

By: Ellis

S.B. No. 1681

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appointment of counsel and the rights of an accused
3 and other requirements for the purposes of appellate proceedings or
4 community supervision revocation proceedings.

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

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

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

1 next in order on the list.

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

16 (e) In a county in which a court is required under
17 Subsection (a) to appoint an attorney from a public appointment
18 list:

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

22 (A) shall:

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

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

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

6 (2) the judges of the district courts trying felony
7 cases in the county, by formal action:

8 (A) shall:

9 (i) establish a public appointment list of
10 attorneys qualified to provide representation in felony cases in
11 the county; and

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

14 (B) may establish, if determined by the judges to
15 be appropriate, more than one appointment list graduated according
16 to the degree of seriousness of the offense, ~~and~~ the attorneys'
17 qualifications, and whether representation will be provided in
18 trial court proceedings, appellate proceedings, or both.

19 (g) A countywide alternative program for appointing counsel
20 for indigent defendants in criminal cases is established by a
21 formal action in which two-thirds of the judges of the courts
22 designated under this subsection vote to establish the alternative
23 program. An alternative program for appointing counsel in
24 misdemeanor and felony cases may be established in the manner
25 provided by this subsection by the judges of the county courts,
26 statutory county courts, and district courts trying criminal cases
27 in the county. An alternative program for appointing counsel in

1 misdemeanor cases may be established in the manner provided by this
2 subsection by the judges of the county courts and statutory county
3 courts trying criminal cases in the county. An alternative program
4 for appointing counsel in felony cases may be established in the
5 manner provided by this subsection by the judges of the district
6 courts trying criminal cases in the county. In a county in which an
7 alternative program is established:

8 (1) the alternative program may:

9 (A) use a single method for appointing counsel or
10 a combination of methods; and

11 (B) use a multicounty appointment list using a
12 system of rotation; and

13 (2) the procedures adopted under Subsection (a) must
14 ensure that:

15 (A) attorneys appointed using the alternative
16 program to represent defendants in misdemeanor cases punishable by
17 confinement:

18 (i) meet specified objective
19 qualifications for that representation, which may be graduated
20 according to the degree of seriousness of the offense and whether
21 representation will be provided in trial court proceedings,
22 appellate proceedings, or both~~[, for providing representation in~~
23 ~~misdemeanor cases punishable by confinement]~~; and

24 (ii) are approved by a majority of the
25 judges of the county courts and statutory county courts trying
26 misdemeanor cases in the county;

27 (B) attorneys appointed using the alternative

1 program to represent defendants in felony cases:

2 (i) meet specified objective
3 qualifications for that representation, which may be graduated
4 according to the degree of seriousness of the offense and whether
5 representation will be provided in trial court proceedings,
6 appellate proceedings, or both~~[, for providing representation in~~
7 ~~felony cases]~~; and

8 (ii) are approved by a majority of the
9 judges of the district courts trying felony cases in the county;

10 (C) appointments for defendants in capital cases
11 in which the death penalty is sought comply with the requirements of
12 Article 26.052; and

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

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

19 (j) An attorney appointed under this article shall:

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

25 (2) represent the defendant until charges are
26 dismissed, the defendant is acquitted, appeals are exhausted, or
27 the attorney is permitted or ordered ~~[relieved of his duties]~~ by the

1 court to withdraw as counsel for the defendant [~~or replaced by other~~
2 ~~counsel~~] after a finding of good cause is entered on the record; and

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

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

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

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

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

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

23 SECTION 2. Section 21, Article 42.12, Code of Criminal
24 Procedure, is amended by amending Subsections (b) and (d) and
25 adding Subsections (b-1) and (b-2) to read as follows:

26 (b) At any time during the period of community supervision
27 the judge may issue a warrant for violation of any of the conditions

1 of the community supervision and cause the defendant to be
2 arrested. Any supervision officer, police officer or other officer
3 with power of arrest may arrest such defendant with or without a
4 warrant upon the order of the judge to be noted on the docket of the
5 court. Subject to Subsection (b-1), a [A] defendant [se] arrested
6 under this subsection may be detained in the county jail or other
7 appropriate place of confinement until he can be taken before the
8 judge for a determination regarding the alleged violation. The
9 arresting [Such] officer shall immediately [forthwith] report the
10 [such] arrest and detention to the [such] judge.

11 (b-1) Without any unnecessary delay, but not later than 48
12 hours after the person is arrested, the arresting officer or the
13 person with custody of the arrested person shall take the arrested
14 person before the judge who ordered the arrest for the alleged
15 violation of a condition of community supervision or, if the judge
16 is unavailable, before a magistrate of the county in which the
17 person was arrested. The judge or magistrate shall perform all
18 appropriate duties and may exercise all appropriate powers as
19 provided by Article 15.17 with respect to an arrest for a new
20 criminal offense, except that only the judge who ordered the arrest
21 for the alleged violation may authorize the person's release on
22 bail. The arrested person may be taken before the judge or
23 magistrate under this subsection by means of an electronic
24 broadcast system as provided by and subject to the requirements of
25 Article 15.17.

26 (b-2) If the defendant has not been released on bail as
27 permitted under Subsection (b-1), on motion by the defendant the

1 judge who ordered the arrest for the alleged violation of a
2 condition of community supervision shall cause the defendant to be
3 brought before the judge for a hearing on the alleged violation
4 within 20 days of filing of said motion, and after a hearing without
5 a jury, may either continue, extend, modify, or revoke the
6 community supervision. A judge may revoke the community
7 supervision of a defendant who is imprisoned in a penal institution
8 without a hearing if the defendant in writing before a court of
9 record in the jurisdiction where imprisoned waives his right to a
10 hearing and to counsel, affirms that he has nothing to say as to why
11 sentence should not be pronounced against him, and requests the
12 judge to revoke community supervision and to pronounce sentence.
13 In a felony case, the state may amend the motion to revoke community
14 supervision any time up to seven days before the date of the
15 revocation hearing, after which time the motion may not be amended
16 except for good cause shown, and in no event may the state amend the
17 motion after the commencement of taking evidence at the hearing.
18 The judge may continue the hearing for good cause shown by either
19 the defendant or the state.

20 (d) A defendant has a right to counsel at a hearing under
21 this section. The court shall appoint counsel for an indigent
22 defendant in accordance with the procedures adopted under Article
23 26.04.

24 SECTION 3. The change in law made by this Act applies only
25 to a criminal proceeding that commences on or after the effective
26 date of this Act. A criminal proceeding that commences before the
27 effective date of this Act is governed by the law in effect when the

1 proceeding commenced, and the former law is continued in effect for
2 that purpose.

3 SECTION 4. This Act takes effect September 1, 2011.