

1-1 By: Hinojosa S.B. No. 1743
 1-2 (In the Senate - Filed March 13, 2015; March 24, 2015, read
 1-3 first time and referred to Committee on Criminal Justice;
 1-4 April 30, 2015, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 0; April 30, 2015,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1743 By: Whitmire

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to expanding the powers and duties of the office of capital
 1-20 writs and renaming the office of capital writs the office of capital
 1-21 and forensic writs.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Sections 2(b), (c), and (f), Article 11.071,
 1-24 Code of Criminal Procedure, are amended to read as follows:

1-25 (b) If a defendant is sentenced to death the convicting
 1-26 court, immediately after judgment is entered under Article 42.01,
 1-27 shall determine if the defendant is indigent and, if so, whether the
 1-28 defendant desires appointment of counsel for the purpose of a writ
 1-29 of habeas corpus. If the defendant desires appointment of counsel
 1-30 for the purpose of a writ of habeas corpus, the court shall appoint
 1-31 the office of capital and forensic writs to represent the defendant
 1-32 as provided by Subsection (c).

1-33 (c) At the earliest practical time, but in no event later
 1-34 than 30 days, after the convicting court makes the findings
 1-35 required under Subsections (a) and (b), the convicting court shall
 1-36 appoint the office of capital and forensic writs or, if the office
 1-37 of capital and forensic writs does not accept or is prohibited from
 1-38 accepting an appointment under Section 78.054, Government Code,
 1-39 other competent counsel under Subsection (f), unless the applicant
 1-40 elects to proceed pro se or is represented by retained counsel. On
 1-41 appointing counsel under this section, the convicting court shall
 1-42 immediately notify the court of criminal appeals of the
 1-43 appointment, including in the notice a copy of the judgment and the
 1-44 name, address, and telephone number of the appointed counsel.

1-45 (f) If the office of capital and forensic writs does not
 1-46 accept or is prohibited from accepting an appointment under Section
 1-47 78.054, Government Code, the convicting court shall appoint counsel
 1-48 from a list of competent counsel maintained by the presiding judges
 1-49 of the administrative judicial regions under Section 78.056,
 1-50 Government Code. The convicting court shall reasonably compensate
 1-51 as provided by Section 2A an attorney appointed under this section,
 1-52 other than an attorney employed by the office of capital and
 1-53 forensic writs, regardless of whether the attorney is appointed by
 1-54 the convicting court or was appointed by the court of criminal
 1-55 appeals under prior law. An attorney appointed under this section
 1-56 who is employed by the office of capital and forensic writs shall be
 1-57 compensated in accordance with Subchapter B, Chapter 78, Government
 1-58 Code.

1-59 SECTION 2. Section 2A(a), Article 11.071, Code of Criminal
 1-60 Procedure, is amended to read as follows:

2-1 (a) The state shall reimburse a county for compensation of
2-2 counsel under Section 2, other than for compensation of counsel
2-3 employed by the office of capital and forensic writs, and for
2-4 payment of expenses under Section 3, regardless of whether counsel
2-5 is employed by the office of capital and forensic writs. The total
2-6 amount of reimbursement to which a county is entitled under this
2-7 section for an application under this article may not exceed
2-8 \$25,000. Compensation and expenses in excess of the \$25,000
2-9 reimbursement provided by the state are the obligation of the
2-10 county.

2-11 SECTION 3. Section 3(f), Article 11.071, Code of Criminal
2-12 Procedure, is amended to read as follows:

2-13 (f) This section applies to counsel's investigation of the
2-14 factual and legal grounds for the filing of an application for a
2-15 writ of habeas corpus, regardless of whether counsel is employed by
2-16 the office of capital and forensic writs.

2-17 SECTION 4. Sections 4A(e) and (f), Article 11.071, Code of
2-18 Criminal Procedure, are amended to read as follows:

2-19 (e) Sections 2A and 3 apply to compensation and
2-20 reimbursement of counsel appointed under Subsection (b)(3) in the
2-21 same manner as if counsel had been appointed by the convicting
2-22 court, unless the attorney is employed by the office of capital and
2-23 forensic writs, in which case the compensation of that attorney is
2-24 governed by Subchapter B, Chapter 78, Government Code.

2-25 (f) Notwithstanding any other provision of this article,
2-26 the court of criminal appeals shall appoint counsel and establish a
2-27 new filing date for application, which may be no later than the
2-28 270th day after the date on which counsel is appointed, for each
2-29 applicant who before September 1, 1999, filed an untimely
2-30 application or failed to file an application before the date
2-31 required by Section 4(a) or (b). Section 2A applies to the
2-32 compensation and payment of expenses of counsel appointed by the
2-33 court of criminal appeals under this subsection, unless the
2-34 attorney is employed by the office of capital and forensic writs, in
2-35 which case the compensation of that attorney is governed by
2-36 Subchapter B, Chapter 78, Government Code.

