

By: Dutton

H.B. No. 3920

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the establishment of the inmate legal services office
3 and to the appointment and compensation of certain legal counsel
4 for certain indigent inmates and other persons in secure
5 correctional facilities.

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

7 SECTION 1. Subtitle F, Title 2, Government Code, is amended
8 by adding Chapter 78A to read as follows:

9 CHAPTER 78A. INMATE LEGAL SERVICES

10 SUBCHAPTER A. GENERAL PROVISIONS

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

12 (1) "Board" means the inmate legal services board of
13 directors established under Subchapter B.

14 (2) "Office" means the inmate legal services office
15 established under Subchapter C.

16 SUBCHAPTER B. INMATE LEGAL SERVICES BOARD

17 Sec. 78A.051. ESTABLISHMENT OF BOARD; DUTIES. (a) The
18 inmate legal services board of directors is established.

19 (b) The board shall recommend to the court of criminal
20 appeals as provided by Section 78A.053 a director for the inmate
21 legal services office when a vacancy exists for the position of
22 director.

23 Sec. 78A.052. APPOINTMENT AND COMPOSITION OF BOARD. (a)
24 The board is composed of the following nine members to be appointed

1 by the president of the State Bar of Texas, with ratification by the
2 executive committee of the State Bar of Texas:

3 (1) five attorneys who are employed as executive
4 directors or chief public defenders of a public defender's office,
5 as defined by Article 26.044(a), Code of Criminal Procedure; and

6 (2) four criminal defense attorneys each of whom:

7 (A) practices in a county in which there is a
8 confinement facility operated by or under contract with the Texas
9 Department of Criminal Justice; and

10 (B) has experience representing indigent
11 defendants in this state.

12 (b) Each member of the board must be a member of the State
13 Bar of Texas and may not be employed as a prosecutor or a law
14 enforcement official.

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

17 (d) Board members serve two-year terms expiring February 1
18 of each even-numbered year.

19 (e) The board meets at the call of the presiding officer of
20 the board.

21 Sec. 78A.053. APPOINTMENT OF DIRECTOR OF INMATE LEGAL
22 SERVICES OFFICE. (a) The board shall submit to the court of
23 criminal appeals, in order of the board's preference, a list of the
24 names of not more than five persons the board recommends that the
25 court consider in appointing the director of the inmate legal
26 services office when a vacancy exists for the position of director.
27 If the board finds that three or more persons under the board's

1 consideration are qualified to serve as the director, the board
2 must include at least three names in the list submitted under this
3 subsection.

4 (b) Each person recommended to the court of criminal appeals
5 by the board under Subsection (a):

6 (1) must be committed to providing quality
7 representation to indigent clients consistent with the principles
8 of a public defense delivery system as established by the American
9 Bar Association;

10 (2) may not have been found by a state or federal court
11 to have rendered ineffective assistance of counsel during the trial
12 or appeal of a criminal defense case;

13 (3) must be a member of the State Bar of Texas;

14 (4) must have practiced law for at least three years;

15 and

16 (5) must have substantial experience in the practice
17 of criminal law.

18 (c) When a vacancy for the position exists, the court of
19 criminal appeals shall appoint from the list of persons submitted
20 to the court under Subsection (a) the director of the inmate legal
21 services office.

22 (d) The board shall determine the director's compensation,
23 which must maintain parity with the compensation of the chief of the
24 special prosecution unit under Subchapter E, Chapter 41.

25 SUBCHAPTER C. INMATE LEGAL SERVICES OFFICE

26 Sec. 78A.101. ESTABLISHMENT. The inmate legal services
27 office is established and operates under the direction and

1 supervision of the director of the office.

2 Sec. 78A.102. DIRECTOR; STAFF. (a) The court of criminal
3 appeals shall appoint a director to direct and supervise the
4 operation of the office as provided by Section 78A.053. The
5 director serves a four-year term and continues to serve until a
6 successor has been appointed and qualified. The board may remove
7 the director only for good cause. The director may be reappointed
8 for a second or subsequent term.

9 (b) The director shall employ attorneys and employ or retain
10 licensed investigators and other personnel necessary to perform the
11 duties of the office.

12 (c) The director and any attorney employed by the office may
13 not:

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

17 Sec. 78A.103. POWERS AND DUTIES. (a) The office may not
18 accept an appointment under Article 26.051, Code of Criminal
19 Procedure, or Section 841.005, Health and Safety Code, if:

20 (1) a conflict of interest exists that has not been
21 waived by the client;

22 (2) the office has insufficient resources to provide
23 adequate representation for the client;

24 (3) the office is incapable of providing
25 representation for the client in accordance with the rules of
26 professional conduct;

27 (4) the acceptance of the appointment would require

1 attorneys at the office to have a caseload that exceeds the maximum
2 allowable caseload established by the office; or

3 (5) other good cause is shown for not accepting the
4 appointment.

5 (b) On refusing to accept an appointment, the director shall
6 file with the court a written statement that identifies the reason
7 for the refusal. The court shall determine whether the director has
8 demonstrated adequate good cause for refusing the appointment and
9 shall include the statement with the papers in the case.

10 (c) A director may not be terminated, removed, or sanctioned
11 for refusing in good faith to accept an appointment under Article
12 26.051, Code of Criminal Procedure, or Section 841.005, Health and
13 Safety Code.

14 Sec. 78A.104. COMPENSATION OF OTHER APPOINTED ATTORNEYS.
15 If it is necessary that an attorney other than an attorney employed
16 by the office be appointed, that attorney shall be compensated as
17 provided by Article 26.051(h), Code of Criminal Procedure.

