

1-1 By: Keel, Hodge (Senate Sponsor - Williams) H.B. No. 1701  
1-2 (In the Senate - Received from the House April 28, 2005;  
1-3 April 29, 2005, read first time and referred to Committee on  
1-4 Criminal Justice; May 20, 2005, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 4, Nays 0;  
1-6 May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1701 By: Williams

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the defense of indigent persons accused of a criminal  
1-11 offense.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 71.0351, Government Code, is amended to  
1-14 read as follows:

1-15 Sec. 71.0351. INDIGENT DEFENSE INFORMATION. (a) In each  
1-16 county, not ~~[Not]~~ later than November ~~[January]~~ 1 of each  
1-17 odd-numbered year and in the form and manner prescribed by the Task  
1-18 Force on Indigent Defense, the following information shall be  
1-19 prepared and provided to the Office of Court Administration of the  
1-20 Texas Judicial System:

1-21 ~~(1) [in each county,]~~ a copy of all formal and  
1-22 informal rules and forms that describe the procedures used in the  
1-23 county to provide indigent defendants with counsel in accordance  
1-24 with the Code of Criminal Procedure, including the schedule of fees  
1-25 required under Article 26.05 of that code;

1-26 (2) any revisions to rules or forms previously  
1-27 submitted to the office of court administration under this section;  
1-28 or

1-29 (3) verification that rules and forms previously  
1-30 submitted to the office of court administration under this section  
1-31 still remain in effect~~[, shall be prepared and sent to the Office of~~  
1-32 ~~Court Administration of the Texas Judicial System in the form and~~  
1-33 ~~manner prescribed by the office].~~

1-34 (b) Except as provided by Subsection (c):

1-35 (1) [(b),] the local administrative district judge in  
1-36 each county, or the person designated by the judge, shall perform  
1-37 the action required by Subsection (a) with respect to ~~[prepare and~~  
1-38 ~~send to the office of court administration a copy of]~~ all rules and  
1-39 forms adopted by the judges of the district courts trying felony  
1-40 cases in the county; and

1-41 (2) [Except as provided by Subsection (b),] the  
1-42 local administrative statutory county court judge in each county,  
1-43 or the person designated by the judge, shall perform the action  
1-44 required by Subsection (a) with respect to ~~[prepare and send to the~~  
1-45 ~~office of court administration a copy of]~~ all rules and forms  
1-46 adopted by the judges of the county courts and statutory county  
1-47 courts trying misdemeanor cases in the county.

1-48 (c) [(b)] If the judges of two or more levels of courts  
1-49 described by Subsection (b) adopt the same formal and informal  
1-50 rules and forms ~~[as described by Subsection (a)],~~ the local  
1-51 administrative judge serving the courts having jurisdiction over  
1-52 offenses with the highest classification of punishment, or the  
1-53 person designated by the judge, shall perform the action required  
1-54 by Subsection (a) ~~[prepare and send to the Office of Court~~  
1-55 ~~Administration of the Texas Judicial System a copy of the rules and~~  
1-56 ~~forms].~~

1-57 (d) The chair of the juvenile board in each county, or the  
1-58 person designated by the chair, shall perform the action required  
1-59 by Subsection (a) with respect to all rules and forms adopted by the  
1-60 juvenile board.

1-61 (e) [(c)] In each county, the county auditor, or the person  
1-62 designated by the commissioners court if the county does not have a  
1-63 county auditor, shall prepare and send to the Office of Court

2-1 Administration of the Texas Judicial System in the form and manner  
2-2 prescribed by the Task Force on Indigent Defense [~~office~~] and on a  
2-3 monthly, quarterly, or annual basis, with respect to legal services  
2-4 provided in the county to indigent defendants during each fiscal  
2-5 year, information showing the total amount expended by the county  
2-6 to provide indigent defense services and an analysis of the amount  
2-7 expended by the county:

2-8 (1) in each district, county, statutory county, and  
2-9 appellate court;

2-10 (2) in cases for which a private attorney is appointed  
2-11 for an indigent defendant;

2-12 (3) in cases for which a public defender is appointed  
2-13 for an indigent defendant;

2-14 (4) in cases for which counsel is appointed for an  
2-15 indigent juvenile under Section 51.10(f), Family Code; and

2-16 (5) for investigation expenses, expert witness  
2-17 expenses, or other litigation expenses.

