

BILL ANALYSIS

H.B. 2058
By: Gallego
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law does not differentiate between the standards adopted by a local selection committee of an administrative judicial region for the qualifications of an attorney appointed as lead appellate counsel and those of a trial attorney appointed as lead counsel to a capital case. Different skills are needed for attorneys handling appeals of death penalty cases than for attorneys who represent defendants at trial in such cases. Setting different standards for appellate counsel in death penalty cases will allow greater specialization in representation in death penalty cases and enable highly skilled appellate attorneys to represent defendants on appeal without having to meet the current trial attorney requirements. This will also expand the number of qualified attorneys available for appointment to handle appeals in death penalty cases.

H.B. 2058 requires the standards adopted by a local selection committee for the qualifications for an attorney appointed as lead appellate counsel to require the appellate attorney, in addition to current requirements, to have authored a significant number of appellate briefs, to have trial or appellate experience in the use of mitigating evidence at the penalty phase of a death penalty trial, and to have participated in continuing legal education courses or other training relating to criminal defense in appealing death penalty cases.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2058 reenacts and amends Article 26.052 (d), Code of Criminal Procedure, as amended by Chapters 787 (S.B. 60) and 965 (H.B. 1701), Acts of the 79th Legislature, Regular Session, 2005, to require the standards adopted by a local selection committee of an administrative judicial region for the qualifications of an attorney appointed as lead appellate counsel in the direct appeal of a capital case to require the appellate attorney, in addition to other requirements established under state law, to have authored a significant number of appellate briefs, including appellate briefs for homicide cases and other cases involving an offense punishable as a capital felony or a felony of the first degree or a certain serious offense in which judge-ordered community supervision is prohibited. The bill removes the requirement that an appellate attorney has tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies. The bill requires the appellate attorney to have trial or appellate experience in the use of mitigating evidence at the penalty phase of a death penalty trial, rather than trial experience in investigating and presenting mitigating evidence at that phase, and to have participated in continuing legal education courses or other training relating to criminal defense in appealing death penalty cases rather than relating to criminal defense in death penalty cases. The bill requires the attorney to present proof by a specific date to the local selection committee of the administrative judicial region of completion of training relating to appealing death penalty cases.

H.B. 2058 requires a local selection committee to amend standards as necessary to conform with the requirements of the bill's provisions not later than the 75th day after the effective date of the bill and requires an attorney appointed to a death penalty case on or after the 75th day after the effective date to meet the revised standards of the bill's provisions.

EFFECTIVE DATE

September 1, 2009.