

By: Hinojosa
(Herrero)

S.B. No. 1743

A BILL TO BE ENTITLED

AN ACT

1
2 relating to expanding the powers and duties of the office of capital
3 writs and renaming the office of capital writs the office of capital
4 and forensic writs.

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

6 SECTION 1. Sections 2(b), (c), and (f), Article 11.071,
7 Code of Criminal Procedure, are amended to read as follows:

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

16 (c) At the earliest practical time, but in no event later
17 than 30 days, after the convicting court makes the findings
18 required under Subsections (a) and (b), the convicting court shall
19 appoint the office of capital and forensic writs or, if the office
20 of capital and forensic writs does not accept or is prohibited from
21 accepting an appointment under Section 78.054, Government Code,
22 other competent counsel under Subsection (f), unless the applicant
23 elects to proceed pro se or is represented by retained counsel. On
24 appointing counsel under this section, the convicting court shall

1 immediately notify the court of criminal appeals of the
2 appointment, including in the notice a copy of the judgment and the
3 name, address, and telephone number of the appointed counsel.

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

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

20 (a) The state shall reimburse a county for compensation of
21 counsel under Section 2, other than for compensation of counsel
22 employed by the office of capital and forensic writs, and for
23 payment of expenses under Section 3, regardless of whether counsel
24 is employed by the office of capital and forensic writs. The total
25 amount of reimbursement to which a county is entitled under this
26 section for an application under this article may not exceed
27 \$25,000. Compensation and expenses in excess of the \$25,000

1 reimbursement provided by the state are the obligation of the
2 county.

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

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

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

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

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

1 Subchapter B, Chapter 78, Government Code.

2 SECTION 5. Section 6(b-1), Article 11.071, Code of Criminal
3 Procedure, is amended to read as follows:

4 (b-1) If the convicting court receives notice that the
5 requirements of Section 5(a) for consideration of a subsequent
6 application have been met and if the applicant has not elected to
7 proceed pro se and is not represented by retained counsel, the
8 convicting court shall appoint, in order of priority:

9 (1) the attorney who represented the applicant in the
10 proceedings under Section 5, if the attorney seeks the appointment;

11 (2) the office of capital and forensic writs, if the
12 office represented the applicant in the proceedings under Section 5
13 or otherwise accepts the appointment; or

14 (3) counsel from a list of competent counsel
15 maintained by the presiding judges of the administrative judicial
16 regions under Section 78.056, Government Code, if the office of
17 capital and forensic writs:

18 (A) did not represent the applicant as described
19 by Subdivision (2); or

20 (B) does not accept or is prohibited from
21 accepting the appointment under Section 78.054, Government Code.

22 SECTION 6. Article 26.044(a)(2), Code of Criminal
23 Procedure, is amended to read as follows:

24 (2) "Office of capital and forensic writs" means the
25 office of capital and forensic writs established under Subchapter
26 B, Chapter 78, Government Code.

27 SECTION 7. Article 26.05(a), Code of Criminal Procedure, is

1 amended to read as follows:

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

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

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

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

19 (4) preparation of a motion for rehearing.

20 SECTION 8. The heading to Chapter 78, Government Code, is
21 amended to read as follows:

22 CHAPTER 78. CAPITAL AND FORENSIC WRITS COMMITTEE AND OFFICE OF
23 CAPITAL AND FORENSIC WRITS

24 SECTION 9. The heading to Subchapter A, Chapter 78,
25 Government Code, is amended to read as follows:

26 SUBCHAPTER A. CAPITAL AND FORENSIC WRITS COMMITTEE

27 SECTION 10. Section 78.001, Government Code, is amended to

1 read as follows:

2 Sec. 78.001. DEFINITIONS. In this subchapter:

3 (1) "Committee" means the capital and forensic writs
4 committee established under this subchapter.

5 (2) "Office of capital and forensic writs" means the
6 office of capital and forensic writs established under Subchapter
7 B.

8 SECTION 11. Section 78.002, Government Code, is amended to
9 read as follows:

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

12 (b) The committee shall recommend to the court of criminal
13 appeals as provided by Section 78.004 a director for the office of
14 capital and forensic writs when a vacancy exists for the position of
15 director.

16 SECTION 12. The heading to Section 78.004, Government Code,
17 is amended to read as follows:

18 Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF
19 OFFICE OF CAPITAL AND FORENSIC WRITS.

20 SECTION 13. Section 78.004, Government Code, is amended to
21 read as follows:

22 Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF
23 OFFICE OF CAPITAL AND FORENSIC WRITS. (a) The committee shall
24 submit to the court of criminal appeals, in order of the committee's
25 preference, a list of the names of not more than five persons the
26 committee recommends that the court consider in appointing the
27 director of the office of capital and forensic writs when a vacancy

1 exists for the position of director. If the committee finds that
2 three or more persons under the committee's consideration are
3 qualified to serve as the director of the office of capital and
4 forensic writs, the committee must include at least three names in
5 the list submitted under this subsection.

