

Bill Summary
2nd Session of the 58th Legislature

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Bill Analysis

SB 1738 modifies procedures for the determination of mental competency of a person to be executed. The measure clarifies that “mentally incompetent to be executed” shall refer to persons presently unable to have a rational understanding of the reason he or she is being executed and that the execution is imminent. Persons who received a judgement of the death penalty shall be presumed to be mentally competent. The measure provides that after the Attorney General has filed a motion to set the execution date, the person’s attorney may file a motion within 7 days of the Attorney General’s filing in the Court of Criminal Appeals setting forth the facts giving rise to the belief that the person may be mentally incompetent to be executed and requesting the court to order an examination of the person. Motions claiming incompetency must identify the proceeding in which the person was convicted and clearly set forth the facts in support of the assertion. The measure directs the Court of Criminal Appeals to remand the issue of mental competency to be executed to the trial court where the person was originally tried and sentenced. Mental competency to be executed shall not be considered until a date of execution is set. The Court of Criminal Appeals may issue stays of execution to permit inquiry into the person’s mental competency.

After receiving the remand, the trial court that originally tried and sentenced the person shall hold an evidentiary hearing to determine whether the person has raised a substantial doubt as to the person’s competency to be executed. The Attorney General shall represent the state in such hearings. If the court determines there is insufficient evidence of mental incompetency, the motion shall be denied, and the execution shall proceed. The court shall order an examination of the person by the Department of Mental Health and Substance Abuse Services if the court determines there is sufficient evidence. Upon agreeing to the examination, the person shall waive any claim of privilege with respect to, and consents to the release of, all mental health and medical records relevant to whether the person is mentally incompetent to be executed.

A qualified forensic expert under the Department shall conduct the examination. The examiner shall determine whether the person understands the reason for his or her execution and whether he or she understands the execution is imminent. The examiner shall provide a report to the court within a time ordered by the court. After all examinations are complete, the trial court shall conduct a hearing to determine whether the person is mentally competent to be executed. If the preponderance of evidence shows the person is mentally incompetent, the presumption of competency to be executed shall be overcome. A stay of execution shall be issued by the Court of Criminal Appeals until such time as the person is deemed to be mentally competent. The Department of Mental Health and Substance Abuse Services shall determine, in

conjunction with the Department of Corrections, where the person shall be housed until such time as a forensic examiner can certify the person is competent to be executed. If such a finding is made, the state shall file a motion to determine competency. The Court of Criminal Appeals shall vacate the stay of execution if the person is found to be competent.

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