

By: Raymond

H.B. No. 163

A BILL TO BE ENTITLED

AN ACT

relating to the criminal jurisdiction of the supreme court and the
abolishment of the court of criminal appeals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 4.04, Code of Criminal Procedure, is
amended to read as follows:

Art. 4.04. SUPREME COURT [~~OF CRIMINAL APPEALS~~]

Sec. 1. The Supreme Court [~~of Criminal Appeals~~] and each
justice of the court [~~judge thereof shall~~] have[, ~~and is hereby~~
~~given,~~] the power and authority to grant and issue and cause the
issuance of:

(1) writs of habeas corpus;

(2) [~~, and,~~] in criminal law matters, the writs of
mandamus, procedendo, prohibition, and certiorari; and

(3) any [~~. The court and each judge thereof shall~~
~~have, and is hereby given, the power and authority to grant and~~
~~issue and cause the issuance of such~~] other writs [~~as may be~~]
necessary to protect its jurisdiction or enforce its judgments.

Sec. 2. The Supreme Court has [~~of Criminal Appeals shall~~
~~have, and is hereby given,~~] final appellate and review jurisdiction
in criminal cases coextensive with the limits of the state, and its
determinations are [~~shall be~~] final. [~~The appeal of all cases in~~
~~which the death penalty has been assessed shall be to the Court of~~
~~Criminal Appeals. In addition, the Court of Criminal Appeals may,~~

1 ~~on its own motion, with or without a petition for such discretionary~~
2 ~~review being filed by one of the parties, review any decision of a~~
3 ~~court of appeals in a criminal case. Discretionary review by the~~
4 ~~Court of Criminal Appeals is not a matter of right, but of sound~~
5 ~~judicial discretion.]~~

6 SECTION 2. Section 52.092(c), Election Code, is amended to
7 read as follows:

8 (c) Statewide offices of the state government shall be
9 listed in the following order:

- 10 (1) governor;
- 11 (2) lieutenant governor;
- 12 (3) attorney general;
- 13 (4) comptroller of public accounts;
- 14 (5) commissioner of the General Land Office;
- 15 (6) commissioner of agriculture;
- 16 (7) railroad commissioner;
- 17 (8) chief justice, supreme court;
- 18 (9) justice, supreme court[~~+~~
- 19 [~~(10) presiding judge, court of criminal appeals,~~
- 20 [~~(11) judge, court of criminal appeals~~].

21 SECTION 3. Section 172.021(g), Election Code, is amended to
22 read as follows:

23 (g) A candidate for the office of chief justice or justice,
24 supreme court, [~~or presiding judge or judge, court of criminal~~
25 ~~appeals,~~] who chooses to pay the filing fee must also accompany the
26 application with a petition that complies with the requirements
27 prescribed for a petition authorized by Subsection (b), except that

1 the minimum number of signatures that must appear on the petition
2 required by this subsection is 50 from each court of appeals
3 district.

4 SECTION 4. Section 22.001(a), Government Code, is amended
5 to read as follows:

6 (a) The supreme court has appellate jurisdiction [~~except~~
7 ~~in criminal law matters,~~] coextensive with the limits of the state
8 and extending to all questions of law arising in the following cases
9 when they have been brought to the courts of appeals from appealable
10 judgment of the trial courts:

11 (1) a case in which the justices of a court of appeals
12 disagree on a question of law material to the decision;

13 (2) a case in which one of the courts of appeals holds
14 differently from a prior decision of another court of appeals or of
15 the supreme court on a question of law material to a decision of the
16 case;

17 (3) a case involving the construction or validity of a
18 statute necessary to a determination of the case;

19 (4) a case involving state revenue;

20 (5) a case in which the railroad commission is a party;
21 and

22 (6) any other case in which it appears that an error of
23 law has been committed by the court of appeals, and that error is of
24 such importance to the jurisprudence of the state that, in the
25 opinion of the supreme court, it requires correction, but excluding
26 those cases in which the jurisdiction of the court of appeals is
27 made final by statute.

1 SECTION 5. Section 22.002(a), Government Code, is amended
2 to read as follows:

3 (a) The supreme court or a justice of the supreme court may
4 issue writs of procedendo and certiorari and all writs of quo
5 warranto and mandamus agreeable to the principles of law regulating
6 those writs, against a statutory county court judge, a statutory
7 probate court judge, a district judge, a court of appeals or a
8 justice of a court of appeals, or any officer of state government
9 except the governor[, the court of criminal appeals, or a judge of
10 the court of criminal appeals].

