

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1071
By: Hinojosa
Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, Article 43.141 (Scheduling of Execution Date; Withdrawal; Modification), Code of Criminal Procedure, governs the scheduling of an execution. A procedure is not explicitly set forth for prosecutors who seek a warrant of execution. Nor does the law require that courts notify defense counsel once an execution date is set. Accordingly, executions have been sought and scheduled without notice to defense counsel.

Attorneys for capital defendants should have the same notice as the state and the court about when executions will be set. Requiring sufficient notice of the scheduling of execution dates will ensure that defendants have an opportunity to fairly prepare for the impending execution.

S.B. 1071 requires both state attorneys and convicting courts to provide written notice to attorneys representing condemned persons once motions are made to set an execution date. The bill also sets time requirements for when notice should be delivered before the court will enter an order setting the execution date. The bill will ensure that attorneys for condemned persons are given sufficient notice of an execution date. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1071 amends current law relating to requiring notice of the scheduling of an execution date and the issuance of a warrant of execution.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 43.141, Code of Criminal Procedure, by adding Subsections (b-1), (b-2), and (b-3), as follows:

(b-1) Requires the attorney representing the state to ensure that a copy of the state's motion to set an execution date is served on the attorney who represented the condemned person in the most recently concluded stage of a state or federal postconviction proceeding.

(b-2) Requires the clerk of the convicting court, if the convicting court intends to set an execution date under this article on its own motion, to provide written notice of that intent to:

(1) the attorney who represented the condemned person in the most recently concluded stage of a state or federal postconviction proceeding;

(2) the attorney representing the state; and

(3) the office of capital writs established under Subchapter B (Office of Capital Writs), Chapter 78, Government Code.

(b-3) Requires that a copy served or notice provided under Subsection (b-1) or (b-2) be:

- (1) personally delivered not later than the 10th day before the day on which the court enters an order setting the execution date; or
- (2) sent by first class mail and deposited in the mail not later than the 16th day before the day on which the court enters an order setting the execution date.

SECTION 2. Amends Article 43.15, Code of Criminal Procedure, as follows:

Art. 43.15. WARRANT OF EXECUTION. (a) Creates this subsection from existing text. Requires the clerk of the court in which the sentence is pronounced, whenever any person is sentenced to death, to, not later than the 10th day after the court enters its order setting the date for execution, issue a warrant under the seal of the court for the execution of the sentence of death. Requires that the warrant recite the fact of conviction, setting forth specifically the offense, the judgment of the court, and the time fixed for the execution. Requires that the warrant be directed to the director of the correctional institutions division of the Texas Department of Criminal Justice, rather than directed to the Director of the Department of Corrections at Huntsville, Texas, commanding the director to proceed, at the time and place named in the order of execution, to carry the same into execution, as provided in Article 43.14 (Execution of Convict). Requires the clerk of the court in which the sentence is pronounced to deliver such warrant to the sheriff of the county in which such judgment of conviction was had, to be delivered by the sheriff to the director, rather than to the said Director of the Department of Corrections, together with the condemned person if the person has not previously been so delivered. Makes a nonsubstantive change.

(b) Requires the clerk of the court, at the time the warrant is issued under Subsection (a), to send a copy of the warrant to:

- (1) the attorney who represented the condemned person in the most recently concluded stage of a state or federal postconviction proceeding;
- (2) the attorney representing the state; and
- (3) the office of capital writs established under Subchapter B, Chapter 78, Government Code.

SECTION 3. (a) Provides that Article 43.141 (Scheduling of Execution Date; Withdrawal; Modification), Code of Criminal Procedure, as amended by this Act, applies only to an order entered on or after the effective date of this Act. Provides that an order entered before the effective date of this Act is governed by the law in effect on the date the order was entered, and the former law is continued in effect for that purpose.

(b) Provides that Article 43.15, Code of Criminal Procedure, as amended by this Act, applies only to a warrant issued on or after the effective date of this Act. Provides that a warrant issued before the effective date of this Act is governed by the law in effect on the date the warrant was issued, and the former law is continued in effect for that purpose.

SECTION 4. Effective date: September 1, 2015.