

By: Huffman

S.B. No. 2189

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of an attorney pro tem for certain criminal proceedings.

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

SECTION 1. Articles 2.07(a), (b), (b-1), and (d), Code of Criminal Procedure, are amended to read as follows:

(a) Whenever an attorney for the state is disqualified to act in any case or proceeding, is absent from the county or district, or is otherwise unable to perform the duties of the attorney's ~~[his]~~ office, or in any instance where there is no attorney for the state, the judge of the court in which the attorney ~~[he]~~ represents the state may appoint, from any county or district, an [any competent] attorney for the state or may appoint an assistant attorney general to perform the duties of the office during the absence or disqualification of the attorney for the state.

(b) Except as otherwise provided by this subsection, ~~[if the appointed attorney is also an attorney for the state,]~~ the duties of the appointed office are additional duties of the appointed attorney's ~~[his]~~ present office, and the attorney ~~[he]~~ is not entitled to additional compensation. This subsection does not ~~[Nothing herein shall]~~ prevent a commissioners court of a county from contracting with another commissioners court to pay expenses and reimburse compensation paid by a county to an attorney ~~[for the~~

1 ~~state]~~ who is appointed to perform additional duties.

2 (b-1) An attorney for the state who is not disqualified to
3 act may request the court to permit the attorney's recusal [~~him to~~
4 ~~recuse himself~~] in a case for good cause, and on [~~upon~~] approval by
5 the court the attorney is disqualified.

6 (d) In this article, "attorney for the state" means a county
7 attorney with criminal jurisdiction, a district attorney, or a
8 criminal district attorney.

9 SECTION 2. Article 52.09(c), Code of Criminal Procedure, is
10 amended to read as follows:

11 (c) An attorney pro tem appointed under Article 52.01(d) [~~of~~
12 ~~this code~~] is entitled to compensation in the same amount and manner
13 as an attorney appointed to represent an indigent person [~~pro tem~~
14 ~~appointed under Article 2.07 of this code~~]. The district judge
15 shall set the compensation of the attorney pro tem based on the
16 sworn testimony of the attorney or other evidence that is given in
17 open court.

18 SECTION 3. Section 574.004, Government Code, is amended to
19 read as follows:

20 Sec. 574.004. ASSISTANCE BY ATTORNEY GENERAL. This
21 [~~Nothing in this~~] chapter does not [~~shall~~] prevent the attorney
22 general from providing assistance to district attorneys, criminal
23 district attorneys, and county attorneys on request by allowing
24 assistant attorneys general to serve as duly appointed and
25 deputized assistant prosecutors, nor does [~~shall~~] this chapter
26 prohibit the appointment of an assistant attorney general as an
27 attorney pro tem pursuant to Article 2.07, Code of Criminal

1 Procedure.

2 SECTION 4. Articles 2.07(c), (e), (f), and (g), Code of
3 Criminal Procedure, are repealed.

4 SECTION 5. The change in law made by this Act in amending
5 Article 2.07, Code of Criminal Procedure, applies only to the
6 appointment of an attorney pro tem that occurs on or after the
7 effective date of this Act. The appointment of an attorney pro tem
8 that occurs before the effective date of this Act is governed by the
9 law in effect on the date the attorney pro tem was appointed, and
10 the former law is continued in effect for that purpose.

11 SECTION 6. This Act takes effect September 1, 2017.