

By: Alonzo

H.B. No. 3338

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the appointment of counsel for indigent defendants
3 arrested for, charged with, or taking appeal from a conviction of an
4 assault punishable by fine only.

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

6 SECTION 1. Articles 1.051(c), (f-1), and (f-2), Code of
7 Criminal Procedure, are amended to read as follows:

8 (c) An indigent defendant is entitled to have an attorney
9 appointed to represent the defendant [~~him~~] in any adversary
10 judicial proceeding that may result in punishment by confinement,
11 in any criminal proceeding for an offense under Section 22.01,
12 Penal Code, punishable by fine only, and in any other criminal
13 proceeding if the court concludes that the interests of justice
14 require representation. Except as otherwise provided by this
15 subsection, if an indigent defendant is entitled to and requests
16 appointed counsel and if adversarial judicial proceedings have been
17 initiated against the defendant, a court or the courts' designee
18 authorized under Article 26.04 to appoint counsel for indigent
19 defendants in the county shall appoint counsel as soon as possible,
20 but not later than the end of the third working day after the date on
21 which the court or the courts' designee receives the defendant's
22 request for appointment of counsel. In a county with a population
23 of 250,000 or more, the court or the courts' designee shall appoint
24 counsel as required by this subsection as soon as possible, but not

1 later than the end of the first working day after the date on which
2 the court or the courts' designee receives the defendant's request
3 for appointment of counsel.

4 (f-1) In any adversary judicial proceeding that may result
5 in punishment by confinement or in a criminal proceeding for an
6 offense under Section 22.01, Penal Code, punishable by fine only,
7 the attorney representing the state may not:

8 (1) initiate or encourage an attempt to obtain from a
9 defendant who is not represented by counsel a waiver of the right to
10 counsel; or

11 (2) communicate with a defendant who has requested the
12 appointment of counsel, unless the court or the court's designee
13 authorized under Article 26.04 to appoint counsel for indigent
14 defendants in the county has denied the request and, subsequent to
15 the denial, the defendant:

16 (A) has been given a reasonable opportunity to
17 retain and has failed to retain private counsel; or

18 (B) waives or has waived the opportunity to
19 retain private counsel.

20 (f-2) In any adversary judicial proceeding that may result
21 in punishment by confinement or in a criminal proceeding for an
22 offense under Section 22.01, Penal Code, punishable by fine only,
23 the court may not direct or encourage the defendant to communicate
24 with the attorney representing the state until the court advises
25 the defendant of the right to counsel and the procedure for
26 requesting appointed counsel and the defendant has been given a
27 reasonable opportunity to request appointed counsel. If the

1 defendant has requested appointed counsel, the court may not direct
2 or encourage the defendant to communicate with the attorney
3 representing the state unless the court or the court's designee
4 authorized under Article 26.04 to appoint counsel for indigent
5 defendants in the county has denied the request and, subsequent to
6 the denial, the defendant:

7 (1) has been given a reasonable opportunity to retain
8 and has failed to retain private counsel; or

9 (2) waives or has waived the opportunity to retain
10 private counsel.

11 SECTION 2. Articles 26.04(a), (b), (c), (d), (e), (g), (h),
12 and (k), Code of Criminal Procedure, are amended to read as follows:

13 (a) The judges and magistrates of the county courts,
14 statutory county courts, municipal courts, justice courts, and
15 district courts trying criminal cases in each county, by local
16 rule, shall adopt and publish written countywide procedures for
17 timely and fairly appointing counsel for an indigent defendant in
18 the county arrested for, charged with, or taking an appeal from a
19 conviction of a misdemeanor punishable by confinement, an offense
20 under Section 22.01, Penal Code, punishable by fine only, or a
21 felony. The procedures must be consistent with this article and
22 Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an
23 attorney from a public appointment list using a system of rotation,
24 unless the court appoints an attorney under Subsection (f), (f-1),
25 (h), or (i). The court shall appoint attorneys from among the next
26 five names on the appointment list in the order in which the
27 attorneys' names appear on the list, unless the court makes a

1 finding of good cause on the record for appointing an attorney out
2 of order. An attorney who is not appointed in the order in which
3 the attorney's name appears on the list shall remain next in order
4 on the list.

