

By: Keel

H.B. No. 19

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appointment of counsel for an indigent applicant
3 for a writ of habeas corpus in a capital case.

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

5 SECTION 1. Sections 2(c) and (d), Article 11.071, Code of
6 Criminal Procedure, are amended to read as follows:

7 (c) At the earliest practical time, but in no event later
8 than 30 days, after the convicting court makes the findings
9 required under Subsections (a) and (b), the convicting court shall
10 appoint competent counsel that meets the requirements of Subsection
11 (d)(2), unless the applicant elects to proceed pro se or is
12 represented by retained counsel. The convicting court may also
13 appoint an attorney to assist an attorney appointed as lead counsel
14 in the case. The assisting attorney is required to meet the
15 requirements of Subsections (d)(2)(A) and (F) but is not required
16 to meet the requirements of Subsections (d)(2)(B)-(E). On
17 appointing counsel under this section, the convicting court shall
18 immediately notify the court of criminal appeals of the
19 appointment, including in the notice a copy of the judgment and the
20 name, address, and telephone number of the appointed counsel.

21 (d)(1) The Task Force on Indigent Defense [~~court of criminal~~
22 ~~appeals~~] shall adopt standards [~~rules~~] for the appointment of
23 attorneys as counsel under this section [~~and the convicting court~~
24 ~~may appoint an attorney as counsel under this section only if the~~

1 ~~appointment is approved by the court of criminal appeals in any~~
2 ~~manner provided by these rules].~~

3 (2) The standards must require that an attorney
4 appointed as lead counsel under this section:

5 (A) be a member of the State Bar of Texas;

6 (B) exhibit proficiency and commitment to
7 providing quality representation to defendants or applicants
8 seeking relief in death penalty cases;

9 (C) have at least five years of experience in
10 criminal trial litigation, appellate practice, or habeas corpus
11 practice;

12 (D) have, in the three years preceding the
13 appointment, appeared in federal or state court as counsel in at
14 least three trial, appellate, or habeas corpus proceedings for
15 offenses punished as felonies of the first degree or capital
16 felonies;

17 (E) have, in the year preceding the appointment,
18 participated in continuing legal education courses or other
19 training relating to criminal defense or habeas corpus proceedings
20 in death penalty cases; and

21 (F) not have been found by a federal or state
22 court to have rendered ineffective assistance of counsel during the
23 trial or appeal of any felony case.

24 (3) The Task Force on Indigent Defense may maintain a
25 list of attorneys qualified for appointment under this section and
26 make that list available to a convicting court for the purpose of
27 assisting that court with the appointment of qualified counsel

1 under this section.

2 (4) The convicting court may not appoint an attorney
3 as counsel under this section if the attorney represented the
4 applicant at trial or on direct appeal, unless:

5 (A) the applicant and the attorney request the
6 appointment on the record; and

7 (B) the court finds good cause to make the
8 appointment.

9 SECTION 2. Section 71.060(c), Government Code, is amended
10 to read as follows:

11 (c) Any qualification standards adopted by the Task Force on
12 Indigent Defense under Subsection (a) that relate to the
13 appointment of counsel in a death penalty case must be consistent
14 with the standards specified under Section 2, Article 11.071, or
15 Article 26.052(d), Code of Criminal Procedure, as appropriate. An
16 attorney who is identified by the task force as not satisfying
17 performance or qualification standards adopted by the task force
18 under Subsection (a) may not accept an appointment in a capital
19 case.

20 SECTION 3. The Task Force on Indigent Defense shall adopt
21 standards described by Section 2(d), Article 11.071, Code of
22 Criminal Procedure, as amended by this Act, not later than the 60th
23 day after the effective date of this Act.

24 SECTION 4. A convicting court that appoints counsel under
25 Section 2, Article 11.071, Code of Criminal Procedure, on or after
26 the 75th day after the effective date of this Act shall appoint the
27 counsel in conformity with this Act. Counsel appointed under

1 Section 2, Article 11.071, before the 75th day after the effective
2 date of this Act must be appointed in conformity with Section 2,
3 Article 11.071, as that section existed immediately before the
4 effective date of this Act, and the former law is continued in
5 effect for this purpose.

6 SECTION 5. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect November 1, 2003.