

1-1 By: Gallego, et al. (Senate Sponsor - Seliger) H.B. No. 2058  
1-2 (In the Senate - Received from the House April 8, 2009;  
1-3 April 15, 2009, read first time and referred to Committee on  
1-4 Jurisprudence; April 30, 2009, reported favorably by the following  
1-5 vote: Yeas 4, Nays 0; April 30, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the standards for attorneys representing indigent  
1-9 defendants in capital cases.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Article 26.052(d), Code of Criminal Procedure,  
1-12 as amended by Chapters 787 (S.B. 60) and 965 (H.B. 1701), Acts of  
1-13 the 79th Legislature, Regular Session, 2005, is reenacted and  
1-14 amended to read as follows:

1-15 (d)(1) The committee shall adopt standards for the  
1-16 qualification of attorneys to be appointed to represent indigent  
1-17 defendants in capital cases in which the death penalty is sought.

1-18 (2) The standards must require that a trial attorney  
1-19 appointed as lead counsel to a capital case [~~or an attorney~~  
1-20 ~~appointed as lead appellate counsel in the direct appeal of a~~  
1-21 ~~capital case~~]:

1-22 (A) be a member of the State Bar of Texas;

1-23 (B) exhibit proficiency and commitment to  
1-24 providing quality representation to defendants in death penalty  
1-25 cases;

1-26 (C) have not been found by a federal or state  
1-27 court to have rendered ineffective assistance of counsel during the  
1-28 trial or appeal of any capital case;

1-29 (D) have at least five years of criminal law  
1-30 experience [~~in criminal litigation~~];

1-31 (E) have tried to a verdict as lead defense  
1-32 counsel a significant number of felony cases, including homicide  
1-33 trials and other trials for offenses punishable as second or first  
1-34 degree felonies or capital felonies;

1-35 (F) have trial experience in:

1-36 (i) the use of and challenges to mental  
1-37 health or forensic expert witnesses; and

1-38 (ii) investigating and presenting  
1-39 mitigating evidence at the penalty phase of a death penalty trial;  
1-40 and

1-41 (G) have participated in continuing legal  
1-42 education courses or other training relating to criminal defense in  
1-43 death penalty cases.

1-44 (3) The standards must require that an attorney  
1-45 appointed as lead appellate counsel in the direct appeal of a  
1-46 capital case:

1-47 (A) be a member of the State Bar of Texas;

1-48 (B) exhibit proficiency and commitment to  
1-49 providing quality representation to defendants in death penalty  
1-50 cases;

1-51 (C) have not been found by a federal or state  
1-52 court to have rendered ineffective assistance of counsel during the  
1-53 trial or appeal of any capital case;

1-54 (D) have at least five years of criminal law  
1-55 experience;

1-56 (E) have authored a significant number of  
1-57 appellate briefs, including appellate briefs for homicide cases and  
1-58 other cases involving an offense punishable as a capital felony or a  
1-59 felony of the first degree or an offense described by Section  
1-60 3g(a)(1), Article 42.12;

1-61 (F) have trial or appellate experience in:

1-62 (i) the use of and challenges to mental  
1-63 health or forensic expert witnesses; and

1-64 (ii) the use of mitigating evidence at the

2-1 penalty phase of a death penalty trial; and  
2-2 (G) have participated in continuing legal  
2-3 education courses or other training relating to criminal defense in  
2-4 appealing death penalty cases.

2-5 (4) The committee shall prominently post the standards  
2-6 in each district clerk's office in the region with a list of  
2-7 attorneys qualified for appointment.

2-8 (5) [~~4~~] Not later than the second anniversary of the  
2-9 date an attorney is placed on the list of attorneys qualified for  
2-10 appointment in death penalty cases and each year following the  
2-11 second anniversary, the attorney must present proof to the  
2-12 committee that the attorney has successfully completed the minimum  
2-13 continuing legal education requirements of the State Bar of Texas,  
2-14 including a course or other form of training relating to criminal  
2-15 [the] defense in [of] death penalty cases or in appealing death  
2-16 penalty cases, as applicable. The committee shall remove the  
2-17 attorney's name from the list of qualified attorneys if the  
2-18 attorney fails to provide the committee with proof of completion of  
2-19 the continuing legal education requirements.

2-20 SECTION 2. A local selection committee shall amend its  
2-21 standards as necessary to conform with the requirements of Article  
2-22 26.052(d), Code of Criminal Procedure, as amended by this Act, not  
2-23 later than the 75th day after the effective date of this Act. An  
2-24 attorney appointed to a death penalty case on or after the 75th day  
2-25 after the effective date of this Act must meet the standards adopted  
2-26 in conformity with amended Article 26.052(d), Code of Criminal  
2-27 Procedure. An attorney appointed to a death penalty case before the  
2-28 75th day after the effective date of this Act is covered by the law  
2-29 in effect when the attorney was appointed, and the former law is  
2-30 continued in effect for that purpose.

2-31 SECTION 3. This Act takes effect September 1, 2009.

2-32

\* \* \* \* \*