

By: Ellis, Duncan

S.B. No. 1655

Substitute the following for S.B. No. 1655:

By: Hartnett

C.S.S.B. No. 1655

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the capital writs committee and the office of capital writs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. 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

1 officials, all of whom must have criminal defense experience with  
2 death penalty proceedings in this state; and

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

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

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

10 Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF  
11 OFFICE OF CAPITAL WRITS. (a) The committee shall submit to the  
12 Court of Criminal Appeals, in order of the committee's preference,  
13 a list of the names of not more than five persons the committee  
14 recommends that the court consider in appointing the director of  
15 the office of capital writs when a vacancy exists for the position  
16 of director. If the committee finds that three or more persons  
17 under the committee's consideration are qualified to serve as the  
18 director of the office of capital writs, the committee must include  
19 at least three names in the list submitted under this subsection.

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

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

1 capital writs.

2 [Sections 78.005-78.050 reserved for expansion]

3 SUBCHAPTER B. OFFICE OF CAPITAL WRITS

4 Sec. 78.051. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

27 (2) accept anything of value not authorized by law for

1 services rendered under this subchapter.

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

5 (1) a conflict of interest exists;

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

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

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

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

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

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

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

24 (c) Notwithstanding Article 26.04(p), Code of Criminal  
25 Procedure, the office may independently investigate the financial  
26 condition of any person the office is appointed to represent. The  
27 office shall report the results of the investigation to the

1 appointing judge. The judge may hold a hearing to determine if the  
2 person is indigent and entitled to representation under this  
3 section.

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

9 Sec. 78.056. APPOINTMENT LIST. (a) The presiding judges  
10 of the administrative judicial regions shall maintain a statewide  
11 list of competent counsel available for appointment under Section  
12 2(f), Article 11.071, Code of Criminal Procedure, if the office  
13 does not accept or is prohibited from accepting an appointment  
14 under Section 78.054. Each attorney on the list must possess the  
15 qualifications described by Section 78.004(b).

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

19 SECTION 2. Sections 2(b), (c), (e), and (f), Article  
20 11.071, Code of Criminal Procedure, are amended to read as follows:

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

1 by Subsection (c).

2 (c) At the earliest practical time, but in no event later  
3 than 30 days, after the convicting court makes the findings  
4 required under Subsections (a) and (b), the convicting court shall  
5 appoint the office of capital writs or, if the office of capital  
6 writs does not accept or is prohibited from accepting an  
7 appointment under Section 78.054, Government Code, other competent  
8 counsel under Subsection (f), unless the applicant elects to  
9 proceed pro se or is represented by retained counsel. On appointing  
10 counsel under this section, the convicting court shall immediately  
11 notify the court of criminal appeals of the appointment, including  
12 in the notice a copy of the judgment and the name, address, and  
13 telephone number of the appointed counsel.

14 (e) If the court of criminal appeals denies an applicant  
15 relief under this article, an attorney appointed under this section  
16 to represent the applicant shall, not later than the 15th day after  
17 the date the court of criminal appeals denies relief or, if the case  
18 is filed and set for submission, the 15th day after the date the  
19 court of criminal appeals issues a mandate on the initial  
20 application for a writ of habeas corpus under this article, move for  
21 the appointment of [~~to be appointed as~~] counsel in federal habeas  
22 review under 21 U.S.C. Section 848(q) or equivalent provision [~~or,~~  
23 ~~if necessary, move for the appointment of other counsel under 21~~  
24 ~~U.S.C. Section 848(q) or equivalent provision~~]. The attorney shall  
25 immediately file a copy of the motion with the court of criminal  
26 appeals, and if the attorney fails to do so, the court may take any  
27 action to ensure that the applicant's right to federal habeas

1 review is protected, including initiating contempt proceedings  
2 against the attorney.

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

16 SECTION 3. Section 2A(a), Article 11.071, Code of Criminal  
17 Procedure, is amended to read as follows:

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

27 SECTION 4. Section 3, Article 11.071, Code of Criminal

1 Procedure, is amended by adding Subsection (f) to read as follows:

2 (f) This section applies to counsel's investigation of the  
3 factual and legal grounds for the filing of an application for a  
4 writ of habeas corpus, regardless of whether counsel is employed by  
5 the office of capital writs.

6 SECTION 5. Sections 4A(e) and (f), Article 11.071, Code of  
7 Criminal Procedure, are amended to read as follows:

8 (e) Sections 2A and 3 apply to compensation and  
9 reimbursement of counsel appointed under Subsection (b)(3) in the  
10 same manner as if counsel had been appointed by the convicting  
11 court, unless the attorney is employed by the office of capital  
12 writs, in which case the compensation of that attorney is governed  
13 by Subchapter B, Chapter 78, Government Code.

14 (f) Notwithstanding any other provision of this article,  
15 the court of criminal appeals shall appoint counsel and establish a  
16 new filing date for application, which may be no later than the  
17 270th day after the date on which counsel is appointed, for each  
18 applicant who before September 1, 1999, filed an untimely  
19 application or failed to file an application before the date  
20 required by Section 4(a) or (b). Section 2A applies to the  
21 compensation and payment of expenses of counsel appointed by the  
22 court of criminal appeals under this subsection, unless the  
23 attorney is employed by the office of capital writs, in which case  
24 the compensation of that attorney is governed by Subchapter B,  
25 Chapter 78, Government Code.

26 SECTION 6. Article 26.04(b), Code of Criminal Procedure, is  
27 amended to read as follows:



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

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

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

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

13 (4) require appointments for defendants in capital  
14 cases in which the death penalty is sought to comply with any  
15 applicable ~~[the]~~ requirements under Articles 11.071 and [Article]  
16 26.052;

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

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

25 SECTION 7. Article 26.044(a), Code of Criminal Procedure,  
26 is amended by adding Subdivision (3) to read as follows:

27 (3) "Office of capital writs" means the office of

1 capital writs established under Subchapter B, Chapter 78,  
2 Government Code.

3 SECTION 8. Article 26.044, Code of Criminal Procedure, is  
4 amended by adding Subsection (n) to read as follows:

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

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

10 (2) the attorney employed by the public defender's  
11 office is on the list of competent counsel maintained under Section  
12 78.056, Government Code.

13 SECTION 9. Article 26.05(a), Code of Criminal Procedure, is  
14 amended to read as follows:

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

22 (1) time spent in court making an appearance on behalf  
23 of the defendant as evidenced by a docket entry, time spent in  
24 trial, and time spent in a proceeding in which sworn oral testimony  
25 is elicited;

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

1 requires;

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

5 (4) preparation of a motion for rehearing.

6 SECTION 10. Section 2(d), Article 11.071, Code of Criminal  
7 Procedure, is repealed, effective January 1, 2008.

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

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

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

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

23 SECTION 12. This Act takes effect September 1, 2007.