5 (b) Procedures adopted under Subsection (a) shall:

6 (1) authorize only the judges or magistrates of the
7 county courts, statutory county courts, municipal courts, justice
8 courts, and district courts trying criminal cases in the county, or
9 the judges' or magistrates' designee, to appoint counsel for
10 indigent defendants in the county;

11 (2) apply to each appointment of counsel made by a
12 judge or magistrate or [~~the judges'~~] designee of the judge or
13 magistrate in the county;

14 (3) ensure that each indigent defendant in the county
15 who is charged with a misdemeanor punishable by confinement, with
16 an offense under Section 22.01, Penal Code, punishable by fine
17 only, or with a felony and who appears in court without counsel has
18 an opportunity to confer with appointed counsel before the
19 commencement of judicial proceedings;

20 (4) require appointments for defendants in capital
21 cases in which the death penalty is sought to comply with any
22 applicable requirements under Articles 11.071 and 26.052;

23 (5) ensure that each attorney appointed from a public
24 appointment list to represent an indigent defendant perform the
25 attorney's duty owed to the defendant in accordance with the
26 adopted procedures, the requirements of this code, and applicable
27 rules of ethics; and

1 (6) ensure that appointments are allocated among
2 qualified attorneys in a manner that is fair, neutral, and
3 nondiscriminatory.

4 (c) Whenever a court or the courts' designee authorized
5 under Subsection (b) to appoint counsel for indigent defendants in
6 the county determines for purposes of a criminal proceeding that a
7 defendant charged with or appealing a conviction of a felony, ~~[or]~~ a
8 misdemeanor punishable by confinement, or an offense under Section
9 22.01, Penal Code, punishable by fine only is indigent or that the
10 interests of justice require representation of a defendant in the
11 proceeding, the court or the courts' designee shall appoint one or
12 more practicing attorneys to represent the defendant in accordance
13 with this subsection and the procedures adopted under Subsection
14 (a). If the court or the courts' designee determines that the
15 defendant does not speak and understand the English language or
16 that the defendant is deaf, the court or the courts' designee shall
17 make an effort to appoint an attorney who is capable of
18 communicating in a language understood by the defendant.

19 (d) A public appointment list from which an attorney is
20 appointed as required by Subsection (a) shall contain the names of
21 qualified attorneys, each of whom:

- 22 (1) applies to be included on the list;
- 23 (2) meets the objective qualifications specified by
24 the judges and magistrates under Subsection (e);
- 25 (3) meets any applicable qualifications specified by
26 the Texas Indigent Defense Commission; and
- 27 (4) is approved by a majority of the judges and

1 magistrates who established the appointment list under Subsection
2 (e).

3 (e) In a county in which a court is required under
4 Subsection (a) to appoint an attorney from a public appointment
5 list:

6 (1) the judges and magistrates of the county courts,
7 [~~and~~] statutory county courts, municipal courts, and justice courts
8 trying misdemeanor cases in the county, by formal action:

9 (A) shall:

10 (i) establish a public appointment list of
11 attorneys qualified to provide representation in the county in
12 misdemeanor cases punishable by confinement and in misdemeanor
13 assaults punishable by fine only; and

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

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

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

24 (A) shall:

25 (i) establish a public appointment list of
26 attorneys qualified to provide representation in felony cases in
27 the county; and

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

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

8 (g) A countywide alternative program for appointing counsel
9 for indigent defendants in criminal cases is established by a
10 formal action in which two-thirds of the judges and magistrates of
11 the courts designated under this subsection vote to establish the
12 alternative program. An alternative program for appointing
13 counsel in misdemeanor and felony cases may be established in the
14 manner provided by this subsection by the judges of the county
15 courts, statutory county courts, and district courts trying
16 criminal cases in the county. An alternative program for
17 appointing counsel in misdemeanor cases may be established in the
18 manner provided by this subsection by the judges and magistrates of
19 the county courts, ~~and~~ statutory county courts, municipal courts,
20 and justice courts trying criminal cases in the county. An
21 alternative program for appointing counsel in felony cases may be
22 established in the manner provided by this subsection by the judges
23 of the district courts trying criminal cases in the county. In a
24 county in which an alternative program is established:

25 (1) the alternative program may:

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

1 (B) use a multicounty appointment list using a
2 system of rotation; and

3 (2) the procedures adopted under Subsection (a) must
4 ensure that:

5 (A) attorneys appointed using the alternative
6 program to represent defendants in misdemeanor cases punishable by
7 confinement:

8 (i) meet specified objective
9 qualifications for that representation, which may be graduated
10 according to the degree of seriousness of the offense and whether
11 representation will be provided in trial court proceedings,
12 appellate proceedings, or both; and

13 (ii) are approved by a majority of the
14 judges and magistrates of the county courts, ~~and~~ statutory county
15 courts, municipal courts, and justice courts trying misdemeanor
16 cases in the county;

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

19 (i) meet specified objective
20 qualifications for that representation, which may be graduated
21 according to the degree of seriousness of the offense and whether
22 representation will be provided in trial court proceedings,
23 appellate proceedings, or both; and

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

26 (C) appointments for defendants in capital cases
27 in which the death penalty is sought comply with the requirements of

1 Article 26.052; and

2 (D) appointments are reasonably and impartially
3 allocated among qualified attorneys.

