

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 306  
By: Harris  
Jurisprudence  
3/23/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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.

C.S.S.B. 306 requires the appointment of a single death penalty qualified attorney, rather than two attorneys, one of whom is death penalty qualified, in a death penalty case as soon as practicable after capital murder charges have been filed against an indigent defendant. The bill requires a second attorney to be appointed to the case after the state files written notice that it will seek the death penalty or 90 days after the capital charges are filed, unless the judge receives written notice from the state that it will not seek the death penalty.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 26.052, Code of Criminal Procedure, by amending Subsections (e), (f), and (g), and adding Subsections (e-1) and (e-2), as follows:

(e) Requires the presiding judge of a district court in which a capital felony case is filed to appoint an attorney who is required to be qualified under this chapter (Arraignment) to represent an indigent defendant in the case, rather than two attorneys, one of whom is required to be qualified. Deletes existing text relating to the state giving notice in writing that the state will not seek the death penalty. Requires the judge to appoint a second attorney to the case on the earlier of certain dates set forth in this subsection unless the state files written notice in the case that it will not seek the death penalty.

(e-1) Provides that an attorney is not required to meet the standards of Subsection (d)(2) to be eligible for appointment as a second attorney under Subsection (e).

(e-2) Prohibits a case in which the state seeks the death penalty from proceeding to trial on the merits until 180 days after the date on which a second attorney is appointed to the case under Subsection (e). Authorizes the judge to remove the second attorney, after appointment to the case, if the state files written notice in the case that it will not seek the death penalty. Provides that 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 capital defendant.

(f) Authorizes an appointed counsel to file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses and mitigation evidence.

(g) Requires the court to timely grant the request for advance payment of expenses, in whole or in part, if it is reasonable.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2007.