

By: Harris

S.B. No. 1028

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

1 second attorney under Subsection (e).

2 (e-2) A case in which the state seeks the death penalty may
3 not proceed to trial on the merits before the 180th day after the
4 date on which a second attorney is appointed to the case under
5 Subsection (e). If, after the second attorney is appointed, the
6 state files written notice in the case that the state will not seek
7 the death penalty, the judge may remove the second attorney from the
8 case. The second attorney remains entitled to reasonable payment
9 for services rendered before removal in accordance with the local
10 guidelines for payment of an attorney appointed to represent a
11 defendant in a capital case.

12 (f) Appointed counsel may file with the trial court a
13 pretrial ex parte confidential request for advance payment of
14 expenses to investigate potential defenses and mitigation
15 evidence. The request for expenses must state:

- 16 (1) the type of investigation to be conducted;
17 (2) specific facts that suggest the investigation will
18 result in admissible evidence; and
19 (3) an itemized list of anticipated expenses for each
20 investigation.

21 (g) The court shall timely grant the request for advance
22 payment of expenses in whole or in part if the request is
23 reasonable. If the court denies in whole or in part the request for
24 expenses, the court shall:

- 25 (1) state the reasons for the denial in writing;
26 (2) attach the denial to the confidential request; and
27 (3) submit the request and denial as a sealed exhibit

1 to the record.

2 SECTION 2. The change in law made by this Act applies only
3 to a capital felony case that is filed on or after the effective
4 date of this Act. A capital felony case that is filed before the
5 effective date of this Act is governed by the law in effect on the
6 date the case was filed, and the former law is continued in effect
7 for that purpose.

8 SECTION 3. This Act takes effect September 1, 2011.