

BILL ANALYSIS

C.S.S.B. 1224
By: Ellis, Rodney
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The appointment of attorneys to represent indigent capital murder defendants in post conviction writs of habeas corpus calls for careful consideration of the attorneys' experience and competence. The Task Force on Indigent Defense is in a much better position to gauge the quality, availability and effectiveness of attorneys eligible to be appointed on such matters than a statewide appellate court. Under current law, the Court of Criminal Appeals adopts rules for convicting courts to follow when appointing attorneys and approves appointments made by such courts. C.S.S.B. 1224 would transfer the obligation to adopt standards for the appointment of attorneys for such proceedings from the Court of Criminal Appeals to the task force.

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

C.S.S.B. 1224 amends the Criminal Procedure and Government codes relating to the appointment of counsel for an indigent applicant for a writ of habeas corpus in a capital case. The bill transfers the obligation to adopt standards for the appointment from the Court of Criminal Appeals to the Task Force on Indigent Defense. The standards must require, among other things, that the attorney have recent and relevant experience, have participated in continuing legal education courses, and not have been found to have rendered ineffective assistance of counsel. Furthermore, the task force may maintain a list of attorneys qualified for appointment and make the list available to the convicting court to assist with the appointment. The court may not appoint an attorney who represented the applicant at trial or on direct appeal unless both the attorney and the applicant request the appointment and there is good cause to do so.

EFFECTIVE DATE

On passage, or if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the engrossed bill by requiring the assistant counsel, which may be appointed by the convicting court, to meet certain requirements established by the Task Force on Indigent Defense (task force). The substitute further differs from the engrossed bill by establishing minimum guidelines for the standards that the task force adopts for the appointment of attorneys. Whereas, the engrossed bill allows the task force to decide upon minimum standards. In addition, the substitute removes provisions contained in the engrossed bill relating to the approval of payment of itemized services by the convicting court. Furthermore, the substitute removes the provision from the engrossed bill which allows the task force to have a procedure that allows attorneys who do not meet the requirements to be on the list of attorneys that the task force maintains for appointments. The substitute also allows for the Act to become effective upon passage.

