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FACT SHEET

TALKING POINTS FOR S.B. 1655 BY SENATORS ELLIS (D-HOUSTON) AND DUNCAN (R-LUBBOCK)

RELATING TO THE ESTABLISHMENT OF THE CAPITAL WRITS COMMITTEE OF THE TEXAS JUDICIAL COUNCIL
AND THE CREATION OF THE OFFICE OF CAPITAL WRITS

HABEAS IS SPECIALIZED AND IMPORTANT

This area of the law is highly specialized. If a lawyer doesn't understand the law, s/he can make terrible mistakes.

State habeas is the most critical appeal – it is a prisoner's **only** opportunity to raise claims about new evidence. If a claim for relief is not presented in state habeas, it cannot be considered later by the federal courts (absent rare circumstance).

CURRENT PROBLEMS WITH POOR REPRESENTATION

There have been many examples of poor representation documented in newspaper articles about individual cases, including an *Austin American-Statesman* series.

The Court of Criminal Appeals (CCA) acknowledges having encountered the following problems:

- Lawyers who don't know what they are supposed to investigate and present
- Lawyers with serious disciplinary histories getting appointments
- Lawyers who cut and pasted appeals from other cases
- Lawyers who missed filing deadlines, preventing their clients from getting any federal review
- Lawyers who drafted unacceptably short habeas corpus petitions (some just 2 pages) containing no claims that can be considered in habeas

The biggest problem is that our indigent defense system is **vastly under-funded**. And good, competent lawyers are not interested in taking these appointments.

THE CURRENT APPOINTMENT SYSTEM DOESN'T WORK

The Legislature gave the CCA an unfair job: deciding which lawyers throughout Texas are good enough to handle these complex appeals. However:

- The CCA doesn't know the lawyers from across the state.
- What happens in habeas happens outside of court (unlike a trial, where the judge can evaluate whether a lawyer is doing a good job).

Judge Cochran on the CCA has said "I was always of the personal persuasion that we should not keep the [court appointment attorney] list. It should be kept by an independent entity . . ."

The CCA recently reviewed the list of lawyers – and asked lawyers whether they wanted to stay on the list. The list shrunk from over 100 to 56 and many of the good lawyers asked to be removed from the list. Texas lost many good lawyers – and the lack of funding is a big reason.

A STATEWIDE OFFICE OFFERS A BETTER SYSTEM

➤ **Prosecutors have “Units” or “Offices” for These Cases – So Should the Defense**

The District Attorney’s Office in all larger counties – such as Harris, Dallas, and Bexar – have a division of lawyers who specialize in habeas corpus work and represent the State in habeas cases. In federal court, the State is represented by the AG’s Postconviction Division, which includes approximately 10 lawyers who specialize in capital habeas cases.

➤ **Better Training and Resources**

A statewide office could provide the kind of institutional training and resources necessary to allow for consistently good lawyering in these cases. It could increase the public’s confidence that capital punishment is accurate and just.

➤ **A Majority of States have Similar Offices**

Texas should follow the lead of the other states – including the active death penalty states – and have an office dedicated to the defense of these cases. The majority of states have a state- or county-funded office or specialized unit of lawyers handling these cases.

➤ **Texas Should Learn from the Florida Experience**

Florida had 3 capital habeas units but recently conducted a pilot project with one respect to one of those offices and changed it from an office to a court-appointed system like that in Texas. However, the quality of representation was so poor that the State is reverting to the centralized offices. This year, Florida Supreme Court Justice Raul Cantero, appointed by Gov. Jeb Bush, characterized the work of the private attorneys handling the appeals as “some of the worst lawyering I’ve seen.”