2-37 SECTION 5. Section 6(b-1), Article 11.071, Code of Criminal
2-38 Procedure, is amended to read as follows:

2-39 (b-1) If the convicting court receives notice that the
2-40 requirements of Section 5(a) for consideration of a subsequent
2-41 application have been met and if the applicant has not elected to
2-42 proceed pro se and is not represented by retained counsel, the
2-43 convicting court shall appoint, in order of priority:

2-44 (1) the attorney who represented the applicant in the
2-45 proceedings under Section 5, if the attorney seeks the appointment;

2-46 (2) the office of capital and forensic writs, if the
2-47 office represented the applicant in the proceedings under Section 5
2-48 or otherwise accepts the appointment; or

2-49 (3) counsel from a list of competent counsel
2-50 maintained by the presiding judges of the administrative judicial
2-51 regions under Section 78.056, Government Code, if the office of
2-52 capital and forensic writs:

2-53 (A) did not represent the applicant as described
2-54 by Subdivision (2); or

2-55 (B) does not accept or is prohibited from
2-56 accepting the appointment under Section 78.054, Government Code.

2-57 SECTION 6. Article 26.044(a)(2), Code of Criminal
2-58 Procedure, is amended to read as follows:

2-59 (2) "Office of capital and forensic writs" means the
2-60 office of capital and forensic writs established under Subchapter
2-61 B, Chapter 78, Government Code.

2-62 SECTION 7. Article 26.05(a), Code of Criminal Procedure, is
2-63 amended to read as follows:

2-64 (a) A counsel, other than an attorney with a public
2-65 defender's office or an attorney employed by the office of capital
2-66 and forensic writs, appointed to represent a defendant in a
2-67 criminal proceeding, including a habeas corpus hearing, shall be
2-68 paid a reasonable attorney's fee for performing the following
2-69 services, based on the time and labor required, the complexity of

3-1 the case, and the experience and ability of the appointed counsel:
 3-2 (1) time spent in court making an appearance on behalf
 3-3 of the defendant as evidenced by a docket entry, time spent in
 3-4 trial, and time spent in a proceeding in which sworn oral testimony
 3-5 is elicited;
 3-6 (2) reasonable and necessary time spent out of court
 3-7 on the case, supported by any documentation that the court
 3-8 requires;
 3-9 (3) preparation of an appellate brief and preparation
 3-10 and presentation of oral argument to a court of appeals or the Court
 3-11 of Criminal Appeals; and
 3-12 (4) preparation of a motion for rehearing.

3-13 SECTION 8. The heading to Chapter 78, Government Code, is
 3-14 amended to read as follows:

3-15 CHAPTER 78. CAPITAL AND FORENSIC WRITS COMMITTEE AND OFFICE OF
 3-16 CAPITAL AND FORENSIC WRITS

3-17 SECTION 9. The heading to Subchapter A, Chapter 78,
 3-18 Government Code, is amended to read as follows:

3-19 SUBCHAPTER A. CAPITAL AND FORENSIC WRITS COMMITTEE

3-20 SECTION 10. Section 78.001, Government Code, is amended to
 3-21 read as follows:

3-22 Sec. 78.001. DEFINITIONS. In this subchapter:

3-23 (1) "Committee" means the capital and forensic writs
 3-24 committee established under this subchapter.

3-25 (2) "Office of capital and forensic writs" means the
 3-26 office of capital and forensic writs established under Subchapter
 3-27 B.

3-28 SECTION 11. Section 78.002, Government Code, is amended to
 3-29 read as follows:

3-30 Sec. 78.002. ESTABLISHMENT OF COMMITTEE; DUTIES. (a) The
 3-31 capital and forensic writs committee is established.

3-32 (b) The committee shall recommend to the court of criminal
 3-33 appeals as provided by Section 78.004 a director for the office of
 3-34 capital and forensic writs when a vacancy exists for the position of
 3-35 director.

3-36 SECTION 12. The heading to Section 78.004, Government Code,
 3-37 is amended to read as follows:

3-38 Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF
 3-39 OFFICE OF CAPITAL AND FORENSIC WRITS.

3-40 SECTION 13. Section 78.004, Government Code, is amended to
 3-41 read as follows:

3-42 Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF
 3-43 OFFICE OF CAPITAL AND FORENSIC WRITS. (a) The committee shall
 3-44 submit to the court of criminal appeals, in order of the committee's
 3-45 preference, a list of the names of not more than five persons the
 3-46 committee recommends that the court consider in appointing the
 3-47 director of the office of capital and forensic writs when a vacancy
 3-48 exists for the position of director. If the committee finds that
 3-49 three or more persons under the committee's consideration are
 3-50 qualified to serve as the director of the office of capital and
 3-51 forensic writs, the committee must include at least three names in
 3-52 the list submitted under this subsection.

