



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2013

Eric H. Holder, Jr.
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Attorney General Holder:

On behalf of the State of Texas, I respectfully request that you certify our State under 28 U.S.C. § 2265. Our enclosed application demonstrates that Texas satisfies all of the statutory criteria for certification.

I also respectfully ask that you let me know the date by which Texas can expect a certification decision.

Sincerely,


Greg Abbott
Attorney General of Texas

cc: James Cole, Deputy Attorney General
Elana Tyrangiel, Office of Legal Policy

Enclosure

**STATE OF TEXAS'S APPLICATION FOR
CERTIFICATION UNDER 28 U.S.C. § 2265**

The Attorney General of Texas respectfully requests that the Attorney General of the United States certify the State of Texas under 28 U.S.C. § 2265. Texas has established a mechanism for appointing and compensating counsel in state postconviction proceedings brought by indigent petitioners in capital cases, and this mechanism satisfies each of the statutory criteria established by Congress. Accordingly, the Attorney General of the United States must certify it. 28 U.S.C. § 2265(a)(1); *see also id.* § 2265(a)(3) (“There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.”).

I. MECHANISM FOR APPOINTING COMPETENT COUNSEL

Chapter 154 of title 28 of the United States Code (“Chapter 154”) imposes three competency-related conditions for certification of States’ counsel-appointment mechanisms. *First*, a State must establish a process for identifying indigent capital prisoners and offering one or more competent counsel to these prisoners. *See* 28 U.S.C. §§ 2261(c), 2265(a)(1)(A). *Second*, the State must offer capital prisoners the choice of a new postconviction attorney who was not previously involved in the prisoner’s case. *See id.* § 2261(d). *Third*, the State must establish competency standards for postconviction counsel appointed under the State’s mechanism. *See id.* § 2265(a)(1)(C). Texas meets all three requirements.

A. Texas Offers Competent State Postconviction Counsel to All Indigent Prisoners Under a Death Sentence

Chapter 154 first requires a qualifying State to establish a process for identifying indigent prisoners who received capital sentences and appointing

counsel to represent those inmates during state postconviction proceedings. In particular, a qualifying state mechanism

must provide for the entry of an order by a court of record (1) appointing one or more counsels to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer; (2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or (3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

28 U.S.C. § 2261(c). Upon a finding that the capital prisoner is indigent and wants appointed counsel, the State “must offer [postconviction] counsel” to him. *Id.*

Under the mechanism established by the Texas Legislature, “immediately after judgment is entered” on a death sentence, the convicting court must conduct a hearing to determine whether the defendant is indigent. TEX. CODE CRIM. PROC. art. 11.071, § 2(b). The Texas Code of Criminal Procedure also requires that the convicting court determine “whether the defendant desires appointment of counsel for the purpose of a writ of habeas corpus.” *Id.* “At the earliest practical time, but in no event later than 30 days, after the convicting court” finds that the capital prisoner is indigent and wants postconviction counsel, the code further requires that the court appoint one or more competent attorneys to assist him. *Id.* § 2(c).

The Texas Legislature established a state agency called the Office of Capital Writs (“OCW”) for the express purpose of ensuring that capital prisoners receive access to competent counsel in their state postconviction proceedings. Generally, the convicting court must appoint the OCW to serve as the capital prisoner’s state postconviction counsel. *See id.* The OCW’s exclusive function is to represent

indigent capital petitioners in state postconviction proceedings. *See* TEX. GOV'T CODE § 78.054. The State of Texas authorizes and funds OCW to hire a permanent staff that includes both competent attorneys and licensed investigators. *Id.* § 78.053(b).

Under the Government Code, OCW may decline an appointment as state postconviction counsel only for good cause, such as a conflict of interest. *See id.* § 78.054(a). Capital petitioners, of course, are free to decline representation from OCW, proceed pro se, or secure alternative outside counsel on their own. *See* TEX. CODE CRIM. PROC. art. 11.071, § 2(c). Since 2010, only one eligible petitioner has declined to use OCW as his postconviction counsel; OCW has handled all other eligible cases.

If OCW cannot accept an appointment, Texas provides alternative safeguards to ensure that all indigent capital prisoners have access to competent State-appointed counsel. Specifically, the Texas Code of Criminal Procedure provides: “If the office of capital writs does not accept or is prohibited from accepting an appointment . . . , the convicting court shall appoint counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions” *Id.* § 2(f). As explained in Part I.C.2. below, the State of Texas has a rigorous screening process for private attorneys who seek appointments for postconviction proceedings in capital cases.

Regardless of whether the court appoints OCW or one or more private attorneys from the list maintained by the presiding judges of the administrative

judicial regions, Texas law requires the convicting court to provide immediate notice of the appointment to the Court of Criminal Appeals. In particular, “[o]n appointing counsel under this section, the convicting court shall immediately notify the court of criminal appeals of the appointment, including in the notice a copy of the judgment and the name, address, and telephone number of the appointed counsel.” *Id.* § 2(c). This statutory notice requirement ensures that newly appointed postconviction counsel receive timely notices and judicial communications relevant to postconviction litigation proceedings.

Texas’s comprehensive statutory and regulatory mechanism therefore satisfies 28 U.S.C. § 2261(c) by requiring a court of record to make factual findings regarding a capital prisoner’s indigence and offer competent, court-appointed, state postconviction counsel to all indigent capital prisoners.

B. Texas Offers New State Postconviction Counsel to All Indigent Prisoners Under a Death Sentence

Chapter 154 next requires a qualifying state mechanism to offer indigent capital prisoners new postconviction counsel that were not previously involved in the prisoner’s case. In particular, “[n]o counsel appointed pursuant to [a state mechanism for postconviction representation] shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.” 28 U.S.C. § 2261(d).

Texas law also satisfies that requirement. In particular, the OCW is permitted to represent indigent capital prisoners *only* in state postconviction proceedings and cannot represent prisoners at trial or on direct appeal. *See* TEX.

GOV'T CODE § 78.054(b) (“[OCW] may not represent a defendant in an action or proceeding in state court other than an action or proceeding that: (1) is conducted under Article 11.071, Code of Criminal Procedure [regarding state postconviction proceedings in capital cases]; (2) is collateral to the preparation of an application under Article 11.071, Code of Criminal Procedure; or (3) concerns any other post-conviction matter in a death penalty case other than a direct appeal . . .”). As noted above, an eligible petitioner may decline representation from the OCW and retain his trial counsel at the postconviction stage. *See* TEX. CODE CRIM. PROC. art. 11.071, § 2(c). But all indigent capital prisoners have the right to a new lawyer that has no previous involvement in the case.

Texas’s mechanism therefore satisfies 28 U.S.C. § 2261(d) by offering all indigent capital prisoners competent court-appointed counsel with no prior involvement in the case.

C. Texas Provides Standards of Competency For State Postconviction Counsel

Finally, Chapter 154 requires a qualifying State to “provide[] standards of competency for the appointment of counsel.” 28 U.S.C. § 2265(a)(1)(C). As explained in Part I.A. above, capital prisoners in Texas are statutorily entitled to state postconviction representation by an attorney from the OCW, or (if the OCW cannot accept the appointment) by a private attorney. Each category of lawyers must satisfy rigorous State-imposed competency standards.

1. The OCW has a permanent staff of seven attorneys, in addition to two investigators and various paralegal and administrative personnel. These State-

funded postconviction lawyers graduated from some of the nation's top law schools, including New York University, Cornell University, and the University of Texas at Austin. Further, they have extensive experience working in public defenders' offices across the country. See Office of Capital Writs, Staff Directory, *available at* <http://www.ocw.texas.gov/staff-directory.aspx> (last updated Oct. 11, 2012).

Significantly, the OCW's attorneys are well compensated. The director of the office earns \$130,000 annually, and salaries for the OCW staff range from \$90,000 for senior-level attorneys to \$58,000 for OCW's junior-most attorney. To put those numbers in perspective, salaries for equivalent positions in the Post-Conviction Litigation Division of the Office of the Attorney General ("PCL") pay \$109,557 (for the Division Chief), \$67,500 (for senior-level attorneys), and \$47,858 (for the junior-most attorney). So, the State of Texas compensates the OCW's postconviction attorneys at a higher rate than the PCL lawyers who represent *the State* in postconviction proceedings. Attorneys at the OCW also earn more than their counterparts in county-level public defender's offices. For example, the Public Defender's Office for Dallas County offers annual salaries of \$129,000 for the head of the office, \$74,000-87,000 for senior-level attorneys, and \$56,000 for the most junior attorneys.¹ Attorneys in Texas's smaller public defenders' offices earn even less.

¹ Dallas County is responsible for more capital cases than any other in Texas. County-by-county data are available at <http://tfid.tamu.edu/public.net>. All salary data are available at <http://www.texastribune.org/library/data/government-employee-salaries/>.

The OCW has a modest caseload. The office indicated that it filed only three state postconviction writs in 2012. *See* Legislative Appropriations Request for FY2012-2013, *available at* <http://www.ocw.texas.gov/media/845/ocwlar.pdf>, at 3.A.1. And according to its latest budget request, the OCW expects to add two full-time attorneys by 2014 and two more in 2015, while filing only nine state postconviction writs in each year. *See* Legislative Appropriations Request for FY2012-2013, *available at* http://www.ocw.texas.gov/media/9660/fy14-15_lar.pdf, at 2.E, 3.A.

And Texas law ensures that OCW's lawyers are state postconviction experts. As noted above, OCW can represent only death-sentenced prisoners, and only in state post-conviction proceedings. *See* TEX. GOV'T CODE § 78.054(b). Texas law specifically prohibits OCW from representing a death-sentenced prisoner in federal habeas proceedings and requires OCW, within 15 days of the denial of state habeas relief, to "move for the appointment of counsel in federal habeas review under 18 U.S.C. Section 3599." TEX. CODE CRIM. PROC. art. 11.071, § 2(e). Those provisions ensure that OCW focuses on only one thing—providing expert and high-quality representation for death-sentenced Texas prisoners in state postconviction proceedings.

