

By: Dutton

H.B. No. 1605

A BILL TO BE ENTITLED

AN ACT

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

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

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

CHAPTER 78A. INMATE LEGAL SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

SUBCHAPTER B. INMATE LEGAL SERVICES BOARD

Sec. 78A.051. ESTABLISHMENT OF BOARD; DUTIES. (a) The inmate legal services board of directors is established. The provision of inmate legal services under this chapter is governed by the board.

(b) The board shall hire a director for the inmate legal services office as provided by Section 78A.053 when a vacancy exists for the position of director.

Sec. 78A.052. APPOINTMENT AND COMPOSITION OF BOARD. (a)

1 The board is composed of the following nine members to be appointed
2 by the president of the State Bar of Texas, with ratification by the
3 executive committee of the State Bar of Texas:

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

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

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

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

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

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

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

20 (e) The board meets at least annually at the call of the
21 presiding officer of the board.

22 Sec. 78A.053. APPOINTMENT OF DIRECTOR OF INMATE LEGAL
23 SERVICES OFFICE. (a) The board, by a majority vote, shall hire a
24 director of the inmate legal services office when a vacancy exists
25 for the position of director.

26 (b) A person hired by the board under Subsection (a):

27 (1) must be committed to providing quality

1 representation to indigent clients consistent with the principles
2 of a public defense delivery system as established by the American
3 Bar Association;

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

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

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

9 and

10 (5) must have substantial experience in the practice
11 of criminal law.

12 (c) The board shall determine the director's compensation,
13 which must maintain parity with the compensation of the chief of the
14 special prosecution unit under Subchapter E, Chapter 41.

15 SUBCHAPTER C. INMATE LEGAL SERVICES OFFICE

16 Sec. 78A.101. ESTABLISHMENT. The inmate legal services
17 office is established and operates under the direction and
18 supervision of the director of the office.

19 Sec. 78A.102. DIRECTOR; STAFF. (a) The board shall hire a
20 director to direct and supervise the operation of the office as
21 provided by Section 78A.053. The director serves a four-year term
22 and continues to serve until a successor has been hired and
23 qualified. The board may remove the director only for good cause.
24 The director may be retained or rehired for a second or subsequent
25 term.

26 (b) The director shall employ attorneys and employ or retain
27 licensed investigators and other personnel necessary to perform the

1 duties and accomplish the purposes of the office.

2 (c) The director and any attorney employed by the office may
3 not:

4 (1) engage in the private practice of criminal law; or

5 (2) accept anything of value not authorized by law for
6 services rendered under this subchapter.

7 (d) The board shall determine the compensation of office
8 employees, which must maintain parity with the compensation of
9 employees of the special prosecution unit under Subchapter E,
10 Chapter 41.

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

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

16 (2) the office has insufficient resources to provide
17 adequate representation for the client;

18 (3) the office is incapable of providing
19 representation for the client in accordance with the rules of
20 professional conduct;

21 (4) the acceptance of the appointment would require
22 attorneys at the office to have a caseload that exceeds the maximum
23 allowable caseload established by the office; or

24 (5) other good cause is shown for not accepting the
25 appointment.

26 (b) On refusing to accept an appointment, the director shall
27 file with the court a written statement that identifies the reason

1 for the refusal. The court shall determine whether the director has
2 demonstrated adequate good cause for refusing the appointment and
3 shall include the statement with the papers in the case.

4 (c) A director may not be terminated, removed, or sanctioned
5 for refusing in good faith to accept an appointment under Article
6 26.051, Code of Criminal Procedure, or Section 841.005, Health and
7 Safety Code.

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

12 Sec. 78A.105. ACCESS TO CERTAIN FACILITIES, WITNESSES, AND
13 DOCUMENTS FOR INVESTIGATION. Attorneys and investigators employed
14 or retained by the office shall be allowed access to a facility
15 operated by or under contract with the Texas Department of Criminal
16 Justice as necessary to:

17 (1) confer with a client of the office or witness to an
18 offense alleged to have been committed by a client of the office; or

19 (2) comply with a court's order.

