

## **BILL ANALYSIS**

C.S.H.B. 2525  
By: Coleman  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that when a person is arrested and jailed in a county on a warrant issued by a different county, confusion results when determining the county responsible for appointing an attorney for the person. These parties believe that this inefficient process has led to arrested persons remaining in jail, most notably in cases in which the warrant-issuing county does not properly transport the person or communicate with the arresting county to effectuate the person's release. C.S.H.B. 2525 seeks to remedy this situation by clarifying responsibility for appointment of counsel for a defendant on an out-of-county warrant.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2525 amends the Code of Criminal Procedure to require a court or the courts' designee who is authorized to appoint counsel for indigent defendants in the county that issued the applicable warrant, if the indigent defendant is arrested under the warrant issued in a county other than the county in which the arrest was made and the defendant is entitled to and requests appointed counsel, to appoint counsel within the applicable periods, regardless of whether the defendant is present within the county issuing the warrant and even if adversarial judicial proceedings have not yet been initiated against the defendant in that county. The bill requires the court or the designee, if the defendant has not been transferred or released into the custody of the county issuing the warrant before the 11th day after the date of the arrest and if counsel has not otherwise been appointed for the defendant in the arresting county, to immediately appoint counsel to represent the defendant in any matter under statutory provisions regarding habeas corpus or bail, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county. The bill authorizes the arresting county, if the counsel for the defendant in the arresting county is appointed under the bill's provisions, to seek from the county that issued the warrant reimbursement for the actual costs paid by the arresting county for the appointed counsel.

C.S.H.B. 2525 requires a magistrate, if a person arrested for an offense is taken before the magistrate and the magistrate serves a county other than the county that issued the warrant, to inform the person arrested of the procedures for requesting appointment of counsel and to ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. The bill requires the magistrate, if the person requests the appointment of counsel, to transmit or cause to be transmitted, without unnecessary

delay but not later than 24 hours after the person requested the appointment of counsel, the necessary request forms for appointed counsel to the court or designee in the county issuing the warrant. The bill includes a case in which a person arrested for an out-of-county offense is taken before a magistrate of the county where the arrest took place or before a magistrate in any other county among the cases in which a record is required to be made of certain information relating to the request for the appointment of counsel. The bill establishes that the adopted and published countywide procedures used for timely and fairly appointing counsel for an indigent defendant must be consistent with statutory provisions relating to an arrest for an out-of-county offense.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2525 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Article 1.051, Code of Criminal Procedure, is amended by amending Subsections (c), (i), and (k) and adding Subsection (c-1) to read as follows:

(c) An indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. Subject to Subsection (c-1) [~~Except as otherwise provided by this subsection~~], if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county in which the defendant is arrested shall appoint counsel as soon as possible, but not later than:

(1) the end of the third working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel, if the defendant is arrested in a county with a population of less than 250,000; or

(2) [~~In a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection as soon as possible, but not later than~~] the end of the first working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel, if the

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Article 1.051, Code of Criminal Procedure, is amended by amending Subsections (c), (i), and (k) and adding Subsection (c-1) to read as follows:

(c) An indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. Subject to Subsection (c-1) [~~Except as otherwise provided by this subsection~~], if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county in which the defendant is arrested shall appoint counsel as soon as possible, but not later than:

(1) the end of the third working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel, if the defendant is arrested in a county with a population of less than 250,000; or

(2) [~~In a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection as soon as possible, but not later than~~] the end of the first working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel, if the

defendant is arrested in a county with a population of 250,000 or more.

(c-1) If an indigent defendant is arrested under a warrant issued in a county other than the county in which the arrest was made and the defendant is entitled to and requests appointed counsel, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county that issued the warrant shall appoint counsel within the periods prescribed by Subsection (c), regardless of whether the defendant is present within the county issuing the warrant and even if adversarial judicial proceedings have not yet been initiated against the defendant in the county issuing the warrant. However, if the defendant has not been transferred or released into the custody of the county issuing the warrant before the 11th day after the date of the arrest and if counsel has not otherwise been appointed for the defendant in the arresting county under this article, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the arresting county immediately shall appoint counsel to represent the defendant in all pretrial and trial matters, including habeas corpus proceedings, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county.

