

BILL ANALYSIS

S.B. 306
By: Harris
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law requires the judge of a district court to appoint two attorneys, at least one of whom is death penalty qualified, to represent an indigent defendant in a capital felony case "as soon as practicable after any charges are filed, unless the state gives notice in writing that [it] will not seek the death penalty." This is expensive and may not be necessary if the state indicates it will not seek the death penalty.

S.B. 306 will require the judge of a district court to appoint only one attorney to represent an indigent defendant as soon as practicable after charges are filed, unless the state files written notice in the case that the state will seek the death penalty or the 90th day after the defendant is charged with a capital offense by indictment or by complaint. The bill also provides for reasonable payment for services rendered by the second attorney who is removed.

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

Senate Bill 306 amends the Code of Criminal Procedure that the presiding judge of the district court in which a capital felony case is filed must appoint an attorney, who must meet certain qualifications, to represent an indigent defendant as soon as practicable after charges are filed. The bill strikes out the provision that required two attorneys to be appointed, unless the state gives notice in writing that the state will not seek the death penalty. Unless the state files written notice in the case that the state will not seek the death penalty, the judge must appoint a second attorney to the case on the earlier of either when the state files written notice in the case that the state will seek the death penalty, or on the 90th day after the date on which the defendant is charged with a capital offense by indictment or by complaint, whichever occurs first.

An attorney is not required to meet the standards described by Article 26.052(d)(2), Code of Criminal Procedure, to be eligible for appointment as a second attorney. A case in which the state seeks the death penalty may not proceed to trial on the merits before the 180th day after the date on which a second attorney is appointed to the case. If, after the second attorney is appointed, the state files written notice in the case that the state will not seek the death penalty, the judge may remove the second attorney from the case. The second attorney remains entitled to reasonable payment for services rendered before removal in accordance with the local guidelines for payment of an attorney appointed to represent a defendant in a capital case. Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses and mitigation evidence. The bill provides that the court must timely grant the request for advance payment of expenses in whole or in part if the request is reasonable.

Makes application of this Act prospective.

EFFECTIVE DATE

September 1, 2007.

S.B. 306 80(R)

