

- SUBJECT:** Revising standards for appointed trial, appellate attorneys in capital cases
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut
- 0 nays
- WITNESSES:** For — (*Registered, but did not testify:* Shea Place, Texas Criminal Defense Lawyers Association)
- Against — None
- On — Ben Wolff, Office of Capital and Forensic Writs; Scott Ehlers, Texas Indigent Defense Commission
- BACKGROUND:** Code of Criminal Procedure art. 26.052 establishes minimum requirements for attorneys appointed to represent indigent defendants in death penalty cases at trial and on direct appeal. A local selection committee in each administrative judicial region must adopt standards for the qualification of these appointed attorneys.
- Concerns have been raised that the number of attorneys qualified in Texas to handle an increase in capital murder defendants is insufficient. Others have noted the frequent appointment of poorly performing attorneys to represent indigent defendants. To address this issue, it has been suggested that experienced, trial-ready defense attorneys should be allowed to be appointed as lead counsel in a capital case if they met certain criteria.
- DIGEST:** HB 679 would revise the minimum standards for attorneys appointed to represent indigent defendants in death penalty cases at trial and on direct appeal.
- The bill would specify that a trial attorney appointed as lead counsel to a capital case would be required to have trial experience in investigating and

presenting mitigating evidence at the penalty phase of a death penalty trial, regardless of whether the case resulted in a judgment or dismissal or the state subsequently waived the death penalty in the case, or an equivalent amount of trial experience as determined by the local selection committee.

For an attorney appointed as lead appellate counsel in the direct appeal of a capital case, the bill would specify the attorney would be required to have trial or appellate experience in the use of mitigating evidence at the penalty phase of a death penalty trial, regardless of whether the case resulted in a judgment or dismissal or the state subsequently waived the death penalty in the case. The appellate counsel also could satisfy the requirement with an equivalent amount of trial or appellate experience, as determined by the local selection committee.

The bill would take effect September 1, 2021, and would apply only to a capital felony case that was filed on or after that date.