

Amend CSSB 1224 by striking all below the enacting clause and substituting the following:

SECTION 1. Sections 2(a), (c), and (d), Article 11.071, Code of Criminal Procedure, are amended to read as follows:

(a) An applicant shall be represented by competent counsel unless the applicant has elected to proceed pro se and the convicting trial court finds, after a hearing on the record, that the applicant's election is intelligent and voluntary. An attorney appointed or employed as counsel under this section shall provide competent representation during the course of proceedings under this article and shall perform all duties required of counsel under this article.

(c) At the earliest practical time, but in no event later than 30 days, after the convicting court makes the findings required under Subsections (a) and (b), the convicting court shall appoint competent counsel from the list of qualified attorneys maintained under Subsection (d), unless the applicant elects to proceed pro se or is represented by retained counsel. The convicting court may also appoint an attorney to assist an attorney appointed as lead counsel in the case. On appointing counsel under this section, the convicting court shall immediately notify the court of criminal appeals of the appointment, including in the notice a copy of the judgment and the name, address, and telephone number of the appointed counsel.

(d)(1) The Task Force on Indigent Defense ~~[court of criminal appeals]~~ shall adopt standards ~~[rules]~~ for the appointment of attorneys as counsel under this section, compile and maintain a list of attorneys qualified for appointment, and make the list available to convicting courts ~~[and the convicting court may 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]~~.

(2) In adopting the standards required by Subdivision (1), the Task Force on Indigent Defense shall establish minimums for:

(A) years of practice;

(B) proficiency and commitment to providing

quality representation to defendants or applicants seeking relief in death penalty cases;

(C) experience in trial, appellate, or habeas corpus proceedings for offenses punished as capital felonies;

(D) participation in continuing legal education courses or other training relating to criminal defense or habeas corpus proceedings in capital cases; and

(E) permissible history relating to:

(i) previous instances of having been found to have rendered ineffective assistance of counsel during the trial or appeal of any felony case; and

(ii) disciplinary proceedings before the State Bar of Texas or an equivalent body in another state.

(3) The Task Force on Indigent Defense shall adopt a procedure that permits placing on the list of qualified attorneys an attorney who does not meet all requirements of this subsection, but only if the task force determines that the attorney possesses background, knowledge, or experience that would enable the attorney to properly represent an applicant, with due consideration to the seriousness of the possible punishment and the unique and complex nature of the litigation.

(4) The convicting court may not appoint an attorney as counsel under this section if the attorney represented the applicant at trial or on direct appeal, unless:

(A) the applicant and the attorney request the appointment on the record; and

(B) the court finds good cause to make the appointment.

SECTION 2. Section 2A, Article 11.071, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d)(1) Payment may not be made under Subsection (c) until a statement itemizing the services performed is submitted to the convicting court and the convicting court approves the payment. If the convicting court disapproves the amount requested for payment, the convicting court shall 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 a

convicting court approves a payment or disapproves a payment and the attorney does not within three days of notice of the disapproval file an appeal of the disapproval under Subdivision (2), the commissioners court of the county shall pay the amount approved by the convicting court. Payment must be made under this subdivision not later than the 45th day after the date the convicting court approves an amount.

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

(A) the date on which the itemized statement is submitted to the convicting court; or

(B) the date on which the presiding judge or fee dispute committee approves a payment amount.

SECTION 3. Section 3(b), Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(b) Not later than the 30th day before the date the application for a writ of habeas corpus is filed with the convicting court, counsel may file with the convicting court an ex parte, verified, and confidential request for prepayment of expenses, including expert fees, to investigate and present potential habeas corpus claims. The court shall 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. ~~[The request for expenses must state:~~

~~[(1) the claims of the application to be investigated,~~  
~~[(2) specific facts that suggest that a claim of possible merit may exist, and~~  
~~[(3) an itemized list of anticipated expenses for each claim.]~~

SECTION 4. Section 5, Article 11.071, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) If a subsequent application for a writ of habeas corpus is filed after filing an initial application, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:

(1) the current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application filed under this article or Article 11.07 because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application;

(2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt; ~~[or]~~

(3) by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the state's favor one or more of the special issues that were submitted to the jury in the applicant's trial under Article 37.071 or 37.0711; or

(4) by clear and convincing evidence:

(A) the applicant was represented by incompetent counsel during the initial application;

(B) as a direct result of the incompetence, a meritorious claim or issue raised in the current application was not raised in the initial application; and

(C) the claim or issue alleges sufficient facts that, if proven in the convicting court, could entitle the applicant to relief.

(g) 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, must be filed in the convicting court not later than the 60th day after the date on which the federal court of appeals denies the applicant relief. The court of criminal appeals shall dismiss as an abuse of writ an application filed later than the 60th day after the denial of relief.

SECTION 5. Section 6, Article 11.071, Code of Criminal Procedure, is amended by adding Subsection (b-1) to read as follows:

(b-1) If the convicting court receives notice that the requirements of Section 5(a) for consideration of a subsequent application have been met, the convicting court shall 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.

SECTION 6. Section 71.060(c), Government Code, is amended to read as follows:

(c) Any qualification standards adopted by the Task Force on Indigent Defense under Subsection (a) that relate to the appointment of counsel in a death penalty case must be consistent with the standards specified under Section 2, Article 11.071, or Article 26.052(d), Code of Criminal Procedure, as appropriate. An attorney who is identified by the task force as not satisfying performance or qualification standards adopted by the task force under Subsection (a) may not accept an appointment in a capital case.

SECTION 7. Section 4A(f), Article 11.071, Code of Criminal Procedure, is repealed.

SECTION 8. The Task Force on Indigent Defense shall adopt standards and create and maintain 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.

SECTION 9. A convicting court that appoints counsel under Section 2, Article 11.071, Code of Criminal Procedure, on or after January 1, 2004, shall appoint the counsel in conformity with this

Act. Counsel appointed under Section 2, Article 11.071, before January 1, 2004, must be appointed in conformity with Section 2, Article 11.071, as that section existed when the appointment was made, and the former law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2003.