

By: Keel, Hodge

H.B. No. 1701

A BILL TO BE ENTITLED

AN ACT

relating to the defense of indigent persons accused of a criminal offense.

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

SECTION 1. Section 71.0351, Government Code, is amended to read as follows:

Sec. 71.0351. INDIGENT DEFENSE INFORMATION. (a) In each county, not ~~[Not]~~ later than November ~~[January]~~ 1 of each odd-numbered year and in the form and manner prescribed by the Task Force on Indigent Defense, the following information shall be prepared and provided to the Office of Court Administration of the Texas Judicial System:

(1) [~~, in each county,~~] a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code;

(2) any revisions to rules or forms previously submitted to the office of court administration under this section;  
or

(3) verification that rules and forms previously submitted to the office of court administration under this section still remain in effect~~[, shall be prepared and sent to the Office of Court Administration of the Texas Judicial System in the form and~~

1 ~~manner prescribed by the office].~~

2 (b) Except as provided by Subsection (c):

3 (1) [~~(b)~~], the local administrative district judge in  
4 each county, or the person designated by the judge, shall perform  
5 the action required by Subsection (a) with respect to [~~prepare and~~  
6 ~~send to the office of court administration a copy of~~] all rules and  
7 forms adopted by the judges of the district courts trying felony  
8 cases in the county; and

9 (2) [~~. Except as provided by Subsection (b)~~], the  
10 local administrative statutory county court judge in each county,  
11 or the person designated by the judge, shall perform the action  
12 required by Subsection (a) with respect to [~~prepare and send to the~~  
13 ~~office of court administration a copy of~~] all rules and forms  
14 adopted by the judges of the county courts and statutory county  
15 courts trying misdemeanor cases in the county.

16 (c) [~~(b)~~] If the judges of two or more levels of courts  
17 described by Subsection (b) adopt the same formal and informal  
18 rules and forms [~~as described by Subsection (a)~~], the local  
19 administrative judge serving the courts having jurisdiction over  
20 offenses with the highest classification of punishment, or the  
21 person designated by the judge, shall perform the action required  
22 by Subsection (a) [~~prepare and send to the Office of Court~~  
23 ~~Administration of the Texas Judicial System a copy of the rules and~~  
24 ~~forms~~].

25 (d) The chair of the juvenile board in each county, or the  
26 person designated by the chair, shall perform the action required  
27 by Subsection (a) with respect to all rules and forms adopted by the

1 juvenile board.

2       (e) [~~(c)~~] In each county, the county auditor, or the person  
3 designated by the commissioners court if the county does not have a  
4 county auditor, shall prepare and send to the Office of Court  
5 Administration of the Texas Judicial System in the form and manner  
6 prescribed by the Task Force on Indigent Defense [~~office~~] and on a  
7 monthly, quarterly, or annual basis, with respect to legal services  
8 provided in the county to indigent defendants during each fiscal  
9 year, information showing the total amount expended by the county  
10 to provide indigent defense services and an analysis of the amount  
11 expended by the county:

12               (1) in each district, county, statutory county, and  
13 appellate court;

14               (2) in cases for which a private attorney is appointed  
15 for an indigent defendant;

16               (3) in cases for which a public defender is appointed  
17 for an indigent defendant;

18               (4) in cases for which counsel is appointed for an  
19 indigent juvenile under Section 51.10(f), Family Code; and

20               (5) for investigation expenses, expert witness  
21 expenses, or other litigation expenses.

22       (f) [~~(d)~~] As a duty of office, each district and county  
23 clerk shall cooperate with the county auditor or the person  
24 designated by the commissioners court and the commissioners court  
25 in retrieving information required to be sent to the Office of Court  
26 Administration of the Texas Judicial System under this section and  
27 under a reporting plan developed by the Task Force on Indigent

1 Defense under Section 71.061(a).

2 ~~[(c) On receipt of information required under this section,~~  
3 ~~the Office of Court Administration of the Texas Judicial System~~  
4 ~~shall forward the information to the Task Force on Indigent~~  
5 ~~Defense.]~~

6 SECTION 2. Sections 71.053(a) and (b), Government Code, are  
7 amended to read as follows:

8 (a) The governor shall appoint with the advice and consent  
9 of the senate five members of the Task Force on Indigent Defense as  
10 follows:

11 (1) one member who is a ~~[an active]~~ district judge  
12 serving as a presiding judge of an administrative judicial region;

13 (2) one member who is a judge of a constitutional  
14 county court or who is a county commissioner;

15 (3) one member who is a practicing criminal defense  
16 attorney;

17 (4) one member who is a public defender or who is  
18 employed by a public defender; and

19 (5) one member who is a judge of a constitutional  
20 county court or who is a county commissioner of a county with a  
21 population of 250,000 or more.

