

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Extensive studies, research by the Texas State Bar, and investigative news reports have revealed pervasive flaws in the quality of legal representation for indigent defendants in the state habeas system. For example, a review of state habeas cases decided between 1995 and 2002 revealed that one out of three death row inmates faces execution without having their case properly investigated by a competent attorney. This lack of quality legal representation is a result of the means by which Texas appoints attorneys to represent indigent defendants in state habeas cases, and the lack of regulations on attorneys eligible to be appointed to these cases. Under current Texas law, attorneys in capital habeas cases are appointed by the district court from a statewide list of eligible lawyers maintained by the Texas Court of Criminal Appeals. The performance of Texas capital habeas lawyers is neither regulated nor monitored by any court or government agency. Thus, if the habeas representation amounts to the functional equivalent of a lawyer sleeping through the trial, the lawyer is nonetheless reappointed to more cases and the death-sentenced inmate has no remedy or recourse.

The list of lawyers appointed to habeas has been, and remains, populated by lawyers who are clearly unqualified, including lawyers: who were serving probated suspensions from the practice of law for neglecting their clients; with no capital experience; with no habeas corpus experience; with mental illness; who abandoned their death sentenced clients and waived all federal review of the case because the federal statute of limitations expired (including one lawyer who joined the prosecutor's office and never informed her client); who filed writs with no cognizable claims (including lawyers who filed verbatim copies of the inmate's direct appeal brief); and even who were deceased.

Despite these failures to provide adequate legal representation, there are no consequences for the attorneys who perform incompetently. They are not removed from the list of those eligible to take these cases and the disciplinary committee of the Texas State Bar does not feel it can adequately police attorney performance in these complicated cases. Instead, the same lawyers providing inadequate representation are reappointed in case after case.

Providing adequate legal representation is especially important in habeas proceedings because state habeas represents the most critical stage of the appellate process in death penalty cases: it is the "safety net" designed to catch the innocent and those treated unfairly by the system. Habeas proceedings are a prisoner's only opportunity to raise claims of prosecutorial misconduct, ineffective assistance of trial counsel, or present evidence not developed or discovered during trial--including new evidence of innocence. Not only are state habeas proceedings the appropriate forum for submitting new evidence, they are a prisoner's final opportunity to do so. If a claim for relief is not presented in state habeas, it cannot be considered by the federal courts except in extraordinary circumstances--even when the claim is clearly meritorious and undermines all confidence in the outcome of the trial. Any omissions by habeas counsel permanently foreclose both state and federal review of any issues or facts overlooked by counsel.

As proposed, S.B. 1655 establishes the capital writs standards subcommittee of the Task Force on Indigent Defense and creates the Office of Capital Writs to represent defendants in applications for writs of habeas corpus.

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 Section 71.060(c), Government Code, to provide that any qualification standards adopted by the Task Force on Indigent Defense (task force) are required to be consistent with the standards specified under Section 71.064, Government Code, rather than Article 26.052(d) (relating to certain required qualifications for attorneys appointed to represent indigent defendants in capital cases in which the death penalty is sought), Code of Criminal Procedure.

SECTION 2. Amends Subchapter D, Chapter 71, Government Code, by adding Section 71.064, as follows:

Sec. 71.064. CAPITAL WRITS STANDARDS SUBCOMMITTEE. (a) Defines "office of capital writs" and "subcommittee."

(b) Establishes the capital writs standards subcommittee (subcommittee) of the task force.

(c) Provides that the subcommittee is composed of seven members to be selected by majority vote of the task force.

(d) Requires the subcommittee to elect one member to serve as the presiding officer of the subcommittee.

(e) Sets forth the duties required to be performed by the subcommittee.

(f) Requires the standards adopted under Subsections (e)(3) and (4) to require that an attorney employed by the office of capital writs (office) or appointed as lead counsel in applications for writs of habeas corpus meet certain qualifications.

SECTION 3. Amends Chapter 71, Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. OFFICE OF CAPITAL WRITS

Sec. 71.071. DEFINITIONS. Defines "office" and "subcommittee."

Sec. 71.072. ESTABLISHMENT; FUNDING. (a) Establishes the Office of Capital Writs (office) as a standing committee of the Texas Judicial Council (council) and provides that it operates under the direction and supervision of the director of the office.

(b) Requires the office to receive funds for personnel costs and expenses as specified in the General Appropriations Act.

Sec. 71.073. DIRECTOR; STAFF. (a) Requires the task force to employ a director to direct and supervise the operation of the office. Provides that the director serves at the pleasure of the task force, except that the task force is authorized to terminate the director's employment only for good cause.

(b) Requires the director to employ attorneys, licensed investigators, and other personnel necessary to perform the duties of the office.

(c) Prohibits the director and any attorney employed by the office to engage in certain activities.

Sec. 71.074. POWERS AND DUTIES. (a) Authorizes the office to refuse an appointment under Article 11.071, Code of Criminal Procedure, only under certain circumstances.

(b) Authorizes the office to independently investigate the financial condition of any person the office is appointed to represent, notwithstanding Article 26.04(p)

(authorizing the defendant, the defendant's counsel, or the attorney representing the state to make a move for reconsideration of the determination of indigency or nonindigency if there is a material change in financial circumstances), Code of Criminal Procedure. Requires the office to report the results of the investigation to the appointing judge. Authorizes the judge to hold a hearing to determine if the person is indigent and entitled to representation under this article.

(c) Prohibits the court from appointing the office to represent a defendant in an application for a writ of habeas corpus under certain circumstances.

Sec. 71.075. COMPENSATION OF OTHER APPOINTED ATTORNEYS. Requires an appointed attorney, other than the attorney employed by the office, to be compensated as provided by Article 26.05 (Compensation Of Counsel Appointed To Defend), Code of Criminal Procedure.

SECTION 4. Amends Section 2, Article 11.071, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (g), as follows:

(b) Requires the court to appoint the office of capital writs to represent the defendant if he or she desires appointment of counsel for the purpose of a writ of habeas corpus.

(g) Provides that Subsections (d) (relating to rules required to be adopted by the court of criminal appeals) and (f) (relating to compensating appointed attorneys) apply only to an attorney appointed to represent an applicant who is not employed by the office. Requires an attorney appointed under this section who is employed by the office to be compensated in accordance with Subchapter E, Chapter 71, Government Code, and any rules adopted under that subchapter.

SECTION 5. Amends Section 4A(f), Article 11.071, Code of Criminal Procedure, to provide that Section 2A applies to the compensation and payment of expenses of counsel appointed by the court of criminal appeals under this subsection, unless the attorney is employed by the office, in which case the attorney is compensated in accordance with Subchapter E, Chapter 71, Government Code.

SECTION 6. Amends Article 26.04(b), Code of Criminal Procedure, to make conforming changes.

SECTION 7. Amends Article 26.044(a), Code of Criminal Procedure, by adding Subdivision (3) to define "office of capital writs."

SECTION 8. Amends Article 26.044, Code of Criminal Procedure, by adding Subsection (n), to authorize a public defender to be appointed with respect to an application for a writ of habeas corpus only if an attorney employed by the office is not appointed in the case.

SECTION 9. Amends Article 26.05(a), Code of Criminal Procedure, to make a conforming change.

SECTION 10. (a) Requires the task force to designate seven members of the task force to serve as the subcommittee, not later than 60 days after the effective date of this Act.

(b) Requires the task force to employ the director of the office under Subchapter E, Chapter 71, Government Code, as added by this Act, not later than June 1, 2009.

SECTION 11. Effective date: September 1, 2007.