

1-1 By: Keel, Hodge (Senate Sponsor - Hinojosa) H.B. No. 268  
1-2 (In the Senate - Received from the House March 22, 2005;  
1-3 March 30, 2005, read first time and referred to Committee on  
1-4 Criminal Justice; May 20, 2005, reported favorably, as amended, by  
1-5 the following vote: Yeas 4, Nays 0; May 20, 2005, sent to  
1-6 printer.)

1-7 COMMITTEE AMENDMENT NO. 1 By: Hinojosa

1-8 Amend C.S.H.B. No. 268 (engrossed version) as follows:

1-9 (1) In SECTION 1 of the bill, in proposed Subsection (c),  
1-10 Section 2, Article 11.071, Code of Criminal Procedure, on page 2,  
1-11 lines 22-23, strike "that meets the requirements of Subsection  
1-12 (d)(2)" and substitute "from the list of qualified attorneys  
1-13 maintained by the Task Force on Indigent Defense under Subsection  
1-14 (d)(3)".

1-15 (2) In SECTION 1 of the bill, in proposed Subsection (c),  
1-16 Section 2, Article 11.071, Code of Criminal Procedure, strike the  
1-17 language between "The assisting attorney" on page 2, line 26, and  
1-18 "Subsection (d)(2)(E) or (F)" on page 2, line 27, and substitute "is  
1-19 not subject to the guidelines applicable to an attorney appointed  
1-20 as lead counsel under".

1-21 (3) In SECTION 1 of the bill, strike proposed Subsection  
1-22 (d)(1), Section 2, Article 11.071, Code of Criminal Procedure, on  
1-23 page 2, line 33, to page 2, line 38, and substitute the following:

1-24 (d)(1) The Task Force on Indigent Defense may [~~court of~~  
1-25 ~~criminal appeals shall~~] adopt discretionary guidelines [~~rules~~] for  
1-26 the appointment of attorneys as counsel under this section and may  
1-27 consider the guidelines in determining whether an attorney is  
1-28 qualified for an appointment [~~the convicting court may appoint an~~  
1-29 ~~attorney as counsel under this section only if the appointment is~~  
1-30 ~~approved by the court of criminal appeals in any manner provided by~~  
1-31 ~~those rules~~]. The Task Force on Indigent Defense:

1-32 (A) may not adopt mandatory standards for the  
1-33 appointment of attorneys under this section; and

1-34 (B) shall determine whether an attorney is qualified  
1-35 for an appointment on a case-by-case basis.

1-36 (4) In SECTION 1 of the bill, in proposed Subdivision (2),  
1-37 Subsection (d), Section 2, Article 11.071, Code of Criminal  
1-38 Procedure, on page 2, line 39, strike "standards must require" and  
1-39 substitute "discretionary guidelines may include".

1-40 (5) In SECTION 1 of the bill, in proposed Paragraph (D),  
1-41 Subdivision (2), Subsection (d), Section 2, Article 11.071, Code of  
1-42 Criminal Procedure, on page 2, line 50, strike "criminal" and  
1-43 substitute "capital".

1-44 (6) In SECTION 2 of the bill, in proposed Paragraph (D),  
1-45 Subdivision (2), Subsection (d), Article 26.052, Code of Criminal  
1-46 Procedure, on page 3, line 28, strike "criminal" and substitute  
1-47 "capital".

1-48 (7) In SECTION 2 of the bill, in proposed Paragraph (D),  
1-49 Subdivision (3), Subsection (d), Article 26.052, Code of Criminal  
1-50 Procedure, on page 3, line 62, strike "criminal" and substitute  
1-51 "capital".

1-52 (8) Strike SECTIONS 3 and 4 of the bill on page 4, lines  
1-53 16-32, and substitute the following:

1-54 SECTION 3. The Task Force on Indigent Defense shall prepare  
1-55 the list of qualified attorneys required by Section 2(d), Article  
1-56 11.071, Code of Criminal Procedure, as amended by this Act, not  
1-57 later than March 1, 2006.

1-58 (9) Renumber subsequent SECTIONS of the bill accordingly.

1-59 COMMITTEE AMENDMENT NO. 2 By: Hinojosa

1-60 Amend H.B. No. 268 (engrossed version) in SECTION 2 of the  
1-61 bill, in amended Subsection (d), Article 26.052, Code of Criminal  
1-62 Procedure, as follows:

2-1 (1) In the proposed Paragraph (F), Subdivision (2), on page  
 2-2 3, lines 32-33, strike "[a significant number of felony cases]" and  
 2-3 substitute "a significant number of felony cases".  
 2-4 (2) In proposed Subparagraph (iii), Paragraph (G),  
 2-5 Subdivision (2), on page 3, lines 45-46, strike "homicide [~~death~~  
 2-6 ~~penalty~~]" and substitute "death penalty".  
 2-7 (3) In proposed Paragraph (F), Subdivision (3), on page 3,  
 2-8 lines 68-69, and page 4, line 1, strike the language between  
 2-9 "including" and the period and substitute "at least one capital  
 2-10 felony case".