18 Sec. 78A.105. ACCESS TO CERTAIN FACILITIES, WITNESSES, AND
19 DOCUMENTS FOR INVESTIGATION. (a) Attorneys and investigators
20 employed or retained by the office shall be allowed access to a
21 facility operated by or under contract with the Texas Department of
22 Criminal Justice as necessary to:

23 (1) confer with a client of the office or witness to an
24 offense alleged to have been committed by a client of the office;
25 and

26 (2) inspect a location where an offense is alleged to
27 have been committed by a client of the office.

1 (b) The Texas Department of Criminal Justice and the special
2 prosecution unit established under Subchapter E, Chapter 41, shall
3 disclose to the office any documents necessary for the
4 representation of the office's clients.

5 SECTION 2. Articles 26.051(a), (d), (e), (g), and (h), Code
6 of Criminal Procedure, are amended to read as follows:

7 (a) In this article:

8 (1) ~~["Board" means the Texas Board of Criminal~~
9 ~~Justice.~~

10 ~~[(2)]~~ "Correctional institutions division" means the
11 correctional institutions division of the Texas Department of
12 Criminal Justice.

13 (2) "Office" means the inmate legal services office
14 established under Subchapter C, Chapter 78A, Government Code.

15 (d) A court shall:

16 (1) notify the office ~~[board]~~ if the court ~~[it]~~
17 determines that a defendant before the court is indigent and is an
18 inmate charged with an offense committed while in the custody of the
19 correctional institutions division or a correctional facility
20 authorized by Section 495.001, Government Code; and

21 (2) request that the office ~~[board]~~ provide legal
22 representation for the inmate.

23 (e) The office ~~[board]~~ shall provide legal representation
24 for inmates described by Subsection (d) ~~[of this section]~~. ~~[The~~
25 ~~board may employ attorneys, support staff, and any other personnel~~
26 ~~required to provide legal representation for those inmates. All~~
27 ~~personnel employed under this article are directly responsible to~~

1 ~~the board in the performance of their duties.]~~ The office [~~board~~]
2 shall pay all fees and costs associated with providing legal
3 representation for those inmates.

4 (g) The court shall appoint an attorney other than an
5 attorney provided by the office [~~board~~] if the court determines for
6 any of the following reasons that a conflict of interest could arise
7 from the use of an attorney provided by the office [~~board~~] under
8 Subsection (e) [~~of this article~~]:

9 (1) the case involves more than one inmate and the
10 representation of more than one inmate could impair the attorney's
11 effectiveness;

12 (2) the case is appealed and the court is satisfied
13 that conflict of interest would prevent the presentation of a good
14 faith allegation of ineffective assistance of counsel by a trial
15 attorney provided by the office [~~board~~]; [~~or~~]

16 (3) any conflict of interest exists under the Texas
17 Disciplinary Rules of Professional Conduct of the State Bar of
18 Texas that precludes representation by an attorney appointed by the
19 office; or

20 (4) the office refuses to accept the appointment as
21 provided by Section 78A.103(a), Government Code [~~board~~].

22 (h) When the court appoints an attorney other than an
23 attorney provided by the office [~~board~~]:

24 (1) except as otherwise provided by this article, the
25 inmate's legal defense is subject to Articles [1.051](#), [26.04](#), [26.05](#),
26 and [26.052](#), as applicable; and

27 (2) the county in which a facility of the correctional

1 institutions division or a correctional facility authorized by
2 Section 495.001, Government Code, is located shall pay from its
3 general fund the total costs of the aggregate amount allowed and
4 awarded by the court for attorney compensation and expenses under
5 Article 26.05 or 26.052, as applicable.

6 SECTION 3. Section 841.005, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 841.005. INMATE LEGAL SERVICES OFFICE [~~OF STATE~~
9 ~~COUNSEL FOR OFFENDERS~~]. (a) Except as provided by Subsection (b),
10 the inmate legal services office established under Subchapter C,
11 Chapter 78A, Government Code, [~~Office of State Counsel for~~
12 ~~Offenders~~] shall represent an indigent person subject to a civil
13 commitment proceeding under this chapter.

14 (b) If for any reason the inmate legal services office
15 [~~Office of State Counsel for Offenders~~] is unable to represent an
16 indigent person described by Subsection (a) at a civil commitment
17 proceeding under this chapter, the court shall appoint other
18 counsel to represent the indigent person.

19 SECTION 4. (a) Not later than December 1, 2019, the
20 president of the State Bar of Texas shall appoint and the executive
21 committee of the State Bar of Texas shall ratify the members of the
22 inmate legal services board of directors as required by Section
23 78A.052, Government Code, as added by this Act. Notwithstanding
24 the terms of board member service provided by that section, the term
25 of an initial member of the board of directors expires February 1,
26 2022.

27 (b) Not later than January 1, 2020, the inmate legal

1 services board of directors shall recommend a director for the
2 inmate legal services office as required by Section 78A.053,
3 Government Code, as added by this Act.

4 SECTION 5. Article 26.051, Code of Criminal Procedure, and
5 Section 841.005, Health and Safety Code, as amended by this Act,
6 apply only to legal representation appointed under those provisions
7 on or after February 1, 2020. Legal representation appointed
8 before February 1, 2020, is governed by the law in effect
9 immediately before the effective date of this Act, and the former
10 law is continued in effect for that purpose.

11 SECTION 6. This Act takes effect September 1, 2019.