

BILL ANALYSIS

H.B. 1676
By: White
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties note that an indigent defendant appealing a death sentence has a constitutional right to a rigorous defense but that attorneys appointed for such indigent defendants often lack the qualifications and breadth of experience necessary for a defense in a capital case. H.B. 1676 seeks to improve the quality of defense for all indigent defendants appealing a death sentence by creating the capital appellate defense committee and the office of capital appellate defender.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 1676 amends the Government Code to establish the capital appellate defense committee and the office of capital appellate defender. The bill requires the capital appellate defense committee to recommend to the court of criminal appeals a director for the office of capital appellate defender when a vacancy exists for the position and sets out requirements for such a recommendation. The bill requires the committee, not later than May 15, 2018, to submit to the court of criminal appeals a list of candidates for the position of the director of the office of capital appellate defender and requires the court of criminal appeals to appoint the director from that list. The bill sets out requirements relating to the appointment and composition of the five-member committee, election of the presiding officer of the committee, and eligibility to serve as a member and establishes that the committee meets at the call of the presiding officer. The bill requires the executive director of the Texas Indigent Defense Commission, not later than January 15, 2018, to appoint the members of the capital appellate defense committee and specifies that the committee members serve at the pleasure of the executive director.

H.B. 1676 establishes that the office of capital appellate defender operates under the direction and supervision of the director of the office and requires the court of criminal appeals, not later than September 1, 2018, to appoint such a director to direct and supervise the operation of the office. The director serves a four-year term and continues to serve until a successor has been appointed. The bill restricts removal of the director by the court of criminal appeals to removal for good cause and authorizes the director to be reappointed for subsequent terms. The bill requires the director to employ attorneys and other personnel necessary to perform the duties of the office and specifies that, to be employed by the director, an attorney may not have been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a death penalty case. The bill prohibits the director and any attorney employed

by the office from engaging in the private practice of criminal law or accepting anything of value not authorized by law for services rendered under the bill's provisions.

H.B. 1676 authorizes the office of capital appellate defender to represent an indigent defendant who has been sentenced to death in the defendant's motions for a new trial, direct appeal before the court of criminal appeals, petition for a writ of certiorari in the U.S. Supreme Court, and application for a writ of mandamus or prohibition that is collateral to such representation. The bill requires a district court or the district court's designee to give the office priority in appointing appellate counsel to represent an indigent defendant who has been sentenced to death and sets out the circumstances under which the office is prohibited from accepting an appointment in a criminal proceeding. The bill authorizes the office to consult with law school clinics with applicable knowledge and experience and with other experts as necessary to research the legal issues of a particular case and requires an appointed attorney not employed by the office to be compensated from county funds as provided by Code of Criminal Procedure provisions relating to the compensation of counsel appointed to defend.

H.B. 1676 amends the Code of Criminal Procedure to authorize an attorney employed by a public defender's office to be appointed with respect to a direct appeal of a death penalty case if the attorney is on the list of qualified counsel maintained under statutory provisions relating to the appointment of counsel in a death penalty case.

EFFECTIVE DATE

September 1, 2017.