

BILL ANALYSIS

H.B. 1428
By: Keel
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2002, the Professional Ethics Committee for the State Bar of Texas issued Ethics Opinion 539, in which the committee concluded that if a lawyer represents a defendant in a criminal case in a county in which the lawyer's spouse is a prosecutor, a spousal conflict of interest is attributed to the lawyer's spouse and every other prosecutor in that spouse's office. This opinion may adversely affect the disposition of indigent defendant's cases by requiring a court to replace an appointed defense lawyer or bring in a special prosecutor to handle these cases, both of which may increase the local counties' costs.

House Bill 1428 would prevent the imputation of a spousal conflict to a lawyer's entire office absent the presence of a more specific conflict that rises to the level of a constitutional due process violation.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 1428 amends the Code of Criminal Procedure to provide that a spousal relationship between an attorney representing the state and an attorney representing a defendant is not a cause for disqualification unless otherwise required by the Code of Criminal Procedure, the constitution of this state, or the constitution of the United States.

EFFECTIVE DATE

September 1, 2003.