

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1224
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Criminal Justice
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Committee Report (Substituted)

DIGEST AND PURPOSE

The Capital Habeas Corpus bill ensures that death row inmates are afforded one full and fair opportunity to have any claims of innocence or unfairness heard by the courts and ensures that inmates are represented by competent lawyers. Habeas Corpus is the only appeal in which an inmate can raise new evidence, including new evidence of his innocence. It is a “safety net” designed to catch the innocent and those treated unfairly by the system. If the claim is not raised in state habeas, it is forever lost. The proper administration of justice requires a system that is perceived to be fair and equitable. C.S.S.B. 1224 defines “competent” counsel as counsel who performs competently, not counsel whose name has been put on the list of approved lawyers. This bill also requires a statewide bar association to establish a death row representation committee and makes changes to the fee cap. C.S.S.B. 1224 creates a limited remedy for those inmates who can prove they were not represented by “competent” lawyers.

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 2, Article 11.071, Code of Criminal Procedure, as follows:

- (a) Requires an attorney appointed or employed as counsel under this section to provide competent representation during the course of proceedings under this article and to perform all duties required of counsel under this article.
- (b) Provides that this chapter does not prohibit the convicting court from appointing an attorney to act as second chair attorney to the lead attorney.
- (c)(1) Requires the Texas Judicial Council to establish a committee to create and maintain a statewide list of attorneys approved for appointment under this section. Requires the committee to consist of certain individuals.
 - (2) Requires the committee to consider recommendations of attorneys made by local selection committees and by the statewide professional association of criminal defense attorneys that is authorized to receive grants under Section 56.003(f) (Use of Funds), Government Code, and whose members regularly represent indigent defendants in criminal matters.
 - (3) Requires the committee to review and update the list of attorneys at least quarterly.
- (d) Creates this subsection from existing text. Requires the convicting court to appoint counsel from the list of attorneys maintained under Subsection (c), unless the applicant elects to proceed pro se or is represented by retained counsel. Includes the appointment committee established under Subsection (c)(1) as an entity to be notified by the convicting court on appointing counsel under this section. Makes a conforming change. Deletes existing Subsection (d) requiring the court of criminal appeals to adopt rules for

the appointment of attorneys as counsel under this section and authorizing the convicting court to appoint an attorney as counsel under this section only if the appointment is approved by the court of criminal appeals in any manner provided by those rules.

(e) Makes a conforming change.

(f) No changes to this subsection.

SECTION 2. Amends Section 2A, Article 11.071, Code of Criminal Procedure, by adding Subsection (d),

(d)(1) Prohibits payment from being made under Subsection (c) until a statement itemizing the services performed is submitted to the convicting court and the convicting court approves the payment. Requires the convicting court to enter a finding in writing stating the amount of payment that the court approves and the reason for approving a different amount than the amount requested, if the convicting court disapproves the amount requested for payment. Requires the commissioners court of the county to pay the amount approved by the convicting court, if a convicting court approves a payment or disapproves a payment and the attorney does not within three days file an appeal of the disapproval under Subdivision (2). Requires payment to be made under this subdivision not later than the 45th day after the date the convicting court approves an amount.

(2) Authorizes an attorney to appeal the disapproval by filing a motion with the presiding judge of the administrative region in which the convicting court is located or invoke the procedures of a fee dispute committee established by a local bar association and recognized by the State Bar of Texas. Requires the judge to review the disapproval of payment and determine, with or without a hearing, the appropriate amount of payment, if a motion is filed under this subdivision with the presiding judge of an administrative judicial region. Requires the presiding judge to approve an amount that the judge determines is proper. Requires the commissioners court of the county served by the convicting court to pay to the attorney the amount determined to be proper by the presiding judge or fee dispute committee. Requires the payment to be made not later than the 45th day after the day on which the itemized statement is submitted to the convicting court or the day on which the presiding judge or fee dispute committee approves a payment amount, whichever date is later.

