

By: Crockett

H.B. No. 3670

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to appointing a court attorney using the Texas Indigent  
3 Defense software

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

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

7 Art. 26.04. PROCEDURES FOR APPOINTING COUNSEL (a) The  
8 judges of the county courts, statutory county courts, and district  
9 courts trying criminal cases in each county, by local rule, shall  
10 adopt and publish written countywide procedures for timely and  
11 fairly appointing counsel for an indigent defendant in the county  
12 arrested for, charged with, or taking an appeal from a conviction of  
13 a misdemeanor punishable by confinement or a felony. The procedures  
14 must be consistent with this article and Articles 1.051, 15.17,  
15 15.18, 26.05, and 26.052 ~~and must provide for the priority~~  
16 ~~appointment of a public defender's office as described by~~  
17 ~~Subsection (f)~~. A court shall appoint an attorney from a public  
18 appointment list using a system of rotation, unless the court  
19 appoints an attorney under Subsection (f), (f-1), (h), or (i). The  
20 court shall appoint attorneys using the method of appointment in  
21 the Indigent Defense software approved by the Texas Indigent  
22 Defense Commission or from among the next five names on the  
23 appointment list in the order in which the attorneys' names appear  
24 on the list, unless the court makes a finding of good cause on the

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

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

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

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

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

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

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

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

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

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

- 18 (1) applies to be included on the list;  
19 (2) meets the objective qualifications specified by  
20 the judges under Subsection (e);  
21 (3) meets any applicable qualifications specified by  
22 the Texas Indigent Defense Commission; and  
23 (4) is approved by a majority of the judges who  
24 established the appointment list under Subsection (e).

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

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

4                   (A) shall:

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

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

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

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

17                   (A) shall:

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

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

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

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

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

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

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

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

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

25 (g) A countywide alternative program for appointing counsel  
26 for indigent defendants in criminal cases is established by a  
27 formal action in which two-thirds of the judges of the courts

1 designated under this subsection vote to establish the alternative  
2 program. An alternative program for appointing counsel in  
3 misdemeanor and felony cases may be established in the manner  
4 provided by this subsection by the judges of the county courts,  
5 statutory county courts, and district courts trying criminal cases  
6 in the county. An alternative program for appointing counsel in  
7 misdemeanor cases may be established in the manner provided by this  
8 subsection by the judges of the county courts and statutory county  
9 courts trying criminal cases in the county. An alternative program  
10 for appointing counsel in felony cases may be established in the  
11 manner provided by this subsection by the judges of the district  
12 courts trying criminal cases in the county. In a county in which an  
13 alternative program is established:

14 (1) the alternative program may:

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

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

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

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

24 (i) meet specified objective  
25 qualifications for that representation, which may be graduated  
26 according to the degree of seriousness of the offense and whether  
27 representation will be provided in trial court proceedings,

1 appellate proceedings, or both; and

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

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

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

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

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

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

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

1 that cause an increase in expenditure of county funds.

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

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

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

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

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

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

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

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

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

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

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

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

27           (n) A defendant who requests a determination of indigency

1 and appointment of counsel shall:

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

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

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

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

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

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

26 (q) A written or oral statement elicited under this article  
27 or evidence derived from the statement may not be used for any

1 purpose, except to determine the defendant's indigency or to  
2 impeach the direct testimony of the defendant. This subsection does  
3 not prohibit prosecution of the defendant under Chapter 37, Penal  
4 Code.

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

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