

1-1 By: Ellis S.B. No. 1681
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 20, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 20, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1681 By: Ellis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the appointment of counsel and the rights of an accused
1-11 and other requirements for the purposes of appellate proceedings or
1-12 community supervision revocation proceedings.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subsections (a), (c), (e), (g), (i), (j), and
1-15 (o), Article 26.04, Code of Criminal Procedure, are amended to read
1-16 as follows:

1-17 (a) The judges of the county courts, statutory county
1-18 courts, and district courts trying criminal cases in each county,
1-19 by local rule, shall adopt and publish written countywide
1-20 procedures for timely and fairly appointing counsel for an indigent
1-21 defendant in the county arrested for, ~~or~~ charged with, or taking
1-22 an appeal from a conviction of a misdemeanor punishable by
1-23 confinement or a felony. The procedures must be consistent with
1-24 this article and Articles 1.051, 15.17, 26.05, and 26.052. A court
1-25 shall appoint an attorney from a public appointment list using a
1-26 system of rotation, unless the court appoints an attorney under
1-27 Subsection (f), (h), or (i). The court shall appoint attorneys from
1-28 among the next five names on the appointment list in the order in
1-29 which the attorneys' names appear on the list, unless the court
1-30 makes a finding of good cause on the record for appointing an
1-31 attorney out of order. An attorney who is not appointed in the
1-32 order in which the attorney's name appears on the list shall remain
1-33 next in order on the list.

1-34 (c) Whenever a court or the courts' designee authorized
1-35 under Subsection (b) to appoint counsel for indigent defendants in
1-36 the county determines for purposes of a criminal proceeding that a
1-37 defendant charged with or appealing a conviction of a felony or a
1-38 misdemeanor punishable by confinement is indigent or that the
1-39 interests of justice require representation of a defendant in the
1-40 ~~[a criminal]~~ proceeding, the court or the courts' designee shall
1-41 appoint one or more practicing attorneys to represent ~~defend~~ the
1-42 defendant in accordance with this subsection and the procedures
1-43 adopted under Subsection (a). If the court or the courts' designee
1-44 determines that the defendant does not speak and understand the
1-45 English language or that the defendant is deaf, the court or the
1-46 courts' designee shall make an effort to appoint an attorney who is
1-47 capable of communicating in a language understood by the defendant.

1-48 (e) In a county in which a court is required under
1-49 Subsection (a) to appoint an attorney from a public appointment
1-50 list:

1-51 (1) the judges of the county courts and statutory
1-52 county courts trying misdemeanor cases in the county, by formal
1-53 action:

1-54 (A) shall:

1-55 (i) establish a public appointment list of
1-56 attorneys qualified to provide representation in the county in
1-57 misdemeanor cases punishable by confinement; and

1-58 (ii) specify the objective qualifications
1-59 necessary for an attorney to be included on the list; and

1-60 (B) may establish, if determined by the judges to
1-61 be appropriate, more than one appointment list graduated according
1-62 to the degree of seriousness of the offense, ~~and~~ the attorneys'
1-63 qualifications, and whether representation will be provided in

2-1 trial court proceedings, appellate proceedings, or both; and

2-2 (2) the judges of the district courts trying felony
2-3 cases in the county, by formal action:

2-4 (A) shall:

2-5 (i) establish a public appointment list of
2-6 attorneys qualified to provide representation in felony cases in
2-7 the county; and

2-8 (ii) specify the objective qualifications
2-9 necessary for an attorney to be included on the list; and

2-10 (B) may establish, if determined by the judges to
2-11 be appropriate, more than one appointment list graduated according
2-12 to the degree of seriousness of the offense, ~~and~~ the attorneys'
2-13 qualifications, and whether representation will be provided in
2-14 trial court proceedings, appellate proceedings, or both.