2.a. The State's Office of Court Administration also maintains a statutorily mandated roster of competent private-sector attorneys who can take any case that the OCW cannot. *See* TEX. CODE CRIM. PROC. art. 11.071, § 2(f). To earn a spot on that list of competent counsel, an attorney must satisfy criteria established by both the applicable statute and administrative rules. As a statutory matter, "[e]ach

attorney on the list . . . must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases; and may not have been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a death penalty case.” TEX. GOV’T CODE § 78.056(a).

As an administrative matter, each attorney must complete a rigorous screening process established by the Office of Court Administration. First, the applicant must complete a ten-page application form. (A copy of the application form is attached as Exhibit A.) As part of that application, an attorney must provide a minimum of five “lawyers and judges, not partners or associates of [the applicant], who may be contacted and who can attest to [the applicant’s] competence in criminal law.” Ex. A, at A-1. Those references must include at least “[o]ne judge of a court of record in Texas before whom [the applicant has] appeared as an advocate in a criminal law matter within the two (2) years immediately preceding th[e] application.” *Id.* at A-2. The applicant’s references also must include at least “[o]ne Texas lawyer with whom or against whom [the applicant has] tried a criminal law matter within the two (2) years immediately preceding th[e] application.” *Id.*

Next, the applicants must provide their educational background (including both college and law school), the date of their admission to the State Bar of Texas, the number of years they have practiced law on a full-time basis, and their employment history for at least the five years immediately preceding the application. *Id.* at A-4. Further, the applicants must name each area in which they are certified by the Texas Board of Legal Specialization. *Id.* at A-7.

The applicants then must demonstrate that they have had an extensive experience in criminal-law matters. They must estimate their criminal-law caseload as a percentage of their overall practice for each of the last three years. *Id.* at A-6. And then they must provide detailed statistics for the number of cases that they handled during the last three years as lead counsel, co-counsel, and supervisor for junior counsel in federal capital habeas cases, federal noncapital habeas cases, state capital habeas cases, state noncapital habeas cases, federal appeals, state capital appeals, state noncapital appeals, capital trials, state district-court trials, federal criminal trials, and any others. *Id.*

Applicants also must demonstrate both recent training in death-penalty litigation and commitments to continuing this training. In particular, the applicant must list all CLE involvement in the last three years. *See id.* at A-7. And they “shall certify, on a biennial basis, that [they have] completed a minimum of six hours of CLE devoted to the law and practice of writs of habeas corpus, with an emphasis on death-penalty cases.” Ex. B, at B-1.

Applicants also must disclose any and all professional grievances, no matter how small, initiated against them. *See* Ex. A, at A-7; *see also* Ex. B, at B-2. In addition, the applicants must disclose whether they have been adjudicated guilty of theft or any offense above a Class-C misdemeanor. Ex. A, at A-7. The applicants’ disclosure obligations include, of course, whether any court ever has found that they rendered ineffective assistance of counsel in a criminal case. *Id.* at A-4.

The Regional Presiding Judges provide continued and rigorous enforcement of Texas’s competency standards. The Judges “may at any time, by majority vote, remove an attorney from the list . . . if they determine that the attorney has (a) . . . exhibited substandard proficiency in providing quality representation to defendants in death-penalty cases; (b) been found by any federal or state court to have rendered ineffective assistance of counsel in any criminal case; (c) engaged in a practice of unprofessional or unethical behavior; or (d) failed to inform the Office of Court Administration of reportable actions [involving professional grievances].” Ex. B, at B-2. The Judges’ removal decisions are un-appealable. *Id.*

b. The active roster of private attorneys approved to represent capital prisoners in state postconviction proceedings currently includes 31 highly qualified and accomplished lawyers. For example, one of them won postconviction relief for his clients in *In re Swearingen*, 556 F.3d 344 (5th Cir. 2009) (per curiam), *Fratta v. Quarterman*, 536 F.3d 485 (5th Cir. 2008), *Aldridge v. Thaler*, No. 4:05-CV-00608, 2010 WL 1050335 (S.D. Tex. Mar. 17, 2010), *Miller v. Johnson*, H-99-0405 (S.D. Tex. Feb. 2, 2004), and *Moody v. Dretke*, H-00-CV-1450 (S.D. Tex. Sept. 30, 2002); one is a professor at the University of Houston Law Center who has represented more than one hundred capital prisoners in their state and federal appeals and who founded the Texas Innocence Network in 2000; one is a tenured professor at the South Texas College of Law; one is a former Chief Prosecutor in the Tarrant County District Attorney’s Office and a legal consultant for COURT TV, MSNBC, CNN, and local media outlets; one is a former judge advocate general in the United States

Marine Corps who, after entering private practice, won postconviction relief for a client in a capital case; one is a judge advocate general in the United States Army Reserve who currently represents five capital prisoners in Texas; one is a former elected district attorney with 29 years of experience in criminal trials and appeals; one is a former attorney-in-charge of the Houston Field Office of the United States Department of Justice, Organized Crime Strike Force; and numerous others are distinguished members of the Texas Bar and are board-certified in criminal law and criminal appeals.

3. Texas therefore “provides standards of competency for the appointment of counsel.” 28 U.S.C. § 2265(a)(1)(C).

II. MECHANISM FOR COMPENSATING COUNSEL AND PAYING REASONABLE LITIGATION EXPENSES

Chapter 154 imposes two compensation-related requirements for States’ counsel-appointment mechanisms. *First*, the state mechanism must provide “compensation [for] competent counsel.” 28 U.S.C. § 2265(a)(1)(A). *Second*, the State must provide for “payment of reasonable litigation expenses.” *Id.* Again, Texas meets both of these requirements.

A. Compensation

1. As DOJ previously recognized, “a State may secure representation for indigent capital defendants in postconviction proceedings by means not dependent on any special financial incentive for accepting appointments, such as by providing salaried public defender personnel to carry out such assignments as part of their duties.” Certification Process for State Capital Counsel Systems, 76 Fed. Reg.

11,705, 11,710 (proposed Mar. 3, 2011) (to be codified at 28 C.F.R. pt. 26). Texas's procedure for compensating State-appointed postconviction counsel is even more robust than the one blessed by DOJ; rather than tasking public defender personnel with the additional responsibility of assisting in postconviction proceedings, Texas gives that responsibility to a dedicated and salaried team of state postconviction specialists in OCW. *See supra* Part I.B. As explained above, OCW's attorneys earn salaries that exceed even their counterparts in the State Attorney General's office and in large public defenders' offices. *See supra* Part I.C.1.

2. The State of Texas also compensates private attorneys who serve as state postconviction counsel for capital prisoners. The State and the prosecuting county share that financial burden; the State provides the first \$25,000 in attorneys' fees and the county pays for all fees in excess of that amount. *See* TEX. CODE CRIM. PROC. art. 11.071, § 2A(a)-(c). Recognizing that state postconviction proceedings can be complicated, time-intensive, and expensive, Texas does not impose a hard cap on reimbursable attorneys' fees. *Id.* § 2A(c).

Private attorneys are compensated at an hourly rate that varies slightly by the county in which the convicting court sits. For example, private attorneys working on state postconviction writs in Bexar County earn \$150 per hour for their out-of-court work and \$200 per hour for their in-court appearances. *See* Ex. C, at C-3. Attorneys in Dallas County earn \$150 per hour for all work on death-penalty cases. *See* Ex. D, at D-1. Attorneys in Harris County generally earn \$100 per hour for all work, but they receive \$350 per day for any court appearance involving live

testimony. *See* Ex. E, at E-1. And private attorneys in Tarrant County earn \$50-\$125 per hour for their out-of-court time (depending on the nature of their tasks), and up to \$1200 per day for court appearances. *See* Ex. F, at F-1.²

Some counties impose soft caps on attorneys' fees. *See, e.g.,* Ex. C, at C-3 (imposing a “*cap of \$15,000”). Even in those counties, however, an attorney may move for compensation in excess of the cap, and those requests must be granted if “reasonable.” *See, e.g., id.* at C-4 to C-5.

B. Reasonable Litigation Expenses

Regardless of whether a capital prisoner is represented by OCW or a private attorney, his lawyer is statutorily entitled to payment for reasonable litigation expenses, including expert fees. *See* TEX. CODE CRIM. PROC. art. 11.071, § 3(f).

Appointed counsel can either apply for prepayment of such expenses or seek reimbursement after the fact. *See id.* § 3(b), (d). If counsel decides to apply for prepayment, he must do so not later than 30 days before the writ is filed with the state court. *Id.* § 3(b). Such a request “must state[] (1) the claims of the application to be investigated; (2) specific facts that suggest that a claim of possible merit may exist; and (3) an itemized list of anticipated expenses for each claim.” *Id.*

Regardless of whether counsel seeks prepayment or reimbursement of expenses, his application may be submitted ex parte, to protect the confidentiality of his litigation strategy. And no matter when counsel incurs a litigation expense, he is statutorily entitled to reimbursement so long as “the expenses are reasonably

² Collectively, Bexar, Dallas, Harris, and Tarrant Counties prosecute approximately half of Texas's death-penalty cases. *See supra* note 1.

necessary and necessarily incurred.” *Id.* § 3(d); *see also id.* § 3(c) (if counsel seeks prepayment of expenses, the application “shall” be granted if it is “timely and reasonable”).

All prepayment and reimbursement requests must be submitted to the convicting court, which also serves as the trial-level court for state postconviction proceedings. If the court denies a request in whole or in part, it must issue a written order to explain the denial. *See id.* § 3(c), (d). And appointed counsel is entitled to seek reconsideration of such a denial. *See id.* § 3(d).

III. MECHANISM’S EFFECTIVE DATE

The Texas Legislature first enacted the State’s procedure for the appointment and compensation of “competent counsel” for indigent petitioners in state postconviction capital cases on May 24, 1995. *See* Act of May 24, 1995, 74th Leg., R.S., ch. 319, § 1, 1995 Tex. Gen. Laws 2764, 2764-69 (current version at TEX. CODE CRIM. PROC. art. 11.071) (attached as Exhibit G). That statute went into effect on September 1, 1995. *See* Ex. G, at G-10.

