

By: Pena

H.B. No. 1266

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the standards for attorneys representing indigent  
3 defendants in capital cases.

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

5 SECTION 1. Article 26.052(d), Code of Criminal Procedure,  
6 as amended by Chapters 787 and 965, Acts of the 79th Legislature,  
7 Regular Session, 2005, is reenacted and amended to read as follows:

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

11 (2) The standards must require that a trial attorney  
12 appointed as lead counsel to a capital case [~~or an attorney~~  
13 ~~appointed as lead appellate counsel in the direct appeal of a~~  
14 ~~capital case~~]:

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

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

19 (C) have not been found by a federal or state  
20 court to have rendered ineffective assistance of counsel during the  
21 trial or appeal of any capital case, unless the conduct underlying  
22 the finding fails to accurately reflect the attorney's current  
23 ability to provide effective representation;

24 (D) have at least five years of criminal law

1 experience [~~in criminal litigation~~];

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

6 (F) have trial experience in:

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

9 (ii) investigating and presenting  
10 mitigating evidence at the penalty phase of a death penalty trial;  
11 and

12 (G) have participated in continuing legal  
13 education courses or other training relating to criminal defense in  
14 death penalty cases.

15 (3) The standards must require that an attorney  
16 appointed as lead appellate counsel in the direct appeal of a  
17 capital case:

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

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

22 (C) have not been found by a federal or state  
23 court to have rendered ineffective assistance of counsel during the  
24 trial or appeal of any capital case, unless the conduct underlying  
25 the finding fails to accurately reflect the attorney's current  
26 ability to provide effective representation;

27 (D) have at least five years of criminal law

1 experience;

2 (E) have authored a significant number of  
3 appellate briefs, including appellate briefs for homicide cases and  
4 other cases involving an offense punishable as a capital felony or a  
5 felony of the first degree or an offense described by Section  
6 3g(a)(1), Article 42.12;

7 (F) have trial or appellate experience in:

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

10 (ii) the use of mitigating evidence at the  
11 penalty phase of a death penalty trial; and

12 (G) have participated in continuing legal  
13 education courses or other training relating to criminal defense in  
14 appealing death penalty cases.

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

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

1 attorney fails to provide the committee with proof of completion of  
2 the continuing legal education requirements.

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

14 SECTION 3. This Act takes effect September 1, 2007.