2-15 (g) A countywide alternative program for appointing counsel
2-16 for indigent defendants in criminal cases is established by a
2-17 formal action in which two-thirds of the judges of the courts
2-18 designated under this subsection vote to establish the alternative
2-19 program. An alternative program for appointing counsel in
2-20 misdemeanor and felony cases may be established in the manner
2-21 provided by this subsection by the judges of the county courts,
2-22 statutory county courts, and district courts trying criminal cases
2-23 in the county. An alternative program for appointing counsel in
2-24 misdemeanor cases may be established in the manner provided by this
2-25 subsection by the judges of the county courts and statutory county
2-26 courts trying criminal cases in the county. An alternative program
2-27 for appointing counsel in felony cases may be established in the
2-28 manner provided by this subsection by the judges of the district
2-29 courts trying criminal cases in the county. In a county in which an
2-30 alternative program is established:

2-31 (1) the alternative program may:

2-32 (A) use a single method for appointing counsel or
2-33 a combination of methods; and

2-34 (B) use a multicounty appointment list using a
2-35 system of rotation; and

2-36 (2) the procedures adopted under Subsection (a) must
2-37 ensure that:

2-38 (A) attorneys appointed using the alternative
2-39 program to represent defendants in misdemeanor cases punishable by
2-40 confinement:

2-41 (i) meet specified objective
2-42 qualifications for that representation, which may be graduated
2-43 according to the degree of seriousness of the offense and whether
2-44 representation will be provided in trial court proceedings,
2-45 appellate proceedings, or both, ~~for providing representation in~~
2-46 ~~misdemeanor cases punishable by confinement~~; and

2-47 (ii) are approved by a majority of the
2-48 judges of the county courts and statutory county courts trying
2-49 misdemeanor cases in the county;

2-50 (B) attorneys appointed using the alternative
2-51 program to represent defendants in felony cases:

2-52 (i) meet specified objective
2-53 qualifications for that representation, which may be graduated
2-54 according to the degree of seriousness of the offense and whether
2-55 representation will be provided in trial court proceedings,
2-56 appellate proceedings, or both, ~~for providing representation in~~
2-57 ~~felony cases~~; and

2-58 (ii) are approved by a majority of the
2-59 judges of the district courts trying felony cases in the county;

2-60 (C) appointments for defendants in capital cases
2-61 in which the death penalty is sought comply with the requirements of
2-62 Article 26.052; and

2-63 (D) appointments are reasonably and impartially
2-64 allocated among qualified attorneys.

2-65 (i) A court or the courts' designee required under
2-66 Subsection (c) to appoint an attorney to represent a defendant
2-67 accused or convicted of a felony may appoint an attorney from any
2-68 county located in the court's administrative judicial region.

2-69 (j) An attorney appointed under this article shall:

3-1 (1) make every reasonable effort to contact the
 3-2 defendant not later than the end of the first working day after the
 3-3 date on which the attorney is appointed and to interview the
 3-4 defendant as soon as practicable after the attorney is appointed;
 3-5 [~~and~~]

3-6 (2) represent the defendant until charges are
 3-7 dismissed, the defendant is acquitted, appeals are exhausted, or
 3-8 the attorney is permitted or ordered [~~relieved of his duties~~] by the
 3-9 court to withdraw as counsel for the defendant [~~or replaced by other~~
 3-10 ~~counsel~~] after a finding of good cause is entered on the record; and

3-11 (3) with respect to a defendant not represented by
 3-12 other counsel, before withdrawing as counsel for the defendant
 3-13 after a trial or the entry of a plea of guilty:

3-14 (A) advise the defendant of the defendant's right
 3-15 to file a motion for new trial and a notice of appeal;

3-16 (B) if the defendant wishes to pursue either or
 3-17 both remedies described by Paragraph (A), assist the defendant in
 3-18 requesting the prompt appointment of replacement counsel; and

3-19 (C) if replacement counsel is not appointed
 3-20 promptly and the defendant wishes to pursue an appeal, file a timely
 3-21 notice of appeal.

