

By: Keel

H.B. No. 19

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the qualifications and appointment of counsel for
3 indigent defendants in capital cases.

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

5 SECTION 1. Section 2, Article 11.071, Code of Criminal
6 Procedure, is amended by amending Subsection (c), by adding
7 Subsection (d-1), and by reenacting and amending Subsection (d), as
8 amended by H.B. No. 1701 and S.B. No. 60, 79th Legislature, Regular
9 Session, 2005, to read as follows:

10 (c) At the earliest practical time, but in no event later
11 than 30 days, after the convicting court makes the findings
12 required under Subsections (a) and (b), the convicting court shall
13 appoint competent counsel from the list of qualified attorneys
14 maintained by the Task Force on Indigent Defense under Subsection
15 (d)(3), unless the applicant elects to proceed pro se or is
16 represented by retained counsel. The convicting court may also
17 appoint an attorney to assist an attorney appointed as lead counsel
18 in the case. The assisting attorney is not subject to the
19 guidelines applicable to an attorney appointed as lead counsel. On
20 appointing counsel under this section, the convicting court shall
21 immediately notify the court of criminal appeals of the
22 appointment, including in the notice a copy of the judgment and the
23 name, address, and telephone number of the appointed counsel.

24 (d)(1) The Task Force on Indigent Defense may ~~[court of~~

1 ~~criminal appeals shall~~] adopt guidelines [~~rules~~] for the
2 appointment of attorneys as counsel under this section and may
3 consider the guidelines in determining whether an attorney is
4 qualified for an appointment [~~the convicting court may appoint an~~
5 ~~attorney as counsel under this section only if the appointment is~~
6 ~~approved by the court of criminal appeals in any manner provided by~~
7 ~~those rules. The rules must require that an attorney appointed as~~
8 ~~lead counsel under this section not have been found by a federal or~~
9 ~~state court to have rendered ineffective assistance of counsel~~
10 ~~during the trial or appeal of any capital case]. The Task Force on
11 Indigent Defense shall determine whether an attorney is qualified
12 for an appointment on a case-by-case basis.~~

13 (2) The guidelines may include that an attorney
14 appointed as lead counsel under this section:

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

16 (B) exhibit proficiency and commitment to
17 providing quality representation to defendants in death penalty
18 cases;

19 (C) have participated in continuing legal
20 education courses or other training relating to criminal defense in
21 death penalty cases;

22 (D) have at least five years of experience in
23 criminal trial or appellate litigation or habeas corpus practice;
24 and

25 (E) have participated in the preparation of
26 appellate briefs for the prosecution or defense, or in the drafting
27 of appellate opinions as an attorney for an appellate court, in

1 felony cases, including homicide cases and other cases involving an
2 offense punishable as a capital felony or a felony of the first or
3 second degree.

4 (3) The Task Force on Indigent Defense shall maintain
5 a list of attorneys qualified for appointment under this section
6 and make that list available to a convicting court for the purpose
7 of assisting that court with the appointment of qualified counsel
8 under this section.

9 (4) The convicting court may not appoint an attorney
10 as counsel under this section if the attorney:

11 (A) has been found by a federal or state court to
12 have rendered ineffective assistance of counsel during the trial or
13 appeal of any capital case; or

14 (B) represented the applicant at trial or on
15 direct appeal, unless:

16 (i) the applicant and the attorney request
17 the appointment on the record; and

18 (ii) the court finds good cause to make the
19 appointment.

20 (d-1) The court of criminal appeals may annually review the
21 list of attorneys qualified for appointment under this section to
22 ensure that the attorneys included on the list are suitably
23 qualified and proficient to be eligible for appointment. The court
24 may determine whether an attorney is eligible for appointment on a
25 case-by-case basis. The court may remove an attorney from the list
26 if the attorney is determined to be ineligible for appointment.

27 SECTION 2. Article 26.052(d), Code of Criminal Procedure,

1 as amended by H.B. No. 1701 and S.B. No. 60, 79th Legislature,
2 Regular Session, 2005, is reenacted and amended to read as follows:

3 (d)(1) The committee shall adopt standards for the
4 qualification of attorneys to be appointed to represent indigent
5 defendants in capital cases in which the death penalty is sought.