The mechanism established in 1995 provides that all prisoners sentenced to death “shall be represented by competent counsel [in state postconviction proceedings] unless the applicant has elected to proceed pro se and the convicting trial court finds, after a hearing on the record, that the applicant’s election is intelligent and voluntary.” *Id.* at G-1 (art. 11.071, § 2(a)); *see also id.* (art. 11.071, § 2(d)) (appointments of competent state postconviction counsel must be made “at the earliest practicable time”). The 1995 mechanism thus satisfies Chapter 154’s first competency-related requirement. *See* 28 U.S.C. § 2261(c); *supra* Part I.A.

Under the Texas law enacted in 1995, all death-sentenced prisoners have the statutorily guaranteed right to receive new postconviction counsel. *See* Ex. G, at G-1 (art. 11.071, § 2(e)) (“The court of criminal appeals may not appoint an attorney [for state postconviction proceedings] if the attorney represented the applicant at trial or on direct appeal, unless[] (1) the applicant and the attorney request the appointment on the record; or (2) the court finds good cause to make the appointment.”). The 1995 mechanism thus satisfies Chapter 154’s second competency-related requirement. *See* 28 U.S.C. § 2261(d); *supra* Part I.B.

Texas’s 1995 mechanism requires the Court of Criminal Appeals to adopt “rules and standards” regarding the “appoint[ment] of competent counsel” for state postconviction proceedings. Ex. G, at G-1 (art. 11.071, § 2(d)). The 1995 mechanism thus satisfies Chapter 154’s third and final competency-related requirement. *See* 28 U.S.C. § 2265(a)(1)(C); *supra* Part I.C.

The Texas law enacted in 1995 also guarantees compensation for competent counsel. *See* Ex. G, at G-2 (art. 11.071, § 2(h)) (“The court of criminal appeals shall reasonably compensate an attorney appointed by the court under this section from state funds.”). The 1995 mechanism thus satisfies Chapter 154’s first compensation-related requirement. *See* 28 U.S.C. § 2265(a)(1)(A); *supra* Part II.A.

Finally, Texas’s 1995 mechanism guarantees prepayment or reimbursement of all reasonable litigation expenses incurred during state postconviction proceedings. *See* Ex. G, at G-2 (art. 11.071, § 3) (allowing court-appointed counsel to submit such requests in advance or after the fact, *ex parte*, and guaranteeing

payment if the requests are “reasonable”). The 1995 mechanism thus satisfies Chapter 154’s second compensation-related requirement. See 28 U.S.C. § 2265(a)(1)(A); *supra* Part II.B.

CONCLUSION

For all of these reasons, the State of Texas satisfies the requirements for certification under 28 U.S.C. § 2265.

Respectfully submitted.

GREG ABBOTT
Attorney General of Texas

JONATHAN F. MITCHELL
Solicitor General

DANIEL T. HODGE
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Deputy Solicitor General

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March 11, 2013

EXHIBIT A

**APPLICATION FOR APPOINTMENT AS COUNSEL PURSUANT
TO ARTICLE 11.071, CODE OF CRIMINAL PROCEDURE**

Texas Office of Court Administration
P. O. Box 12066, Capitol Station
Austin, Texas 78711-2066

DATE: _____

STATE BAR CARD NO.: _____

I. GENERAL INFORMATION

Full Legal Name: _____

Office Address: _____

Suite/Building/Number/Street

AC()

City/State/Zip

Office Telephone

****Mailing Address (if different):** _____

Home Address: _____

Number/Street

AC()

City/State/Zip

Home Telephone

Email Address: _____

Date of Birth: _____ Social Security Number _____

II. PEER REVIEW

I submit the following 5 lawyers and judges, not partners or associates of mine, who may be contacted and who can attest to my competence in criminal law.

A. Three lawyers who practice in my geographical area and are familiar with my practice:

1. _____ AC()

Name

Office Telephone

Address

City/State/Zip

2. _____ AC()
Name Office Telephone

Address City/State/Zip

3. _____ AC()
Name Office Telephone

Address City/State/Zip

B. One judge of a court of record in Texas before whom I have appeared as an advocate in a criminal law matter within the two (2) years immediately preceding this application:

4. _____
Name of Judge

Name of Court AC()
Office Telephone

Address City/State/Zip

C. One Texas lawyer with whom or against whom I have tried a criminal law matter within the two (2) years immediately preceding this application:

5. _____ AC()
Name Office Telephone

Address City/State/Zip

D. The following is a representative list of the judges before whom I have appeared in criminal law matters during the two (2) years immediately preceding this application:

STATE DISTRICT COURTS

<u>Name</u>	<u>Court</u>	<u>County</u>	<u>Office Telephone</u>
_____	_____	_____	() _____
_____	_____	_____	() _____
_____	_____	_____	() _____

_____ () _____
_____ () _____

STATE APPELLATE COURTS

_____ () _____
_____ () _____
_____ () _____
_____ () _____
_____ () _____

FEDERAL COURTS

_____ () _____
_____ () _____
_____ () _____
_____ () _____
_____ () _____

OTHER COURTS

_____ () _____
_____ () _____
_____ () _____

III. EDUCATION/LAW PRACTICE

A. College and Law Schools Attended:

	<u>From</u>	<u>To</u>	<u>Degree</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

B. Date admitted to the State Bar of Texas: _____

C. Name of firm, partnership or professional corporation: _____

D. How long have you maintained an office at the above address? ___ Years ___ Months

E. Other offices maintained during the period of five (5) years immediately preceding the date of this application:

	<u>From</u>	<u>To</u>
Firm or Employer: _____	_____	_____

_____	_____	_____	_____
Address	City/State/Zip	Month/Year	Month/Year

Firm or Employer: _____

_____	_____	_____	_____
Address	City/State/Zip	Month/Year	Month/Year

F. I am an active member in good standing of the State Bar of Texas, currently maintaining an office in the State of Texas. ___ Yes ___ No

G. I have been engaged in the actual practice of law on a full time basis for a period of _____ years.

H. I have been found by a court to have rendered ineffective assistance of counsel in a criminal law case.

___ Yes ___ No If yes, attach a separate sheet with full details.

IV. SUBSTANTIAL INVOLVEMENT IN CRIMINAL LAW MATTERS

A. I estimate that my time practicing criminal law has been ____% ____% and ____% of my practice for each of the three (3) immediately preceding years, respectively.

B. During the three (3) years immediately preceding the date of this application, I have participated in the criminal law activities listed below to the extent and in the capacity indicated:

NUMBER HANDLED (Approximate)

	<u>Lead Counsel</u>	<u>Co- Counsel</u>	<u>Supervisor of Jr. Counsel</u>
1. Federal habeas corpus applications--death penalty	_____	_____	_____
2. Federal habeas corpus applications--non-death penalty	_____	_____	_____
3. State habeas corpus applications--death penalty	_____	_____	_____
4. State habeas corpus applications--non-death penalty	_____	_____	_____
5. Federal appeals	_____	_____	_____
6. State appeals--death penalty	_____	_____	_____
7. State appeals--non-death penalty	_____	_____	_____
8. Capital murder trials	_____	_____	_____
9. State district court trials	_____	_____	_____
10. Federal criminal trials	_____	_____	_____
11. Others	_____	_____	_____

V. CONTINUING LEGAL EDUCATION

Please list the courses you have attended and other CLE involvement you have had during the past three (3) years. (Attached additional sheets if necessary)

VI. GRIEVANCE MATTERS

A. State whether you have been disbarred, suspended, reprimanded, or otherwise disciplined by any segment of the bar, including, but not limited to any local, district or state grievance authority of an organized bar. If yes, give full details by attachment to this application. ____ Yes ____ No

B. Do you now have any charges pending against you, either in court or grievance committee, that could result in the filing of a malpractice suit, a grievance committee proceeding or a suit for disciplinary action? If yes, give full details by attachment to this application. ____ Yes ____ No

C. State whether you have been adjudicated guilty of any offense of theft or any other offense above the grade of a Class C Misdemeanor and whether such resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise and regardless of the pendency of an appeal. If yes, give full details by attachment to this application. ____ Yes ____ No

VII. BOARD CERTIFICATION

(Areas in which certified by Texas Board of Legal Specialization.)

Areas

Date of Certification

VIII. GEOGRAPHICAL APPOINTMENTS

The State of Texas is divided into nine administrative judicial regions. A map reflecting those regions is included within the attached materials. Please indicate the regions(s) from which you would be willing to accept appointments: _____

IX. A. I have read the rules and standards adopted by the Regional Presiding Judges for appointment of counsel under Art. 11.071, C.C.P., and certify that I am fully qualified for appointment. ____ Yes ____ No

B. I agree to abide by the provisions of the rules and standards adopted by the Regional Presiding Judges concerning the appointment of counsel under Art. 11.071, C.C.P. and all rules and standards which may be promulgated by the Regional Presiding Judges from time to time. ____ Yes ____ No

C. I agree that I will immediately notify the Office of Court Administration of any reason which would render me unfit for appointment. ____ Yes ____ No

D. In filing this application, I authorize all persons, firms, officers, corporations, associations, organizations, state or federal agencies, and institutions to furnish to the Office of Court Administration or any of its authorized representatives all relevant documents, records or other information that may be requested in the investigation of this application, specifically including the records of grievances in possession of a Grievance Committee or the general counsel of the State Bar of Texas. I further agree that all information received by the Office of Court Administration shall be treated confidentially and that I have no right of access to information received by the Office of Court Administration from third parties.

Signature of Applicant

THE STATE OF TEXAS)(

COUNTY OF _____)(

I, _____, being duly sworn, state that I have read the foregoing application and have made each statement and representation therein and answered each question therein fully and frankly and without concealment or reservation, and such questions and answers are, to the best of my knowledge true and complete.

Signature of Applicant

SUBSCRIBED AND SWORN TO before me, on this the _____ day of
_____, 20____.

