

By: Sherman, Sr.

H.B. No. 3827

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the procedures for appointing counsel to represent
3 indigent defendants in certain post-conviction proceedings in
4 capital cases.

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

6 SECTION 1. Section 2, Article 11.071, Code of Criminal
7 Procedure, is amended by amending Subsections (b), (c), and (f) and
8 adding Subsections (d) and (d-1) to read as follows:

9 (b) If a defendant is sentenced to death the convicting
10 court, immediately after judgment is entered under Article 42.01,
11 shall determine if the defendant is indigent and, if so, whether the
12 defendant desires appointment of counsel for the purpose of a writ
13 of habeas corpus. If the defendant has not elected to proceed pro
14 se, is not represented by retained counsel, and desires appointment
15 of counsel for the purpose of a writ of habeas corpus, the court
16 shall appoint counsel [~~the office of capital and forensic writs~~] to
17 represent the defendant as provided by Subsection (c).

18 (c) At the earliest practical time, but in no event later
19 than 30 days, after the convicting court makes the findings
20 required under Subsections (a) and (b), the convicting court shall
21 appoint the office of capital and forensic writs unless [~~or, if~~] the
22 office of capital and forensic writs does not accept or is
23 prohibited from accepting an appointment under Section 78.054,
24 Government Code, or the convicting court determines good cause

1 exists for appointment of other counsel. If the office of capital
2 and forensic writs is not appointed under this subsection, the
3 convicting court shall appoint other competent counsel under
4 Subsection (d) [~~(f)~~, unless the applicant elects to proceed pro se
5 ~~or is represented by retained counsel~~].

6 (d) If the office of capital and forensic writs does not
7 accept or is prohibited from accepting an appointment under Section
8 78.054, Government Code, or the convicting court determines good
9 cause exists for appointment of other counsel, the convicting court
10 shall appoint counsel from a list of competent counsel maintained
11 by the presiding judges of the administrative judicial regions
12 under Section 78.056, Government Code.

13 (d-1) On appointing counsel under this section, the
14 convicting court shall immediately notify the court of criminal
15 appeals of the appointment, including in the notice a copy of the
16 judgment and the name, address, and telephone number of the
17 appointed counsel.

18 [~~If the office of capital and forensic writs does not~~
19 ~~accept or is prohibited from accepting an appointment under Section~~
20 ~~78.054, Government Code, the convicting court shall appoint counsel~~
21 ~~from a list of competent counsel maintained by the presiding judges~~
22 ~~of the administrative judicial regions under Section 78.056,~~
23 ~~Government Code.~~] The convicting court shall reasonably compensate
24 as provided by Section 2A an attorney appointed under this section,
25 other than an attorney employed by the office of capital and
26 forensic writs, regardless of whether the attorney is appointed by
27 the convicting court or was appointed by the court of criminal

1 appeals under prior law. An attorney appointed under this section
2 who is employed by the office of capital and forensic writs shall be
3 compensated in accordance with Subchapter B, Chapter 78, Government
4 Code.

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

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

12 (1) the attorney who represented the applicant in the
13 proceedings under Section 5, if the attorney seeks the appointment
14 and is otherwise competent for that purpose;

15 (2) the office of capital and forensic writs, if the
16 office represented the applicant in the proceedings under Section 5
17 or otherwise accepts the appointment in accordance with Chapter 78,
18 Government Code; or

19 (3) counsel from a list of competent counsel
20 maintained by the presiding judges of the administrative judicial
21 regions under Section 78.056, Government Code, if counsel is not
22 appointed under Subdivision (1) or (2) or if the convicting court
23 determines good cause exists for appointment of counsel other than
24 counsel described by those subdivisions [~~the office of capital and~~
25 ~~forensic writs;~~

26 [~~(A) did not represent the applicant as described~~
27 ~~by Subdivision (2); or~~

1 ~~[(B) does not accept or is prohibited from~~
2 ~~accepting the appointment under Section [78.054](#), Government Code].~~

3 SECTION 3. This Act takes effect September 1, 2019.