

BILL ANALYSIS

Senate Research Center

H.B. 268
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Criminal Justice
5/18/2005
Committee Report (Amended)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The appointment of attorneys to represent indigent capital murder defendants at trial, in appellate proceedings, and in post-conviction writs of habeas corpus calls for careful consideration of the attorney's experience and competence. Under current law, counties without a public defender's office utilize local selection committees and adopt guidelines and identify qualified attorneys to represent indigent defendants at trial and on appeal.

With regard to post-conviction writs of habeas corpus, current law bestows the Texas Court of Criminal Appeals with the responsibility of adopting guidelines for the appointment of attorneys and approving the appointments made by convicting courts. The Task Force on Indigent Defense, however, is in a better position to gauge the quality, availability, and effectiveness of attorneys eligible to be appointed on such matters than is a statewide appellate court.

H.B. 268 codifies minimum acceptable standards for attorneys to represent indigent defendants in capital cases and transfers the obligation for creating standards governing appointments for writs of habeas corpus in death penalty cases from the court of criminal appeals to the Task Force on Indigent Defense.

RULEMAKING AUTHORITY

Rulemaking authority formerly granted to the court of criminal appeals is rescinded in SECTION 1 (Section 2, Article 11.071, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2, Article 11.071, Code of Criminal Procedure, by amending Subsections (c) and (d) and adding Subsection (d-1), as follows:

(c) Specifies that the convicting court is required to appoint competent counsel [to assist an indigent defendant with a writ of habeas corpus in a capital case] who meets certain requirements. Authorizes the convicting court to appoint an attorney to assist the lead counsel in the case. Sets forth the requirements the assisting attorney must meet.

(d)(1) Requires the Task Force on Indigent Defense (task force) to adopt standards for the appointment of attorneys as counsel under this section. Deletes the requirement that the court of criminal appeals adopt rules for the appointment of attorneys as counsel. Deletes the provision that the court of criminal appeals must approve appointments made by the convicting court.

(2) Sets forth the requirements that the standards must require an attorney to meet.

(3) Requires the task force to maintain a list of attorneys qualified for appointment under this section and make the list available to a convicting court.

(4) Sets forth the circumstances under which the convicting court is authorized to appoint an attorney as counsel if the attorney represented the applicant at trial or on direct appeal.

(d-1) Authorizes the court of criminal appeals to annually review the list of attorneys qualified for appointment under this section to ensure that the attorneys included on the

list are suitably qualified and proficient to be eligible for appointment. Authorizes the court to determine eligibility on a case-by-case basis. Authorizes the court to remove an attorney from the list if the attorney is determined to be ineligible.

SECTION 2. Amends Article 26.052(d), Code of Criminal Procedure, to set forth the qualifications, which the standards adopted by the local selection committee must require, for a trial attorney appointed as lead counsel to a death penalty case, rather than the qualifications for an attorney appointed to a death penalty case. Sets forth the qualifications, which the standards must require, for an attorney appointed as lead appellate counsel in the direct appeal of a death penalty case. Makes nonsubstantive changes.

SECTION 3. Amends Section 71.060(c), Government Code, to require the qualification standards adopted by the task force that relate to the appointment of counsel in a death penalty case to be consistent with standards specified under Section 2, Article 11.071 or Article 26.052(d), rather than under Article 26.052(d), Code of Criminal Procedure, as appropriate.

SECTION 4. Requires the task force to adopt standards described by Section 2(d), Article 11.071, Code of Criminal Procedure, as amended by this Act, not later than January 1, 2006. Requires the task force to prepare the list of qualified attorneys required by that section not later than March 1, 2006.

SECTION 5. Makes application of the requirements for appointment of counsel under Section 2, Article 11.071, Code of Criminal Procedure, as amended by this Act, prospective to May 1, 2006.

SECTION 6. Requires a local selection committee to amend standards previously adopted by the committee to conform with the requirements of Article 26.052(d), Code of Criminal Procedure, as amended by this Act, not later than the 75th day after the effective date of this Act. Makes application of the standards adopted in conformity with Article 26.052(d), as amended by this Act, relating to the appointment of an attorney to a death penalty case, prospective to the 75th day after the effective date of this Act.

