

By: Ellis

S.B. No. 2162

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appointment of counsel for the purposes of
3 community supervision revocation or appellate proceedings.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subsections (a), (c), (i), and (o), Article
6 26.04, Code of Criminal Procedure, are amended to read as follows:

7 (a) The judges of the county courts, statutory county
8 courts, and district courts trying criminal cases in each county,
9 by local rule, shall adopt and publish written countywide
10 procedures for timely and fairly appointing counsel for an indigent
11 defendant in the county arrested for, ~~or~~ charged with, or taking
12 an appeal from a conviction of a misdemeanor punishable by
13 confinement or a felony. The procedures must be consistent with
14 this article and Articles 1.051, 15.17, 26.05, and 26.052. A court
15 shall appoint an attorney from a public appointment list using a
16 system of rotation, unless the court appoints an attorney under
17 Subsection (f), (h), or (i). The court shall appoint attorneys from
18 among the next five names on the appointment list in the order in
19 which the attorneys' names appear on the list, unless the court
20 makes a finding of good cause on the record for appointing an
21 attorney out of order. An attorney who is not appointed in the
22 order in which the attorney's name appears on the list shall remain
23 next in order on the list.

24 (c) Whenever a court or the courts' designee authorized

1 under Subsection (b) to appoint counsel for indigent defendants in
2 the county determines for purposes of a criminal proceeding that a
3 defendant charged with or appealing a conviction of a felony or a
4 misdemeanor punishable by confinement is indigent or that the
5 interests of justice require representation of a defendant in the
6 ~~[a criminal]~~ proceeding, the court or the courts' designee shall
7 appoint one or more practicing attorneys to represent ~~[defend]~~ the
8 defendant in accordance with this subsection and the procedures
9 adopted under Subsection (a). If the court or the courts' designee
10 determines that the defendant does not speak and understand the
11 English language or that the defendant is deaf, the court or the
12 courts' designee shall make an effort to appoint an attorney who is
13 capable of communicating in a language understood by the defendant.

14 (i) A court or the courts' designee required under
15 Subsection (c) to appoint an attorney to represent a defendant
16 accused or convicted of a felony may appoint an attorney from any
17 county located in the court's administrative judicial region.

18 (o) Before making a determination of whether a defendant is
19 indigent, the court shall request the defendant to sign under oath a
20 statement substantially in the following form:

21 "On this _____ day of _____, 20 ____, I have been
22 advised by the (name of the court) Court of my right to
23 representation by counsel in connection with ~~[the trial of]~~
24 the charge pending against me. I am without means to employ
25 counsel of my own choosing and I hereby request the court to
26 appoint counsel for me. (signature of the defendant)"

27 SECTION 2. Subsection (d), Section 21, Article 42.12, Code

1 of Criminal Procedure, is amended to read as follows:

2 (d) A defendant has a right to counsel at a hearing under
3 this section. The court shall appoint counsel for an indigent
4 defendant in accordance with Article 26.04.

5 SECTION 3. The change in law made by this Act applies only
6 to a criminal proceeding that commences on or after the effective
7 date of this Act. A criminal proceeding that commences before the
8 effective date of this Act is governed by the law in effect when the
9 proceeding commenced, and the former law is continued in effect for
10 that purpose.

11 SECTION 4. This Act takes effect September 1, 2009.