

1-1 By: Ellis

S.B. No. 2162

1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 28, 2009, reported favorably by the following vote: Yeas 7,
1-5 Nays 0; April 28, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the appointment of counsel for the purposes of
1-9 community supervision revocation or appellate proceedings.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsections (a), (c), (i), and (o), Article
1-12 26.04, Code of Criminal Procedure, are amended to read as follows:

1-13 (a) The judges of the county courts, statutory county
1-14 courts, and district courts trying criminal cases in each county,
1-15 by local rule, shall adopt and publish written countywide
1-16 procedures for timely and fairly appointing counsel for an indigent
1-17 defendant in the county arrested for, ~~or~~ charged with, or taking
1-18 an appeal from a conviction of a misdemeanor punishable by
1-19 confinement or a felony. The procedures must be consistent with
1-20 this article and Articles 1.051, 15.17, 26.05, and 26.052. A court
1-21 shall appoint an attorney from a public appointment list using a
1-22 system of rotation, unless the court appoints an attorney under
1-23 Subsection (f), (h), or (i). The court shall appoint attorneys from
1-24 among the next five names on the appointment list in the order in
1-25 which the attorneys' names appear on the list, unless the court
1-26 makes a finding of good cause on the record for appointing an
1-27 attorney out of order. An attorney who is not appointed in the
1-28 order in which the attorney's name appears on the list shall remain
1-29 next in order on the list.

1-30 (c) Whenever a court or the courts' designee authorized
1-31 under Subsection (b) to appoint counsel for indigent defendants in
1-32 the county determines for purposes of a criminal proceeding that a
1-33 defendant charged with or appealing a conviction of a felony or a
1-34 misdemeanor punishable by confinement is indigent or that the
1-35 interests of justice require representation of a defendant in the
1-36 ~~[a criminal]~~ proceeding, the court or the courts' designee shall
1-37 appoint one or more practicing attorneys to represent ~~[defend]~~
1-38 the defendant in accordance with this subsection and the procedures
1-39 adopted under Subsection (a). If the court or the courts' designee
1-40 determines that the defendant does not speak and understand the
1-41 English language or that the defendant is deaf, the court or the
1-42 courts' designee shall make an effort to appoint an attorney who is
1-43 capable of communicating in a language understood by the defendant.

1-44 (i) A court or the courts' designee required under
1-45 Subsection (c) to appoint an attorney to represent a defendant
1-46 accused or convicted of a felony may appoint an attorney from any
1-47 county located in the court's administrative judicial region.

1-48 (o) Before making a determination of whether a defendant is
1-49 indigent, the court shall request the defendant to sign under oath a
1-50 statement substantially in the following form:

1-51 "On this _____ day of _____, 20 ____, I have been
1-52 advised by the (name of the court) Court of my right to
1-53 representation by counsel in connection with ~~[the trial of]~~
1-54 the charge pending against me. I am without means to employ
1-55 counsel of my own choosing and I hereby request the court to
1-56 appoint counsel for me. (signature of the defendant)"

1-57 SECTION 2. Subsection (d), Section 21, Article 42.12, Code
1-58 of Criminal Procedure, is amended to read as follows:

1-59 (d) A defendant has a right to counsel at a hearing under
1-60 this section. The court shall appoint counsel for an indigent
1-61 defendant in accordance with Article 26.04.

1-62 SECTION 3. The change in law made by this Act applies only
1-63 to a criminal proceeding that commences on or after the effective
1-64 date of this Act. A criminal proceeding that commences before the

2-1 effective date of this Act is governed by the law in effect when the
2-2 proceeding commenced, and the former law is continued in effect for
2-3 that purpose.

2-4 SECTION 4. This Act takes effect September 1, 2009.

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