

By: Ellis

S.B. No. 1681

A BILL TO BE ENTITLED

1 AN ACT
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. Articles 26.04(a), (c), (e), (g), (i), (j), and
7 (o), Code of Criminal Procedure, are amended to read as follows:

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

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

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

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

21 (A) shall:

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

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

27 (B) may establish, if determined by the judges to

1 be appropriate, more than one appointment list graduated according
2 to the degree of seriousness of the offense, ~~and~~ the attorneys'
3 qualifications, and whether representation will be provided in
4 trial court proceedings, appellate proceedings, or both; and

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

7 (A) shall:

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

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

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

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

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

7 (1) the alternative program may:

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

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

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

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

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

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

26 (B) attorneys appointed using the alternative
27 program to represent defendants in felony cases:

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

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

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

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

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 (j) An attorney appointed under this article shall:

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

24 (2) represent the defendant until charges are
25 dismissed, the defendant is acquitted, appeals are exhausted, or
26 the attorney is permitted or ordered [~~relieved of his duties~~] by the
27 court to withdraw as counsel for the defendant [~~or replaced by other~~

1 ~~counsel]~~ after a finding of good cause is entered on the record; and
2 (3) with respect to a defendant not represented by
3 other counsel, before withdrawing as counsel for the defendant
4 after a trial or the entry of a plea of guilty:

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

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

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

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

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

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

25 (b) At any time during the period of community supervision
26 the judge may issue a warrant for violation of any of the conditions
27 of the community supervision and cause the defendant to be

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

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

25 (b-2) If the defendant has not been released on bail as
26 permitted under Subsection (b-1), [on motion by the defendant] the
27 judge who ordered the arrest for the alleged violation of a

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

21 (d) A defendant has a right to counsel at a hearing under
22 this section. The court shall appoint counsel for an indigent
23 defendant in accordance with the procedures adopted under Article
24 26.04.

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

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

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