

- SUBJECT:** Court findings on competence of appointed attorneys in death penalty cases
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Hinojosa, Dunnam, Talton, Kitchen, Martinez Fischer, Shields
0 nays
3 absent — Keel, Garcia, Green
- WITNESSES:** For — *Registered but did not testify:* Laurel Redford and Will Harrell, American Civil Liberties Union of Texas
Against — None
- BACKGROUND:** States must provide attorneys for indigent defendants charged with felonies or misdemeanors that involve possible punishment. Most Texas courts meet the requirement by appointing attorneys for indigent defendants. The Code of Criminal Procedure establishes guidelines and procedures for appointing counsel in death penalty cases. Local committees composed of judges and attorneys must adopt standards for the qualifications of attorneys for appointment in death penalty cases and must post lists of attorneys qualified for appointment.

A writ of *habeas corpus* is a type of appeal of a death sentence that challenges the constitutionality of a conviction.
- DIGEST:** HB 267 would require a convicting court to make certain findings about an attorney appointed to represent an indigent defendant in a death penalty case if the defendant claimed in an application for a writ of *habeas corpus* that the appointed attorney was incompetent. The court would have to decide:
- ! whether the appointed attorney, at the time of the appointment, was qualified to be on the list of qualified attorneys compiled by a statutorily required local selection committee; and
 - ! whether the appointed attorney provided representation at trial that was at least as competent as the minimum level of competence expected by the

trial court from attorneys meeting the standards adopted by the local selection committee.

HB 267 would take effect September 1, 2001, and would apply only to writs of *habeas corpus* filed on or after that date.

**SUPPORTERS
SAY:**

HB 267 would ensure that a judge would make the necessary findings if a defendant in a capital case alleged that the appointed attorney was incompetent. The Court of Criminal Appeals would consider these findings in making its decision on the appeal. HB 267 would recognize that it takes special skills to represent capital defendants and would help ensure that appointed defense attorneys are on the local list of those who have the required skills and that they provide adequate representation. The bill would help bring attention to the issue of competency in appointed attorneys.

**OPPONENTS
SAY:**

HB 267 is unnecessary. Under current practice, if a defendant alleged in an application for a writ of *habeas corpus* that counsel was incompetent, the judge would make a finding about the issue, and if the judge did not, the Court of Criminal Appeals would send the case back to the convicting court for the finding. Enacting unnecessary statutes can confuse judges, lawyers, and defendants, who often assume that the Legislature meant somehow to change current practice, which, in this case, does not need to be changed.