

By: Ellis, Duncan

S.B. No. 1655

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the establishment of the capital writs standards
3 subcommittee of the Task Force on Indigent Defense and the creation
4 of the office of capital writs.

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

6 SECTION 1. Section 71.060(c), Government Code, is amended
7 to read as follows:

8 (c) Any qualification standards adopted by the Task Force on
9 Indigent Defense under Subsection (a) that relate to the
10 appointment of counsel in a death penalty case must be consistent
11 with the standards specified under Section 71.064 [~~Article~~
12 ~~26.052(d), Code of Criminal Procedure~~]. An attorney who is
13 identified by the task force as not satisfying performance or
14 qualification standards adopted by the task force under Subsection
15 (a) may not accept an appointment in a capital case.

16 SECTION 2. Subchapter D, Chapter 71, Government Code, is
17 amended by adding Section 71.064 to read as follows:

18 Sec. 71.064. CAPITAL WRITS STANDARDS SUBCOMMITTEE. (a) In
19 this section:

20 (1) "Office of capital writs" means the office of
21 capital writs established under Subchapter E.

22 (2) "Subcommittee" means the capital writs standards
23 subcommittee established under Subsection (b).

24 (b) The capital writs standards subcommittee is established

1 as a subcommittee of the Task Force on Indigent Defense.

2 (c) The subcommittee is composed of seven members to be
3 selected by majority vote of the Task Force on Indigent Defense.

4 (d) The subcommittee shall elect one member to serve as the
5 presiding officer of the subcommittee.

6 (e) The subcommittee shall:

7 (1) oversee the creation of the office of capital
8 writs;

9 (2) recommend to the Task Force on Indigent Defense a
10 director for the office of capital writs;

11 (3) adopt standards and qualifications necessary for
12 attorneys to be employed by the office of capital writs; and

13 (4) adopt standards and qualifications necessary for
14 attorneys to be appointed to represent indigent defendants in
15 applications for writs of habeas corpus with respect to which the
16 office of capital writs is unable to represent the defendant.

17 (f) The standards adopted under Subsections (e)(3) and (4)
18 must require that an attorney employed by the office of capital
19 writs or appointed as lead counsel in applications for writs of
20 habeas corpus:

21 (1) be a member of the State Bar of Texas;

22 (2) exhibit proficiency and commitment to providing
23 quality representation to defendants in death penalty cases, as
24 described by the Guidelines and Standards for Texas Capital
25 Counsel, as published by the State Bar of Texas in the November 2006
26 issue of the Texas Bar Journal;

27 (3) not have been found by a federal or state court to

1 have rendered ineffective assistance of counsel during the trial or
2 appeal of a death penalty case or any other capital case; and

3 (4) have participated in continuing legal education
4 courses or other training relating to criminal defense in death
5 penalty cases.

6 SECTION 3. Chapter 71, Government Code, is amended by
7 adding Subchapter E to read as follows:

8 SUBCHAPTER E. OFFICE OF CAPITAL WRITS

9 Sec. 71.071. DEFINITIONS. In this subchapter:

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

12 (2) "Subcommittee" means the capital writs standards
13 subcommittee established under Section 71.064.

14 Sec. 71.072. ESTABLISHMENT; FUNDING. (a) The office of
15 capital writs is established as a standing committee of the council
16 and operates under the direction and supervision of the director of
17 the office.

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

20 Sec. 71.073. DIRECTOR; STAFF. (a) The Task Force on
21 Indigent Defense shall employ a director to direct and supervise
22 the operation of the office. The director serves at the pleasure of
23 the Task Force on Indigent Defense, except that the task force may
24 only terminate the director's employment for good cause.

25 (b) The director shall employ attorneys, licensed
26 investigators, and other personnel necessary to perform the duties
27 of the office.

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

- 3 (1) engage in the private practice of criminal law; or
4 (2) accept anything of value not authorized by this
5 chapter for services rendered under this article.

