

By: Gervin-Hawkins

H.B. No. 3411

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the standards for attorneys representing indigent  
3 defendants in certain capital cases.

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

5 SECTION 1. Articles 26.052(d)(2) and (3), Code of Criminal  
6 Procedure, are amended to read as follows:

7 (2) The standards must require that a trial attorney  
8 appointed as lead counsel to a capital case:

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

10 (B) exhibit proficiency and commitment to  
11 providing quality representation to defendants in death penalty  
12 cases;

13 (C) have not been found by a federal or state  
14 court to have rendered ineffective assistance of counsel during the  
15 trial or appeal of any capital case, unless the local selection  
16 committee determines under Subsection (n) that the conduct  
17 underlying the finding no longer accurately reflects the attorney's  
18 ability to provide effective representation;

19 (D) have at least five years of criminal law  
20 experience;

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

1 (F) have trial experience in[+]   
 2 [~~(i)~~] the use of and challenges to mental   
 3 health or forensic expert witnesses[+] and have:

4 (i) trial experience in [~~(ii)~~]   
 5 investigating and presenting mitigating evidence at the penalty   
 6 phase of a death penalty trial, regardless of whether:

7 (a) the case resulted in a judgment or   
 8 dismissal; or

9 (b) the state subsequently waived the   
 10 death penalty in the case; or

11 (ii) an equivalent amount of trial   
 12 experience, as determined by the local selection committee; and

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

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

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

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

23 (C) have not been found by a federal or state   
 24 court to have rendered ineffective assistance of counsel during the   
 25 trial or appeal of any capital case, unless the local selection   
 26 committee determines under Subsection (n) that the conduct   
 27 underlying the finding no longer accurately reflects the attorney's

1 ability to provide effective representation;

2 (D) have at least five years of criminal law  
3 experience;

4 (E) have authored a significant number of  
5 appellate briefs, including appellate briefs for homicide cases and  
6 other cases involving an offense punishable as a capital felony or a  
7 felony of the first degree or an offense described by Article  
8 [42A.054\(a\)](#);

9 (F) have trial or appellate experience in[+] ~~in~~  
10 [~~(i)~~] the use of and challenges to mental  
11 health or forensic expert witnesses[+] and have:

12 (i) trial or appellate experience in [~~(i)~~]  
13 the use of mitigating evidence at the penalty phase of a death  
14 penalty trial, regardless of whether:

15 (a) the case resulted in a judgment or  
16 dismissal; or

17 (b) the state subsequently waived the  
18 death penalty in the case; or

19 (ii) an equivalent amount of trial or  
20 appellate experience, as determined by the local selection  
21 committee; and

22 (G) have participated in continuing legal  
23 education courses or other training relating to criminal defense in  
24 appealing death penalty cases.

25 SECTION 2. The change in law made by this Act applies only  
26 to a capital felony case that is filed on or after the effective  
27 date of this Act. A capital felony case that is filed before the

1 effective date of this Act is governed by the law in effect on the  
2 date the case was filed, and the former law is continued in effect  
3 for that purpose.

4 SECTION 3. This Act takes effect September 1, 2017.