Notary Public in and for The State of Texas

My commission expires: _____

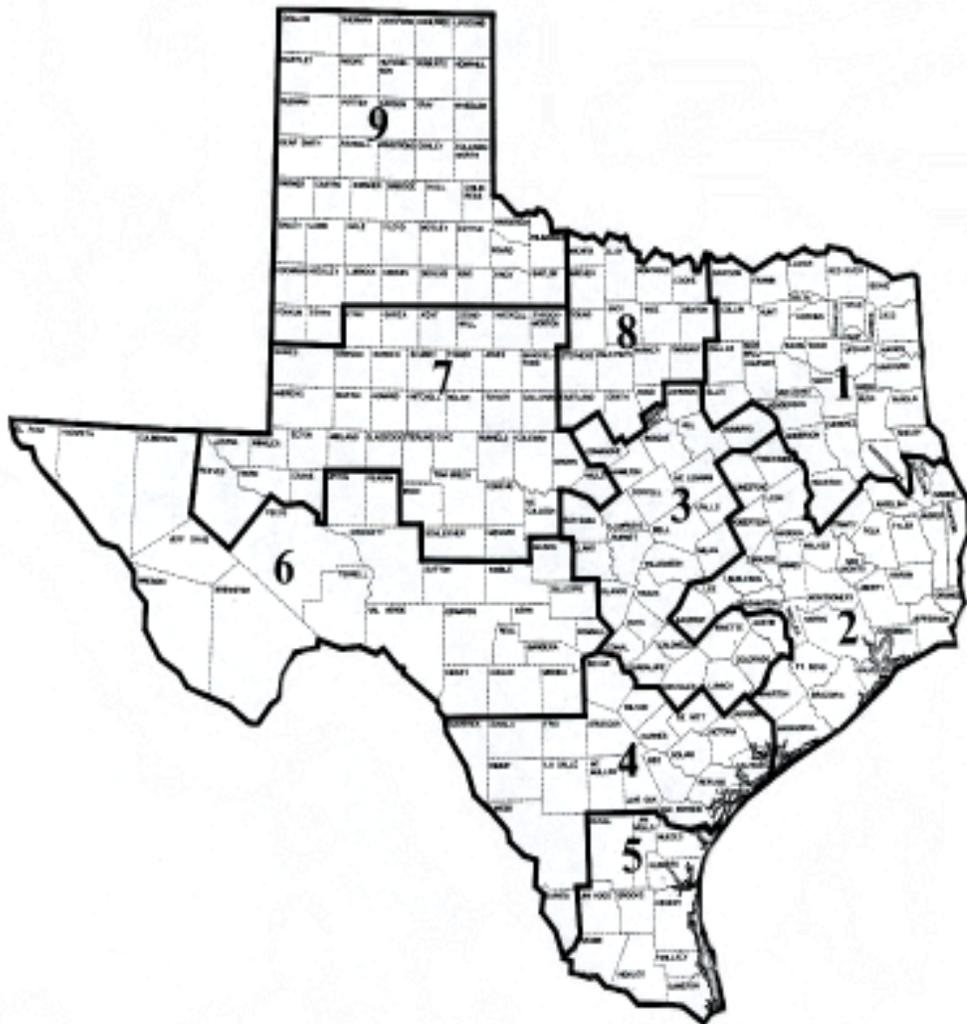


EXHIBIT B

**PROCEDURES REGARDING ELIGIBILITY FOR APPOINTMENT OF
ATTORNEYS AS COUNSEL UNDER ARTICLE 11.071, SECTION 2(f), CODE
OF CRIMINAL PROCEDURE, AND
REGARDING THE MAINTENANCE OF A STATEWIDE LIST OF
ATTORNEYS ELIGIBLE FOR APPOINTMENT AS REQUIRED BY SECTION
78.056, GOVERNMENT CODE**

The following procedures are adopted by the Presiding Judges of the Administrative Judicial Regions (hereinafter “Regional Presiding Judges”) regarding the appointment of attorneys as counsel under Article 11.071, Section 2(f), Code of Criminal Procedure:

1. The Office of Court Administration and Task Force on Indigent Defense shall provide administrative support to the Regional Presiding Judges to implement these procedures. References to the Office of Court Administration shall be to its Legal Division.
2. The Regional Presiding Judges will maintain a list of those attorneys eligible for appointment by the convicting court for purposes of representing an applicant on an initial application for writ of habeas corpus under Article 11.071, Code of Criminal Procedure. The list will provide the name, address, telephone number, and administrative judicial region from which an attorney will accept appointments.
3. The convicting court will appoint an attorney from the list of eligible attorneys maintained by the Regional Presiding Judges, if the Office of Capital Writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code.
4. Those attorneys seeking to be added to the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure shall complete and submit an Application for Appointment as Counsel to the Regional Presiding Judges in care of the Office of Court Administration. The application can be obtained from the Office of Court Administration. Counsel will be notified by the Office of Court Administration of eligibility for appointment. Any attorney seeking to be removed from the list of those eligible for appointment shall make a written request to the Office of Court Administration.
5. An attorney on the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure, shall exhibit continued proficiency and commitment to providing quality representation to defendants in death-penalty cases.
6. An attorney on the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure, shall certify, on a biennial basis, that the attorney has completed a minimum of six hours of CLE devoted to the law and practice of writs of habeas corpus, with an emphasis on death-penalty cases.

7. Attorneys on the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure, have a continuing duty to report to the Office of Court Administration:
 - (a) a finding by any federal or state court of ineffective assistance of counsel during any criminal case;
 - (b) a public disciplinary action by any federal or state licensing authority;
 - (c) a contempt finding by the Court of Criminal Appeals under Article 11.071, Section 4A, Code of Criminal Procedure; or
 - (d) a sanction imposed by the Court of Criminal Appeals under that Court's Miscellaneous Rule 08-101.The attorney must notify the Office of Court Administration within 30 days of any such finding or action.
8. The Regional Presiding Judges may at any time, by majority vote, remove an attorney from the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure, if they determine that the attorney has:
 - (a) in any application for writ of habeas corpus filed in the trial court or forwarded to the Court of Criminal Appeals exhibited substandard proficiency in providing quality representation to defendants in death-penalty cases;
 - (b) been found by any federal or state court to have rendered ineffective assistance of counsel in any criminal case;
 - (c) engaged in a practice of unprofessional or unethical behavior; or
 - (d) failed to inform the Office of Court Administration of reportable actions under section 7 of these procedures.
9.
 - (a) There is no appeal from the Regional Presiding Judges' discretionary decision to remove an attorney from the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure. However, an attorney may request reconsideration within 15 days of receipt of the Regional Presiding Judges' removal notice.
 - (b) If an attorney is removed solely for failure to complete the required MCLE, that attorney may reapply after completing the required MCLE and providing proof to the Office of Court Administration.
 - (c) If an attorney is removed from the list for any reason other than failure to complete the required MCLE, that attorney may reapply for inclusion in the list after 24 months. An attorney who reapplies under this subsection must demonstrate that the attorney's current level of proficiency, effectiveness and professionalism as defense counsel meets the required standards in all respects (*see* 7(a), (b),(c), and (d) above), and the attorney must certify that, since the time of the attorney's removal from the list, the attorney has handled at least three non-death-penalty writs of habeas corpus. The attorney shall submit copies of the materials he has filed in those cases with the Office of Court Administration.
10. The convicting court may not appoint an attorney as counsel if the attorney represented the applicant at trial or on direct appeal unless:
 - (a) the applicant and the attorney request the appointment on the record, and
 - (b) the convicting court finds good cause to make the appointment.

11. The list of those attorneys eligible for appointment by the convicting court shall be available from Office of Court Administration, Legal Division, P. O. Box 12066, Capitol Station, Austin, Texas, 78711 and shall be posted on the Regional Presiding Judges' website at <http://www.courts.state.tx.us/courts/ajr.asp>
12. Those attorneys who on December 31, 2009 are on the list of attorneys eligible for appointment maintained previously by the Court of Criminal Appeals shall automatically remain on the list.
13. These procedures become effective on January 1, 2010.

EXHIBIT C

64592

STATE OF TEXAS

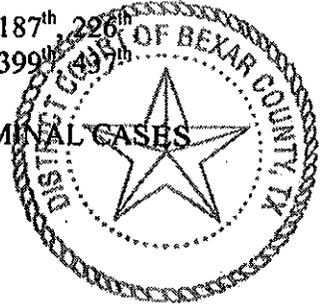
IN THE DISTRICT COURTS

AND

144th, 175th, 186th, 187th, 226th,
227th, 290th, 379th, 399th

COUNTY OF BEXAR

HANDLING CRIMINAL CASES

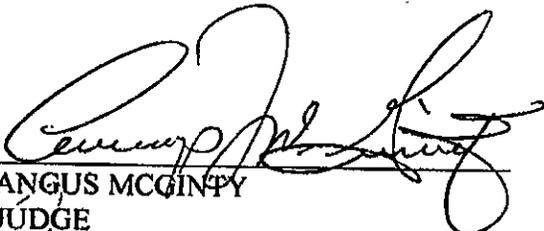


JOINT ORDER ADOPTING FEE SCHEDULE

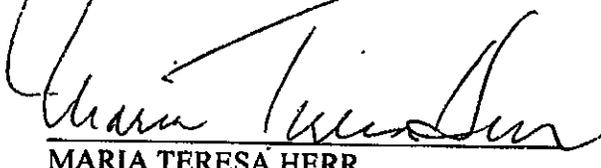
In accordance with Article 26.05, Sections (b), (c), and (d) of the Code of Criminal Procedure of the State of Texas, the undersigned, being the district court judges designated by the legislature to give priority to criminal cases in Bexar County, Texas, now adopt the attached Fee Schedule, effective for all vouchers submitted after November 1, 2011.

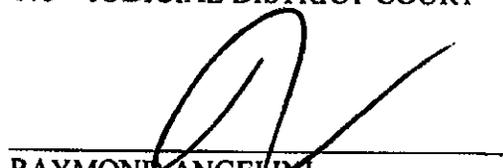
It is ORDERED that this Joint Order be spread upon the minutes of the respective courts, filed for a record in the offices of the District Clerk of Bexar County, and a copy sent to the Commissioners Court of Bexar County.

SIGNED, ORDERED and ENTERED the 28th day of October, 2011.


