

By: Gervin-Hawkins

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;

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

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

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

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

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

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

24                   (5) A member of the statewide capital defense training  
25 and standards committee may not receive compensation for service on  
26 the committee but is entitled to be reimbursed for actual and  
27 necessary expenses incurred in discharging committee duties. The

1 expenses are paid from funds appropriated to the Texas Indigent  
2 Defense Commission.

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

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

14 (A) training requirements and curricula;  
15 (B) qualification standards;  
16 (C) continuing legal education requirements; and  
17 (D) other policies and standards as necessary to  
18 ensure quality legal representation in capital cases.

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

22 (A) be a member of the State Bar of Texas;  
23 (B) exhibit proficiency and commitment to  
24 providing quality representation to defendants in death penalty  
25 cases;

26 (C) have not been found by a local selection  
27 committee described by Subsection (c) to have provided deficient

1 legal representation [~~a federal or state court to have rendered~~  
2 ~~ineffective assistance of counsel~~] during the trial or appeal of  
3 any capital case if [~~, unless~~] the local selection committee has  
4 determined [~~determines under Subsection (n)~~] that the conduct  
5 underlying the deficient representation [~~finding no longer~~]  
6 accurately reflects the attorney's inability [~~ability~~] to provide  
7 effective representation in the future;

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

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

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

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

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

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

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

27 (G) have participated in continuing legal

1 education courses or other training relating to criminal defense in  
2 death penalty cases.

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

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

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

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

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

21 (E) have authored a significant number of  
22 appellate briefs, including appellate briefs for homicide cases and  
23 other cases involving an offense punishable as a capital felony or a  
24 felony of the first degree or an offense described by Article  
25 [42A.054\(a\)](#);

26 (F) have trial or appellate experience in[+]

27 [~~(+)~~] 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

1 region that the attorney has successfully completed the training,  
 2 minimum continuing legal education requirements, and other  
 3 standards adopted by the statewide capital defense training and  
 4 standards committee under Subdivision (1) ~~[of the State Bar of~~  
 5 ~~Texas, including a course or other form of training relating to~~  
 6 ~~criminal defense in death penalty cases or in appealing death~~  
 7 ~~penalty cases, as applicable]~~. The applicable local selection  
 8 committee shall remove the attorney's name from the list of  
 9 qualified attorneys if the attorney fails to provide the local  
 10 selection committee with the materials required under this  
 11 subsection ~~[proof of completion of the continuing legal education~~  
 12 ~~requirements]~~.

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

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

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

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