6 (b) Each person recommended to the court of criminal appeals
7 by the committee under Subsection (a):

8 (1) must exhibit proficiency and commitment to
9 providing quality representation to defendants in death penalty
10 cases, as described by the Guidelines and Standards for Texas
11 Capital Counsel, as published by the State Bar of Texas; and

12 (2) may not have been found by a state or federal court
13 to have rendered ineffective assistance of counsel during the trial
14 or appeal of a criminal [~~death penalty~~] case.

15 (c) When a vacancy for the position exists, the court of
16 criminal appeals shall appoint from the list of persons submitted
17 to the court under Subsection (a) the director of the office of
18 capital and forensic writs.

19 SECTION 14. The heading to Subchapter B, Chapter 78,
20 Government Code, is amended to read as follows:

21 SUBCHAPTER B. OFFICE OF CAPITAL AND FORENSIC WRITS

22 SECTION 15. Section 78.051, Government Code, is amended to
23 read as follows:

24 Sec. 78.051. DEFINITIONS. In this subchapter:

25 (1) "Committee" means the capital and forensic writs
26 committee established under Subchapter A.

27 (2) "Office" means the office of capital and forensic

1 writs established under this subchapter.

2 SECTION 16. Section 78.052(a), Government Code, is amended
3 to read as follows:

4 (a) The office of capital and forensic writs is established
5 and operates under the direction and supervision of the director of
6 the office.

7 SECTION 17. Section 78.053(b), Government Code, is amended
8 to read as follows:

9 (b) The director shall employ attorneys and employ or retain
10 licensed investigators, experts, and other personnel necessary to
11 perform the duties of the office. To be employed by the director,
12 an attorney may not have been found by a state or federal court to
13 have rendered ineffective assistance of counsel during the trial or
14 appeal of a criminal [~~death penalty~~] case.

15 SECTION 18. Section 78.054, Government Code, is amended by
16 amending Subsection (b) and adding Subsection (d) to read as
17 follows:

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

22 (1) is conducted under Article 11.071 or 11.073, Code
23 of Criminal Procedure;

24 (2) is collateral to the preparation of an application
25 under Article 11.071 or 11.073, Code of Criminal Procedure; [~~or~~]

26 (3) concerns any other post-conviction matter in a
27 death penalty case other than a direct appeal, including an action

1 or proceeding under Article 46.05 or Chapter 64, Code of Criminal
2 Procedure; or

3 (4) concerns any other post-conviction matter in a
4 case that involves a forensic science issue.

5 (d) The office may consult with law school clinics with
6 applicable knowledge and experience and with other experts as
7 necessary to investigate the facts of a particular case.

8 SECTION 19. Section 79.001(12), Government Code, is amended
9 to read as follows:

10 (12) "Office of capital and forensic writs" means the
11 office of capital and forensic writs established under Subchapter
12 B, Chapter 78.

13 SECTION 20. Section 79.031, Government Code, is amended to
14 read as follows:

15 Sec. 79.031. FAIR DEFENSE ACCOUNT. The fair defense
16 account is an account in the general revenue fund that may be
17 appropriated only to:

18 (1) the commission for the purpose of implementing
19 this chapter; and

20 (2) the office of capital and forensic writs for the
21 purpose of implementing Subchapter B, Chapter 78.

22 SECTION 21. Section 411.082(5), Government Code, is amended
23 to read as follows:

24 (5) "Office of capital and forensic writs" means the
25 office of capital and forensic writs established under Subchapter
26 B, Chapter 78.

27 SECTION 22. Section 411.088(a-1), Government Code, is

1 amended to read as follows:

2 (a-1) The department may not charge a fee under Subsection
3 (a) for providing criminal history record information to:

- 4 (1) a criminal justice agency;
- 5 (2) the office of capital and forensic writs; or
- 6 (3) a public defender's office.

7 SECTION 23. Section [411.1272](#), Government Code, is amended
8 to read as follows:

9 Sec. 411.1272. ACCESS TO CRIMINAL HISTORY RECORD
10 INFORMATION: OFFICE OF CAPITAL AND FORENSIC WRITS AND PUBLIC
11 DEFENDER'S OFFICES. The office of capital and forensic writs and a
12 public defender's office are entitled to obtain from the department
13 criminal history record information maintained by the department
14 that relates to a criminal case in which an attorney compensated by
15 the office of capital and forensic writs or by the public defender's
16 office has been appointed.

17 SECTION 24. This Act takes effect September 1, 2015.