

By: Ellis

S.B. No. 260

A BILL TO BE ENTITLED

AN ACT

1
2 relating to caseloads for attorneys who are appointed to represent
3 indigent defendants in criminal cases.

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

5 SECTION 1. Articles 26.04(b), (d), (e), and (j), Code of
6 Criminal Procedure, are amended to read as follows:

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

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

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

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

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

22 (5) ensure that each attorney appointed from a public
23 appointment list to represent an indigent defendant perform the
24 attorney's duty owed to the defendant in accordance with the

1 adopted procedures, the requirements of this code, and applicable
2 rules of ethics; ~~and~~

3 (6) ensure that appointments are allocated among
4 qualified attorneys in a manner that is fair, neutral, and
5 nondiscriminatory; and

6 (7) ensure that an appointment will not result in the
7 applicable attorney having a caseload that is larger than the
8 maximum allowable caseload established under Subsection (e).

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

12 (1) applies to be included on the list;

13 (2) meets the objective qualifications specified by
14 the judges under Subsection (e);

15 (3) meets any applicable qualifications specified by
16 the Texas Indigent Defense Commission; ~~and~~

17 (4) is approved by a majority of the judges who
18 established the appointment list under Subsection (e); and

19 (5) annually provides information necessary to
20 establish that the attorney is able to accept an appointment under
21 the program without exceeding the attorney's maximum allowable
22 caseload specified by the judges under Subsection (e).

23 (e) In a county in which a court is required under
24 Subsection (a) to appoint an attorney from a public appointment
25 list:

26 (1) the judges of the county courts and statutory
27 county courts trying misdemeanor cases in the county, by formal

1 action:

2 (A) shall:

3 (i) establish a public appointment list of
4 attorneys qualified to provide representation in the county in
5 misdemeanor cases punishable by confinement; ~~and~~

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

8 (iii) establish a maximum allowable
9 caseload for a qualified attorney that, considering the attorney's
10 total caseload including appointments made under this article,
11 appointments made under Title 3, Family Code, and other work,
12 ensures that the defendant will be diligently represented; 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, the attorneys'
16 qualifications, and whether representation will be provided in
17 trial court proceedings, appellate proceedings, or both; and

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

20 (A) shall:

21 (i) establish a public appointment list of
22 attorneys qualified to provide representation in felony cases in
23 the county; ~~and~~

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

26 (iii) establish a maximum allowable
27 caseload for a qualified attorney that, considering the attorney's

1 total caseload including appointments made under this article,
2 appointments made under Title 3, Family Code, and other work,
3 ensures that the defendant will be diligently represented; and

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

9 (j) An attorney appointed under this article shall:

10 (1) make every reasonable effort to contact the
11 defendant not later than the end of the first working day after the
12 date on which the attorney is appointed and to interview the
13 defendant as soon as practicable after the attorney is appointed;

14 (2) represent the defendant until charges are
15 dismissed, the defendant is acquitted, appeals are exhausted, or
16 the attorney is permitted or ordered by the court to withdraw as
17 counsel for the defendant after a finding of good cause is entered
18 on the record;

19 (3) with respect to a defendant not represented by
20 other counsel, before withdrawing as counsel for the defendant
21 after a trial or the entry of a plea of guilty:

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

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

27 (C) if replacement counsel is not appointed

1 promptly and the defendant wishes to pursue an appeal, file a timely
2 notice of appeal; and

3 (4) not later than October 1 [~~15~~] of each year and in
4 the form and manner [~~on a form~~] prescribed by the Texas Indigent
5 Defense Commission, submit to the county information that describes
6 the attorney's caseload for the most recent state fiscal year,
7 including [~~, for the preceding fiscal year, that describes the~~
8 ~~percentage of the attorney's practice time that was dedicated to~~
9 ~~work based on~~] appointments accepted in the county under this
10 article, appointments accepted in the county under [~~and~~] Title 3,
11 Family Code, and other work.

12 SECTION 2. Section 79.036(a-1), Government Code, is amended
13 to read as follows:

14 (a-1) Not later than November 1 of each year and in the form
15 and manner prescribed by the commission, each county shall prepare
16 and provide to the commission information that describes for the
17 preceding fiscal year the number of appointments under Article
18 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to
19 each attorney accepting appointments in the county, and information
20 provided to the county by [~~these~~] attorneys under Article
21 26.04(j)(4), Code of Criminal Procedure.

22 SECTION 3. The change in law made by this Act applies only
23 to a criminal proceeding that commences on or after the effective
24 date of this Act. A criminal proceeding that commences before the
25 effective date of this Act is governed by the law in effect when the
26 proceeding commenced, and the former law is continued in effect for
27 that purpose.

1 SECTION 4. This Act takes effect January 1, 2016.