2-18 (f) [~~(d)~~] As a duty of office, each district and county  
2-19 clerk shall cooperate with the county auditor or the person  
2-20 designated by the commissioners court and the commissioners court  
2-21 in retrieving information required to be sent to the Office of Court  
2-22 Administration of the Texas Judicial System under this section and  
2-23 under a reporting plan developed by the Task Force on Indigent  
2-24 Defense under Section 71.061(a).

2-25 [~~(e) On receipt of information required under this section,~~  
2-26 ~~the Office of Court Administration of the Texas Judicial System~~  
2-27 ~~shall forward the information to the Task Force on Indigent~~  
2-28 ~~Defense.~~]

2-29 SECTION 2. Sections 71.053(a) and (b), Government Code, are  
2-30 amended to read as follows:

2-31 (a) The governor shall appoint with the advice and consent  
2-32 of the senate five members of the Task Force on Indigent Defense as  
2-33 follows:

2-34 (1) one member who is a a [~~an active~~] district judge  
2-35 serving as a presiding judge of an administrative judicial region;

2-36 (2) one member who is a judge of a constitutional  
2-37 county court or who is a county commissioner;

2-38 (3) one member who is a practicing criminal defense  
2-39 attorney;

2-40 (4) one member who is a public defender or who is  
2-41 employed by a public defender; and

2-42 (5) one member who is a judge of a constitutional  
2-43 county court or who is a county commissioner of a county with a  
2-44 population of 250,000 or more.

2-45 (b) The members serve staggered terms of two years, with two  
2-46 members' terms expiring February 1 of each odd-numbered year and  
2-47 three [~~two~~] members' terms expiring February 1 of each  
2-48 even-numbered year.

2-49 SECTION 3. Section 71.059(b), Government Code, is amended  
2-50 to read as follows:

2-51 (b) The State Grants Team of the Governor's Office of  
2-52 Budget, [~~and~~] Planning, and Policy may assist the Task Force on  
2-53 Indigent Defense in identifying grants and other resources  
2-54 available for use by the task force in performing its duties under  
2-55 this subchapter.

2-56 SECTION 4. Section 71.061(b), Government Code, is amended  
2-57 to read as follows:

2-58 (b) The Task Force on Indigent Defense shall annually submit  
2-59 to the governor, lieutenant governor, speaker of the house of  
2-60 representatives, and council and shall publish in written and  
2-61 electronic form a report:

2-62 (1) containing the information submitted [~~forwarded~~  
2-63 ~~to the task force from the Office of Court Administration of the~~  
2-64 ~~Texas Judicial System] under Section 71.0351 [~~71.0351(e)~~]; and~~

2-65 (2) regarding:

2-66 (A) the quality of legal representation provided  
2-67 by counsel appointed to represent indigent defendants;

2-68 (B) current indigent defense practices in the  
2-69 state as compared to state and national standards;

3-1 (C) efforts made by the task force to improve  
3-2 indigent defense practices in the state; and

3-3 (D) recommendations made by the task force for  
3-4 improving indigent defense practices in the state.

3-5 SECTION 5. Section 2(d), Article 11.071, Code of Criminal  
3-6 Procedure, is amended to read as follows:

3-7 (d) The court of criminal appeals shall adopt rules for the  
3-8 appointment of attorneys as counsel under this section and the  
3-9 convicting court may appoint an attorney as counsel under this  
3-10 section only if the appointment is approved by the court of criminal  
3-11 appeals in any manner provided by those rules. The rules must  
3-12 require that an attorney appointed as lead counsel under this  
3-13 section not have been found by a federal or state court to have  
3-14 rendered ineffective assistance of counsel during the trial or  
3-15 appeal of any capital case.

3-16 SECTION 6. Article 26.044(a), Code of Criminal Procedure,  
3-17 is amended to read as follows:

3-18 (a) In this chapter:

3-19 (1) "Governmental entity" includes a county, a group  
3-20 of counties, a branch or agency of a county, an administrative  
3-21 judicial region created by Section 74.042, Government Code, and any  
3-22 entity created under the Interlocal Cooperation Act as permitted by  
3-23 Chapter 791, Government Code.

