

By: Keel, Hodge

H.B. No. 268

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 Subsections (c) and (d) and  
7 adding Subsection (d-1) to read as follows:

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

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

1 ~~may appoint an attorney as counsel under this section only if the~~  
2 ~~appointment is approved by the court of criminal appeals in any~~  
3 ~~manner provided by these rules].~~

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

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

7 (B) exhibit proficiency and commitment to  
8 providing quality representation to defendants in death penalty  
9 cases;

10 (C) have participated in continuing legal  
11 education courses or other training relating to criminal defense in  
12 death penalty cases;

13 (D) not have been found by a federal or state  
14 court to have rendered ineffective assistance of counsel during the  
15 trial or appeal of any criminal case;

16 (E) have at least five years of experience in  
17 criminal trial or appellate litigation or habeas corpus practice;  
18 and

19 (F) have participated in the preparation of  
20 appellate briefs for the prosecution or defense, or in the drafting  
21 of appellate opinions as a staff attorney for an appellate court, in  
22 felony cases, including homicide cases and other cases involving an  
23 offense punishable as a capital felony or a felony of the first or  
24 second degree.

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

1 of assisting that court with the appointment of qualified counsel  
2 under this section.

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

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

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

10 (d-1) The court of criminal appeals may annually review the  
11 list of attorneys qualified for appointment under this section to  
12 ensure that the attorneys included on the list are suitably  
13 qualified and proficient to be eligible for appointment. The court  
14 may determine whether an attorney is eligible for appointment on a  
15 case-by-case basis. The court may remove an attorney from the list  
16 if the attorney is determined to be ineligible for appointment.

17 SECTION 2. Subsection (d), Article 26.052, Code of Criminal  
18 Procedure, is amended to read as follows:

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

22 (2) The standards must require that a trial [an]  
23 attorney appointed as lead counsel to a death penalty case:

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

25 (B) exhibit proficiency and commitment to  
26 providing quality representation to defendants in death penalty  
27 cases;

1 (C) have participated in continuing legal  
2 education courses or other training related to criminal defense in  
3 death penalty cases;

4 (D) have not been found by a federal or state  
5 court to have rendered ineffective assistance of counsel during the  
6 trial or appeal of any criminal case;

7 (E) have at least five years of experience in  
8 criminal trial or appellate litigation;

9 (F) [~~(D)~~] have tried felony cases to a verdict as  
10 lead prosecutor or lead defense counsel [~~a significant number of~~  
11 ~~felony cases~~], including homicide trials and other trials for  
12 offenses punishable as second or first degree felonies or capital  
13 felonies; and

14 (G) [~~(E)~~] have previous [~~trial~~] experience as a  
15 member of the prosecution or defense trial counsel team in:

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

18 (ii) the direct examination or  
19 cross-examination [~~use~~] of [~~and challenges to~~] mental health or  
20 forensic expert witnesses; and

21 (iii) the presentation or  
22 cross-examination of [~~(ii) investigating and presenting~~]  
23 mitigating evidence at the penalty phase of a homicide [~~death~~  
24 ~~penalty~~] trial[, ~~and~~

25 [~~(F) have participated in continuing legal~~  
26 ~~education courses or other training relating to criminal defense in~~  
27 ~~death penalty cases].~~

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

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

5                   (B) exhibit proficiency and commitment to  
6 providing quality representation to defendants in death penalty  
7 cases;

8                   (C) have participated in continuing legal  
9 education courses or other training related to criminal defense in  
10 death penalty cases;

11                   (D) have not been found by a federal or state  
12 court to have rendered ineffective assistance of counsel during the  
13 trial or appeal of any criminal case;

14                   (E) have at least five years of experience in  
15 criminal trial or appellate litigation; and

16                   (F) have participated in the preparation of  
17 appellate briefs for the prosecution or defense, or in the drafting  
18 of appellate opinions as a staff attorney for an appellate court, in  
19 felony cases, including homicide cases and other cases involving an  
20 offense punishable as a capital felony or a felony of the first or  
21 second degree.

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

25           (5) [~~4~~] Not later than the second anniversary of the  
26 date an attorney is placed on the list of attorneys qualified for  
27 appointment in death penalty cases and each year following the

1 second anniversary, the attorney must present proof to the  
2 committee that the attorney has successfully completed the minimum  
3 continuing legal education requirements of the State Bar of Texas,  
4 including a course or other form of training relating to the defense  
5 of death penalty cases. The committee shall remove the attorney's  
6 name from the list of qualified attorneys if the attorney fails to  
7 provide the committee with proof of completion of the continuing  
8 legal education requirements.

9 SECTION 3. 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 4. 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 January  
23 1, 2006. The Task Force on Indigent Defense shall prepare the list  
24 of qualified attorneys required by that section not later than  
25 March 1, 2006.

26 SECTION 5. 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 that date, and the former law is  
6 continued in effect for that purpose.

7 SECTION 6. A local selection committee shall amend  
8 standards previously adopted by the committee to conform with the  
9 requirements of Subsection (d), Article 26.052, Code of Criminal  
10 Procedure, as amended by this Act, not later than the 75th day after  
11 the effective date of this Act. An attorney appointed to a death  
12 penalty case on or after the 75th day after the effective date of  
13 this Act must meet the standards adopted in conformity with the  
14 amended Subsection (d), Article 26.052. An attorney appointed to a  
15 death penalty case before the 75th day after the effective date of  
16 this Act is covered by the law in effect when the attorney was  
17 appointed, and the former law is continued in effect for that  
18 purpose.

19 SECTION 7. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2005.