11 SECTION 6. The heading to Subchapter B, Chapter 22,
12 Government Code, is amended to read as follows:

13 SUBCHAPTER B. SUPREME COURT: [~~OF~~] CRIMINAL APPEALS

14 SECTION 7. Subchapter B, Chapter 22, Government Code, is
15 amended by adding Section 22.1011 to read as follows:

16 Sec. 22.1011. REFERENCE TO COURT OF CRIMINAL APPEALS. A
17 reference in state law to the court of criminal appeals means the
18 supreme court, a reference to a judge of the court of criminal
19 appeals means a justice of the supreme court, and a reference to the
20 presiding judge of the court of criminal appeals means the chief
21 justice of the supreme court.

22 SECTION 8. Sections 22.102 and 22.103, Government Code, are
23 amended to read as follows:

24 Sec. 22.102. MANDATE. When the court from which an appeal
25 is taken is deprived of jurisdiction over the case pending the
26 appeal and the case is determined by a court of appeals or the
27 supreme court [~~of criminal appeals~~], the mandate of the appellate

1 court that determined the case shall be directed to the court that
2 had jurisdiction over the case, as also provided by Section 22.226.

3 Sec. 22.103. ASCERTAINMENT OF FACTS. The supreme court [~~of~~
4 ~~criminal appeals~~] may ascertain, on affidavit or otherwise, the
5 matters of fact that are necessary to the exercise of its
6 jurisdiction.

7 SECTION 9. Section 22.105(a), Government Code, is amended
8 to read as follows:

9 (a) The fact that a justice [~~judge~~] of the supreme court [~~of~~
10 ~~criminal appeals~~] is disqualified under the constitution and laws
11 of this state to hear and determine a case shall be certified to the
12 governor.

13 SECTION 10. Sections 22.106(a), (c), and (d), Government
14 Code, are amended to read as follows:

15 (a) The chief justice [~~presiding judge~~] of the supreme court
16 [~~of criminal appeals~~], with the concurrence of a majority of the
17 justices [~~judges~~] of the supreme court [~~of criminal appeals~~], may
18 designate and appoint a retired appellate judge or district judge
19 who has consented to be subject to appointment, or an active
20 appellate judge or district judge, to sit as a commissioner of the
21 supreme court [~~of criminal appeals~~]. A designated judge must
22 consent to the designation and appointment. The chief justice
23 [~~presiding judge~~] may designate and appoint as many commissioners
24 as the chief justice considers [~~he deems~~] necessary to aid the court
25 in disposing of its business.

26 (c) The opinions of a commissioner shall be submitted to the
27 supreme court [~~of criminal appeals~~] for approval. When approved by

1 a majority of the court, an opinion of a commissioner has the same
2 weight and legal effect as an opinion originally prepared by the
3 supreme court [~~of criminal appeals~~].

4 (d) The compensation of a judge while sitting as a
5 commissioner of the supreme court [~~of criminal appeals~~] shall be
6 paid out of money appropriated from the general revenue fund for
7 that purpose in an amount equal to the salary of the justices
8 [~~judges~~] of the supreme court [~~of criminal appeals~~] and shall be in
9 lieu of the retirement allowance that the judge receives or in lieu
10 of the compensation the judge [~~he~~] receives as an active judge of
11 another court. In addition to the compensation, a judge sitting as
12 a commissioner of the court is entitled to receive the judge's [~~his~~]
13 actual travel expenses to and from Austin and a \$25 per diem while
14 the judge [~~he~~] is assigned to the supreme court [~~of criminal~~
15 ~~appeals~~] in Austin.

16 SECTION 11. Sections 22.107, 22.108, 22.109, and 22.1095,
17 Government Code, are amended to read as follows:

18 Sec. 22.107. COMMISSION IN AID OF SUPREME COURT [~~OF~~
19 ~~CRIMINAL APPEALS~~]. (a) In addition to the authority granted by
20 Section 22.106 [~~of this code~~], the supreme court [~~of criminal~~
21 ~~appeals~~] may appoint a commission for the aid of the court in
22 disposing of the business before the court. The commission in aid
23 of the court shall discharge the duties that are assigned it by the
24 supreme court [~~of criminal appeals~~].

25 (b) The commission shall be composed of two attorneys having
26 the qualifications fixed by the constitution and laws of this state
27 for a justice [~~judge~~] of the supreme court [~~of criminal appeals~~].

1 Commissioners serve two-year terms that expire September 1 of each
2 odd-numbered year.

3 (c) The opinions of the commissioners in aid of the court
4 shall be submitted to the supreme court [~~of criminal appeals~~] for
5 approval. When approved by a majority of the court and handed down
6 as an opinion of the court, an opinion of a commissioner in aid of
7 the court has the same weight and legal effect as an opinion
8 originally prepared and handed down by the supreme court [~~of~~
9 ~~criminal appeals~~].

