

BILL ANALYSIS

Senate Research Center

S.B. 280
By: Hinojosa
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The office of capital and forensic writs (OCFW) is a judicial agency that is the statewide public defender for post-conviction matters. OCFW opened in 2010 and currently has 20 employees.

The director of OCFW is appointed by the Court of Criminal Appeals to a four-year term, upon a recommendation of the statutorily created capital and forensic writs committee (committee). Apart from interviewing and recommending qualified candidates for the position of director to the Court of Criminal Appeals, the committee does not serve in any advisory or oversight capacity. While the Court of Criminal Appeals selects and appoints the director of OCFW, and can terminate the director upon good cause, there is currently no mechanism for ongoing oversight of OCFW's programmatic and fiscal governance, or any entity with the responsibility to provide support and assistance in advancing the mission of OCFW. Apart from selecting the director, neither the Court of Criminal Appeals nor the committee oversees OCFW.

A 2018 outside assessment of OCFW recommended that an independent oversight board be created to ensure program integrity, professional independence, and accountability. The Texas Legislature previously recognized the desirability of oversight boards for county-level public defender agencies and provided a mechanism for such boards to be established. Dozens of counties have benefited, and governing boards are now the norm for Texas public defender offices — indeed, the Texas Indigent Defense Commission requires a board for any new public defender office.

S.B. 280 builds on these advances by reorganizing the existing OCFW committee to enhance governance, accountability, and support, while maintaining professionally appropriate independence for the agency. S.B. 280 does not modify or limit the existing power of the Court of Criminal Appeals to select and appoint the director of OCFW, monitor the director's performance, remove the director on good cause, or reappoint the director.

(Original Author's / Sponsor's Statement of Intent)

S.B. 280 amends current law relating to the composition and duties of the capital and forensic writs committee.

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 78.002, Government Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires the capital and forensic writs committee (committee) to provide oversight and strategic guidance to the office of capital and forensic writs (office), including recommending to the Texas Court of Criminal Appeals as provided by Section 78.004 (Recommendation and Appointment of Director of Office of Capital and Forensic Writs) a director for the office when a vacancy exists for the position of director, setting

policy for the office, and developing a budget proposal for the office. Makes a nonsubstantive change.

(c) Prohibits the committee from accessing privileged or confidential information.

SECTION 2. Amends Section 78.003, Government Code, by amending Subsections (a) and (c) and adding Subsections (a-1), (a-2), and (a-3), as follows:

(a) Provides that the committee is composed of the following five members who are appointed as follows, rather than who are appointed by the president of the State Bar of Texas (state bar) with ratification by the executive committee of the state bar:

(1) three attorneys who are appointed by the executive director of the Texas Indigent Defense Commission; and

(2) two attorneys who are appointed by the president of the state bar, with ratification by the executive committee of the state bar.

Deletes existing text providing for the appointment of three attorneys who are members of the state bar and who are not employed as prosecutors or law enforcement officials, all of whom are required to have criminal defense experience with death penalty proceedings in this state and the appointment of two state district judges, one of whom serves as presiding judge of an administrative judicial region.

(a-1) Requires each member of the committee to be a licensed attorney and to have significant experience in capital defense or indigent criminal defense policy or practice. Prohibits a member of the committee from being a prosecutor, a law enforcement official, a judge of a court that presides over criminal offenses, or an employee of the office.

(a-2) Provides that members of the committee serve four-year terms and are authorized to be reappointed.

(a-3) Requires the appropriate appointing authority, if a vacancy occurs, to appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

(c) Deletes existing text providing that the committee members serve at the pleasure of the president of the state bar. Makes nonsubstantive changes.

SECTION 3. Effective date: September 1, 2021.