3-24 (2) "Public[~~, "public~~] defender" means a governmental  
3-25 entity or nonprofit corporation:

3-26 (A) [~~(1)~~] operating under a written agreement  
3-27 with a governmental entity, other than an individual judge or  
3-28 court;

3-29 (B) [~~(2)~~] using public funds; and

3-30 (C) [~~(3)~~] providing legal representation and  
3-31 services to indigent defendants accused of a crime or juvenile  
3-32 offense, as those terms are defined by Section 71.001, Government  
3-33 Code.

3-34 SECTION 7. Article 26.052(d), Code of Criminal Procedure,  
3-35 is amended to read as follows:

3-36 (d)(1) The committee shall adopt standards for the  
3-37 qualification of attorneys to be appointed to represent indigent  
3-38 defendants in capital cases in which the death penalty is sought.

3-39 (2) The standards must require that a trial [an]  
3-40 attorney appointed as lead counsel to a capital [death penalty]  
3-41 case or an attorney appointed as lead appellate counsel in the  
3-42 direct appeal of a capital case:

3-43 (A) be a member of the State Bar of Texas;

3-44 (B) exhibit proficiency and commitment to  
3-45 providing quality representation to defendants in death penalty  
3-46 cases;

3-47 (C) have not been found by a federal or state  
3-48 court to have rendered ineffective assistance of counsel during the  
3-49 trial or appeal of any capital case;

3-50 (D) have at least five years of experience in  
3-51 criminal litigation;

3-52 (E) [~~(D)~~] have tried to a verdict as lead defense  
3-53 counsel a significant number of felony cases, including homicide  
3-54 trials and other trials for offenses punishable as second or first  
3-55 degree felonies or capital felonies;

3-56 (F) [~~(E)~~] have trial experience in:

3-57 (i) the use of and challenges to mental  
3-58 health or forensic expert witnesses; and

3-59 (ii) investigating and presenting  
3-60 mitigating evidence at the penalty phase of a death penalty trial;  
3-61 and

3-62 (G) [~~(F)~~] have participated in continuing legal  
3-63 education courses or other training relating to criminal defense in  
3-64 death penalty cases.

3-65 (3) The committee shall prominently post the standards  
3-66 in each district clerk's office in the region with a list of  
3-67 attorneys qualified for appointment.

3-68 (4) Not later than the second anniversary of the date  
3-69 an attorney is placed on the list of attorneys qualified for

4-1 appointment in death penalty cases and each year following the  
4-2 second anniversary, the attorney must present proof to the  
4-3 committee that the attorney has successfully completed the minimum  
4-4 continuing legal education requirements of the State Bar of Texas,  
4-5 including a course or other form of training relating to the defense  
4-6 of death penalty cases. The committee shall remove the attorney's  
4-7 name from the list of qualified attorneys if the attorney fails to  
4-8 provide the committee with proof of completion of the continuing  
4-9 legal education requirements.

4-10 SECTION 8. The court of criminal appeals shall amend rules  
4-11 adopted under Section 2(d), Article 11.071, Code of Criminal  
4-12 Procedure, as necessary to comply with that section, as amended by  
4-13 this Act, not later than January 1, 2006.

4-14 SECTION 9. A local selection committee shall amend  
4-15 standards previously adopted by the committee to conform with the  
4-16 requirements of Article 26.052(d), Code of Criminal Procedure, as  
4-17 amended by this Act, not later than the 75th day after the effective  
4-18 date of this Act. An attorney appointed to a death penalty case on  
4-19 or after the 75th day after the effective date of this Act must meet  
4-20 the standards adopted in conformity with the amended Article  
4-21 26.052(d). An attorney appointed to a death penalty case before the  
4-22 75th day after the effective date of this Act is covered by the law  
4-23 in effect when the attorney was appointed, and the former law is  
4-24 continued in effect for that purpose.

4-25 SECTION 10. This Act takes effect immediately if it  
4-26 receives a vote of two-thirds of all the members elected to each  
4-27 house, as provided by Section 39, Article III, Texas Constitution.  
4-28 If this Act does not receive the vote necessary for immediate  
4-29 effect, this Act takes effect September 1, 2005.

4-30 \* \* \* \* \*