10 (d) Each member of the commission is entitled to receive for
11 the member's [~~his~~] services the salary that is provided by law.

12 (e) The supreme court [~~of criminal appeals~~] by appointment
13 may fill a vacancy on the commission in aid of the court that is
14 created by the death, resignation, or removal of a member of the
15 commission. A person appointed to fill a vacancy continues in
16 office for the unexpired portion of the term for which the
17 commissioner vacating the office was appointed.

18 (f) The supreme court [~~of criminal appeals~~] shall appoint
19 two stenographers for the commission.

20 Sec. 22.108. RULES OF APPELLATE PROCEDURE IN CRIMINAL
21 CASES. (a) The supreme court [~~of criminal appeals~~] is granted
22 rulemaking power to promulgate rules of posttrial, appellate, and
23 review procedure in criminal cases except that its rules may not
24 abridge, enlarge, or modify the substantive rights of a litigant.

25 (b) The supreme court [~~of criminal appeals~~] may promulgate a
26 comprehensive body of rules of posttrial, appellate, and review
27 procedure in criminal cases and from time to time may promulgate a

1 specific rule or rules of posttrial, appellate, or review procedure
2 in criminal cases or an amendment or amendments to a specific rule
3 or rules. Rules and amendments adopted under this subsection are
4 effective at the time the supreme court [~~of criminal appeals~~]
5 considers expedient in the interest of a proper administration of
6 justice. The rules and amendments to rules remain in effect unless
7 and until disapproved, modified, or changed by the legislature.
8 The clerk of the supreme court [~~of criminal appeals~~] shall file with
9 the secretary of state the rules or amendments to rules promulgated
10 by the supreme court [~~of criminal appeals~~] under this subsection.

11 (c) The rules of posttrial, appellate, and review procedure
12 in criminal cases shall be published in the Texas Register and in
13 the Texas Bar Journal. The supreme court [~~of criminal appeals~~] may
14 adopt the method it considers expedient for the printing and
15 distribution of the rules.

16 Sec. 22.109. RULES OF EVIDENCE IN CRIMINAL CASES. (a) The
17 supreme court [~~of criminal appeals~~] has the full rulemaking power
18 in the promulgation of rules of evidence in the trials of criminal
19 cases, except that its rules may not abridge, enlarge, or modify the
20 substantive rights of a litigant.

21 (b) The supreme court [~~of criminal appeals~~] may promulgate a
22 comprehensive body of rules of evidence in the trials of criminal
23 cases and from time to time may promulgate a specific rule or rules
24 of evidence or an amendment or amendments to a specific rule or
25 rules. Rules and amendments adopted under this subsection are
26 effective at the time the supreme court [~~of criminal appeals~~]
27 considers expedient in the interest of a proper administration of

1 justice. The rules and amendments to rules remain in effect unless
2 and until disapproved by the legislature. The secretary of state
3 shall report the rules or amendments to rules to the next regular
4 session of the legislature by mailing a copy of the rules or
5 amendments to rules to each elected member of the legislature on or
6 before December 1 immediately preceding the session.

7 (c) The rules of evidence in the trials of criminal cases
8 shall be published in the Texas Register and in the Texas Bar
9 Journal. The supreme court [~~of criminal appeals~~] may adopt the
10 method it considers expedient for the printing and distribution of
11 the rules.

12 Sec. 22.1095. RULES ON ELECTRONIC FILING OF DOCUMENTS FOR
13 CAPITAL CASES IN SUPREME COURT [~~OF CRIMINAL APPEALS~~].

14 [~~(a)~~] Notwithstanding Subchapter I, Chapter 51, or any other law,
15 the supreme court [~~of criminal appeals~~] may adopt rules and
16 procedures providing for and governing the electronic filing of
17 briefs, pleadings, and other documents for capital cases in that
18 court.

19 [~~(b) In the adoption of rules and procedures under~~
20 ~~Subsection (a), the court of criminal appeals shall coordinate with~~
21 ~~the supreme court and the rules and procedures adopted by that~~
22 ~~court.~~]

23 SECTION 12. Sections 22.110(a), (b), (c), and (e),
24 Government Code, are amended to read as follows:

25 (a) The supreme court [~~of criminal appeals~~] shall assure
26 that judicial training related to the problems of family violence,
27 sexual assault, and child abuse and neglect is provided.

