

- SUBJECT:** Requiring the Court of Criminal Appeals to set execution dates
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 5 ayes — Hinojosa, Dunnam, Garcia, Kitchen, Martinez Fischer
1 nay — Talton
3 absent — Keel, Green, Shields
- WITNESSES:** For — *Registered but did not testify:* William Harrell, American Civil Liberties Union of Texas and National Association for the Advancement of Colored People
Against — None
- BACKGROUND:** In capital murder cases, convicting courts set execution dates. After the court sets the date, the court clerk must issue a warrant for the execution of the death sentence. The warrant is delivered by the sheriff of the county where the inmate was convicted to the director of the Texas Department of Criminal Justice (TDCJ).

Under Code of Criminal Procedure, sec. 42.04, execution dates cannot be set until after the trial-court clerk receives affirmation of the sentence by the Court of Criminal Appeals, the state’s highest criminal court. Sec. 43.141 outlines how an execution date must be scheduled if the inmate files a writ of *habeas corpus* and allows the convicting court to modify or withdraw the date.
- DIGEST:** HB 1328 would require the Court of Criminal Appeals to issue warrants for the execution of inmates whose conviction the court had affirmed. Warrants would have to be issued as soon as practicable after:

! the day the court denied relief to an inmate who filed an initial timely application for an appeal of a death sentence through a writ of *habeas corpus*, or

! the day that any initial application for a writ of *habeas corpus* would be untimely.

The Court of Criminal Appeals could issue a new execution warrant if the inmate was granted a stay of execution in response to an application for a writ of *habeas corpus* or if the Court of Criminal Appeals or a federal court issued an execution stay.

An execution warrant would have to be issued to the TDCJ executive director and would have to state the fact of the conviction and the date on which the inmate was to be executed.

HB 1328 would apply only to inmates who did not have an execution date set by the bill's effective date and to inmates whose set execution dates already were set on the effective date but then were stayed. The Court of Criminal Appeals could not set an execution date before September 1, 2003.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS
SAY:

HB 1328 would lead to a more efficient, uniform setting of execution dates in Texas. Currently, convicting courts across the state issue the execution dates, making them difficult to track. This even has led to more than one execution being scheduled on the same day. Requiring one entity to set the dates would streamline the process and ensure that all dates were set in the same manner. Since the Court of Criminal Appeals makes the state's final determination on death sentences, it is the proper statewide entity to set execution dates.

HB 1328 would not impose a burden on the Court of Criminal Appeals. The court already considers all death sentences, so it simply would have to institute a system for setting dates after it had considered all appeals and an inmate had exhausted federal appeals. The fiscal note for HB 1328 anticipates no significant fiscal implication for the state.

OPPONENTS
SAY:

Current law works well and should not be changed. The trial court that imposed the sentence is the proper entity to finish the sentencing function by setting the execution date. Trial courts are experienced in setting these dates

and in issuing stays when appropriate. The current guidelines in the Code of Criminal Procedure for setting the dates work well.

Prosecutors and defense attorneys both know where and how to argue the setting of execution dates by the trial courts, and it would be inefficient and inconvenient for them to have to communicate from all over the state with the Court of Criminal Appeals in Austin.

It would be burdensome on the Court of Criminal Appeals to begin tracking the status of all cases and issuing execution dates for the approximately 400 inmates on Texas' death row. The court might have to develop a new database and possibly hire a new employee. Other states that use a central body to set execution dates have much smaller death rows than Texas.