

BILL ANALYSIS

H.B. 1170
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

It has been noted that it is not uncommon for poorly performing attorneys to be appointed to represent indigent defendants. There are concerns that there are a shrinking number of attorneys qualified to handle the growing list of capital murder defendants. H.B. 1170 seeks to address these issues by changing certain requirements for an attorney to represent indigent defendants, including by making an attorney's experience in capital trials, regardless of whether such trials resulted in judgment, dismissal, or the dropping of death penalty, count towards the attorney's qualification to represent such defendants. H.B. 1170 also creates a statewide capital defense and standards committee to establish standards and policies for training and vetting attorneys to serve indigent defendants.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1170 amends the Code of Criminal Procedure to create the statewide capital defense training and standards committee to adopt policies and standards for providing legal representation to indigent defendants in capital cases in which the death penalty is sought. The bill removes the duty of local selection committees of administrative judicial regions to adopt standards for the qualification of attorneys to be appointed for that representation, clarifies the local committees' duty to evaluate and determine the list of attorneys in the region qualified to be so appointed, and changes the location where the local committees are required to post the list from in each district clerk's office in the region to on the region's website.

H.B. 1170 requires the policies and standards adopted by the new statewide committee to include the following with respect to attorneys to be appointed in such capital cases: training requirements and curricula, qualification standards, continuing legal education requirements, and other policies and standards as necessary to ensure quality legal representation in those cases. The bill revises the qualifications that the adopted standards must require for a trial attorney appointed either as lead counsel to a capital case or as lead appellate counsel in the direct appeal of such a case, as applicable, as follows:

- changes the condition that the attorney not have been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case unless the local selection committee determined that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective

representation to a condition that the attorney not have been found by such a committee to have provided deficient legal representation during such a trial or appeal if the committee has determined that the conduct underlying the deficient representation accurately reflects the attorney's inability to provide effective representation in the future;

- specifies that the requirement for the attorney to have trial experience in investigating and presenting, or have trial or appellate experience in the use of mitigating evidence at the penalty phase of a death penalty trial is regardless of whether the case resulted in a judgment or dismissal or the state subsequently waived the death penalty in the case; and
- provides as an alternative to that experience requirement that the attorney have an equivalent amount of trial or appellate experience as determined by the applicable local selection committee.

H.B. 1170 revises the requirement for an attorney on a local selection committee's list of attorneys qualified for appointment in death penalty cases to present certain proof to the committee not later than the second anniversary of the date the attorney is placed on the list and annually thereafter as follows:

- also requires the attorney to present a list of death penalty trial, direct appeal, and habeas corpus cases in which the attorney served as counsel and proof that the attorney has successfully completed training and other standards adopted by the statewide capital defense training and standards committee; and
- changes the nature of the attorney's completed continuing legal education requirements of which proof must be presented from those requirements of the State Bar of Texas, including a course or other form of training relating to criminal defense in death penalty cases or in appealing those cases, to those requirements adopted by the statewide capital defense training and standards committee.

H.B. 1170 requires the statewide capital defense training and standards committee to be composed of the following nine members:

- two judges jointly selected by the presiding judges of the administrative judicial regions;
- a criminal defense attorney appointed by the president of the Texas Criminal Defense Lawyers Association;
- the chief public defender of the Regional Public Defender for Capital Cases office, or the chief public defender's designee;
- the chief capital defender of a county public defender office appointed by the executive director of the Texas Indigent Defense Commission;
- a member of the State Bar of Texas committee on legal services to the poor in criminal matters selected by the chair of the committee; and
- three attorneys appointed by the executive director of the Texas Indigent Defense Commission.

Each member of the committee must be a licensed attorney and have significant experience in capital defense or indigent criminal defense policy or practice, but may not be a prosecutor, a law enforcement officer, or an employee of the office of capital and forensic writs. The bill provides for member terms, reappointment, and vacancy appointments and for the selection of the committee chair and the reimbursement of member expenses, which are paid from funds appropriated to the Texas Indigent Defense Commission. The bill requires the commission to provide administrative support to the committee as necessary to carry out the committee's purposes and to post the committee's adopted policies and standards on the commission's website. The bill applies only to a capital felony case that is filed on or after the bill's effective date.

H.B. 1170 repeals Article 26.052(n), Code of Criminal Procedure.

EFFECTIVE DATE

September 1, 2023.