SECTION 3. Amends Section 3(b), Article 11.071, Code of Criminal Procedure, to require the court to authorize the prepayment of expenses on finding that the expenses are reasonably necessary for the investigation of a potentially meritorious habeas corpus claim that could entitle the applicant to relief. Deletes language regarding what the request for expenses is required to state.

SECTION 4. Amends Section 5, Article 11.071, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsections (g), (h), and (i), as follows:

(a) Makes changes to a subsequent application for a writ of habeas corpus that is filed after filing an initial application by including the term “meritorious” in the description of a legal basis for a claim under Subdivision (1). Includes new Subdivision (4) to include an additional procedure to be addressed in the application.

(b) Requires the clerk of the court, if the convicting court receives a subsequent application asserting specific facts establishing justifications described by Subsection (a)(1), (2), or (3), to perform certain tasks.

(g) Requires a subsequent application for a writ of habeas corpus asserting specific facts establishing justifications described by Subsection (a)(4), returnable to the court of

criminal appeals, to be filed in the convicting court not later than the 60th day after the day on which the federal court of appeals denies the applicant relief. Requires the convicting court to dismiss as an abuse of writ an application filed later than the 60th day after the denial of relief.

(h) Authorizes an applicant to make a prima facie showing of justifications described by Subsection (a)(4) by establishing that the attorney in the initial application for a writ of habeas corpus under this article failed:

(1) to properly investigate the factual and legal grounds for the filing of an application for a writ of habeas corpus; or

(2) for reasons other than exercising reasonable professional judgment, to exercise due diligence in properly raising and presenting to the convicting court material and cognizable claims that were available in the applicant's case and the proper factual support for those claims.

(i) Requires the convicting court to appoint new counsel to represent the applicant and establish a new filing date for a subsequent application, which may not be later than the 270th day after the day on which the convicting court appointed new counsel, if an applicant makes the prima facie showing described by Subsection (h). Provides that Sections 2A and 3 apply to the compensation and reimbursement of counsel appointed under this subsection.

SECTION 5. Amends Section 6, Article 11.071, Code of Criminal Procedure, by adding Subsection (b-1) to require the convicting court to appoint counsel and provide for the compensation for time previously spent and reimbursement of expenses previously incurred in the same manner as is provided by Sections 2A and 3, regardless of whether the subsequent application is ultimately dismissed, if the convicting court receives notice that the requirements of Section 5(a)(1), (2), or (3) for consideration of a subsequent application have been met.

SECTION 6. Amends Section 8(c), Article 11.071, Code of Criminal Procedure, to include “without the assistance of either party” when referring to the requirement of the convicting court to make appropriate written findings of fact and conclusions of law.

SECTION 7. Amends Section 9(e), Article 11.071, Code of Criminal Procedure, to make a conforming change.

SECTION 8. (a) Requires the Texas Judicial Council to establish an appointment committee, as required by Subdivision (1), Subsection (c), Section 2, Article 11.071, Code of Criminal Procedure, as amended by this Act, not later than October 1, 2003, and requires the committee to create an attorney appointment list, as required by Section 2, Article 11.071, Code of Criminal Procedure, as amended by this Act, not later than January 1, 2004.

(b) Makes application of this Act prospective to January 1, 2004.

SECTION 9. Effective date: September 1, 2003.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Amends As Filed S.B. 1224, proposed Section 2(c), Article 11.071, Code of Criminal Procedure, to add new language to the existing language and subdivide Subsection (c) into 3 subdivisions. Makes conforming changes in Subsections (d) and (e).

SECTION 2. Deletes proposed amendments made to existing Subdivisions (a)-(b) of Section 2A, Article 11.071, Code of Criminal Procedure, which would have increased the amount of reimbursement to be made to a county for compensation of counsel.

SECTION 3. No changes.

SECTIONS 4-7. No changes.

SECTION 8. Makes a conforming change.

SECTION 9. No change.