4 (h) In a county in which an alternative program for
5 appointing counsel is established as provided by Subsection (g) and
6 is approved by the presiding judge of the administrative judicial
7 region, a court or the courts' designee may appoint an attorney to
8 represent an indigent defendant by using the alternative program.
9 In establishing an alternative program under Subsection (g), the
10 judges and magistrates of the courts establishing the program may
11 not, without the approval of the commissioners court, obligate the
12 county by contract or by the creation of new positions that cause an
13 increase in expenditure of county funds.

14 (k) A court may replace an attorney who violates Subsection
15 (j)(1) with other counsel. A majority of the judges and magistrates
16 of the county courts, ~~and~~ statutory county courts, municipal
17 courts, and justice courts or of the district courts, as
18 appropriate, trying criminal cases in the county may remove from
19 consideration for appointment an attorney who intentionally or
20 repeatedly violates Subsection (j)(1).

21 SECTION 3. Articles 26.05(b), (c), and (e), Code of
22 Criminal Procedure, are amended to read as follows:

23 (b) All payments made under this article shall be paid in
24 accordance with a schedule of fees adopted by formal action of the
25 judges and magistrates of the county courts, statutory county
26 courts, municipal courts, justice courts, and district courts
27 trying criminal cases in each county. On adoption of a schedule of

1 fees as provided by this subsection, a copy of the schedule shall be
2 sent to the commissioners court of the county.

3 (c) Each fee schedule adopted shall state reasonable fixed
4 rates or minimum and maximum hourly rates, taking into
5 consideration reasonable and necessary overhead costs and the
6 availability of qualified attorneys willing to accept the stated
7 rates, and shall provide a form for the appointed counsel to itemize
8 the types of services performed. No payment shall be made under
9 this article until the form for itemizing the services performed is
10 submitted to the judge or magistrate presiding over the proceedings
11 or, if the county operates a managed assigned counsel program under
12 Article 26.047, to the director of the program, and until the judge,
13 magistrate, or director, as applicable, approves the payment. If
14 the judge, magistrate, or director disapproves the requested amount
15 of payment, the judge, magistrate, or director shall make written
16 findings stating the amount of payment that the judge, magistrate,
17 or director approves and each reason for approving an amount
18 different from the requested amount. An attorney whose request for
19 payment is disapproved or is not otherwise acted on by the 60th day
20 after the date the request for payment is submitted may appeal the
21 disapproval or failure to act by filing a motion with the presiding
22 judge of the administrative judicial region. On the filing of a
23 motion, the presiding judge of the administrative judicial region
24 shall review the disapproval of payment or failure to act and
25 determine the appropriate amount of payment. In reviewing the
26 disapproval or failure to act, the presiding judge of the
27 administrative judicial region may conduct a hearing. Not later

1 than the 45th day after the date an application for payment of a fee
2 is submitted under this article, the commissioners court shall pay
3 to the appointed counsel the amount that is approved by the
4 presiding judge of the administrative judicial region and that is
5 in accordance with the fee schedule for that county.

6 (e) A majority of the judges and magistrates of the county
7 courts, ~~and~~ statutory county courts, municipal courts, and
8 justice courts or of the district courts, as appropriate, trying
9 criminal cases in the county may remove an attorney from
10 consideration for appointment if, after a hearing, it is shown that
11 the attorney submitted a claim for legal services not performed by
12 the attorney.

13 SECTION 4. Sections 79.001(6) and (10), Government Code,
14 are amended to read as follows:

15 (6) "Crime" means:

16 (A) an offense under Section 22.01, Penal Code,
17 punishable by fine only;

18 (B) a misdemeanor punishable by confinement; or

19 (C) ~~(B)~~ a felony.

20 (10) "Juvenile offense" means conduct committed by a
21 person while younger than 17 years of age that constitutes:

22 (A) an offense under Section 22.01, Penal Code,
23 punishable by fine only;

24 (B) a misdemeanor punishable by confinement; or

25 (C) ~~(B)~~ a felony.

26 SECTION 5. The change in law made by this Act applies only
27 to a defendant arrested for, charged with, or taking an appeal from

1 a conviction of an offense under Section 22.01, Penal Code,
2 punishable by fine only on or after the effective date of this Act,
3 regardless of whether the offense that was the subject of the
4 arrest, charge, or conviction was committed before, on, or after
5 that date.

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