ANGUS MCGINTY
JUDGE
144th JUDICIAL DISTRICT COURT


MARY ROMAN
JUDGE
175TH JUDICIAL DISTRICT COURT


MARIA TERESA HERR
JUDGE
186th JUDICIAL DISTRICT COURT


RAYMOND ANGELENI
JUDGE
187th JUDICIAL DISTRICT COURT

FILED AT THE CLERK'S OFFICE FOR BEXAR COUNTY TEXAS

64592

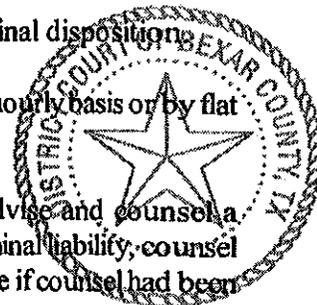
Document Type: JOINT ORDER ADOPTING FEE SCHEDULE

Case Number: 64592

64592

GUIDELINES FOR THE FEE SCHEDULE

1. No claim will be paid unless properly submitted within one year of the final disposition.
2. Dismissals (either pre-indictment or post-indictment) may be paid on an hourly basis or by flat fee. For multiple cases that include a dismissal, see Guideline #16.
3. When it becomes necessary for the Court to appoint an attorney to advise and counsel a witness whose own testimony might subject that witness to potential criminal liability, counsel will be entitled to compensation at the hourly rate which would be payable if counsel had been appointed to represent the defendant in the case on trial.
4. Attorneys handling waiver pleas will be paid as if the case had been indicted.
5. According to Article 26.05(c) of the Code of Criminal Procedure, this fee schedule takes into consideration reasonable and necessary overhead costs.
6. Requests for prior approval to exceed the maximum stated out-of-court hours and/or the maximum stated investigator fees must be filed in the appropriate court and set out the need to exceed the maximum and a justification of the cost. Extraordinary circumstances must be presented in order to obtain Court approval.
7. Only if an attorney chooses to be paid a flat fee for a plea, an additional \$100 may be paid for the initial jail visit, if in person or if done remotely through the Remote Attorney Visitation System.
8. An itemization sheet must be attached showing detailed hours worked if the attorney is being paid on an hourly basis.
9. If the County Auditor's Office detects simple mathematical errors in a pay voucher, it will compute the voucher and pay it out based on the auditor's office calculations.
10. A copy of your brief must be attached to your voucher for payment on an appeal.
11. After January 1, 2002, there will be no more automated payments. A voucher must be submitted for payment on any case.
12. Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable expenses will not be approved. When possible, prior court approval should be obtained before incurring expenses for mental health and other experts. Prior court approval is required before incurring expenses for investigation



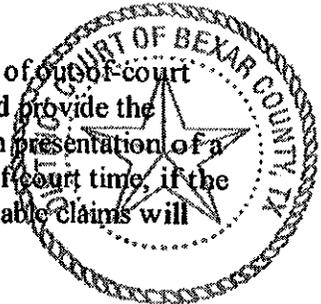
64592

FOR INFORMATION ONLY

64592

services that exceed \$300 for a SJF or 3°, \$500 for a 2°, \$750 for a 1°, and \$1500 for a Capital.

13. On a capital murder case, if an attorney anticipates exceeding 100 hours of out-of-court time, he/she must notify the court when they have reached 100 hours and provide the court with an up-to-date itemization form for the time already spent. On presentation of a claim for payment, the court shall order payment of counsel for all out-of-court time, if the time spent was reasonably necessary and reasonably incurred. Unreasonable claims will not be approved.
14. When an appointment is made on an appeal, it is expected that the attorney receiving the appointment and signing the voucher actually did the research and wrote the brief. If another person assisted the attorney of record, the voucher must reflect that person's name, the work performed by that person, and the amount, if any, that person was paid or promised for their services.
15. A voucher combining hourly itemizations and flat fees on multiple cases/multiple counts will not be approved. An attorney must submit a voucher based on flat fees alone, or hourly itemizations alone, and no combination of the two is acceptable.
16. For multiple cases with the same defendant, including indictments, MTRs, informations on waiver pleas, and/or any combination of these, you may either choose to submit one itemized voucher or be paid a flat fee for the highest degree case, whatever the disposition of that case. If you choose to itemize, use the rate applicable to the highest degree case.
17. For one indictment with multiple counts, you may either itemize or choose to be paid one flat fee.
18. Defense attorneys must submit pay vouchers to the court for experts and court appointed investigators. Investigators and experts may not approach a judge directly for payment.
19. Attorneys who volunteer to sit second chair on a felony case in order to gain experience will not be paid.
20. On all itemized vouchers filed you must use the authorized worksheets for in court and out of court hours. In-court time must be itemized on ¼ of an hour basis, and out-of-court time must be itemized in real time. The "Brief Description of Services" should be specific. Prior court approval is required to exceed 100 hours of out-of court time on capital murder cases and 30 hours of out-of-court time on all other felonies. If the attorney expects to exceed this 100/30 hour cap, he/she should approach the court prior to exceeding the cap with an up-to-date itemization along with a Motion and Order approving hours in excess of the cap.



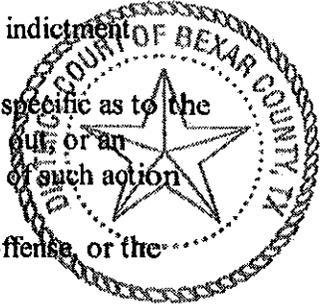
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FOR INFORMATION ONLY

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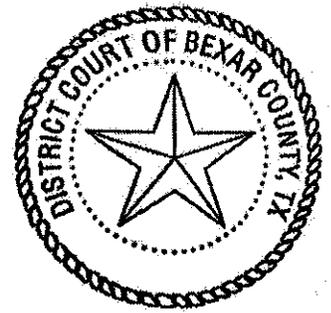
21. Itemized vouchers should be completely, accurately, and sufficiently filled out when submitted.

- "Offense(s) charged" should accurately reflect the information or indictment
- "Offense date" should be accurate
- "Proceeding and Disposition" should be dated and be reasonably specific as to the nature of the disposition. If an attorney withdraws, is substituted out, or an attorney is hired resulting in the removal of the attorney, the date of such action and the name of the new attorney should be listed
- "Payment Category" should accurately reflect the degree of the offense, or the highest level offense where there are multiple cases.



FOR COUNTY CLERK'S OFFICE

CERTIFIED COPY CERTIFICATE STATE OF TEXAS
I, DONNA KAY MCKINNEY, BEXAR COUNTY DISTRICT
CLERK, CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE ORIGINAL RECORD AS
INDICATED BY THE VOLUME, PAGE AND COURT ON
SAID DOCUMENT. WITNESSED MY OFFICIAL HAND
AND SEAL OF OFFICE ON THIS:



October 28, 2011

**DONNA KAY MCKINNEY
BEXAR COUNTY, TEXAS**

By: *Graciela V Rocha*
GRACIELA V ROCHA, Deputy District Clerk
(NOT VALID WITHOUT THE CLERKS'S ORIGINAL SIGNATURE.)

EXHIBIT D

REQUEST FOR PAYMENT BY APPOINTED COUNSEL

THE STATE OF TEXAS § IN THE _____ DISTRICT COURT _____
VS. _____ § OF DALLAS COUNTY, TEXAS

Appointment Date: _____ Disposition Date: _____ Partial/Supplemental Payment Request: YES / NO
Date of Initial Contact: _____ Dates of Jail Visits: _____
OFFENSE: _____ CASE NO.: _____ GRADE: _____ AUDIT NO.: _____

I UNDERSTAND THAT I MAY BE COMPENSATED UNDER SECTION "A" BELOW ONLY IF THE CASE HAS BEEN FINALLY DISPOSED OF EITHER BY A DISMISSAL, PLEA, TRIAL, CONTINUATION OF COMMUNITY SUPERVISION, OR COMPETENCY DISPOSITION. I FURTHER UNDERSTAND THAT WHEN I AM COMPENSATED UNDER SECTION "A" BELOW, I AM NOT REQUIRED TO LIST THE LEGAL SERVICES PROVIDED. ONLY IF THERE ARE EXCEPTIONAL CIRCUMSTANCES IN THE CASE MAY ADDITIONAL COMPENSATION BE REQUESTED AS PROVIDED IN SECTION "B".

This case has been finally disposed of in the following manner (circle one):

DISMISSAL -- AGREED PLEA -- OPEN PLEA -- JURY TRIAL -- TBC -- REVOCATION HEARING -- COMPETENCY HEARING

- A. I request standard compensation for this case as follows (check one):
 - PROBATION VIOLATION.....\$270 STATE JAIL/3RD DEGREE FELONY.....\$360
 - 2ND DEGREE FELONY.....\$450 1ST DEGREE FELONY/MINI-CAP.....\$540
 - CONTESTED TRIAL\$720 (Full day)..... \$360 (Half day)
 - COMPETENCY HEARING.....\$540 (Contested).... \$270 (Agreed)
- B. I request additional compensation (at the rate of \$90 per hour) in the amount of \$_____ for services performed. If I am requesting additional compensation, or if I am requesting compensation for services performed prior to counsel being retained, I must attach the form entitled "Detailed List of Legal Services Provided."
- C. Death Penalty Case. I request compensation at the rate of \$150.00 per hour in the amount of \$_____ for services performed and/or \$_____ for voir dire and each day of trial as listed on the attached "Detailed List of Legal Services Provided."
- D. Appeal. I request compensation (at the rate of \$90 per hour) in the amount of \$_____ for services performed as listed on the attached "Detailed List of Legal Services Provided."
- E. Writ. I request compensation (at the rate of \$90 per hour) in the amount of \$_____ for services performed as listed on the attached "Detailed List of Legal Services Provided."
- F. I request payment for expert witness/investigator expenses in the amount of \$_____ for services performed as listed on the attached itemized bill.

TOTAL AMOUNT REQUESTED: \$_____. COURT APPROVED AMOUNT: \$_____.

AFFIRMATION

I the undersigned attorney, am appointed to represent the above-named defendant and am requesting payment in accordance with the laws of the State of Texas. I further affirm to the truth and correctness to the information stated above, and that I have not received any other monies or anything else of value for said services.

