

BILL ANALYSIS

S.B. 1681
By: Ellis
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

S.B. 1681 addresses three indigent defense related proposals to the appointment of counsel to represent indigent defendants on appeals and in probation revocation proceedings.

The three major proposals would clarify that the Fair Defense Act applies to attorney appointments for probation revocations and appeals; clarify procedures for withdrawal of trial counsel and appointment of appellate counsel; and authorize any magistrate to provide warnings on rights to defendants arrested for motions to revoke probation.

The Fair Defense Act (FDA) requires judges in each county to adopt countywide procedures for appointing attorneys for indigent defendants arrested for or charged with felonies or misdemeanors punishable by confinement. Courts are required to appoint attorneys from a public appointment list using a system of rotation, an alternative appointment program, or a public defender. Currently some jurisdictions believe that FDA requirements apply to attorney appointments for appeals and probation revocation hearings, while others do not. This bill would clarify that these requirements do apply to those proceedings.

This legislation also requires trial counsel to advise a defendant of his or her right to file a motion for new trial or appeal, and to help the defendant request appointment of replacement counsel if the defendant wishes to pursue either remedy, before being permitted by the court to withdraw representation.

The final change in the bill authorizes any magistrate to give required warnings, including about the right to counsel, to persons on motions to revoke probation, while not permitting magistrates to release such persons on bail. It requires that the warnings be provided within 48 hours of arrest, as they are when a person is arrested for a new offense.

Current law requires these defendants to be brought back before the judge overseeing their probation, which may result in long delays in rural parts of the state where judge must sit in multiple counties. Magistrates already provide such warnings if the arrest is for a new offense and, in some areas, they also provide the warnings to probation revocation arrestees. This bill would provide the magistrates clear authority to provide such warnings.

S.B. 1681 amends current law relating to the appointment of counsel and the rights of an accused and other requirements for the purposes of appellate proceedings or community supervision revocation proceedings.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Articles 26.04(a), (c), (e), (g), (i), (j), and (o), Code of Criminal Procedure, as follows:

(a) Requires the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, to adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for, charged with, or taking an appeal from a conviction of a misdemeanor punishable by confinement or a felony. Makes a nonsubstantive change.

(c) Requires a court or the courts' designee, whenever a court or the court's designee authorized under Subsection (b) (relating to procedures for appointing counsel), to appoint counsel for indigent defendants in the county determines for purposes of a criminal proceeding that a defendant charged with or appealing a conviction of a felony or a misdemeanor punishable by confinement is indigent or that the interests of justice require representation of a defendant in the proceeding, rather than in a criminal proceeding, to appoint one or more practicing attorneys to represent, rather than to defend, the defendant in accordance with this subsection and the procedures adopted under Subsection (a).

(e) Provides that in a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) are required to:

(i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) are authorized to establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense, the attorneys' qualifications, and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(2) Makes a conforming change.

(g) Provides that in a county in which an alternative program for appointing counsel is established:

(1) the alternative program may use a single method for appointing counsel or a combination of methods; and use a multicounty appointment list using a system of rotation; and

(2) the procedures adopted under Subsection (a) are required to ensure that:

(A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement meet specified objective qualifications for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both, rather than for providing representation in misdemeanor cases punishable by confinement; and are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;

(B) attorneys appointed using the alternative program to represent defendants in felony cases meet specified objective qualifications for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in

trial court proceedings, appellate proceedings, or both, rather than for providing representation in misdemeanor cases punishable by confinement; and are approved by a majority of the judges of the district courts trying felony cases in the county;

(C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052 (Appointment of Counsel in Death Penalty Case Reimbursement of Investigative Expenses); and

(D) appointments are reasonably and impartially allocated among qualified attorneys.

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

(j) Requires an attorney appointed under this article to:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed;

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant, rather than the attorney is relieved of his duties by the court or replaced by other counsel, after a finding of good cause is entered on the record; and

(3) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:

(A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;

(B) if the defendant wishes to pursue either or both remedies described by Paragraph (A), assist the defendant in requesting the prompt appointment of replacement counsel; and

(C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal.

(o) Requires the court, before making a determination of whether a defendant is indigent, to request the defendant to sign under oath a statement substantially in a certain form. Sets forth the required language of the form.

SECTION 2. Amends Section 21, Article 42.12, Code of Criminal Procedure, by amending Subsections (b) and (d) and adding Subsections (b-1) and (b-2), as follows:

(b) Authorizes a defendant arrested under this subsection, subject to Subsection (b-1), to be detained in the county jail or other appropriate place of confinement until he can be taken before the judge for a determination regarding the alleged violation. Requires the arresting officer to immediately report the arrest and detention to the judge. Makes nonsubstantive changes.

(b-1) Requires the arresting officer or the person with custody of the arrested person, without any unnecessary delay, but not later than 48 hours after the person is arrested, to take the arrested person before the judge who ordered the arrest for the alleged violation of a condition of community supervision or, if the judge is unavailable, before a magistrate of the county in which the person was arrested. Requires the judge or magistrate to perform all appropriate duties and may exercise all appropriate powers as

provided by Article 15.17 (Duties of Arresting Officer and Magistrate) with respect to an arrest for a new criminal offense, except that only the judge who ordered the arrest for the alleged violation may authorize the person's release on bail. Authorizes the arrested person to be taken before the judge or magistrate under this subsection by means of an electronic broadcast system as provided by and subject to the requirements of Article 15.17.

(b-2) Requires the judge who ordered the arrest for the alleged violation of a condition of community supervision, if the defendant has not been released on bail as permitted under Subsection (b-1), on motion by the defendant, to cause the defendant to be brought before the judge for a hearing on the alleged violation within 20 days of filing of said motion, and after a hearing without a jury, may either continue, extend, modify, or revoke the community supervision.

(d) Provides that a defendant has a right to counsel at a hearing under this section. Requires the court to appoint counsel for an indigent defendant in accordance with the procedures adopted under Article 26.04 (Procedures for Appointing Counsel).

SECTION 3. Makes application of this Act prospective.

EFFECTIVE DATE

September 1, 2011