

Amend **HB 1267** by adding the following SECTIONS and renumber accordingly:

SECTION _____. Subtitle F, Title 2, Government Code, is amended by adding Chapter 78 to read as follows:

CHAPTER 78. CAPITAL WRITS COMMITTEE AND OFFICE OF CAPITAL WRITS

SUBCHAPTER A. CAPITAL WRITS COMMITTEE

Sec. 78.001. DEFINITIONS. In this subchapter:

(1) "Committee" means the capital writs committee established under this subchapter.

(2) "Office of capital writs" means the office of capital writs established under Subchapter B.

Sec. 78.002. ESTABLISHMENT OF COMMITTEE; DUTIES. (a) The capital writs committee is established.

(b) The committee shall recommend to the Court of Criminal Appeals a director for the office of capital writs when a vacancy exists for the position of director.

Sec. 78.003. APPOINTMENT AND COMPOSITION OF COMMITTEE. (a) The committee is composed of the following five members who are appointed by the president of the State Bar of Texas, with ratification by the executive committee of the State Bar of Texas:

(1) three attorneys who are members of the State Bar of Texas and who are not employed as prosecutors or law enforcement officials, all of whom must have criminal defense experience with death penalty proceedings in this state; and

(2) two state district judges, one of whom serves as presiding judge of an administrative judicial region.

(b) The committee shall elect one member of the committee to serve as the presiding officer of the committee.

(c) The committee members serve at the pleasure of the president of the State Bar of Texas, and the committee meets at the call of the presiding officer of the committee.

Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF OFFICE OF CAPITAL WRITS. (a) The committee shall submit to the Court of Criminal Appeals, in order of the committee's preference, a list of the names of not more than five persons the committee recommends that the court consider in appointing the director of the office of capital writs when a vacancy exists for the position of director. If the committee finds that three or more persons under the committee's consideration are qualified to serve as the

director of the office of capital writs, the committee must include at least three names in the list submitted under this subsection.

(b) Each person recommended to the Court of Criminal Appeals by the committee under Subsection (a) must exhibit proficiency and commitment to providing quality representation to defendants in death penalty state habeas cases, as described by the Guidelines and Standards for Texas Capital Counsel, as published by the State Bar of Texas.

(c) When a vacancy for the position exists, the Court of Criminal Appeals shall appoint from the list of persons submitted to the court under Subsection (a) the director of the office of capital writs.

[Sections 78.005-78.050 reserved for expansion]

SUBCHAPTER B. OFFICE OF CAPITAL WRITS

Sec. 78.051. DEFINITIONS. In this subchapter:

(1) "Committee" means the capital writs committee established under Subchapter A.

(2) "Office" means the office of capital writs established and operated under this subchapter.

Sec. 78.052. ESTABLISHMENT; FUNDING. (a) The office of capital writs is established and operates under the direction and supervision of the director of the office.

(b) The office shall receive funds for personnel costs and expenses as specified in the General Appropriations Act.

Sec. 78.053. DIRECTOR; STAFF. (a) The Court of Criminal Appeals shall appoint a director to direct and supervise the operation of the office. The director serves a four-year term and continues to serve until a successor has been appointed and qualified. The Court of Criminal Appeals may remove the director only for good cause. The director may be reappointed for a second or subsequent term.

(b) The director shall employ attorneys and employ or retain licensed investigators and other personnel necessary to perform the duties of the office.

(c) The director and any attorney employed by the office may not:

(1) engage in the private practice of criminal law; or

(2) accept anything of value not authorized by law for services rendered under this subchapter.

Sec. 78.054. POWERS AND DUTIES. (a) The office may not accept an appointment under Article 11.071, Code of Criminal Procedure, if:

(1) a conflict of interest exists;

(2) the office has insufficient resources to provide adequate representation for the defendant;

(3) the office is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or

(4) other good cause is shown for not accepting the appointment.

(b) The office may not represent a defendant in a federal habeas review. The office may not represent a defendant in an action or proceeding in state court other than an action or proceeding that:

(1) is conducted under Article 11.071, Code of Criminal Procedure;

(2) is collateral to the preparation of an application under Article 11.071, Code of Criminal Procedure; or

(3) concerns any other post-conviction matter other than a direct appeal, including an action or proceeding under Article 46.05 or Chapter 64, Code of Criminal Procedure.

(c) Notwithstanding Article 26.04(p), Code of Criminal Procedure, the office may independently investigate the financial condition of any person the office is appointed to represent. The office shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this section.

Sec. 78.055. COMPENSATION OF OTHER APPOINTED ATTORNEYS. If it is necessary that an attorney other than an attorney employed by the office be appointed, that attorney shall be compensated as provided by Articles 11.071 and 26.05, Code of Criminal Procedure.

Sec. 78.056. APPOINTMENT LIST. (a) The presiding judges

of the administrative judicial regions shall maintain a statewide list of competent counsel available for appointment under Section 2(f), Article 11.071, Code of Criminal Procedure, if the office does not accept or is prohibited from accepting an appointment under Section 78.054. Each attorney on the list must possess the qualifications described by Section 78.004(b).

(b) The Office of Court Administration and the Task Force on Indigent Defense shall provide administrative support necessary under this section.

SECTION __. Sections 2(b), (c), (e), and (f), Article 11.071, Code of Criminal Procedure, are amended to read as follows:

(b) If a defendant is sentenced to death the convicting court, immediately after judgment is entered under Article 42.01, shall determine if the defendant is indigent and, if so, whether the defendant desires appointment of counsel for the purpose of a writ of habeas corpus. If the defendant desires appointment of counsel for the purpose of a writ of habeas corpus, the court shall appoint the office of capital writs to represent the defendant as provided by Subsection (c).