6 (2) The standards must require that a trial attorney
7 appointed as lead counsel to a capital case in which the death
8 penalty is sought [~~or an attorney appointed as lead appellate~~
9 ~~counsel in the direct appeal of a capital case~~]:

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

11 (B) exhibit proficiency and commitment to
12 providing quality representation to defendants in death penalty
13 cases;

14 (C) have participated in continuing legal
15 education courses or other training related to criminal defense in
16 death penalty cases;

17 (D) have not been found by a federal or state
18 court to have rendered ineffective assistance of counsel during the
19 trial or appeal of any capital case;

20 (E) [~~(D)~~] have at least five years of experience
21 in criminal trial or appellate litigation;

22 (F) [~~(E)~~] have tried felony cases to a verdict as
23 lead prosecutor or lead defense counsel [~~a significant number of~~
24 ~~felony cases~~], including homicide trials and other trials for
25 offenses punishable as second or first degree felonies or capital
26 felonies; and

27 (G) [~~(F)~~] have previous [~~trial~~] experience as a

1 member of the prosecution or defense trial counsel team in:

2 (i) jury selection in a capital case in
3 which the death penalty is sought;

4 (ii) the direct examination or
5 cross-examination [use] of [~~and challenges to~~] mental health or
6 forensic expert witnesses; and

7 (iii) the presentation or
8 cross-examination of [~~(ii) investigating and presenting~~]
9 mitigating evidence at the penalty phase of a homicide [~~death~~
10 ~~penalty~~] trial[, and

11 [~~(C) have participated in continuing legal~~
12 ~~education courses or other training relating to criminal defense in~~
13 ~~death penalty cases].~~

14 (3) The standards must require that an attorney
15 appointed as lead appellate counsel in the direct appeal of a death
16 penalty case:

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

18 (B) exhibit proficiency and commitment to
19 providing quality representation to defendants in death penalty
20 cases;

21 (C) have participated in continuing legal
22 education courses or other training related to criminal defense in
23 death penalty cases;

24 (D) have not been found by a federal or state
25 court to have rendered ineffective assistance of counsel during the
26 trial or appeal of any capital case;

27 (E) have at least five years of experience in

1 criminal trial or appellate litigation; and

2 (F) have participated in the preparation of
3 appellate briefs for the prosecution or defense, or in the drafting
4 of appellate opinions as an attorney for an appellate court, in
5 felony cases, including homicide cases and other cases involving an
6 offense punishable as a capital felony or a felony of the first or
7 second degree.

8 (4) The committee shall prominently post the standards
9 in each district clerk's office in the region with a list of
10 attorneys qualified for appointment.

11 (5) [~~4~~] Not later than the second anniversary of the
12 date an attorney is placed on the list of attorneys qualified for
13 appointment in death penalty cases and each year following the
14 second anniversary, the attorney must present proof to the
15 committee that the attorney has successfully completed the minimum
16 continuing legal education requirements of the State Bar of Texas,
17 including a course or other form of training relating to the defense
18 of death penalty cases. The committee shall remove the attorney's
19 name from the list of qualified attorneys if the attorney fails to
20 provide the committee with proof of completion of the continuing
21 legal education requirements.

22 SECTION 3. The Task Force on Indigent Defense shall prepare
23 the list of qualified attorneys required by Section 2(d), Article
24 11.071, Code of Criminal Procedure, as amended by this Act, not
25 later than March 1, 2006.

26 SECTION 4. A convicting court that appoints counsel under
27 Section 2, Article 11.071, Code of Criminal Procedure, on or after

1 May 1, 2006, shall appoint the counsel in conformity with this Act.
2 Counsel appointed under Section 2, Article 11.071, Code of Criminal
3 Procedure, before May 1, 2006, must be appointed in conformity with
4 Section 2, Article 11.071, Code of Criminal Procedure, as that
5 section existed immediately before the effective date of this Act,
6 and the former law is continued in effect for that purpose.

7 SECTION 5. A local selection committee shall amend
8 standards previously adopted by the committee to conform with the
9 requirements of Article 26.052(d), Code of Criminal Procedure, as
10 amended by this Act, not later than the 75th day after the effective
11 date of this Act. An attorney appointed to a death penalty case on
12 or after the 75th day after the effective date of this Act must meet
13 the standards adopted in conformity with amended Article 26.052(d),
14 Code of Criminal Procedure. An attorney appointed to a death
15 penalty case before the 75th day after the effective date of this
16 Act is covered by the law in effect when the attorney was appointed,
17 and the former law is continued in effect for that purpose.

18 SECTION 6. This Act takes effect November 1, 2005.