6 Sec. 71.074. POWERS AND DUTIES. (a) The office may refuse
7 an appointment under Article 11.071, Code of Criminal Procedure,
8 only if:

- 9 (1) a conflict of interest exists;
10 (2) the office has insufficient resources to provide
11 adequate representation for the defendant;
12 (3) the office is incapable of providing
13 representation for the defendant in accordance with the rules of
14 professional conduct; or
15 (4) the office shows other good cause for refusing the
16 appointment.

17 (b) Notwithstanding Article 26.04(p), Code of Criminal
18 Procedure, the office may independently investigate the financial
19 condition of any person the office is appointed to represent. The
20 office shall report the results of the investigation to the
21 appointing judge. The judge may hold a hearing to determine if the
22 person is indigent and entitled to representation under this
23 article.

24 (c) The court may not appoint the office to represent a
25 defendant in an application for a writ of habeas corpus if:

- 26 (1) the court has previously appointed counsel other
27 than the office under this subsection in the case; or

1 (2) the defendant has previously retained counsel to
2 represent the defendant in an application for a writ of habeas
3 corpus in the case.

4 Sec. 71.075. 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 Article 26.05, Code of Criminal
8 Procedure.

9 SECTION 4. Section 2, Article 11.071, Code of Criminal
10 Procedure, is amended by amending Subsection (b) and adding
11 Subsection (g) to read as follows:

12 (b) If a defendant is sentenced to death the convicting
13 court, immediately after judgment is entered under Article 42.01,
14 shall determine if the defendant is indigent and, if so, whether the
15 defendant desires appointment of counsel for the purpose of a writ
16 of habeas corpus. If the defendant desires appointment of counsel
17 for the purpose of a writ of habeas corpus, the court shall appoint
18 the office of capital writs to represent the defendant.

19 (g) Subsections (d) and (f) apply only to an attorney
20 appointed to represent an applicant who is not employed by the
21 office of capital writs. An attorney appointed under this section
22 who is employed by the office of capital writs shall be compensated
23 in accordance with Subchapter E, Chapter 71, Government Code, and
24 any rules adopted under that subchapter.

25 SECTION 5. Section 4A(f), Article 11.071, Code of Criminal
26 Procedure, is amended to read as follows:

27 (f) Notwithstanding any other provision of this article,

1 the court of criminal appeals shall appoint counsel and establish a
2 new filing date for application, which may be no later than the
3 270th day after the date on which counsel is appointed, for each
4 applicant who before September 1, 1999, filed an untimely
5 application or failed to file an application before the date
6 required by Section 4(a) or (b). Section 2A applies to the
7 compensation and payment of expenses of counsel appointed by the
8 court of criminal appeals under this subsection, unless the
9 attorney is employed by the office of capital writs, in which case
10 the attorney is compensated in accordance with Subchapter E,
11 Chapter 71, Government Code.

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

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

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

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

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

26 (4) require appointments for defendants in capital
27 cases in which the death penalty is sought to comply with applicable

1 ~~the~~ requirements under Article 26.052 of this code, Section
2 71.064, Government Code, and Subchapter E, Chapter 71, Government
3 Code;

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

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

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

14 (3) "Office of capital writs" means the office of
15 capital writs established under Subchapter E, Chapter 71,
16 Government Code.

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

19 (n) A public defender may be appointed with respect to an
20 application for a writ of habeas corpus only if an attorney employed
21 by the office of capital writs is not appointed in the case.

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

24 (a) A counsel, other than an attorney with a public defender
25 or an attorney employed by the office of capital writs, appointed to
26 represent a defendant in a criminal proceeding, including a habeas
27 corpus hearing, shall be paid a reasonable attorney's fee for

1 performing the following services, based on the time and labor
2 required, the complexity of the case, and the experience and
3 ability of the appointed counsel:

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

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

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

14 (4) preparation of a motion for rehearing.

15 SECTION 10. (a) Not later than the 60th day after the
16 effective date of this Act, the Task Force on Indigent Defense shall
17 designate seven members of the task force to serve as the capital
18 writs standards subcommittee.

19 (b) Not later than June 1, 2009, the Task Force on Indigent
20 Defense shall employ the director of the office of capital writs
21 under Subchapter E, Chapter 71, Government Code, as added by this
22 Act.

23 SECTION 11. This Act takes effect September 1, 2007.