

By: White

H.B. No. 1676

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the capital appellate defense committee and the office of capital appellate defender.

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

SECTION 1. Article 26.044(a), Code of Criminal Procedure, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Office of capital appellate defender" means the office of capital appellate defender established under Subchapter C, Chapter 78A, Government Code.

SECTION 2. Article 26.044, Code of Criminal Procedure, is amended by adding Subsection (o) to read as follows:

(o) An attorney employed by a public defender's office may be appointed with respect to a direct appeal of a death penalty case under Article 26.052(i) if the attorney is on the list of qualified counsel maintained under Article 26.052(d).

SECTION 3. Subtitle F, Title 2, Government Code, is amended by adding Chapter 78A to read as follows:

CHAPTER 78A. CAPITAL APPELLATE DEFENSE COMMITTEE AND OFFICE OF

CAPITAL APPELLATE DEFENDER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 78A.001. DEFINITIONS. In this chapter:

(1) "Committee" means the capital appellate defense committee established under Subchapter B.

(2) "Office" means the office of capital appellate

1 defender established under Subchapter C.

2 SUBCHAPTER B. CAPITAL APPELLATE DEFENSE COMMITTEE

3 Sec. 78A.051. ESTABLISHMENT OF COMMITTEE; DUTIES. (a) The
4 capital appellate defense committee is established.

5 (b) The committee shall recommend to the court of criminal
6 appeals as provided by Section 78A.053 a director for the office
7 when a vacancy exists for the position of director.

8 Sec. 78A.052. APPOINTMENT AND COMPOSITION OF COMMITTEE.

9 (a) The committee is composed of five members who are:

10 (1) appointed by the executive director of the Texas
11 Indigent Defense Commission; and

12 (2) licensed attorneys with significant experience in
13 capital defense or criminal indigent defense policy or practice.

14 (b) The committee members serve at the pleasure of the
15 executive director of the Texas Indigent Defense Commission.

16 (c) The committee shall elect one member of the committee to
17 serve as the presiding officer of the committee.

18 (d) The committee meets at the call of the presiding officer
19 of the committee.

20 Sec. 78A.053. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF

21 OFFICE. (a) The committee shall submit to the court of criminal
22 appeals, in order of the committee's preference, a list of the names
23 of at least three persons the committee recommends that the court
24 consider in appointing the director of the office when a vacancy
25 exists for the position of director.

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

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

5 (2) may not have been found by a state or federal court
6 to have rendered ineffective assistance of counsel during the trial
7 or appeal of a death penalty case.

8 (c) When a vacancy for the position exists, the court of
9 criminal appeals shall appoint from the list of persons submitted
10 to the court under Subsection (a) the director of the office.

11 SUBCHAPTER C. OFFICE OF CAPITAL APPELLATE DEFENDER

12 Sec. 78A.101. ESTABLISHMENT. The office of capital
13 appellate defender is established and operates under the direction
14 and supervision of the director of the office.

15 Sec. 78A.102. DIRECTOR; STAFF. (a) The court of criminal
16 appeals shall appoint a director to direct and supervise the
17 operation of the office. The director serves a four-year term and
18 continues to serve until a successor has been appointed. The court
19 of criminal appeals may remove the director only for good
20 cause. The director may be reappointed for subsequent terms.

21 (b) The director shall employ attorneys and other personnel
22 necessary to perform the duties of the office. To be employed by
23 the director, an attorney may not have been found by a state or
24 federal court to have rendered ineffective assistance of counsel
25 during the trial or appeal of a death penalty case.

26 (c) The director and any attorney employed by the office may
27 not:

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

4 Sec. 78A.103. POWERS AND DUTIES. (a) The office may
5 represent an indigent defendant who has been sentenced to death
6 under Article 37.071, Code of Criminal Procedure, in the
7 defendant's:

- 8 (1) motions for a new trial;
- 9 (2) direct appeal before the court of criminal
- 10 appeals;
- 11 (3) petition for a writ of certiorari in the United
- 12 States Supreme Court; and

13 (4) application for a writ of mandamus or prohibition
14 that is collateral to the representation described by Subdivisions
15 (1), (2), and (3).

16 (b) A district court or the district court's designee shall
17 give the office priority in appointing appellate counsel under
18 Article 26.052, Code of Criminal Procedure, to represent an
19 indigent defendant who has been sentenced to death.

20 (c) The office may not accept an appointment in any criminal
21 proceeding if:

- 22 (1) a conflict of interest exists;
- 23 (2) the office has insufficient resources to provide
- 24 competent representation for the defendant;
- 25 (3) the office is incapable of providing

26 representation for the defendant in accordance with the rules of
27 professional conduct; or

1 (4) other good cause is shown for not accepting the
2 appointment.

3 (d) The office may consult with law school clinics with
4 applicable knowledge and experience and with other experts as
5 necessary to research the legal issues of a particular case.

6 Sec. 78A.104. COMPENSATION OF OTHER APPOINTED ATTORNEYS.
7 If it is necessary that an attorney other than an attorney employed
8 by the office be appointed, that attorney shall be compensated as
9 provided by Article 26.052, Code of Criminal Procedure.

10 SECTION 4. (a) Not later than January 15, 2018, the
11 executive director of the Texas Indigent Defense Commission shall
12 appoint the members of the capital appellate defense committee
13 under Section 78A.052, Government Code, as added by this Act.

14 (b) Not later than May 15, 2018, the capital appellate
15 defense committee shall submit to the Texas Court of Criminal
16 Appeals the list of candidates for the position of the director of
17 the office of capital appellate defender under Section 78A.053,
18 Government Code, as added by this Act.

19 (c) Not later than September 1, 2018, the Texas Court of
20 Criminal Appeals shall appoint the director of the office of
21 capital appellate defender under Section 78A.102, Government Code,
22 as added by this Act.

23 SECTION 5. This Act takes effect September 1, 2017.