_____, Attorney at Law. Date: _____

ATTORNEY INFORMATION (Print): _____ (For Auditor Use Vendor I.D. _____)

Name _____ State Bar No. _____

Mailing Address: _____

Telephone: _____ Number Street Suite City State Zip

_____ Soc. Sec. No. _____ (Not required if S.S. number is on file with County Auditor's Office)

TO THE COMMISSIONERS COURT OF DALLAS COUNTY, TEXAS:

I the undersigned Judge of Dallas County, Texas do hereby certify that the defendant in the above cause(s) has on file with this court an affidavit reflecting indigency and an inability to afford counsel, that the attorney shown above has been appointed to represent the defendant and that said attorney is entitled under Article 26.05, Texas Code of Criminal Procedure, to be paid from the General Fund of Dallas County, Texas, for services performed in the amount shown above.

Date Judge

Reason for Denial or variation: Request exceeds flat rate. Request exceeds hourly rate. Other, see attached.

EXHIBIT E

**ATTORNEY FEES EXPENSE CLAIM
DISTRICT COURTS-WRITS**
UNDER ARTICLE 26.05, CODE OF CRIMINAL PROCEDURE
AS AMENDED

INSTRUCTIONS

Before payment can be authorized, each item must be completed legibly in ink.
An Appointed Counsel Hourly Worksheet, Expense Worksheet, and expense receipts must be attached.
Forward completed claim to the presiding judge for approval.

Court No.	Defendant Name	Case Number(s) <p align="center">-</p>
------------------	-----------------------	--

Court of Criminal Appeals Case Number	Date of Writ Appointment
--	---------------------------------

<u>11.071 DEATH PENALTY WRITS</u>	Number of Court Days/Hours	RATE	AMOUNT (Judge Completes)
--	-----------------------------------	-------------	---------------------------------

WRIT (See attached worksheet)		\$100/hour	
-------------------------------	--	------------	--

HEARING WITH TESTIMONY		\$350/day	
------------------------	--	-----------	--

EXPENSES		TOTAL	
-----------------	--	--------------	--

Investigation	Bills submitted by investigators and expert witnesses must document the dates and hours spent on the case and must be sworn to or affirmed to as accurate. Expert expenses paid per County policy.		
---------------	---	--	--

Expert Witness			
----------------	--	--	--

Travel			
--------	--	--	--

Miscellaneous	Paid expense receipts must be attached.		
---------------	--	--	--

\$25,000 is the presumptive maximum for all fees incurred in an 11.071 writ.	TOTAL	\$	
---	--------------	-----------	--

List date(s) of all court appearances for hearings with testimony.

PERSONAL INFORMATION

Social Security Number (last 4 digits only) XXX - XX -	Telephone Number ()	Bar Card Number
---	-------------------------	-----------------

Mailing Address (Number, Street, Suite, City, State, Zip Code)

CERTIFICATION

I, _____, swear or affirm that the Harris County Auditor may rely upon the information contained above to make payment according to the fee schedule adopted by the Board of District Judges Trying Criminal Cases pursuant to Tex. Code Crim. P. Art. 26.05. I further swear or affirm that:

I have not received nor will I receive anything of value for representing the accused, except as otherwise disclosed to the court in writing; and

I wrote this writ and I am solely responsible for its contents.

Attorney Name (print legibly) _____
Attorney at Law (signature)

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS THE _____ DAY OF _____ A.D. 20__

District Clerk Deputy (Signature)

Approved _____
Judge, Presiding

CLAIM FOR REIMBURSEMENT

Amount of Claim \$ _____ Amount of Prior Claims Paid \$ _____

The total amount of reimbursement to which a county is entitled is \$25,000.00. CCP Art. 11.071 §2A(a).

I hereby submit this claim for reimbursement of expenses under Art. 11.071. The information in this claim is to the best of my knowledge true and correct.

Judge, Presiding _____
Date

Harris County Vendor Number 1-76-0454514-9

Address to Mail Check: Harris County Auditor, 1001 Preston, 8th Floor, Houston, Texas 77002.

Instructions to Auditor's Office: Mail the completed form along with the Expense Worksheet, any attached itemized paid bill receipts, and the Appointed Counsel Hourly Worksheet to: Comptroller Judiciary, P.O. Box 13528, Austin, Texas 78711-3528.

EXHIBIT F

11/18/2009

Fee Schedule for Attorney Services
Tarrant County District Courts

Counsel appointed to represent indigent criminal defendants shall be compensated for their services as follows:

court appearance

(including uncontested disposition): \$50-300/appearance

evidentiary court appearance

(including jury trial): \$500-1200/day

out-of-court time:

\$50-125/hour

appellate time:

\$50-125/hour

EXHIBIT G

CHAPTER 319

S.B. No. 440

AN ACT

relating to procedures for applying for a writ of habeas corpus by persons convicted of a felony and procedures for the compensation and appointment of counsel to represent certain persons charged with a capital felony.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 11, Code of Criminal Procedure, is amended by adding Article 11.071 to read as follows:

Art. 11.071. PROCEDURE IN DEATH PENALTY CASE

Sec. 1. APPLICATION TO DEATH PENALTY CASE. Notwithstanding any other provision of this chapter, this article establishes the procedures for an application for a writ of habeas corpus in which the applicant seeks relief from a judgment imposing a penalty of death.

Sec. 2. REPRESENTATION BY COUNSEL. (a) An applicant shall be represented by competent counsel unless the applicant has elected to proceed pro se and the convicting trial court finds, after a hearing on the record, that the applicant's election is intelligent and voluntary.

(b) If a defendant is sentenced to death on or after September 1, 1995, the convicting court, immediately after judgment is entered under Article 42.01, shall determine if the defendant is indigent and, if so, whether the defendant desires appointment of counsel for the purpose of a writ of habeas corpus. If a defendant is sentenced to death, does not have an initial application for a writ of habeas corpus under Article 11.07 pending on September 1, 1995, and has not been denied relief by the court of criminal appeals in an initial habeas corpus proceeding under Article 11.07, the convicting court, as soon as practicable, shall determine whether the defendant is indigent and, if so, whether the defendant desires the appointment of counsel for the purpose of a writ of habeas corpus.

(c) Immediately after the convicting court makes the findings required under Subsections (a), (b), and (i), the clerk of the convicting court shall forward to the court of criminal appeals:

(1) a copy of the judgment;

(2) a list containing the name, address, and telephone number of each counsel of record for the applicant at trial and on direct appeal; and

(3) if the applicant elects to proceed pro se, any findings made by the convicting court on the voluntariness of the applicant's election.

(d) Unless an applicant elects to proceed pro se or is represented by retained counsel, the court of criminal appeals shall, under rules and standards adopted by the court, appoint competent counsel at the earliest practicable time after receipt of the documents under Subsection (c).

(e) The court of criminal appeals may not appoint an attorney as counsel under this section if the attorney represented the applicant at trial or on direct appeal, unless:

(1) the applicant and the attorney request the appointment on the record; or

(2) the court finds good cause to make the appointment.

(f) If counsel is the same person appointed as counsel on appeal under Article 26.052, the court of criminal appeals shall appoint a second counsel to assist in the preparation of the appeal and writ of habeas corpus.

(g) If the court of criminal appeals denies an applicant relief under this article, an attorney appointed under this section to represent the applicant shall, not later than the 15th day after the date the court of criminal appeals denies relief or, if the case is filed and set for submission, the 15th day after the date the court of criminal appeals issues a mandate on the initial application for a writ of habeas corpus under this article, move to be appointed as counsel in federal habeas review under 21 U.S.C. Section 848(q) or equivalent provision or, if

necessary, move for the appointment of other counsel under 21 U.S.C. Section 848(q) or equivalent provision.

(h) The court of criminal appeals shall reasonably compensate an attorney appointed by the court under this section from state funds. The court shall appoint and reasonably compensate an attorney for representation in a subsequent or untimely application for a writ of habeas corpus, if the court determines that the requirements of Section 5 allowing consideration of the application have been satisfied.

(i) If an attorney is representing an inmate under a sentence of death for an initial application for a writ of habeas corpus under Article 11.07 pending on September 1, 1995, the attorney may request that the convicting court determine if the defendant is indigent and, if so, whether the defendant desires appointment of counsel for the purpose of the writ of habeas corpus.

Sec. 3. INVESTIGATION OF GROUNDS FOR APPLICATION. (a) On appointment, counsel shall investigate expeditiously, before and after the appellate record is filed in the court of criminal appeals, the factual and legal grounds for the filing of an application for a writ of habeas corpus.

(b) Not later than the 30th day before the date the application for a writ of habeas corpus is filed with the convicting court, counsel may file with the court of criminal appeals an ex parte, verified, and confidential request for prepayment of expenses, including expert fees, to investigate and present potential habeas corpus claims. The request for expenses must state:

- (1) the claims of the application to be investigated;
- (2) specific facts that suggest that a claim of possible merit may exist; and
- (3) an itemized list of anticipated expenses for each claim.

(c) The court shall grant a request for expenses in whole or in part if the request for expenses is timely and reasonable. If the court denies in whole or in part the request for expenses, the court shall briefly state the reasons for the denial in a written order provided to the applicant.

(d) Counsel may incur expenses for habeas corpus investigation, including expenses for experts, without prior approval by the court of criminal appeals. On presentation of a claim for reimbursement, which may be presented ex parte, the court shall order reimbursement of counsel for expenses, if the expenses are reasonably necessary and reasonably incurred. If the court denies in whole or in part the request for expenses, the court shall briefly state the reasons for the denial in a written order provided to the applicant. The applicant may request reconsideration of the denial for reimbursement.

(e) Materials submitted to the court under this section are a part of the court's record.

Sec. 4. FILING OF APPLICATION. (a) An application for a writ of habeas corpus, returnable to the court of criminal appeals, must be filed in the convicting court not later than the 45th day after the date the appellee's original brief is filed on direct appeal with the court of criminal appeals. If an applicant who was convicted before September 1, 1995, does not have an original application for a writ of habeas corpus under Article 11.07 pending on September 1, 1995, and has not previously filed an application under Article 11.07, the applicant's original application must be filed not later than the 180th day after the date the court of criminal appeals appoints counsel under Section 2 or not later than the 45th day after the date the appellee's original brief is due on direct appeal, whichever is later.

