

## **BILL ANALYSIS**

Senate Research Center  
80R2707 SLO-F

S.B. 528  
By: Seliger  
Criminal Justice  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law specifies qualifications for trial attorneys and puts appellate attorneys in the same category, despite the difference in experience between trial attorneys and appellate attorneys. As a result, many attorneys who have extensive appellate experience from representing indigent defendants in capital cases are disqualified from such cases because those lawyers do not meet qualification standards specific to trial lawyers. Additionally, attorneys are disqualified from such representation because of a single finding of ineffective counsel.

As proposed, S.B. 528 amends Article 26.052, Code of Criminal Procedure, to create a specialized listing of qualifications for appellate attorneys representing indigent defendants in capital cases. This bill also provides for the review of attorneys who are ineligible to represent indigent defendants in capital cases due to a single finding of ineffectiveness that was case-specific and not indicative of future representation.

### **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. Reenacts and amends and Article 26.052(d), Code of Criminal Procedure, as amended by Chapters 787 and 965, Acts of the 79th Legislature, Regular Session, 2005, as follows:

- (d)(1) Makes no changes to this subsection.
- (2) Sets forth certain required standards for a trial attorney appointed as lead counsel to a capital case (trial attorney). Deletes existing text providing that an attorney appointed as lead appellate counsel in the direct appeal of a capital case is subject to these standards. Specifies that a trial attorney is still eligible under this subsection despite being 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 conduct underlying such a finding fails to accurately reflect the attorney's current ability to provide effective representation. Requires the attorney to have five years of criminal law experience, rather than experience in criminal litigation.
- (3) Sets forth certain required standards for an attorney appointed as lead appellate counsel in the direct appeal of a capital case (appellate attorney).
- (4) Redesignated from Subdivision (3).
- (5) Redesignated from Subdivision (4). Requires a trial or appellate attorney to present proof of successful completion of 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 death penalty cases, as applicable within a certain time frame.

SECTION 2. Requires a local selection committee to amend standards previously adopted by the committee to conform with the requirements of Article 26.052(d), Code of Criminal

Procedure, as amended by this Act, not later than the 75th day after the effective date of this Act. Makes application of the standards for an attorney appointed to a death penalty case amended by this Act prospective to the 75th day after the effective date of this Act.

SECTION 3. Effective date: September 1, 2007.