

BILL ANALYSIS

Senate Research Center

H.B. 679
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties note that there is a shortage of experienced attorneys to be appointed to represent indigent defendants. There are concerns that there is a shrinking number of attorneys qualified to handle the growing list of capital murder defendants.

Current standards for trial attorneys appointed as lead counsel to a capital case and an attorney appointed as lead appellate counsel in the direct appeal of a capital case are outlined under Article 26.052 (d)(2) and (3), Code of Criminal Procedure. However, there are differences in these standards across the 11 administrative judicial regions across Texas. Currently, these polices and standards do not include training requirements regarding the qualifications of attorneys to be appointed in a capital case.

H.B. 679 seeks to address this problem by allowing experienced and trial-ready defense attorneys to be appointed as the lead counsel in a capital case if they meet certain criteria.

H.B. 679 will establish a statewide capital defense training and standards committee. The committee members must be licensed to practice law and must have significant experience in capital defense or indigent criminal defense policy or practice.

The polices and standards shall include:

- training requirements and curricula for qualification of attorneys to be appointed in a capital case;
- standards for qualification of attorneys to be appointed in a capital case;
- continuing legal education requirements for qualification of attorneys to be appointed in a capital case;
- other policies and standards as are necessary to ensure quality legal representation in capital cases.

The standards must require for both a trial attorney appointed as lead counsel to a capital case and the standards for an attorney appointed as lead appellate counsel in the direct appeal of a capital case to:

- be a member of the State Bar of Texas;
- exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;
- have not been found by the local selection committee to have provided deficient legal representation during the trial or appeal of any capital case if the local selection committee has determined that the conduct underlying the deficient representation accurately reflects the attorney's inability to provide effective representation in the future;
- have at least five years of criminal law experience;

- have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases or in appealing death penalty cases;
- and other requirements as outlined in the bill.

H.B. 679 would require attorneys who qualify to represent defendants in capital cases to report back to the local selection committee regarding their representation of capital defendants and completion of training required.

H.B. 679 requires the Texas Indigent Defense Commission (TIDC) to provide administrative support and requires TIDC to post the standards prominently on their website.

H.B. 679 amends current law relating to policies and standards for providing legal representation to indigent defendants in certain capital felony cases.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

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

(c-2) Provides that a statewide capital defense training and standards committee is created (committee). Requires each member of the committee to be a licensed attorney and have significant experience in capital defense or indigent criminal defense policy or practice. Prohibits a member of the committee from being a prosecutor, a law enforcement officer, or an employee of the office of capital and forensic writs. Requires that the committee be composed of nine members, including:

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

(c-3) Provides that members of the committee serve four-year terms and are authorized to be reappointed. Requires the appropriate appointing authority, if a vacancy occurs, to appoint a successor in the same manner as the original appointment to serve for the remainder of the unexpired term.

(c-4) Requires the members of the committee to select a chair from among the committee's members.

(c-5) Prohibits a member of the committee from receiving compensation for services on the committee but authorizes a member to be reimbursed for actual and necessary expenses incurred in discharging committee duties. Provides that expenses are paid from funds appropriated to TIDC.

(c-6) Requires TIDC to provide administrative support as necessary to carry out the purposes of this article.

(d)(1) Requires the committee to adopt policies and standards for providing legal representation to, rather than adopt standards for the qualification of attorneys to be appointed to represent, indigent defendants in capital cases in which the death penalty is sought. Requires that the policies and standards 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) Requires that the standards require that a trial attorney appointed as lead counsel to a capital case:

(A) and (B) makes no changes to these paragraphs;

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

(D) and (E) makes no changes to these paragraphs;

(F) have trial experience in the use of and challenges to mental health or forensic expert witnesses and have:

(i) trial experience in 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 local selection committee; and

(G) makes no changes to this paragraph.

Makes conforming and nonsubstantive changes.

(3) Requires the standards to require that an attorney appointed as lead appellate counsel in the direct appeal of a capital case:

(A) and (B) makes no changes to these paragraphs;

(C) makes conforming changes;

(D) and (E) makes no changes to these paragraphs;

(F) makes conforming changes

(G) makes no changes to this paragraph.

(4) Requires TIDC, rather than the committee, to prominently post the policies and standards adopted by the statewide capital defense training and standards committee under Subdivision (1) on TIDC's Internet website, rather than in each district clerk's office in the region with a list of attorneys qualified for appointment.

(5) Requires the attorney, not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, to 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 that the attorney has successfully completed the training, minimum continuing legal education requirements, and other standards established by the statewide capital defense training and standards committee established under Subsection (c-2).

Requires the local selection committee to 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, rather than proof of completion of the continuing legal education requirements. Deletes existing text requiring that the attorney submit proof to the committee that the attorney has successfully completed the minimum continuing legal education 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 the death penalty cases, as applicable.

(m) Requires the local selection committee to annually review the list of attorneys posted under Subsection (c-1), rather than Subsection (d), to ensure that each listed attorney satisfies the requirements under this chapter.

SECTION 2. Repealer: Article 26.052(n) (relating to the local selection committee making a determination regarding an attorney's current ability to provide effective representation, at the request of an attorney), Code of Criminal Procedure.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2021.