2-11 A BILL TO BE ENTITLED  
 2-12 AN ACT

2-13 relating to the qualifications and appointment of counsel for  
 2-14 indigent defendants in capital cases.

2-15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

2-16 SECTION 1. Section 2, Article 11.071, Code of Criminal  
 2-17 Procedure, is amended by amending Subsections (c) and (d) and  
 2-18 adding Subsection (d-1) to read as follows:

2-19 (c) At the earliest practical time, but in no event later  
 2-20 than 30 days, after the convicting court makes the findings  
 2-21 required under Subsections (a) and (b), the convicting court shall  
 2-22 appoint competent counsel that meets the requirements of Subsection  
 2-23 (d)(2), unless the applicant elects to proceed pro se or is  
 2-24 represented by retained counsel. The convicting court may also  
 2-25 appoint an attorney to assist an attorney appointed as lead counsel  
 2-26 in the case. The assisting attorney is required to meet the  
 2-27 requirements of Subsections (d)(2)(A)-(D) but is not required to  
 2-28 meet the requirements of Subsection (d)(2)(E) or (F). On  
 2-29 appointing counsel under this section, the convicting court shall  
 2-30 immediately notify the court of criminal appeals of the  
 2-31 appointment, including in the notice a copy of the judgment and the  
 2-32 name, address, and telephone number of the appointed counsel.

2-33 (d) (1) The Task Force on Indigent Defense [court of criminal  
 2-34 appeals] shall adopt standards [rules] for the appointment of  
 2-35 attorneys as counsel under this section [and the convicting court  
 2-36 may appoint an attorney as counsel under this section only if the  
 2-37 appointment is approved by the court of criminal appeals in any  
 2-38 manner provided by those rules].

2-39 (2) The standards must require that an attorney  
 2-40 appointed as lead counsel under this section:

2-41 (A) be a member of the State Bar of Texas;

2-42 (B) exhibit proficiency and commitment to  
 2-43 providing quality representation to defendants in death penalty  
 2-44 cases;

2-45 (C) have participated in continuing legal  
 2-46 education courses or other training relating to criminal defense in  
 2-47 death penalty cases;

2-48 (D) not have been found by a federal or state  
 2-49 court to have rendered ineffective assistance of counsel during the  
 2-50 trial or appeal of any criminal case;

2-51 (E) have at least five years of experience in  
 2-52 criminal trial or appellate litigation or habeas corpus practice;  
 2-53 and

2-54 (F) have participated in the preparation of  
 2-55 appellate briefs for the prosecution or defense, or in the drafting  
 2-56 of appellate opinions as a staff attorney for an appellate court, in  
 2-57 felony cases, including homicide cases and other cases involving an  
 2-58 offense punishable as a capital felony or a felony of the first or  
 2-59 second degree.

2-60 (3) The Task Force on Indigent Defense shall maintain  
 2-61 a list of attorneys qualified for appointment under this section  
 2-62 and make that list available to a convicting court for the purpose  
 2-63 of assisting that court with the appointment of qualified counsel  
 2-64 under this section.

2-65 (4) The convicting court may not appoint an attorney  
 2-66 as counsel under this section if the attorney represented the  
 2-67 applicant at trial or on direct appeal, unless:

3-1 (A) the applicant and the attorney request the  
 3-2 appointment on the record; and

3-3 (B) the court finds good cause to make the  
 3-4 appointment.

3-5 (d-1) The court of criminal appeals may annually review the  
 3-6 list of attorneys qualified for appointment under this section to  
 3-7 ensure that the attorneys included on the list are suitably  
 3-8 qualified and proficient to be eligible for appointment. The court  
 3-9 may determine whether an attorney is eligible for appointment on a  
 3-10 case-by-case basis. The court may remove an attorney from the list  
 3-11 if the attorney is determined to be ineligible for appointment.

3-12 SECTION 2. Subsection (d), Article 26.052, Code of Criminal  
 3-13 Procedure, is amended to read as follows:

3-14 (d)(1) The committee shall adopt standards for the  
 3-15 qualification of attorneys to be appointed to represent indigent  
 3-16 defendants in capital cases in which the death penalty is sought.

3-17 (2) The standards must require that a trial [an]  
 3-18 attorney appointed as lead counsel to a death penalty case:

3-19 (A) be a member of the State Bar of Texas;

3-20 (B) exhibit proficiency and commitment to  
 3-21 providing quality representation to defendants in death penalty  
 3-22 cases;

3-23 (C) have participated in continuing legal  
 3-24 education courses or other training related to criminal defense in  
 3-25 death penalty cases;

3-26 (D) have not been found by a federal or state  
 3-27 court to have rendered ineffective assistance of counsel during the  
 3-28 trial or appeal of any criminal case;

3-29 (E) have at least five years of experience in  
 3-30 criminal trial or appellate litigation;

3-31 (F) [~~(D)~~] have tried felony cases to a verdict as  
 3-32 lead prosecutor or lead defense counsel [a significant number of  
 3-33 felony cases], including homicide trials and other trials for  
 3-34 offenses punishable as second or first degree felonies or capital  
 3-35 felonies; and

3-36 (G) [~~(E)~~] have previous [~~trial~~] experience as a  
 3-37 member of the prosecution or defense trial counsel team in:

3-38 (i) jury selection in a capital case in  
 3-39 which the death penalty is sought;

3-40 (ii) the direct examination or  
 3-41 cross-examination [use] of [and challenges to] mental health or  
 3-42 forensic expert witnesses; and

3-43 (iii) the presentation or  
 3-44 cross-examination of [(ii) investigating and presenting]  
 3-45 mitigating evidence at the penalty phase of a homicide [death  
 3-46 penalty] trial[, and

3-47 [~~(F)~~ have participated in continuing legal  
 3-48 education courses or other training relating to criminal defense in  
 3-49 death penalty cases].

