

BILL ANALYSIS

S.B. 1308
By: Seliger
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current statute states that in order for an attorney to be appointed to represent indigent defendants in both capital cases and appellate cases, the attorney must have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case. Currently, the permanent ban has removed highly skilled attorneys from the appointments list even when some findings of ineffective assistance of counsel may be very case-specific and not be indicative of future representation. The demand for more qualified capital defense lawyers to defend indigent clients continues to be problematic.

This bill would allow for the review of attorneys who are no longer eligible to represent indigent defendants in capital cases due to a single finding of ineffective counsel. The determination will be made by the Regional Selection Committee, which includes an administrative law judge, a district judge, a representative from the local bar association, and a board-certified criminal attorney.

As proposed, S.B. 1308 amends current law relating to the standards for attorneys representing indigent defendants in capital cases.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Article 26.052, Code of Criminal Procedure, by amending Subsection (d) and adding Subsection (n), as follows:

(d)(1) Requires the local selection committee to adopt standards for the qualification of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought.

(2) Requires that the standards require that a trial attorney appointed as lead counsel to a capital case meet certain requirements, including that the trial attorney have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation.

(3) Requires that the standards require an attorney appointed as lead appellate counsel in the direct appeal of a capital case meet certain requirements, including that the attorney have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation.

(4)-(5) Makes no changes to these subdivisions.

(n) Requires the local selection committee, at the request of an attorney, to make a determination under Subsection (d)(2)(C) (relating to the standards required of a trial attorney in a capital case) or (3)(C) (relating to the standards required of a lead appellate counsel in a capital case), as applicable, regarding the attorney's current ability to provide effective representations following a judicial finding that the attorney previously rendered ineffective assistance of counsel in a capital case.

SECTION 2. Provides that the change in law made by this Act applies to an attorney who, before, on, or after the effective date of this Act, has been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of a capital case.

SECTION 3. Requires a local selection committee to amend its stands as necessary to conform with the requirements of Article 26.052(n), Code of Criminal Procedure, as added by this Act, not later than the 30th day after the effective date of this Act.

EFFECTIVE DATE

September 1, 2011.