(b) An application filed after the filing date that is applicable to the applicant under Subsection (a) is presumed untimely unless the applicant establishes good cause by showing particularized justifying circumstances.

(c) If counsel has been appointed and a timely application is not filed on or before the applicable filing date under Subsection (a), the convicting court shall, before the 11th day after the applicable filing date under Subsection (a), conduct a hearing and determine if good cause exists for either the untimely filing of an application or other necessary action.

(d) If the convicting court finds the applicant failed to establish good cause for the delay, the court shall:

- (1) make appropriate findings of fact;

(2) enter an order to that effect;

(3) direct the clerk of the court to enter a notation that the petition is untimely; and

(4) send a copy of the petition, findings, and notation to the court of criminal appeals as provided by Section 5.

(e) If the convicting court finds that the applicant has established good cause for the delay, the convicting court shall proceed as if the application was timely filed.

(f) Notwithstanding Subsection (b), (c), or (e), an applicant cannot establish good cause for the untimely filing of an application filed after the 91st day after the applicable filing date under Subsection (a).

(g) A failure to file an application before the 91st day after the filing date applicable to the applicant under Subsection (a) constitutes a waiver of all grounds for relief that were available to the applicant before the last date on which an application could be timely filed, except as provided by Section 5.

(h) If an amended or supplemental application is not filed within the time specified under Subsection (a), the court shall treat the application as a subsequent or untimely application for a writ of habeas corpus under Section 5, unless the applicant:

(1) establishes good cause by showing particularized justifying circumstances for not raising in the original application the facts or claims contained in the amended or supplemental application; and

(2) the amended or supplemental application is filed before the 91st day after the filing date applicable to the applicant under Subsection (a).

Sec. 5. SUBSEQUENT OR UNTIMELY APPLICATION. (a) If an original application for a writ of habeas corpus is untimely or if a subsequent application is filed after filing an original application, a court may not consider the merits of or grant relief based on the subsequent or untimely original application unless the application contains sufficient specific facts establishing that:

(1) the current claims and issues have not been and could not have been presented previously in a timely original application or in a previously considered application filed under this article or Article 11.07 because the factual or legal basis for the claim was unavailable.

(A) on the date the applicant filed the previous application; or

(B) if the applicant did not file an original application, on or before the last date for the timely filing of an original application;

(2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt; or

(3) by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the state's favor one or more of the special issues that were submitted to the jury in the applicant's trial under Article 37.071 or 37.0711.

(b) If the convicting court receives a subsequent application or an untimely original application, the clerk of the court shall:

(1) attach a notation that the application is a subsequent or untimely original application;

(2) assign to the case a file number that is ancillary to that of the conviction being challenged; and

(3) immediately send to the court of criminal appeals a copy of:

(A) the application;

(B) the notation;

(C) the order scheduling the applicant's execution, if scheduled; and

(D) any order the judge of the convicting court directs to be attached to the application.

(c) On receipt of the copies of the documents from the clerk, the court of criminal appeals shall determine whether the requirements of Subsection (a) have been satisfied. The convicting court may not take further action on the application before the court of criminal appeals issues an order finding that the requirements have been satisfied. If the court of criminal appeals determines that the requirements have not been satisfied, the court shall issue an order dismissing the application as an abuse of the writ under this section.

(d) For purposes of Subsection (a)(1), a legal basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the legal basis was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date.

(e) For purposes of Subsection (a)(1), a factual basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

Sec. 6. ISSUANCE OF WRIT. (a) If a timely application for a writ of habeas corpus is filed in the convicting court, a writ of habeas corpus, returnable to the court of criminal appeals, shall issue by operation of law.

(b) If the convicting court receives notice that the requirements of Section 5 for consideration of a subsequent or untimely application have been met, a writ of habeas corpus, returnable to the court of criminal appeals, shall issue by operation of law.

(c) The clerk of the convicting court shall:

- (1) make an appropriate notation that a writ of habeas corpus was issued;
- (2) assign to the case a file number that is ancillary to that of the conviction being challenged; and
- (3) send a copy of the application by certified mail, return receipt requested, to the attorney representing the state in that court.

(d) The clerk of the convicting court shall promptly deliver copies of documents submitted to the clerk under this article to the applicant and the attorney representing the state.

Sec. 7. ANSWER TO APPLICATION. (a) The state may file an answer to the application for a writ of habeas corpus not later than the 30th day after the date the state receives notice of issuance of the writ. The state shall serve the answer, if any, on counsel for the applicant or, if the applicant is proceeding pro se, on the applicant. The state may request from the convicting court an extension of time in which to answer the application by showing particularized justifying circumstances for the extension.

(b) Matters alleged in the application not admitted by the state are deemed denied.

Sec. 8. FINDINGS OF FACT WITHOUT EVIDENTIARY HEARING. (a) Not later than the 20th day after the last date the state may answer the application, the convicting court shall determine whether controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist and shall issue a written order of the determination.

(b) If the convicting court determines the issues do not exist, the parties may file proposed findings of fact and conclusions of law for the court to consider on or before a date set by the court that is not later than the 30th day after the date the order is issued.

(c) After argument of counsel, if requested by the court, the convicting court shall make appropriate written findings of fact and conclusions of law not later than the 15th day after the date the parties filed proposed findings or not later than the 45th day after the date the court's determination is made under Subsection (a), whichever occurs first.

(d) The clerk of the court shall immediately send to:

- (1) the court of criminal appeals a copy of the:
 - (A) application;
 - (B) answer;
 - (C) orders entered by the convicting court;
 - (D) proposed findings of fact and conclusions of law; and

(E) findings of fact and conclusions of law entered by the court; and

(2) counsel for the applicant or, if the applicant is proceeding pro se, to the applicant, a copy of:

(A) orders entered by the convicting court;

(B) proposed findings of fact and conclusions of law; and

(C) findings of fact and conclusions of law entered by the court.

(e) Failure of the convicting court to issue findings of fact and conclusions of law within the time provided by Subsection (c) constitutes a finding that controverted, previously unresolved factual issues material to the legality of the applicant's confinement do not exist.

Sec. 9. HEARING. (a) If the convicting court determines that controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist, the court shall enter an order, not later than the 20th day after the last date the state may answer the application, designating the issues of fact to be resolved and the manner in which the issues shall be resolved. To resolve the issues, the court may require affidavits, depositions, interrogatories, and evidentiary hearings and may use personal recollection.

(b) The convicting court shall allow the applicant and the state not less than 10 days to prepare for an evidentiary hearing. The parties may waive the preparation time. If the state or the applicant requests that an evidentiary hearing be held within 30 days after the date the court ordered the hearing, the hearing shall be held within that period unless the court states, on the record, good cause for delay.

(c) The presiding judge of the convicting court shall conduct a hearing held under this section unless another judge presided over the original capital felony trial, in which event that judge, if qualified for assignment under Section 74.054 or 74.055, Government Code, may preside over the hearing.

(d) The court reporter shall prepare a transcript of the hearing not later than the 30th day after the date the hearing ends and file the transcript with the clerk of the convicting court.

(e) The parties may file proposed findings of fact and conclusions of law for the convicting court to consider on or before a date set by the court that is not later than the 30th day after the date the transcript is filed. If the court requests argument of counsel, after argument the court shall make written findings of fact that are necessary to resolve the previously unresolved facts and make conclusions of law not later than the 15th day after the date the parties file proposed findings or not later than the 45th day after the date the court reporter files the transcript, whichever occurs first.

(f) The clerk of the convicting court shall immediately transmit to:

(1) the court of criminal appeals a copy of:

(A) the application;

(B) the answers and motions filed;

(C) the court reporter's transcript;

(D) the documentary exhibits introduced into evidence;

(E) the proposed findings of fact and conclusions of law;

(F) the findings of fact and conclusions of law entered by the court;

(G) the sealed materials such as a confidential request for investigative expenses; and

(H) any other matters used by the convicting court in resolving issues of fact; and

(2) counsel for the applicant or, if the applicant is proceeding pro se, to the applicant, a copy of:

(A) orders entered by the convicting court;

(B) proposed findings of fact and conclusions of law; and

(C) findings of fact and conclusions of law entered by the court.

(g) The clerk of the convicting court shall forward an exhibit that is not documentary to the court of criminal appeals on request of the court.

Sec. 10. RULES OF EVIDENCE. The Texas Rules of Criminal Evidence apply to a hearing held under this article.

Sec. 11. REVIEW BY COURT OF CRIMINAL APPEALS. The court of criminal appeals shall expeditiously review all applications for a writ of habeas corpus submitted under this article. The court may set the cause for oral argument and may request further briefing of the issues by the applicant or the state. After reviewing the record, the court shall enter its judgment remanding the applicant to custody or ordering the applicant's release, as the law and facts may justify.

SECTION 2. Chapter 26, Code of Criminal Procedure, is amended by adding Article 26.052 to read as follows:

Art. 26.052. APPOINTMENT OF COUNSEL IN DEATH PENALTY CASE; REIMBURSEMENT OF INVESTIGATIVE EXPENSES. (a) Notwithstanding any other provision of this chapter, this article establishes procedures in death penalty cases for appointment and payment of counsel to represent indigent defendants at trial and on direct appeal and to apply for writ of certiorari in the United States Supreme Court.

(b) If a county is served by a public defender's office, trial counsel and counsel for direct appeal or to apply for a writ of certiorari may be appointed as provided by the guidelines established by the public defender's office. In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article.

(c) A local selection committee is created in each administrative judicial region created under Section 74.042, Government Code. The administrative judge of the judicial region shall appoint the members of the committee. A committee shall have not less than four members, including:

- (1) the administrative judge of the judicial region;*
- (2) at least one district judge;*
- (3) a representative from the local bar association; and*
- (4) at least one practitioner who is board certified by the State Bar of Texas in criminal law.*

(d) The committee shall adopt standards for the qualification of attorneys for appointment to death penalty cases. The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(e) The presiding judge of the district court in which a capital felony case is filed shall appoint counsel to represent an indigent defendant as soon as practicable after charges are filed, if the death penalty is sought in the case. The judge shall appoint lead trial counsel from the list of attorneys qualified for appointment. The judge shall appoint a second counsel to assist in the defense of the defendant, unless reasons against the appointment of two counsel are stated in the record.