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

22 (a) In this article:

23 (1) [~~"Board" means the Texas Board of Criminal~~
24 ~~Justice.~~

25 [~~(2)~~] "Correctional institutions division" means the
26 correctional institutions division of the Texas Department of
27 Criminal Justice.

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

3 (d) A court shall:

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

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

11 (e) The office [~~board~~] shall provide legal representation
12 for inmates described by Subsection (d) [~~of this section~~]. [~~The~~
13 ~~board may employ attorneys, support staff, and any other personnel~~
14 ~~required to provide legal representation for those inmates. All~~
15 ~~personnel employed under this article are directly responsible to~~
16 ~~the board in the performance of their duties.~~] The office [~~board~~]
17 shall pay all fees and costs associated with providing legal
18 representation for those inmates.

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

24 (1) the case involves more than one inmate and the
25 representation of more than one inmate could impair the attorney's
26 effectiveness;

27 (2) the case is appealed and the court is satisfied

1 that conflict of interest would prevent the presentation of a good
2 faith allegation of ineffective assistance of counsel by a trial
3 attorney provided by the office [~~board~~]; [~~or~~]

4 (3) any conflict of interest exists under the Texas
5 Disciplinary Rules of Professional Conduct of the State Bar of
6 Texas that precludes representation by an attorney appointed by the
7 office; or

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

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

12 (1) except as otherwise provided by this article, the
13 inmate's legal defense is subject to Articles 1.051, 26.04, 26.05,
14 and 26.052, as applicable; and

15 (2) the county in which a facility of the correctional
16 institutions division or a correctional facility authorized by
17 Section 495.001, Government Code, is located shall pay from its
18 general fund the total costs of the aggregate amount allowed and
19 awarded by the court for attorney compensation and expenses under
20 Article 26.05 or 26.052, as applicable.

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

23 Sec. 841.005. INMATE LEGAL SERVICES OFFICE [~~OF STATE~~
24 ~~COUNSEL FOR OFFENDERS~~]. (a) Except as provided by Subsection (b),
25 the inmate legal services office established under Subchapter C,
26 Chapter 78A, Government Code, [~~Office of State Counsel for~~
27 ~~Offenders~~] shall represent an indigent person subject to a civil

1 commitment proceeding under this chapter.

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

7 SECTION 4. (a) Not later than December 1, 2021, the
8 president of the State Bar of Texas shall appoint and the executive
9 committee of the State Bar of Texas shall ratify the members of the
10 inmate legal services board of directors as required by Section
11 78A.052, Government Code, as added by this Act. Notwithstanding
12 the terms of board member service provided by that section, the term
13 of an initial member of the board of directors expires February 1,
14 2024.

15 (b) Not later than January 1, 2022, the inmate legal
16 services board of directors shall hire a director for the inmate
17 legal services office as required by Section 78A.053, Government
18 Code, as added by this Act.

19 SECTION 5. Article [26.051](#), Code of Criminal Procedure, and
20 Section 841.005, Health and Safety Code, as amended by this Act,
21 apply only to legal representation appointed under those provisions
22 on or after February 1, 2022. Legal representation appointed
23 before February 1, 2022, is governed by the law in effect
24 immediately before the effective date of this Act, and the former
25 law is continued in effect for that purpose.

26 SECTION 6. (a) On the effective date of this Act, an
27 employee of the Office of State Counsel for Offenders, other than

1 the director of the office, becomes an employee of the inmate legal
2 services office established under Subchapter C, Chapter 78A,
3 Government Code, as added by this Act.

4 (b) On or after September 1, 2022, the director of the
5 inmate legal services office shall evaluate the performance of each
6 employee described by Subsection (a) of this section and determine
7 whether there is good cause to remove an employee.

8 SECTION 7. This Act takes effect September 1, 2021.