1 (b) The supreme court [~~of criminal appeals~~] shall adopt the
2 rules necessary to accomplish the purposes of this section. The
3 rules must require each district judge, judge of a statutory county
4 court, associate judge appointed under Chapter 54 of this code or
5 Chapter 201, Family Code, master, referee, and magistrate to
6 complete at least 12 hours of the training within the judge's first
7 term of office or the judicial officer's first four years of service
8 and provide a method for certification of completion of that
9 training. At least four hours of the training must be dedicated to
10 issues related to child abuse and neglect and must cover at least
11 two of the topics described in Subsections (d)(8)-(12). At least
12 six hours of the training must be dedicated to the training
13 described by Subsections (d)(5), (6), and (7). The rules must
14 require each judge and judicial officer to complete an additional
15 five hours of training during each additional term in office or four
16 years of service. At least two hours of the additional training
17 must be dedicated to issues related to child abuse and
18 neglect. The rules must exempt from the training requirement of
19 this subsection each judge or judicial officer who files an
20 affidavit stating that the judge or judicial officer does not hear
21 any cases involving family violence, sexual assault, or child abuse
22 and neglect.

23 (c) In adopting the rules, the supreme court [~~of criminal~~
24 ~~appeals~~] may consult with [~~the supreme court and with~~] professional
25 groups and associations in the state that have expertise in the
26 subject matter to obtain the recommendations of those groups or
27 associations for instruction content.

1 (e) The supreme court [~~of criminal appeals~~] or the court's
2 designee shall report the name of a judge or judicial officer who
3 does not comply with the requirements of this section to the State
4 Commission on Judicial Conduct.

5 SECTION 13. Sections 22.1105(b) and (c), Government Code,
6 are amended to read as follows:

7 (b) The supreme court [~~of criminal appeals~~] shall adopt the
8 rules necessary to provide for the training required under
9 Subsection (a). The rules must require a judge described by
10 Subsection (a) to complete two hours of the required training every
11 judicial academic year that ends in a 0 or a 5 as part of the
12 training the judge is required to complete under rules adopted by
13 the supreme court [~~of criminal appeals~~] or other law.

14 (c) In adopting the rules, the supreme court [~~of criminal~~
15 ~~appeals~~] may consult with [~~the supreme court and with~~] professional
16 groups and associations in this state that have expertise in the
17 subject matter to obtain the recommendations of those groups or
18 associations for instructional content.

19 SECTION 14. Section 22.111, Government Code, is amended to
20 read as follows:

21 Sec. 22.111. TRAINING FOR PROSECUTING ATTORNEYS RELATED TO
22 PUNISHMENT ENHANCEMENT BECAUSE OF BIAS OR PREJUDICE. The supreme
23 court [~~of criminal appeals~~] shall provide to prosecuting attorneys
24 training related to the use of Section 12.47, Penal Code, and
25 Article 42.014, Code of Criminal Procedure, for enhancing
26 punishment on a finding that an offense was committed because of the
27 defendant's bias or prejudice as defined in Article 42.014, Code of

1 Criminal Procedure.

2 SECTION 15. Sections 22.226 and 22.301, Government Code,
3 are amended to read as follows:

4 Sec. 22.226. MANDATE. When the court from which an appeal
5 is taken is deprived of jurisdiction over the case pending the
6 appeal and the case is determined by a court of appeals or the
7 supreme court [~~of criminal appeals~~], the mandate of the appellate
8 court that determines the case shall be directed to the court that
9 had jurisdiction over the case, as also provided by Section 22.102.

10 Sec. 22.301. SALARIES OF OFFICERS AND PERSONNEL OF
11 APPELLATE COURTS. The salaries of the state prosecuting attorney
12 and the clerks, other officers, and employees of the supreme
13 court [~~, court of criminal appeals,~~] and courts of appeals shall be
14 determined by the legislature in its appropriation acts for the
15 support of the judiciary.

16 SECTION 16. Section 22.302(a), Government Code, is amended
17 to read as follows:

18 (a) At the discretion of its chief justice [~~or presiding~~
19 ~~judge~~], the supreme court [~~, the court of criminal appeals,~~] or a
20 court of appeals may order that oral argument be presented through
21 the use of teleconferencing technology. The court and the parties
22 or their attorneys may participate in oral argument from any
23 location through the use of teleconferencing technology.

24 SECTION 17. The following sections of the Government Code
25 are repealed:

26 (1) Sections 22.0035(d) and (e);

27 (2) Section 22.101; and

1 (3) Section 22.112.

2 SECTION 18. This Act takes effect on the date on which the
3 constitutional amendment proposed by the 82nd Legislature, Regular
4 Session, 2011, to abolish the court of criminal appeals and vest
5 that court's criminal jurisdiction in the supreme court takes
6 effect. If that amendment is not approved by the voters, this Act
7 has no effect.