

By: Gervin-Hawkins

H.B. No. 29

A BILL TO BE ENTITLED

1 AN ACT
2 relating to policies and standards for providing legal
3 representation to indigent defendants in certain capital felony
4 cases.

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

6 SECTION 1. Article 26.052, Code of Criminal Procedure, is
7 amended by adding Subsections (c-1), (c-2), (c-3), (c-4), (c-5),
8 and (c-6) and amending Subsections (d) and (m) to read as follows:

9 (c-1) The local selection committee shall evaluate and
10 determine the list of attorneys qualified under this article to be
11 appointed to represent indigent defendants in capital cases in
12 which the death penalty is sought and post a list of those attorneys
13 on the Internet website of each administrative judicial region.

14 (c-2) A statewide capital defense training and standards
15 committee is created. Each member of the committee must be a
16 licensed attorney and must have significant experience in capital
17 defense or indigent criminal defense policy or practice. A member
18 of the committee may not be a prosecutor, a law enforcement officer,
19 or an employee of the office of capital and forensic writs. The
20 committee must be composed of nine members, including:

21 (1) two judges jointly selected by the presiding
22 judges of the administrative judicial regions;

23 (2) a criminal defense attorney appointed by the
24 president of the Texas Criminal Defense Lawyers Association;

1 (3) the chief public defender of the Regional Public
2 Defender for Capital Cases office, or the chief public defender's
3 designee;

4 (4) the chief capital defender of a county public
5 defender office appointed by the executive director of the Texas
6 Indigent Defense Commission;

7 (5) a member of the State Bar of Texas committee on
8 legal services to the poor in criminal matters selected by the chair
9 of the committee; and

10 (6) three attorneys appointed by the executive
11 director of the Texas Indigent Defense Commission.

12 (c-3) Members of the statewide capital defense training and
13 standards committee serve four-year terms and may be reappointed.
14 If a vacancy occurs, the appropriate appointing authority shall
15 appoint a successor in the same manner as the original appointment
16 to serve for the remainder of the unexpired term.

17 (c-4) The members of the statewide capital defense training
18 and standards committee shall select a chair from among the
19 committee's members.

20 (c-5) A member of the statewide capital defense training and
21 standards committee may not receive compensation for services on
22 the committee but is entitled to be reimbursed for actual and
23 necessary expenses incurred in discharging committee duties. The
24 expenses are paid from funds appropriated to the Texas Indigent
25 Defense Commission.

26 (c-6) The Texas Indigent Defense Commission shall provide
27 administrative support as necessary to carry out the purposes of

1 this article.

2 (d)(1) The statewide capital defense training and standards
3 committee shall adopt policies and standards for providing legal
4 representation [~~the qualification of attorneys to be appointed~~] to
5 [~~represent~~] indigent defendants in capital cases in which the death
6 penalty is sought. The policies and standards must include, with
7 respect to the qualification of attorneys to be appointed in
8 capital cases, the following:

9 (A) training requirements and curricula;

10 (B) qualification standards;

11 (C) continuing legal education requirements; and

12 (D) other policies and standards as necessary to
13 ensure quality legal representation in capital cases.

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

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

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

20 (C) have not been found by the local selection
21 committee to have provided deficient legal representation [~~a~~
22 ~~federal or state court to have rendered ineffective assistance of~~
23 ~~counsel~~] during the trial or appeal of any capital case if [~~7~~
24 ~~unless~~] the local selection committee has determined [~~determines~~
25 ~~under Subsection (n)~~] that the conduct underlying the deficient
26 representation [~~finding no longer~~] accurately reflects the
27 attorney's inability [~~ability~~] to provide effective representation

1 in the future;

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

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

8 (F) have trial experience in[+]

9 [~~(i)~~] the use of and challenges to mental
10 health or forensic expert witnesses[+] and have:

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

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

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

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

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

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

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

27 (B) exhibit proficiency and commitment to

1 providing quality representation to defendants in death penalty
2 cases;

3 (C) have not been found by the local selection
4 committee to have provided deficient legal representation [~~a~~
5 ~~federal or state court to have rendered ineffective assistance of~~
6 ~~counsel~~] during the trial or appeal of any capital case if [~~7~~
7 ~~unless~~] the local selection committee has determined [~~determines~~
8 ~~under Subsection (n)~~] that the conduct underlying the deficient
9 representation [~~finding no longer~~] accurately reflects the
10 attorney's inability [~~ability~~] to provide effective representation
11 in the future;

12 (D) have at least five years of criminal law
13 experience;

14 (E) have authored a significant number of
15 appellate briefs, including appellate briefs for homicide cases and
16 other cases involving an offense punishable as a capital felony or a
17 felony of the first degree or an offense described by Article
18 [42A.054\(a\)](#);

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

22 (i) trial or appellate experience in [~~(ii)~~]
23 the use of mitigating evidence at the penalty phase of a death
24 penalty trial, regardless of whether:

25 (a) the case resulted in a judgment or
26 dismissal; or

27 (b) the state subsequently waived the

1 death penalty in the case; or

2 (ii) an equivalent amount of trial or
3 appellate experience, as determined by the local selection
4 committee; and

5 (G) have participated in continuing legal
6 education courses or other training relating to criminal defense in
7 appealing death penalty cases.

8 (4) The Texas Indigent Defense Commission [~~committee~~]
9 shall prominently post the policies and standards adopted by the
10 statewide capital defense training and standards committee under
11 Subdivision (1) on the commission's Internet website [~~in each~~
12 ~~district clerk's office in the region with a list of attorneys~~
13 ~~qualified for appointment~~].

14 (5) Not later than the second anniversary of the date
15 an attorney is placed on the list of attorneys qualified for
16 appointment in death penalty cases and each year following the
17 second anniversary, the attorney must present a list of death
18 penalty trial, direct appeal, and habeas corpus cases in which the
19 attorney served as counsel and proof to the local selection
20 committee that the attorney has successfully completed the
21 training, minimum continuing legal education requirements, and
22 other standards established by the statewide capital defense
23 training and standards committee established under Subsection
24 (c-2) [~~of the State Bar of Texas, including a course or other form~~
25 ~~of training relating to criminal defense in death penalty cases or~~
26 ~~in appealing death penalty cases, as applicable~~]. The local
27 selection committee shall remove the attorney's name from the list

1 of qualified attorneys if the attorney fails to provide the local
2 selection committee with the materials required under this
3 subsection [~~proof of completion of the continuing legal education~~
4 ~~requirements~~].

5 (m) The local selection committee shall annually review the
6 list of attorneys posted under Subsection (c-1) [~~(d)~~] to ensure
7 that each listed attorney satisfies the requirements under this
8 chapter.

9 SECTION 2. Article 26.052(n), Code of Criminal Procedure,
10 is repealed.

11 SECTION 3. The change in law made by this Act applies only
12 to a capital felony case that is filed on or after the effective
13 date of this Act. A capital felony case that is filed before the
14 effective date of this Act is governed by the law in effect on the
15 date the case was filed, and the former law is continued in effect
16 for that purpose.

17 SECTION 4. This Act takes effect December 1, 2021.