3-53 (b) Each person recommended to the court of criminal appeals
 3-54 by the committee under Subsection (a):

3-55 (1) must exhibit proficiency and commitment to
 3-56 providing quality representation to defendants in death penalty
 3-57 cases, as described by the Guidelines and Standards for Texas
 3-58 Capital Counsel, as published by the State Bar of Texas; and

3-59 (2) may not have been found by a state or federal court
 3-60 to have rendered ineffective assistance of counsel during the trial
 3-61 or appeal of a criminal ~~[death penalty]~~ case.

3-62 (c) When a vacancy for the position exists, the court of
 3-63 criminal appeals shall appoint from the list of persons submitted
 3-64 to the court under Subsection (a) the director of the office of
 3-65 capital and forensic writs.

3-66 SECTION 14. The heading to Subchapter B, Chapter 78,
 3-67 Government Code, is amended to read as follows:

3-68 SUBCHAPTER B. OFFICE OF CAPITAL AND FORENSIC WRITS

3-69 SECTION 15. Section 78.051, Government Code, is amended to

4-1 read as follows:

4-2 Sec. 78.051. DEFINITIONS. In this subchapter:

4-3 (1) "Committee" means the capital and forensic writs
4-4 committee established under Subchapter A.

4-5 (2) "Office" means the office of capital and forensic
4-6 writs established under this subchapter.

4-7 SECTION 16. Section 78.052(a), Government Code, is amended
4-8 to read as follows:

4-9 (a) The office of capital and forensic writs is established
4-10 and operates under the direction and supervision of the director of
4-11 the office.

4-12 SECTION 17. Section 78.053(b), Government Code, is amended
4-13 to read as follows:

4-14 (b) The director shall employ attorneys and employ or retain
4-15 licensed investigators, experts, and other personnel necessary to
4-16 perform the duties of the office. To be employed by the director,
4-17 an attorney may not have been found by a state or federal court to
4-18 have rendered ineffective assistance of counsel during the trial or
4-19 appeal of a criminal [~~death penalty~~] case.

4-20 SECTION 18. Section 78.054, Government Code, is amended by
4-21 amending Subsection (b) and adding Subsection (d) to read as
4-22 follows:

4-23 (b) The office may not represent a defendant in a federal
4-24 habeas review. The office may not represent a defendant in an
4-25 action or proceeding in state court other than an action or
4-26 proceeding that:

4-27 (1) is conducted under Article 11.071 or 11.073, Code
4-28 of Criminal Procedure;

4-29 (2) is collateral to the preparation of an application
4-30 under Article 11.071 or 11.073, Code of Criminal Procedure; [~~or~~]

4-31 (3) concerns any other post-conviction matter in a
4-32 death penalty case other than a direct appeal, including an action
4-33 or proceeding under Article 46.05 or Chapter 64, Code of Criminal
4-34 Procedure; or

4-35 (4) concerns any other post-conviction matter in a
4-36 case that involves a forensic science issue.

4-37 (d) The office may consult with law school clinics with
4-38 applicable knowledge and experience and with other experts as
4-39 necessary to investigate the facts of a particular case.

4-40 SECTION 19. Section 79.001(12), Government Code, is amended
4-41 to read as follows:

4-42 (12) "Office of capital and forensic writs" means the
4-43 office of capital and forensic writs established under Subchapter
4-44 B, Chapter 78.

4-45 SECTION 20. Section 79.031, Government Code, is amended to
4-46 read as follows:

4-47 Sec. 79.031. FAIR DEFENSE ACCOUNT. The fair defense
4-48 account is an account in the general revenue fund that may be
4-49 appropriated only to:

4-50 (1) the commission for the purpose of implementing
4-51 this chapter; and

4-52 (2) the office of capital and forensic writs for the
4-53 purpose of implementing Subchapter B, Chapter 78.

4-54 SECTION 21. Section 411.082(5), Government Code, is amended
4-55 to read as follows:

4-56 (5) "Office of capital and forensic writs" means the
4-57 office of capital and forensic writs established under Subchapter
4-58 B, Chapter 78.

4-59 SECTION 22. Section 411.088(a-1), Government Code, is
4-60 amended to read as follows:

4-61 (a-1) The department may not charge a fee under Subsection
4-62 (a) for providing criminal history record information to:

4-63 (1) a criminal justice agency;

4-64 (2) the office of capital and forensic writs; or

4-65 (3) a public defender's office.

4-66 SECTION 23. Section 411.1272, Government Code, is amended
4-67 to read as follows:

4-68 Sec. 411.1272. ACCESS TO CRIMINAL HISTORY RECORD
4-69 INFORMATION: OFFICE OF CAPITAL AND FORENSIC WRITS AND PUBLIC

5-1 DEFENDER'S OFFICES. The office of capital and forensic writs and a
5-2 public defender's office are entitled to obtain from the department
5-3 criminal history record information maintained by the department
5-4 that relates to a criminal case in which an attorney compensated by
5-5 the office of capital and forensic writs or by the public defender's
5-6 office has been appointed.

5-7 SECTION 24. This Act takes effect September 1, 2015.

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