

## **BILL ANALYSIS**

H.B. 1605  
By: Dutton  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

For many years, indigent defense for offenders in the Texas Department of Criminal Justice (TDCJ) has been provided by the Office of State Counsel for Offenders (SCFO), which is a part of TDCJ. It has been argued that this presents a conflict of interest because SCFO attorneys are under the oversight of the same agency that is responsible for housing the offenders that the attorneys are tasked with defending. There have been calls to create a new independent office to provide indigent defense similar to the Special Prosecution Unit, which prosecutes offenders in TDCJ but is separate from that agency. H.B. 1605 seeks to do this by creating an independent legal services office to provide indigent defense to offenders in TDCJ and a board of directors to manage the office.

### **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. 1605 amends the Code of Criminal Procedure to transfer to the inmate legal services office established by the bill the duty of the Texas Board of Criminal Justice to provide legal representation for indigent inmates charged with committing an offense while in the custody of the correctional institutions division of the Texas Department of Criminal Justice (TDCJ) or a contracted correctional facility. This applies to legal representation appointed on or after February 1, 2022.

H.B. 1605 amends the Health and Safety Code to transfer to the inmate legal services office the duty of the Office of State Counsel for Offenders to represent an indigent person who is a sexually violent predator subject to a civil commitment. This applies to legal representation appointed on or after February 1, 2022. The bill makes an employee of the Office of State Counsel for Offenders an employee of the inmate legal services office on the bill's effective date.

H.B. 1605 amends the Government Code to establish the inmate legal services office and board of directors for the office and to specify that the board governs the provision of inmate legal services. The bill sets out the following:

- provisions relating to the composition of the nine-member board, whose members are certain attorneys appointed by the president of the State Bar of Texas and ratified by the state bar's executive committee not later than December 1, 2021; and

- provisions relating to member terms, the designation of a presiding officer, and board meetings.

The bill requires the board by majority vote to appoint a director for the office when a vacancy exists, sets January 1, 2022, as the deadline for hiring the first director, and sets out provisions relating to the director's qualifications, term of service, retention or rehiring for subsequent terms, and removal.

H.B. 1605 requires the director to employ attorneys and employ or retain licensed investigators and other personnel necessary to perform the duties and accomplish the purposes of the office. The bill does the following:

- requires the board to determine the compensation of the director and office employees, which must maintain parity with the compensation of the chief of the special prosecution unit and the employees of the unit, respectively;
- provides for the compensation of an attorney other than an attorney employed by the office whose appointment is determined to be necessary; and
- requires attorneys and investigators employed or retained by the office to be allowed access to a facility operated by or under contract with TDCJ as necessary to confer with a client of the office or witness to an offense alleged to have been committed by a client and comply with a court's order.

H.B. 1605 sets out the following prohibitions:

- the director and any attorney employed by the office may not engage in the private practice of criminal law or accept anything of value not authorized by law for services rendered under the bill's provisions; and
- the office may not accept an appointment as legal representative of an applicable indigent inmate or an indigent person who is a sexually violent predator subject to a civil commitment in certain circumstances.

The bill sets out procedures relating to the refusal to accept an appointment by the director and prohibits the termination, removal, or sanction of the director for refusing in good faith to accept an appointment.

H.B. 1605 requires the director, on or after September 1, 2022, to evaluate the performance of each employee who was previously employed by the Office of State Counsel for Offenders and became an employee of the inmate legal services office on the bill's effective date and to determine whether there is good cause to remove the employee.

#### **EFFECTIVE DATE**

September 1, 2021.