

1-1 By: Harris S.B. No. 306
1-2 (In the Senate - Filed January 24, 2007; February 14, 2007,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 March 26, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 4, Nays 0; March 26, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 306 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the appointment of counsel to represent an indigent
1-11 defendant in a capital case and to the reimbursement of certain
1-12 expenses incurred by appointed counsel.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Article 26.052, Code of Criminal Procedure, is
1-15 amended by amending Subsections (e), (f), and (g) and adding
1-16 Subsections (e-1) and (e-2) to read as follows:

1-17 (e) The presiding judge of the district court in which a
1-18 capital felony case is filed shall appoint an attorney, who [~~two~~
1-19 ~~attorneys, at least one of whom~~] must be qualified under this
1-20 chapter, to represent an indigent defendant as soon as practicable
1-21 after charges are filed[~~, unless the state gives notice in writing~~
1-22 ~~that the state will not seek the death penalty~~]. Unless the state
1-23 files written notice in the case that the state will not seek the
1-24 death penalty, the judge shall appoint a second attorney to the case
1-25 on the earlier of:

1-26 (1) the date the state files written notice in the case
1-27 that the state will seek the death penalty; or

1-28 (2) the 90th day after the date on which the defendant
1-29 is charged with a capital offense by indictment or by complaint,
1-30 whichever occurs first.

1-31 (e-1) An attorney is not required to meet the standards
1-32 described by Subsection (d)(2) to be eligible for appointment as a
1-33 second attorney under Subsection (e).

1-34 (e-2) A case in which the state seeks the death penalty may
1-35 not proceed to trial on the merits before the 180th day after the
1-36 date on which a second attorney is appointed to the case under
1-37 Subsection (e). If, after the second attorney is appointed, the
1-38 state files written notice in the case that the state will not seek
1-39 the death penalty, the judge may remove the second attorney from the
1-40 case. The second attorney remains entitled to reasonable payment
1-41 for services rendered before removal in accordance with the local
1-42 guidelines for payment of an attorney appointed to represent a
1-43 defendant in a capital case.

1-44 (f) Appointed counsel may file with the trial court a
1-45 pretrial ex parte confidential request for advance payment of
1-46 expenses to investigate potential defenses and mitigation
1-47 evidence. The request for expenses must state:

1-48 (1) the type of investigation to be conducted;

1-49 (2) specific facts that suggest the investigation will
1-50 result in admissible evidence; and

1-51 (3) an itemized list of anticipated expenses for each
1-52 investigation.

1-53 (g) The court shall timely grant the request for advance
1-54 payment of expenses in whole or in part if the request is
1-55 reasonable. If the court denies in whole or in part the request for
1-56 expenses, the court shall:

1-57 (1) state the reasons for the denial in writing;

1-58 (2) attach the denial to the confidential request; and

1-59 (3) submit the request and denial as a sealed exhibit
1-60 to the record.

1-61 SECTION 2. The change in law made by this Act applies only
1-62 to a capital felony case that is filed on or after the effective
1-63 date of this Act. A capital felony case that is filed before the

2-1 effective date of this Act is governed by the law in effect on the
2-2 date the case was filed, and the former law is continued in effect
2-3 for that purpose.

2-4 SECTION 3. This Act takes effect September 1, 2007.

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