

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

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

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.