

SUBJECT: Appeals of trial court decisions about competency to be executed

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Keel, Riddle, Pena, Denny, Escobar, Raymond, Reyna

0 nays

2 absent — Hodge, P. Moreno

SENATE VOTE: On final passage, April 21 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Under Code of Criminal Procedure, art. 46.05, a person convicted of capital murder and sentenced to death who is incompetent to be executed may not be executed. Defendants file motions of incompetency with the trial court, which holds a hearing to determine whether a defendant has made a substantial showing of incompetency. If the trial court does not determine that the defendant has made the necessary substantial showing of incompetency, the court must deny the defendant's motion.

If the trial court makes a finding by a preponderance of evidence that the defendant is incompetent to be executed, the Court of Criminal Appeals is sent documents to determine whether any existing execution date should be withdrawn and a stay of execution issued. If the trial court does not make a finding by a preponderance of evidence that the defendant is incompetent, the court may set an execution date.

DIGEST: SB 925 would allow appeals of trial court decisions about the competency of someone to be executed to be made by either party in the case. After a trial court had determined whether a defendant had established incompetency to be executed, the court would, upon motion of a party, send documents to the Court of Criminal Appeals for review and a judgment of whether to adopt the trial court's findings or recommendations.

The Court of Criminal Appeals also would be required to determine

whether an existing execution date should be withdrawn and a stay of execution issued while it conducted its review or after its judgment. The bill would authorize trial courts to set execution dates when they determined that a defendant had not made a substantial showing of incompetency and if a trial court made a finding that a defendant was not incompetent to be executed.

The bill would take effect on September 1, 2005, and apply only to a motion filed on or after that date.

**SUPPORTERS
SAY:**

SB 925 would help equalize the appeals process for court findings on whether an inmate was competent to be executed. Current law has been interpreted by courts to mean that the prosecution can appeal a trial court's finding on incompetency but a defendant cannot.

SB 925 would specifically allow either party to appeal a trial court's finding on incompetency. The bill would make the appeals process more like those in actions on writs of habeas corpus by having the trial court make findings and having the Court of Criminal Appeals make the final decision on an appeal. This procedure would streamline the decision-making process for these appeals and result in quicker decisions than under a traditional appeals process. It would fully protect the rights of defendants, has worked well in habeas proceedings, and helps ensure that appeals are not used to delay unduly the imposition of a sentence.

SB 925 would not expand the current authority of trial courts to set execution dates. SB 925 would preserve this authority in light of possible execution stays from the Court of Criminal Appeals while they were considering a trial courts' decision.

**OPPONENTS
SAY:**

It would be better for SB 925 to institute a full appeals process rather than the abbreviated one used in habeas proceedings. Given the nature of the proceedings and the importance of a decision about whether someone is competent to be executed, it would be best clearly to protect all of the rights of defendants by using the traditional appeals process.