By:  Crockett H.B. No. 3670

A BILL TO BE ENTITLED

AN ACT

relating to appointing a court attorney using the Texas Indigent Defense software

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

SECTION 1.  Article 26.04, Chapter 26, Title 1, Code of Criminal Procedure is amended to read as follows:

Art. 26.04.  PROCEDURES FOR APPOINTING COUNSEL (a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for, charged with, or taking an appeal from a conviction of a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 15.18, 26.05, and 26.052 ~~and must provide for the priority appointment of a public defender's office as described by Subsection (f)~~. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (f-1), (h), or (i). The court shall appoint attorneys using the method of appointment in the Indigent Defense software approved by the Texas Indigent Defense Commission or from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record or in the appointment system for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

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

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

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

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

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

(5)  ensure that each attorney appointed from a public appointment list or pursuant to section (f) below to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and

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

(c)  Whenever a court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines for purposes of a criminal proceeding that a defendant charged with or appealing a conviction of a felony or a misdemeanor punishable by confinement is indigent or that the interests of justice require representation of a defendant in the proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to represent the defendant in accordance with this subsection and the procedures adopted under Subsection (a) If the court or the courts' designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the court or the courts' designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.

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

(1)  applies to be included on the list;

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

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

(4)  is approved by a majority of the judges who established the appointment list under Subsection (e).

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

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

(A)  shall:

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

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

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

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

(A)  shall:

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

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

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

(f)  In a county with a public defender's office, the court or the courts' designee may appoint from the public defender's office. The courts shall determine qualifications for appointment of the public defender pursuant to section (d) above. Section (d) above also applies to ~~including a proceeding in~~ a capital murder case except a public defender who is appointed to represent a defendant in a death penalty case must also meet the qualifications of Article 26.052. ~~However, the court is not required to appoint the public defender's office if:~~

~~(1)  the court makes a finding of good cause for appointing other counsel, provided that in a capital murder case, the court makes a finding of good cause on the record for appointing that counsel;~~

~~(2)  the appointment would be contrary to the office's written plan under Article 26.044;~~

~~(3)  the office is prohibited from accepting the appointment under Article 26.044(j); or~~

~~(4)  a managed assigned counsel program also exists in the county and an attorney will be appointed under that program.~~

(f-1)  In a county in which a managed assigned counsel program is operated in accordance with Article 26.047, the managed assigned counsel program may appoint counsel to represent the defendant in accordance with the guidelines established for the program.

(g)  A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An alternative program for appointing counsel in felony cases may be established in the manner provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

(1)  the alternative program may:

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

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

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

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

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

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

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

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

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

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

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

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

(i)  ~~Subject to Subsection (f),~~ A court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused or convicted of a felony may appoint an attorney from any county located in the court's administrative judicial region.

(j)  An attorney appointed under this article shall:

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

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

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

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

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

(C)  if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal; and

(4)  not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code.

(k)  A court may replace an attorney who violates Subsection (j)(1) with other counsel. A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove from consideration for appointment an attorney who intentionally or repeatedly violates Subsection (j)(1).

(l)  Procedures adopted under Subsection (a) must include procedures and financial standards for determining whether a defendant is indigent. The procedures and standards shall apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail.

(m)  In determining whether a defendant is indigent, the court or the courts' designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The court or the courts' designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.

(n)  A defendant who requests a determination of indigency and appointment of counsel shall:

(1)  complete under oath a questionnaire concerning his financial resources;

(2)  respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or

(3)  complete the questionnaire and respond to examination by the judge or magistrate.

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

"On this \_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, I have been advised by the (name of the court) Court of my right to representation by counsel in connection with the charge pending against me. I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)"

(p)  A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigency or nonindigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.

(q)  A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant. This subsection does not prohibit prosecution of the defendant under Chapter 37, Penal Code.

(r)  A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel.

SECTION 2.  This Act takes effect September 1, 2021.