

By: Keel

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. 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)-(D) but is not required to  
16 meet the requirements of Subsection (d)(2)(E) or (F). 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 in death penalty  
8 cases;

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

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

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

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

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. Subsection (d), Article 26.052, Code of Criminal  
10 Procedure, is amended to read as follows:

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

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

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

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

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

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

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

1           (F) [~~(D)~~] have tried felony cases to a verdict as  
2 lead prosecutor or lead defense counsel [~~a significant number of~~  
3 ~~felony cases~~], including homicide trials and other trials for  
4 offenses punishable as second or first degree felonies or capital  
5 felonies; and

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

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

10                   (ii) the direct examination or  
11 cross-examination [~~use~~] of [~~and challenges to~~] mental health or  
12 forensic expert witnesses; and

13                   (iii) the presentation or  
14 cross-examination of [~~(ii) investigating and presenting~~]  
15 mitigating evidence at the penalty phase of a homicide [~~death~~  
16 ~~penalty~~] trial[, ~~and~~

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

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

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

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

27                   (C) have participated in continuing legal

1 education courses or other training related to criminal defense in  
2 death penalty cases;

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

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

8 (F) have participated in the preparation of  
9 appellate briefs for the prosecution or defense, or in the drafting  
10 of appellate opinions as a staff attorney for an appellate court, in  
11 felony cases, including homicide cases and other cases involving an  
12 offense punishable as a capital felony or a felony of the first or  
13 second degree.

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

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

1           SECTION 3. Section 71.060(c), Government Code, is amended  
2 to read as follows:

3           (c) Any qualification standards adopted by the Task Force on  
4 Indigent Defense under Subsection (a) that relate to the  
5 appointment of counsel in a death penalty case must be consistent  
6 with the standards specified under Section 2, Article 11.071, or  
7 Article 26.052(d), Code of Criminal Procedure, as appropriate. An  
8 attorney who is identified by the task force as not satisfying  
9 performance or qualification standards adopted by the task force  
10 under Subsection (a) may not accept an appointment in a capital  
11 case.

12           SECTION 4. The Task Force on Indigent Defense shall adopt  
13 standards described by Section 2(d), Article 11.071, Code of  
14 Criminal Procedure, as amended by this Act, not later than the 60th  
15 day after the effective date of this Act.

16           SECTION 5. A convicting court that appoints counsel under  
17 Section 2, Article 11.071, Code of Criminal Procedure, on or after  
18 the 75th day after the effective date of this Act shall appoint the  
19 counsel in conformity with this Act. Counsel appointed under  
20 Section 2, Article 11.071, Code of Criminal Procedure, before the  
21 75th day after the effective date of this Act must be appointed in  
22 conformity with Section 2, Article 11.071, Code of Criminal  
23 Procedure, as that section existed immediately before the effective  
24 date of this Act, and the former law is continued in effect for that  
25 purpose.

26           SECTION 6. A local selection committee shall amend  
27 standards previously adopted by the committee to conform with the

1 requirements of Subsection (d), Article 26.052, Code of Criminal  
2 Procedure, as amended by this Act, not later than the 75th day after  
3 the effective date of this Act. An attorney appointed to a death  
4 penalty case on or after the 75th day after the effective date of  
5 this Act must meet the standards adopted in conformity with the  
6 amended Subsection (d), Article 26.052. An attorney appointed to a  
7 death penalty case before the 75th day after the effective date of  
8 this Act is covered by the law in effect when the attorney was  
9 appointed, and the former law is continued in effect for that  
10 purpose.

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

COMMITTEE AMENDMENT NO. 1

Amend H.B. No. 268 as follows:

(1) On page 2, line 24, strike "may" and substitute "shall".

(2) On page 6, lines 14-15, strike "the 60th day after the effective date of this Act" and substitute "January 1, 2006".

(3) On page 6, at the end of line 15, add the following:  
"The Task Force on Indigent Defense shall prepare the list of qualified attorneys required by that section not later than March 1, 2006."

(4) On page 6, lines 18 and 20-21, strike "the 75th day after the effective date of this Act" and substitute "May 1, 2006".

(5) On page 6, lines 23-24, strike "the effective date of this Act" and substitute "that date".

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