SECTION 7. Effective date: upon passage or September 1, 2005.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment No. 1:

Amends C.S.H.B. [sic] No. 268 (engrossed version), in SECTION 1 of the bill, in proposed Subsection (c), Section 2, Article 11.071, Code of Criminal Procedure, on page 1, lines 11-12, by striking "that meets the requirements of Subsection (d)(2)" and substituting "from the list of qualified attorneys maintained by the Task Force on Indigent Defense under Subsection (d)(3)."

Amends C.S.H.B. [sic] No. 268 (engrossed version), in SECTION 1 of the bill, in proposed Subsection (c), Section 2, Article 11.071, Code of Criminal Procedure, by striking the language between "The assisting attorney" on page 1, line 15, and "Subsection (d)(2)(E) or (F)" on page 1, line 17, and substituting "is not subject to the guidelines applicable to an attorney appointed as lead counsel under".

Amends C.S.H.B. [sic] No. 268 (engrossed version), in SECTION 1 of the bill, by striking proposed Subsection (d)(1), Section 2, Article 11.071, Code of Criminal Procedure, on page 1, line 22, to page 2, line 3, and substituting the following:

(d)(1) Authorizes the Task Force on Indigent Defense (task force) to adopt discretionary guidelines for the appointment of attorneys as counsel under this section and to consider the guidelines in determining whether an attorney is qualified for appointment. Deletes existing text requiring the court of criminal appeals to adopt rules for the appointment of attorneys as counsel under this section and authorizing the convicting court to appoint an attorney under this section only if the appointment is approved by the court of criminal appeals. Prohibits the task force from adopting mandatory standards for the appointment

of attorneys under this section and requires the task force to determine whether an attorney is qualified for an appointment on a case-by-case basis.

Amends C.S.H.B. [sic] No. 268 (engrossed version), in SECTION 1 of the bill, in proposed Subdivision (2), Subsection (d), Section 2, Article 11.071, Code of Criminal Procedure, on page 2, line 4, by striking "standards must require" and substituting "discretionary guidelines may include."

Amends C.S.H.B. [sic] No. 268 (engrossed version), in SECTION 1 of the bill, in proposed Paragraph D, Subdivision (2), Subsection (d), Section 2, Article 11.071, Code of Criminal Procedure, on page 2, line 15, by striking "criminal" and substituting "capital."

Amends C.S.H.B. [sic] No. 268 (engrossed version), in SECTION 2 of the bill, in proposed Paragraph D, Subdivision (2), Subsection (d), Section 2, Article 26.052, Code of Criminal Procedure, on page 4, line 6, by striking "criminal" and substituting "capital."

Amends C.S.H.B. [sic] No. 268 (engrossed version), in SECTION 2 of the bill, in proposed Paragraph D, Subdivision (3), Subsection (d), Section 2, Article 26.052, Code of Criminal Procedure, on page 5, line 13, by striking "criminal" and substituting "capital."

Amends C.S.H.B. [sic] No. 268 (engrossed version) by striking SECTIONS 3 and 4 of the bill on page 6, lines 9-25, and substituting the following:

SECTION 3. Requires the task force to prepare the list of qualified attorneys required by Section 2(d), Article 11.071, Code of Criminal Procedure, as amended by this Act, not later than March 1, 2006.

Amends C.S.H.B. [sic] No. 268 (engrossed version) by renumbering subsequent sections accordingly.

Committee Amendment No. 2:

Amends H.B. No. 268 (engrossed version), in SECTION 2 of the bill, in amended Subsection (d), Article 26.052, Code of Criminal Procedure, by striking "[a significant number of felony cases]" in proposed Paragraph (F), Subdivision (2), on page 4, and substituting "a significant number of felony cases."

Amends H.B. No. 268 (engrossed version), in SECTION 2 of the bill, in amended Subsection (d), Article 26.052, Code of Criminal Procedure, by striking "homicide [death penalty]" in proposed Subparagraph (iii), Paragraph (G), Subdivision (2), on page 4, lines 23-24, and substituting "death penalty."

Amends H.B. No. 268 (engrossed version), in SECTION 2 of the bill, in amended Subsection (d), Article 26.052, Code of Criminal Procedure, by striking the language between "including" and the period in proposed Paragraph (F), Subdivision (3), on page 5, lines 19-21, and substituting "at least one capital felony case".