(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 the office of capital writs or, if the office of capital writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, other competent counsel under Subsection (f), unless the applicant elects to proceed pro se or is represented by retained counsel. 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.

(e) If the court of criminal appeals denies an applicant relief under this article, an attorney appointed under this section to represent the applicant shall, not later than the 15th day after the date the court of criminal appeals denies relief or, if the case is filed and set for submission, the 15th day after the date the court of criminal appeals issues a mandate on the initial

application for a writ of habeas corpus under this article, move for the appointment of ~~[to be appointed as]~~ counsel in federal habeas review under 21 U.S.C. Section 848(q) or equivalent provision ~~[or, if necessary, move for the appointment of other counsel under 21 U.S.C. Section 848(q) or equivalent provision]~~. The attorney shall immediately file a copy of the motion with the court of criminal appeals, and if the attorney fails to do so, the court may take any action to ensure that the applicant's right to federal habeas review is protected, including initiating contempt proceedings against the attorney.

(f) If the office of capital writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, the ~~[The]~~ convicting court shall appoint counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions under Section 78.056, Government Code. The convicting court shall reasonably compensate as provided by Section 2A an attorney appointed under this section, other than an attorney employed by the office of capital writs, regardless of whether the attorney is appointed by the convicting court or was appointed by the court of criminal appeals under prior law. An attorney appointed under this section who is employed by the office of capital writs shall be compensated in accordance with Subchapter B, Chapter 78, Government Code.

SECTION _____. Section 2A(a), Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(a) The state shall reimburse a county for compensation of counsel under Section 2, other than for compensation of counsel employed by the office of capital writs, and for payment of expenses under Section 3, regardless of whether counsel is employed by the office of capital writs. The total amount of reimbursement to which a county is entitled under this section for an application under this article may not exceed \$25,000. Compensation and expenses in excess of the \$25,000 reimbursement provided by the state are the obligation of the county.

SECTION _____. Section 3, Article 11.071, Code of Criminal Procedure, is amended by adding Subsection (f) to read as follows:

(f) This section applies to counsel's investigation of the

factual and legal grounds for the filing of an application for a writ of habeas corpus, regardless of whether counsel is employed by the office of capital writs.

SECTION _____. Sections 4A(e) and (f), Article 11.071, Code of Criminal Procedure, are amended to read as follows:

(e) 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, unless the attorney is employed by the office of capital writs, in which case the compensation of that attorney is governed by Subchapter B, Chapter 78, Government Code.

(f) Notwithstanding any other provision of this article, the court of criminal appeals shall appoint counsel and establish a new filing date for application, which may be no later than the 270th day after the date on which counsel is appointed, for each applicant who before September 1, 1999, filed an untimely application or failed to file an application before the date required by Section 4(a) or (b). Section 2A applies to the compensation and payment of expenses of counsel appointed by the court of criminal appeals under this subsection, unless the attorney is employed by the office of capital writs, in which case the compensation of that attorney is governed by Subchapter B, Chapter 78, Government Code.

SECTION _____. Article 26.04(b), Code of Criminal Procedure, is amended to read as follows:

(b) Procedures adopted under Subsection (a) shall:

(1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;

(2) apply to each appointment of counsel made by a judge or the judges' designee in the county;

(3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;

(4) require appointments for defendants in capital cases in which the death penalty is sought to comply with any applicable ~~[the]~~ requirements under Articles 11.071 and [Article] 26.052;

(5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and

(6) ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.

SECTION _____. Article 26.044(a), Code of Criminal Procedure, is amended by adding Subdivision (3) to read as follows:

(3) "Office of capital writs" means the office of capital writs established under Subchapter B, Chapter 78, Government Code.

SECTION _____. Article 26.044, Code of Criminal Procedure, is amended by adding Subsection (n) to read as follows:

(n) An attorney employed by a public defender's office may be appointed with respect to an application for a writ of habeas corpus only if:

(1) an attorney employed by the office of capital writs is not appointed in the case; and

(2) the attorney employed by the public defender's office is on the list of competent counsel maintained under Section 78.056, Government Code.

SECTION _____. Article 26.05(a), Code of Criminal Procedure, is amended to read as follows:

(a) A counsel, other than an attorney with a public defender or an attorney employed by the office of capital writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf

of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

SECTION _____. Section 2(d), Article 11.071, Code of Criminal Procedure, is repealed, effective January 1, 2008.

SECTION 11. (a) Not later than January 1, 2008, in accordance with Section 78.056, Government Code, as added by this Act, the presiding judges of the administrative judicial regions shall complete the statewide list of competent counsel available for appointment to represent defendants in applications for writs of habeas corpus.

(b) Not later than January 15, 2008, the president of the State Bar of Texas shall appoint the members of the capital writs committee.

(c) Not later than May 15, 2008, the capital writs committee shall submit to the Court of Criminal Appeals the list of candidates for the position of the director of the office of capital writs.

(d) Not later than September 1, 2008, the Court of Criminal Appeals shall appoint the director of the office of capital writs under Chapter 78, Government Code, as added by this Act.

SECTION _____. 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 and reimbursement of expenses of the counsel as is provided by Sections 2A and 3, including compensation for time previously spent and reimbursement of expenses previously incurred and regardless of whether the subsequent application is ultimately dismissed.

SECTION _____. (a) The change in law made by this Act to Section 2A, Article 11.071, Code of Criminal Procedure, applies only to an initial or subsequent application for a writ of habeas corpus filed on or after January 1, 2008. An application filed before January 1, 2008, is covered by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act in adding Section 6(b-1), Article 11.071, Code of Criminal Procedure, applies only to a subsequent application for a writ of habeas corpus filed on or after January 1, 2008. A subsequent application filed before

January 1, 2008, is covered by the law in effect when the application was filed, and the former law is continued in effect for that purpose.