

By: Gallego

H.B. No. 4382

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to standards of competency for attorneys appointed as  
3 counsel to indigent applicants in certain habeas corpus  
4 proceedings.

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

6 SECTION 1. Section 2(d), Article 11.071, Code of Criminal  
7 Procedure, is amended to read as follows:

8 (d)(1) The court of criminal appeals shall adopt rules for  
9 the appointment of attorneys as counsel under this section.

10 (2) The rules must require that an attorney appointed  
11 as counsel under this section:

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

13 (B) exhibit proficiency and commitment to  
14 providing quality representation to applicants seeking relief in  
15 death penalty cases;

16 (C) have at least five years of experience in  
17 criminal litigation, appellate practice, or habeas corpus  
18 practice;

19 (D) have appeared in federal or state court in a  
20 significant number of habeas corpus proceedings for offenses  
21 punished as second-degree or first-degree felonies or capital  
22 felonies; and

23 (E) have in the 12 months preceding the  
24 appointment participated in continuing legal education courses or

1 other training relating to habeas corpus proceedings, provided or  
2 approved by a statewide association of criminal defense attorneys  
3 who regularly represent indigent defendants and whose purposes  
4 include providing continuing legal education, technical  
5 assistance, and support programs.

6 (3) The [~~and the~~] convicting court may appoint an  
7 attorney as counsel under this section only if the appointment is  
8 approved by the court of criminal appeals in any manner provided by  
9 those rules.

10 SECTION 2. Section 4A, Article 11.071, Code of Criminal  
11 Procedure, is amended to read as follows:

12 Sec. 4A. UNTIMELY APPLICATION; APPLICATION NOT FILED;  
13 CLAIMS NOT COGNIZABLE. (a) On command of the court of criminal  
14 appeals, a counsel who files:

15 (1) an untimely application or fails to file an  
16 application before the filing date applicable under Section 4(a) or  
17 (b) shall show cause as to why the application was untimely filed or  
18 not filed before the filing date; and

19 (2) an application containing a claim that is not  
20 cognizable shall show cause as to why the application contains the  
21 claim.

22 (b) At the conclusion of the counsel's presentation to the  
23 court of criminal appeals, the court may:

24 (1) find that good cause has not been shown and dismiss  
25 the application if the court finds that the untimely filing,  
26 failure to file, or inclusion in the application of a claim that is  
27 not cognizable is specifically due to an act or omission of the

1 applicant and not due to an act or omission of the counsel for the  
2 applicant;

3 (2) permit the counsel to continue representation of  
4 the applicant and establish a new filing date for the application,  
5 which may be not more than 180 days from the date the court permits  
6 the counsel to continue representation; or

7 (3) appoint new counsel to represent the applicant and  
8 establish a new filing date for the application, which may be not  
9 more than 270 days after the date the court appoints new counsel.

10 (c) The court of criminal appeals may hold in contempt  
11 counsel who files an untimely application or fails to file an  
12 application before the date required by Section 4(a) or (b) or who  
13 files an application that contains a claim that is not cognizable.  
14 The court of criminal appeals may punish as a separate instance of  
15 contempt each day after the first day on which the counsel fails to  
16 timely file the application. In addition to or in lieu of holding  
17 counsel in contempt, the court of criminal appeals may enter an  
18 order denying counsel compensation under Section 2A. If on more  
19 than one occasion the court of criminal appeals finds that the  
20 untimely filing, failure to file, or inclusion in the application  
21 of a claim that is not cognizable is specifically due to an act or  
22 omission of an attorney acting as counsel for the applicant and not  
23 due to an act or omission of the applicant, the court shall prohibit  
24 a trial court from subsequently appointing that attorney as counsel  
25 under this section.

26 (d) If the court of criminal appeals establishes a new  
27 filing date for the application, the court of criminal appeals

1 shall notify the convicting court of that fact and the convicting  
2 court shall proceed under this article.

3 (e) Sections 2A and 3 apply to compensation and  
4 reimbursement of counsel appointed under Subsection (b)(3) in the  
5 same manner as if counsel had been appointed by the convicting  
6 court.

7 (f) Notwithstanding any other provision of this article,  
8 the court of criminal appeals shall appoint counsel and establish a  
9 new filing date for application, which may be no later than the  
10 270th day after the date on which counsel is appointed, for each  
11 applicant who before September 1, 1999, filed an untimely  
12 application or failed to file an application before the date  
13 required by Section 4(a) or (b). Section 2A applies to the  
14 compensation and payment of expenses of counsel appointed by the  
15 court of criminal appeals under this subsection.

16 (g) It is the intent of the legislature that an applicant  
17 not be penalized because counsel to the applicant has filed a  
18 defective application under this article.

19 SECTION 3. The court of criminal appeals shall amend  
20 standards previously adopted by the court to conform with the  
21 requirements of Section 2(d), Article 11.071, Code of Criminal  
22 Procedure, as amended by this Act, not later than the 60th day after  
23 the effective date of this Act.

24 SECTION 4. An attorney appointed under Section 2, Article  
25 11.071, Code of Criminal Procedure, as amended by this Act, on or  
26 after January 1, 2010, must meet the standards adopted in  
27 conformity with amended Section 2(d), Article 11.071, except that

1 the requirement that the attorney complete a course or training on  
2 habeas corpus proceedings during the previous 12 months applies  
3 only to an attorney appointed under Section 2 on or after January 1,  
4 2011.

5 SECTION 5. The change in law made by this Act to Section 4A,  
6 Article 11.071, Code of Criminal Procedure, applies only to an  
7 application for a writ of habeas corpus filed on or after the  
8 effective date of this Act. An application for a writ of habeas  
9 corpus filed before the effective date of this Act is covered by the  
10 law in effect when the application was filed, and the former law is  
11 continued in effect for this purpose.

12 SECTION 6. This Act takes effect immediately if it receives  
13 a vote of two-thirds of all the members elected to each house, as  
14 provided by Section 39, Article III, Texas Constitution. If this  
15 Act does not receive the vote necessary for immediate effect, this  
16 Act takes effect September 1, 2009.