22 (b) The members serve staggered terms of two years, with two  
23 members' terms expiring February 1 of each odd-numbered year and  
24 three ~~[two]~~ members' terms expiring February 1 of each  
25 even-numbered year.

26 SECTION 3. Section 71.059(b), Government Code, is amended  
27 to read as follows:

1 (b) The State Grants Team of the Governor's Office of  
2 Budget, ~~[and]~~ Planning, and Policy may assist the Task Force on  
3 Indigent Defense in identifying grants and other resources  
4 available for use by the task force in performing its duties under  
5 this subchapter.

6 SECTION 4. Section 71.061(b), Government Code, is amended  
7 to read as follows:

8 (b) The Task Force on Indigent Defense shall annually submit  
9 to the governor, lieutenant governor, speaker of the house of  
10 representatives, and council and shall publish in written and  
11 electronic form a report:

12 (1) containing the information submitted ~~[forwarded~~  
13 ~~to the task force from the Office of Court Administration of the~~  
14 ~~Texas Judicial System]~~ under Section 71.0351 ~~[71.0351(e)]~~; and

15 (2) regarding:

16 (A) the quality of legal representation provided  
17 by counsel appointed to represent indigent defendants;

18 (B) current indigent defense practices in the  
19 state as compared to state and national standards;

20 (C) efforts made by the task force to improve  
21 indigent defense practices in the state; and

22 (D) recommendations made by the task force for  
23 improving indigent defense practices in the state.

24 SECTION 5. Section 2(d), Article 11.071, Code of Criminal  
25 Procedure, is amended to read as follows:

26 (d) The court of criminal appeals shall adopt rules for the  
27 appointment of attorneys as counsel under this section and the

1 convicting court may appoint an attorney as counsel under this  
2 section only if the appointment is approved by the court of criminal  
3 appeals in any manner provided by those rules. The rules must  
4 require that an attorney appointed as lead counsel under this  
5 section not have been found by a federal or state court to have  
6 rendered ineffective assistance of counsel during the trial or  
7 appeal of any capital case.

8 SECTION 6. Article 26.044(a), Code of Criminal Procedure,  
9 is amended to read as follows:

10 (a) In this chapter:

11 (1) "Governmental entity" includes a county, a group  
12 of counties, a branch or agency of a county, an administrative  
13 judicial region created by Section 74.042, Government Code, and any  
14 entity created under the Interlocal Cooperation Act as permitted by  
15 Chapter 791, Government Code.

16 (2) "Public[~~, "public~~] defender" means a governmental  
17 entity or nonprofit corporation:

18 (A) [~~(1)~~] operating under a written agreement  
19 with a governmental entity, other than an individual judge or  
20 court;

21 (B) [~~(2)~~] using public funds; and

22 (C) [~~(3)~~] providing legal representation and  
23 services to indigent defendants accused of a crime or juvenile  
24 offense, as those terms are defined by Section 71.001, Government  
25 Code.

26 SECTION 7. Article 26.052(d), Code of Criminal Procedure,  
27 is amended to read as follows:

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

4 (2) The standards must require that a trial [~~an~~  
5 attorney appointed as lead counsel to a death penalty case or an  
6 attorney appointed as lead appellate counsel in the direct appeal  
7 of a death penalty case:

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

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

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

15 (D) have at least five years of experience in  
16 criminal litigation;

17 (E) [~~(D)~~] have tried to a verdict as lead defense  
18 counsel a significant number of felony cases, including homicide  
19 trials and other trials for offenses punishable as second or first  
20 degree felonies or capital felonies;

21 (F) [~~(E)~~] have trial experience in:

22 (i) the use of and challenges to mental  
23 health or forensic expert witnesses; and

24 (ii) investigating and presenting  
25 mitigating evidence at the penalty phase of a death penalty trial;  
26 and

27 (G) [~~(F)~~] have participated in continuing legal

1 education courses or other training relating to criminal defense in  
2 death penalty cases.

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

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

17 SECTION 8. The court of criminal appeals shall amend rules  
18 adopted under Section 2(d), Article 11.071, Code of Criminal  
19 Procedure, as necessary to comply with that section, as amended by  
20 this Act, not later than January 1, 2006.

21 SECTION 9. A local selection committee shall amend  
22 standards previously adopted by the committee to conform with the  
23 requirements of Article 26.052(d), Code of Criminal Procedure, as  
24 amended by this Act, not later than the 75th day after the effective  
25 date of this Act. An attorney appointed to a death penalty case on  
26 or after the 75th day after the effective date of this Act must meet  
27 the standards adopted in conformity with the amended Article



1 26.052(d). An attorney appointed to a death penalty case before the  
2 75th day after the effective date of this Act is covered by the law  
3 in effect when the attorney was appointed, and the former law is  
4 continued in effect for that purpose.

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