(i) Subject to Subsection (c-1) [Except as otherwise provided by this subsection], with respect to a county with a population of less than 250,000, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have not been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county in which the defendant is arrested shall appoint counsel immediately following the expiration of three working days after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the

defendant is arrested in a county with a population of 250,000 or more.

(c-1) If an indigent defendant is arrested under a warrant issued in a county other than the county in which the arrest was made and the defendant is entitled to and requests appointed counsel, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county that issued the warrant shall appoint counsel within the periods prescribed by Subsection (c), regardless of whether the defendant is present within the county issuing the warrant and even if adversarial judicial proceedings have not yet been initiated against the defendant in the county issuing the warrant. However, if the defendant has not been transferred or released into the custody of the county issuing the warrant before the 11th day after the date of the arrest and if counsel has not otherwise been appointed for the defendant in the arresting county under this article, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the arresting county immediately shall appoint counsel to represent the defendant in any matter under Chapter 11 or 17, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county. If counsel is appointed for the defendant in the arresting county as required by this subsection, the arresting county may seek from the county that issued the warrant reimbursement for the actual costs paid by the arresting county for the appointed counsel.

(i) Subject to Subsection (c-1) [Except as otherwise provided by this subsection], with respect to a county with a population of less than 250,000, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have not been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county in which the defendant is arrested shall appoint counsel immediately following the expiration of three working days after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the

defendant before the expiration of the three working days, the court or the courts' designee shall appoint counsel as provided by Subsection (c). Subject to Subsection (c-1), in [H] a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection immediately following the expiration of one working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the defendant before the expiration of the one working day, the court or the courts' designee shall appoint counsel as provided by Subsection (c).

(k) A court or the courts' designee may without unnecessary delay appoint new counsel to represent an indigent defendant for whom counsel is appointed under Subsection (c), (c-1), or (i) if:

(1) the defendant is subsequently charged in the case with an offense different from the offense with which the defendant was initially charged; and

(2) good cause to appoint new counsel is stated on the record as required by Article 26.04(j)(2).

SECTION 2. Article 15.17(e), Code of Criminal Procedure, is amended.

SECTION 3. Article 15.18, Code of Criminal Procedure, is amended by adding Subsection (a-1) to read as follows:

(a-1) If the arrested person is taken before a magistrate of a county other than the county that issued the warrant, the magistrate shall,

if the person is indigent and is entitled to and requests appointed counsel, without unnecessary delay but not later than 24 hours after the person requested the appointment of counsel, transmit, or cause to be transmitted, the appropriate request forms to a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county issuing the warrant.

defendant before the expiration of the three working days, the court or the courts' designee shall appoint counsel as provided by Subsection (c). Subject to Subsection (c-1), in [H] a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection immediately following the expiration of one working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the defendant before the expiration of the one working day, the court or the courts' designee shall appoint counsel as provided by Subsection (c).

(k) A court or the courts' designee may without unnecessary delay appoint new counsel to represent an indigent defendant for whom counsel is appointed under Subsection (c), (c-1), or (i) if:

(1) the defendant is subsequently charged in the case with an offense different from the offense with which the defendant was initially charged; and

(2) good cause to appoint new counsel is stated on the record as required by Article 26.04(j)(2).

SECTION 2. Same as introduced version.

SECTION 3. Article 15.18, Code of Criminal Procedure, is amended by adding Subsection (a-1) to read as follows:

(a-1) If the arrested person is taken before a magistrate of a county other than the county that issued the warrant, the magistrate shall inform the person arrested of the procedures for requesting appointment of counsel and ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person requests the appointment of counsel, the magistrate shall, without unnecessary delay but not later than 24 hours after the person requested the appointment of counsel, transmit, or cause to be transmitted, the necessary request forms to a court or the courts' designee authorized under Article 26.04 to appoint counsel in the county issuing the warrant.

SECTION 4. Article 26.04(a), Code of Criminal Procedure, is amended.

SECTION 4. Same as introduced version.

SECTION 5. The change in law made by this Act applies only to a person who is arrested on or after the effective date of this Act. A person arrested before the effective date of this Act is governed by the law in effect on the date the person was arrested, and the former law is continued in effect for that purpose.

SECTION 5. Same as introduced version.

SECTION 6. This Act takes effect September 1, 2015.

SECTION 6. Same as introduced version.