(f) Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses. The request for expenses must state:

- (1) the type of investigation to be conducted;*
- (2) specific facts that suggest the investigation will result in admissible evidence; and*
- (3) an itemized list of anticipated expenses for each investigation.*

(g) The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- (1) state the reasons for the denial in writing;*
- (2) attach the denial to the confidential request; and*
- (3) submit the request and denial as a sealed exhibit to the record.*

(h) Counsel may incur expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred.

(i) If the indigent defendant is convicted of a capital felony and sentenced to death, the defendant is entitled to be represented by competent counsel on appeal and to apply for a writ of certiorari to the United States Supreme Court.

(j) As soon as practicable after a death sentence is imposed in a capital felony case, the presiding judge of the convicting court shall appoint counsel to represent an indigent defendant on appeal and to apply for a writ of certiorari, if appropriate.

(k) The court may not appoint an attorney as counsel on appeal if the attorney represented the defendant at trial, unless:

- (1) the defendant and the attorney request the appointment on the record; and
- (2) the court finds good cause to make the appointment.

(l) An attorney appointed under this article to represent a defendant at trial or on direct appeal is compensated as provided by Article 26.05 from county funds.

SECTION 3. Article 43.14, Code of Criminal Procedure, is amended to read as follows:

Art. 43.14. EXECUTION OF CONVICT. Whenever the sentence of death is pronounced against a convict, the sentence shall be executed at any time after ~~before~~ the hour of 6 p.m. ~~[sunrise]~~ on the day set for the execution ~~[not less than thirty days from the day the court sets the execution date, as the court may adjudge]~~, by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until such convict is dead, such execution procedure to be determined and supervised by the Director of the institutional division of the Texas Department of Criminal Justice.

SECTION 4. Chapter 43, Code of Criminal Procedure, is amended by adding Article 43.141 to read as follows:

Art. 43.141. SCHEDULING OF EXECUTION DATE; WITHDRAWAL; MODIFICATION. (a) If an initial application under Article 11.071 is timely filed, the convicting court may not set an execution date before:

- (1) the court of criminal appeals denies relief; or
- (2) if the case is filed and set for submission, the court of criminal appeals issues a mandate.

(b) If an original application is not timely filed under Article 11.071 or good cause is not shown for an untimely application under Article 11.071, the convicting court may set an execution date.

(c) The first execution date may not be earlier than the 91st day after the date the convicting court enters the order setting the execution date. A subsequent execution date may not be earlier than the 31st day after the date the convicting court enters the order setting the execution date.

(d) The convicting court may modify or withdraw the order of the court setting a date for execution in a death penalty case if the court determines that additional proceedings are necessary on a subsequent or untimely application for a writ of habeas corpus filed under Article 11.071.

(e) If the convicting court withdraws the order of the court setting the execution date, the court shall recall the warrant of execution. If the court modifies the order of the court setting the execution date, the court shall recall the previous warrant of execution, and the clerk of the court shall issue a new warrant.

SECTION 5. Article 11.07, Code of Criminal Procedure, is amended to read as follows:

Art. 11.07. ~~[RETURN TO CERTAIN COUNTY;]~~ PROCEDURE AFTER CONVICTION WITHOUT DEATH PENALTY

Sec. 1. This article establishes the procedures for an application for writ of habeas corpus in which the applicant seeks relief from a felony judgment imposing a penalty other than death.

Sec. 2. After indictment found in any felony case, other than a case in which the death penalty is imposed, and before conviction, the writ must be made returnable in the county where the offense has been committed.

Sec. 3 [2]. (a) After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas.

(b) Whenever an application [a-petition] for writ of habeas corpus is filed after final conviction in a felony case, *other than a case in which the death penalty is imposed*, the clerk shall transfer or assign it to the court in which the conviction being challenged was obtained. When the application [petition] is received by that court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. The clerk of that court shall make appropriate notation thereof, assign to the case a file number (ancillary to that of the conviction being challenged), and send a copy of the application [petition] by certified mail, return receipt requested, to the attorney representing the state in that court, who shall have 15 days in which it may answer the application [petition]. Matters alleged in the application [petition] not admitted by the state are deemed denied.

(c) Within 20 days of the expiration of the time in which the state is allowed to answer, it shall be the duty of the convicting court to decide whether there are controverted, previously unresolved facts material to the legality of the applicant's confinement. *Confinement means confinement for any offense or any collateral consequence resulting from the conviction that is the basis of the instant habeas corpus.* If the convicting court decides that there are no such issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of the application [petition], any answers filed, and a certificate reciting the date upon which that finding was made. Failure of the court to act within the allowed 20 days shall constitute such a finding.

(d) If the convicting court decides that there are controverted, previously unresolved facts which are material to the legality of the applicant's confinement, it shall enter an order within 20 days of the expiration of the time allowed for the state to reply, designating the issues of fact to be resolved. To resolve those issues the court may order affidavits, depositions, interrogatories, and hearings, as well as using personal recollection. Also, the convicting court may appoint an attorney or a magistrate to hold a hearing and make findings of fact. An attorney so appointed shall be compensated as provided in Article 26.05 of this code. It shall be the duty of the reporter who is designated to transcribe a hearing held pursuant to this article to prepare a transcript within 15 days of its conclusion. After the convicting court makes findings of fact or approves the findings of the person designated to make them, the clerk of the convicting court shall immediately transmit to the Court of Criminal Appeals, under one cover, the application [petition], any answers filed, any motions filed, transcripts of all depositions and hearings, any affidavits, and any other matters such as official records used by the court in resolving issues of fact.

Sec. 4. (a) *If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:*

(1) *the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application; or*

(2) *by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.*

(b) *For purposes of Subsection (a)(1), a legal basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the legal basis was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date.*

(c) *For purposes of Subsection (a)(1), a factual basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.*

Sec. 5 [3]. The Court of Criminal Appeals may deny relief upon the findings and conclusions of the hearing judge without docketing the cause, or may direct that the cause be

docketed and heard as though originally presented to said court or as an appeal. Upon reviewing the record the court shall enter its judgment remanding the *applicant* [~~petitioner~~] to custody or ordering his release, as the law and facts may justify. The mandate of the court shall issue to the court issuing the writ, as in other criminal cases. After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void and of no force and effect in discharging the prisoner.

Sec. 6 [4]. Upon any hearing by a district judge by virtue of this Act, the attorney for *applicant* [~~petitioner~~], and the state, shall be given at least *seven* [~~three~~] full days' notice before such hearing is held.

Sec. 7 [5]. When the attorney for the state files an answer, motion, or other pleading relating to *an application* [~~a petition~~] for a writ of habeas corpus or the court issues an order relating to *an application* [~~a petition~~] for a writ of habeas corpus, the clerk of the court shall mail or deliver to the *applicant* [~~petitioner~~] a copy of the answer, motion, pleading, or order.

SECTION 6. The rulemaking authority granted to the court of criminal appeals under Section 22.108, Government Code, is withdrawn with respect to rules of appellate procedure relating to an application for a writ of habeas corpus, but only to the extent the rules conflict with a procedure under Article 11.071, Code of Criminal Procedure, as added by this Act, or Article 11.07, Code of Criminal Procedure, as amended by this Act.

SECTION 7. (a) The change in law made by Articles 43.14, 43.141, and 11.071, Code of Criminal Procedure, as amended or added by this Act, applies only to a person under a sentence of death.

(b) The change in law made by Article 26.052, Code of Criminal Procedure, as added by this Act, applies only to a defendant charged with an offense committed on or after the effective date of this Act or to a defendant for whom the court of criminal appeals or a federal court has entered an order granting a new trial or a new punishment hearing on or after the effective date of this Act. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date. A defendant charged with an offense committed before the effective date of this Act or a defendant for whom an order granting a new trial or new punishment hearing is entered before the effective date of this Act is covered by the law in effect when the offense was committed or the order was entered, and the former law is continued in effect for that purpose.

(c) The change in law made by Article 11.07, Code of Criminal Procedure, as amended by this Act, applies only to an application for a writ of habeas corpus filed on or after the effective date of this Act by a person convicted of a felony, other than an application filed by a person under a sentence of death. An application filed before the effective date of this Act by a person convicted of a felony, other than an application filed by a person under a sentence of death, is covered by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

SECTION 8. The legislature strongly encourages district courts to make use of state-of-the-art technology for the preparation of transcripts in capital felony cases in order to expedite the appeals process in those cases.

SECTION 9. This Act takes effect September 1, 1995, but only if the comptroller certifies on or before that date that at least \$2,000,000 is appropriated by the General Appropriations Act, Acts of the 74th Legislature, Regular Session, 1995, for the fiscal biennium ending August 31, 1997, to the court of criminal appeals for the purpose of providing compensation and expenses to counsel representing persons under a sentence of death in habeas corpus proceedings.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 10, 1995, by a viva-voce vote; the Senate concurred in House amendments on May 24, 1995, by a viva-voce vote; passed the House, with amendments, on May 19, 1995, by a non-record vote.

Approved June 7, 1995.

Effective September 1, 1995, except as provided in § 9.

CHAPTER 320

S.B. No. 840

AN ACT

relating to the punishment for certain weapons offenses committed in a school zone.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 46, Penal Code, is amended by adding Section 46.11 to read as follows:

Sec. 46.11. PENALTY IF OFFENSE COMMITTED WITHIN WEAPON-FREE SCHOOL ZONE. (a) Except as provided by Subsection (b), the punishment prescribed for an offense under this chapter is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense in a place that the actor knew was:

(1) within 300 feet of the premises of a school; or

(2) on premises where:

(A) an official school function is taking place; or

(B) an event sponsored or sanctioned by the University Interscholastic League is taking place.

(b) This section does not apply to an offense under Section 46.03(a)(1).

(c) In this section, "institution of higher education," "premises," and "school" have the meanings assigned by Section 481.134, Health and Safety Code.

SECTION 2. Chapter 46, Penal Code, is amended by adding Section 46.12 to read as follows:

Sec. 46.12. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution of an offense for which punishment is increased under Section 46.11, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of weapon-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 46.11; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Criminal Evidence.

SECTION 3. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.