88R4106 MEW-F

By:  Gervin-Hawkins, A. Johnson of Harris H.B. No. 1170

A BILL TO BE ENTITLED

AN ACT

relating to policies and standards for providing legal representation to indigent defendants in certain capital felony cases.

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

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

(c-1)  Each local selection committee described by Subsection (c) shall evaluate and determine the list of attorneys in the applicable administrative judicial region qualified under this article to be appointed to represent indigent defendants in capital cases in which the death penalty is sought and post the list on the Internet website of that administrative judicial region.

(c-2)(1)  A statewide capital defense training and standards committee is created. The committee must be composed of nine members, including:

(A)  two judges jointly selected by the presiding judges of the administrative judicial regions;

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

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

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

(E)  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

(F)  three attorneys appointed by the executive director of the Texas Indigent Defense Commission.

(2)  Each member of the statewide capital defense training and standards committee must be a licensed attorney and must have significant experience in capital defense or indigent criminal defense policy or practice. A member of the committee may not be a prosecutor, a law enforcement officer, or an employee of the office of capital and forensic writs.

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

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

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

(6)  The Texas Indigent Defense Commission shall provide administrative support to the statewide capital defense training and standards committee as necessary to carry out the purposes of the committee.

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

(A)  training requirements and curricula;

(B)  qualification standards;

(C)  continuing legal education requirements; and

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

(2)  The standards described by Subdivision (1) must require that a trial attorney appointed as lead counsel to a capital case:

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

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

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

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

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

(F)  have trial experience in[~~:~~

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

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

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

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

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

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

(3)  The standards described by Subdivision (1) must require that an attorney appointed as lead appellate counsel in the direct appeal of a capital case:

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

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

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

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

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

(F)  have trial or appellate experience in[~~:~~

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

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

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

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

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

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

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

(5)  Not later than the second anniversary of the date an attorney is placed on a local selection committee's [~~the~~] list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present a list of death penalty trial, direct appeal, and habeas corpus cases in which the attorney served as counsel and proof to the local selection committee for the applicable administrative judicial region that the attorney has successfully completed the training, minimum continuing legal education requirements, and other standards adopted by the statewide capital defense training and standards committee under Subdivision (1) [~~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 death penalty cases, as applicable~~]. The applicable local selection committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the local selection committee with the materials required under this subsection [~~proof of completion of the continuing legal education requirements~~].

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

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

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

SECTION 4.  This Act takes effect September 1, 2023.