

BILL ANALYSIS

Senate Research Center

H.B. 1516
By: Gallego (Duncan)
Criminal Justice
5/11/1999
Committee Report (Amended)

DIGEST

The 74th Texas Legislature enacted legislation requiring the court of criminal appeals to appoint and pay counsel to represent indigent death row inmates in their applications for writs of habeas corpus in the state court. H.B. 1516 would establish conditions regarding the representation of applicants for writs of habeas corpus in capital cases.

PURPOSE

As proposed, H.B. 1516 establishes conditions regarding the representation of applicants for writs of habeas corpus in capital cases.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the court of criminal appeals in SECTION 1 (Section 2(d), Article 11.071, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2, Article 11.071, Code of Criminal Procedure, to require the convicting court, at the earliest practical time, but in no event later than 30 days, after the convicting court makes the required findings, to appoint competent counsel, unless the applicant elects to proceed pro se or is represented by retained counsel. Requires the convicting court to immediately notify the court of criminal appeals of the appointment. Requires the court of criminal appeals to adopt rules for the appointment of attorneys as counsel and the convicting court may appoint an attorney as counsel only if the appointment is approved by the court of criminal appeals. Requires the attorney to immediately file a copy of the motion with the court of criminal appeals, and authorizes the court to take any action to ensure that the applicant's right to federal habeas review is protected, if the attorney fails to do so. Requires the convicting court, rather than court of criminal appeals, to reasonably compensate an appointed attorney. Deletes text regarding an application for a writ of habeas for a defendant who is indigent and sentenced to death on or after September 1, 1995; required information by the court of criminal appeals immediately after the convicting court makes a finding; appointment of counsel; and an attorney's compensation for representation. Makes conforming changes.

SECTION 2. Amends Article 11.071, Code of Criminal Procedure, by adding Section 2A, as follows:

Sec. 2A. STATE REIMBURSEMENT; COUNTY OBLIGATION. Requires the state to reimburse a county for compensation of counsel and payment of expenses. Prohibits the total amount of reimbursement to which a county is entitled for an application from exceeding \$25,000. Provides that compensation and expenses in excess of the \$25,000 reimbursement are the obligation of the county. Requires a convicting court seeking reimbursement for a county to certify to the comptroller of public accounts the amount of compensation that the county is entitled to receive. Requires the comptroller of public accounts to issue a warrant to the county in the amount certified by the convicting court not to exceed \$25,000. Provides that the imposed limitation on reimbursement by the state to the county for compensation of counsel and payment of reasonable expenses does not prohibit a county from compensating counsel and reimbursing expenses in an amount that is in excess of the amount the county receives from the state as reimbursement, and a county is specifically granted discretion to make payments in excess of the state reimbursement.

SECTION 3. Amends Sections 3(b) and (d), Article 11.071, Code of Criminal Procedure, to make

conforming changes.

SECTION 4. Amends Section 4, Article 11.071, Code of Criminal Appeals, to require an application for a writ of habeas corpus to be filed in the convicting court not later than the 180th day after the date the convicting court appoints counsel or not later than the 45th day after the date the state's, rather than the appellee's, original brief is filed on direct appeal with the court of criminal appeals, whichever date is later. Authorizes the convicting court, before the applicable filing date, for good cause shown and after notice and an opportunity to be heard by the attorney representing the state to grant one 90-day extension that begins on the applicable filing date. Authorizing either party to request that the court hold a hearing on the request. Provides that if the convicting court finds that the applicant cannot establish good cause justifying the requested extension, the court shall make a finding stating that fact and deny the request. Requires the convicting court, if the court receives an untimely application or determines that after the filing date that is applicable to the applicant no application is filed, to immediately send certain documents to the court of criminal appeals and to the attorney representing the state. Deletes text regarding an applicant that was convicted before September 1, 1995; and conditions regarding an application that is not filed timely. Makes conforming changes.

SECTION 5. Amends Article 11.071, Code of Criminal Procedure, by adding Section 4A, as follows:

Sec. 4A. UNTIMELY APPLICATION; APPLICATION NOT FILED. Requires a counsel, who files an untimely application or fails to file an application to show cause as to why the application was untimely filed or not filed, on command of the court of criminal appeals. Sets forth certain options for the court at the conclusion of the counsel's presentation to the court of criminal appeals. Authorizes the court of criminal appeals to hold in contempt counsel who files an untimely application or fails to file an application before the required date. Sets forth authorized punishment by the court for counsel who fails to file a timely application. Requires the court of criminal appeals to notify the convicting court and the convicting court shall proceed under this article, if a new filing date for the application is established. Provides that Sections 2A and 3 apply to compensation and reimbursement of counsel appointed under Subsection (b)(3) in the same manner as if counsel had been appointed by the convicting court. Sets forth provisions regarding the establishment of a new filing date for certain applications. Provides that Section 2A applies only to the compensation and payment of expenses of counsel appointed by the court of criminal appeals.

SECTION 6. Amends Section 5, Article 11.071, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsection (f), to require the court to treat the application as a subsequent application, if an amended or supplemental application is not filed within the specified time. Deletes text regarding the untimely filing or failure to file an initial application for a writ of habeas corpus. Makes conforming changes.

SECTION 7. Amends the heading to Section 5, Article 11.071, Code of Criminal Procedure, as follows:

Sec. 5. New heading: SUBSEQUENT APPLICATION.

SECTION 8. Amends Section 6(b), Article 11.071, Code of Criminal Procedure, to delete text regarding an untimely application.

SECTION 9. Amends Section 7(a), Article 11.071, Code of Criminal Procedure, to require the state to file an answer to the application for a writ of habeas corpus not later than the 120th, rather than the 30th day after the date the state receives notice of issuance of the writ. Authorizes the state to request an extension on the answer to the writ, but the extension may not be filed later than the 180th day after the date the state receives the notice of issuance of the writ.

SECTION 10. Amends Section 9(b), Article 11.071, Code of Criminal Procedure, to require the convicting court to hold the evidentiary hearing not later than the 30th day after the date on which the court enters the order designating issues under Subsection (a). Authorizes the convicting court to grant a motion to postpone the hearing, but not for more than 30 days, and only if the court states good cause for the delay. Deletes text regarding the allowable preparation time for an evidentiary hearing.

SECTION 11. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 12. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Sections 2A(a) and (b), Article 11.071, Code of Criminal Procedure, to prohibit the total amount of reimbursement to which a county is entitled for an application from exceeding \$25,000. Provides that compensation and expenses in excess of the \$25,000 reimbursement are the obligation of the county. Requires the comptroller of public accounts to issue a warrant to the county in the amount certified by the convicting court not to exceed \$25,000.