

BILL ANALYSIS

Senate Research Center
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S.B. 780
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Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The use of public defenders is governed by Article 26.04 (Procedures for Appointing Counsel) of the Code of Criminal Procedure. The provision currently indicates that a court "may" appoint a public defender to represent qualifying defendants, indicating that the court is not required to do so.

During the interim, certain legislators and appellate judges received reports that courts are not assigning public defenders to qualifying defendants, even when the case seems like one where the use of a public defender is warranted. This underutilization of county public defender's offices undermines the rights of the accused and wastes the taxpayer money that funds the offices.

S.B. 780 amends the Code of Criminal Procedure to make the use of public defenders mandatory, rather than discretionary, in counties where a public defender's office is located. This bill changes the provision to indicate that a court "shall" appoint a public defender, except where the court finds good cause to appoint other counsel, or where counsel is provided by a county managed assigned counsel program.

As proposed, S.B. 780 amends current law relating to the prioritization of certain available legal defense services when appointing representation for an indigent defendant in a criminal case.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Articles 26.04(f), (h), and (i), Code of Criminal Procedure, as follows:

(f) Requires the court or the courts' designee, in a county in which a public defender's office is created or designated under Article 26.044 (Public Defender's Office), to appoint that office to represent the defendant, except that the court is not required to make an appointment under this subsection if the court makes a finding of good cause on the record for appointing other counsel or a managed assigned counsel program also exists in the county and an attorney will be appointed under that program. Deletes existing text authorizing the court or the courts' designee, in a county in which a public defender's office is created or designated under Article 26.044, to appoint that office to represent the defendant in accordance with guidelines established for the office.

(h) Authorizes a court or the courts' designee, subject to Subsection (f), in a county in which an alternative program for appointing counsel is established as provided by Subsection (g) (relating to a countywide alternative program for appointing counsel for indigent defendants in criminal cases) and is approved by the presiding judge of the administrative judicial region, to represent an indigent defendant by using the alternative program.

(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, subject to Subsection (f), to appoint an attorney from any county located in the court's administrative judicial region.

SECTION 2. Amends Article 26.044(c-1), Code of Criminal Procedure, to require that a written plan under Subsection (b-1) (relating to the commissioners court requiring a written plan from a governmental entity serving as a public defender's office) or a proposal under Subsection (c) (relating to the commissioners court soliciting proposals for the public defender's office) to include a policy that establishes circumstances constituting good cause under Article 26.04(f) (relating to a public defender's office being directed by a chief public defender who fulfills certain criteria), such as attorney caseloads at the public defender's office, the distance that an attorney employed by a regional public defender's office would have to travel if appointed to the case, or any other circumstance that the commissioners court or courts consider appropriate.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2013.