

BILL ANALYSIS

H.B. 268
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Criminal Jurisprudence
Committee Report (Amended)

BACKGROUND AND PURPOSE

The appointment of attorneys to represent indigent capital murder defendants at trial, in appellate proceedings, and in post conviction writs of habeas corpus calls for careful consideration of the attorneys' experience and competence. Under current law, counties without a public defender's office utilize local selection committees to adopt guidelines and identify qualified attorneys to represent indigent defendants at trial and on appeal.

With regard to post conviction writs of habeas corpus, current law bestows the Court of Criminal Appeals with the responsibility of adopting guidelines for the appointment of attorneys and approving the appointments made by convicting courts. The Task Force on Indigent Defense is in a much better position to gauge the quality, availability, and effectiveness of attorneys eligible to be appointed on such matters than a statewide appellate court. House Bill 268 codifies minimum acceptable standards for attorneys to represent indigent defendants in capital cases and transfers the obligation for creating standards governing appointments from the Court of Criminal Appeals to the Task Force on Indigent Defense.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 268 amends the Criminal Procedure and Government codes relating to the qualifications and appointment of counsel for indigent defendants in capital cases. The bill codifies minimum acceptable standards for defense attorneys appointed for indigent defendants in trial, appellate, and habeas corpus proceedings. Included among the minimum standards as lead counsel are, participation in continuing legal education in death penalty cases; not having been found to have rendered ineffective assistance of counsel; and at least five-years of experience in criminal trial, appellate, or habeas corpus practice, as appropriate. That which is unique to appellate and habeas corpus practice is, participation in the preparation of appellate briefs or the drafting of appellate opinions. Provisions of the bill unique to trial practice are experience in trying felony cases to verdict as lead counsel, jury selection in a capital case, and direct or cross-examination of mental health or forensic expert witnesses and mitigating evidence at the penalty phase.

With regard to habeas corpus proceedings, H.B. 268 allows a convicting court to appoint an attorney to assist the lead counsel in a habeas corpus application and transfers the responsibility for adopting standards for appointments from the Court of Criminal Appeals to the Task Force on Indigent Defense. The task force may maintain a list of qualified attorneys and make the list available to a convicting court to assist in the appointment.

EFFECTIVE DATE

On passage, or if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

EXPLANATION OF AMENDMENTS

Committee Amendment No. 1

H.B. 268 79(R)

The amendment makes it mandatory rather than discretionary for the Task Force on Indigent Defense to maintain a list of qualified attorneys and to make the list available to a convicting court to assist in the appointment. The amendment also extends the deadlines for the task force to adopt standards, extends the date by which a convicting court must comply with Section 2, 11.071 as set out in the bill. Finally, the amendment requires the task force to prepare the list of qualified attorneys not later than March 1, 2006.