

By: Dutton

H.B. No. 458

A BILL TO BE ENTITLED

AN ACT

1
2 relating to standards for judicial review of certain writs of
3 habeas corpus in capital cases.

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

5 SECTION 1. Section 5(a), Article 11.071, Code of Criminal
6 Procedure, is amended to read as follows:

7 (a) If a subsequent application for a writ of habeas corpus
8 is filed after filing an initial application, a court may not
9 consider the merits of or grant relief based on the subsequent
10 application unless the application contains sufficient specific
11 facts establishing that:

12 (1) the current claims and issues have not been and
13 could not have been presented previously in a timely initial
14 application or in a previously considered application filed under
15 this article or Article 11.07 because the factual or legal basis for
16 the claim was unavailable on the date the applicant filed the
17 previous application;

18 (2) by a preponderance of the evidence, but for a
19 violation of the United States Constitution no rational juror could
20 have found the applicant guilty beyond a reasonable doubt; or

21 (3) by a preponderance of the [~~clear and convincing~~]
22 evidence, but for a violation of the United States Constitution no
23 rational juror would have answered in the state's favor one or more
24 of the special issues that were submitted to the jury in the

1 applicant's trial under Article 37.071 or 37.0711.

2 SECTION 2. The change in law made by this Act to Section
3 5(a), Article 11.071, Code of Criminal Procedure, applies only to
4 an application for a writ of habeas corpus filed on or after the
5 effective date of this Act. An application for a writ of habeas
6 corpus filed before the effective date of this Act is governed by
7 the law in effect before the effective date of this Act, and the
8 former law is continued in effect for that purpose.

9 SECTION 3. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2005.