3-50 (3) The standards must require that an attorney  
 3-51 appointed as lead appellate counsel in the direct appeal of a death  
 3-52 penalty case:

3-53 (A) be a member of the State Bar of Texas;

3-54 (B) exhibit proficiency and commitment to  
 3-55 providing quality representation to defendants in death penalty  
 3-56 cases;

3-57 (C) have participated in continuing legal  
 3-58 education courses or other training related to criminal defense in  
 3-59 death penalty cases;

3-60 (D) have not been found by a federal or state  
 3-61 court to have rendered ineffective assistance of counsel during the  
 3-62 trial or appeal of any criminal case;

3-63 (E) have at least five years of experience in  
 3-64 criminal trial or appellate litigation; and

3-65 (F) have participated in the preparation of  
 3-66 appellate briefs for the prosecution or defense, or in the drafting  
 3-67 of appellate opinions as a staff attorney for an appellate court, in  
 3-68 felony cases, including homicide cases and other cases involving an  
 3-69 offense punishable as a capital felony or a felony of the first or

4-1 second degree.

4-2 (4) The committee shall prominently post the standards  
4-3 in each district clerk's office in the region with a list of  
4-4 attorneys qualified for appointment.

4-5 (5) [~~4~~] Not later than the second anniversary of the  
4-6 date an attorney is placed on the list of attorneys qualified for  
4-7 appointment in death penalty cases and each year following the  
4-8 second anniversary, the attorney must present proof to the  
4-9 committee that the attorney has successfully completed the minimum  
4-10 continuing legal education requirements of the State Bar of Texas,  
4-11 including a course or other form of training relating to the defense  
4-12 of death penalty cases. The committee shall remove the attorney's  
4-13 name from the list of qualified attorneys if the attorney fails to  
4-14 provide the committee with proof of completion of the continuing  
4-15 legal education requirements.

4-16 SECTION 3. Section 71.060(c), Government Code, is amended  
4-17 to read as follows:

4-18 (c) Any qualification standards adopted by the Task Force on  
4-19 Indigent Defense under Subsection (a) that relate to the  
4-20 appointment of counsel in a death penalty case must be consistent  
4-21 with the standards specified under Section 2, Article 11.071, or  
4-22 Article 26.052(d), Code of Criminal Procedure, as appropriate. An  
4-23 attorney who is identified by the task force as not satisfying  
4-24 performance or qualification standards adopted by the task force  
4-25 under Subsection (a) may not accept an appointment in a capital  
4-26 case.

4-27 SECTION 4. The Task Force on Indigent Defense shall adopt  
4-28 standards described by Section 2(d), Article 11.071, Code of  
4-29 Criminal Procedure, as amended by this Act, not later than January  
4-30 1, 2006. The Task Force on Indigent Defense shall prepare the list  
4-31 of qualified attorneys required by that section not later than  
4-32 March 1, 2006.

4-33 SECTION 5. A convicting court that appoints counsel under  
4-34 Section 2, Article 11.071, Code of Criminal Procedure, on or after  
4-35 May 1, 2006, shall appoint the counsel in conformity with this Act.  
4-36 Counsel appointed under Section 2, Article 11.071, Code of Criminal  
4-37 Procedure, before May 1, 2006, must be appointed in conformity with  
4-38 Section 2, Article 11.071, Code of Criminal Procedure, as that  
4-39 section existed immediately before that date, and the former law is  
4-40 continued in effect for that purpose.

4-41 SECTION 6. A local selection committee shall amend  
4-42 standards previously adopted by the committee to conform with the  
4-43 requirements of Subsection (d), Article 26.052, Code of Criminal  
4-44 Procedure, as amended by this Act, not later than the 75th day after  
4-45 the effective date of this Act. An attorney appointed to a death  
4-46 penalty case on or after the 75th day after the effective date of  
4-47 this Act must meet the standards adopted in conformity with the  
4-48 amended Subsection (d), Article 26.052. An attorney appointed to a  
4-49 death penalty case before the 75th day after the effective date of  
4-50 this Act is covered by the law in effect when the attorney was  
4-51 appointed, and the former law is continued in effect for that  
4-52 purpose.

4-53 SECTION 7. This Act takes effect immediately if it receives  
4-54 a vote of two-thirds of all the members elected to each house, as  
4-55 provided by Section 39, Article III, Texas Constitution. If this  
4-56 Act does not receive the vote necessary for immediate effect, this  
4-57 Act takes effect September 1, 2005.

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