3-22 (o) Before making a determination of whether a defendant is
 3-23 indigent, the court shall request the defendant to sign under oath a
 3-24 statement substantially in the following form:

3-25 "On this _____ day of _____, 20 ____, I have been advised
 3-26 by the (name of the court) Court of my right to representation by
 3-27 counsel in connection with [~~the trial of~~] the charge pending
 3-28 against me. I am without means to employ counsel of my own choosing
 3-29 and I hereby request the court to appoint counsel for me.
 3-30 (signature of the defendant)"

3-31 SECTION 2. Section 21, Article 42.12, Code of Criminal
 3-32 Procedure, is amended by amending Subsections (b) and (d) and
 3-33 adding Subsections (b-1) and (b-2) to read as follows:

3-34 (b) At any time during the period of community supervision
 3-35 the judge may issue a warrant for violation of any of the conditions
 3-36 of the community supervision and cause the defendant to be
 3-37 arrested. Any supervision officer, police officer or other officer
 3-38 with power of arrest may arrest such defendant with or without a
 3-39 warrant upon the order of the judge to be noted on the docket of the
 3-40 court. Subject to Subsection (b-1), a [A] defendant [so] arrested
 3-41 under this subsection may be detained in the county jail or other
 3-42 appropriate place of confinement until he can be taken before the
 3-43 judge for a determination regarding the alleged violation. The
 3-44 arresting [Such] officer shall immediately [forthwith] report the
 3-45 [such] arrest and detention to the [such] judge.

3-46 (b-1) Without any unnecessary delay, but not later than 48
 3-47 hours after the person is arrested, the arresting officer or the
 3-48 person with custody of the arrested person shall take the arrested
 3-49 person before the judge who ordered the arrest for the alleged
 3-50 violation of a condition of community supervision or, if the judge
 3-51 is unavailable, before a magistrate of the county in which the
 3-52 person was arrested. The judge or magistrate shall perform all
 3-53 appropriate duties and may exercise all appropriate powers as
 3-54 provided by Article 15.17 with respect to an arrest for a new
 3-55 criminal offense, except that only the judge who ordered the arrest
 3-56 for the alleged violation may authorize the person's release on
 3-57 bail. The arrested person may be taken before the judge or
 3-58 magistrate under this subsection by means of an electronic
 3-59 broadcast system as provided by and subject to the requirements of
 3-60 Article 15.17.

3-61 (b-2) If the defendant has not been released on bail as
 3-62 permitted under Subsection (b-1), on motion by the defendant the
 3-63 judge who ordered the arrest for the alleged violation of a
 3-64 condition of community supervision shall cause the defendant to be
 3-65 brought before the judge for a hearing on the alleged violation
 3-66 within 20 days of filing of said motion, and after a hearing without
 3-67 a jury, may either continue, extend, modify, or revoke the
 3-68 community supervision. A judge may revoke the community
 3-69 supervision of a defendant who is imprisoned in a penal institution

4-1 without a hearing if the defendant in writing before a court of
4-2 record in the jurisdiction where imprisoned waives his right to a
4-3 hearing and to counsel, affirms that he has nothing to say as to why
4-4 sentence should not be pronounced against him, and requests the
4-5 judge to revoke community supervision and to pronounce sentence.
4-6 In a felony case, the state may amend the motion to revoke community
4-7 supervision any time up to seven days before the date of the
4-8 revocation hearing, after which time the motion may not be amended
4-9 except for good cause shown, and in no event may the state amend the
4-10 motion after the commencement of taking evidence at the hearing.
4-11 The judge may continue the hearing for good cause shown by either
4-12 the defendant or the state.

4-13 (d) A defendant has a right to counsel at a hearing under
4-14 this section. The court shall appoint counsel for an indigent
4-15 defendant in accordance with the procedures adopted under Article
4-16 26.04.

4-17 SECTION 3. The change in law made by this Act applies only
4-18 to a criminal proceeding that commences on or after the effective
4-19 date of this Act. A criminal proceeding that commences before the
4-20 effective date of this Act is governed by the law in effect when the
4-21 proceeding commenced, and the former law is continued in effect for
4-22 that purpose.

4-23 SECTION 4. This Act takes effect September 1, 2011.

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