

SUBJECT: Authorizing independent assigned counsel programs for indigent defense

COMMITTEE: Criminal Jurisprudence — favorable, as amended

VOTE: 11 ayes — Gallego, Christian, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Riddle, Vaught, Vo

0 nays

SENATE VOTE: On final passage, April 23 — 30-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Under Code of Criminal Procedure, art. 26.04, judges in each county are required to adopt countywide procedures for appointing attorneys for indigent defendants arrested for or charged with felonies or with misdemeanors punishable by confinement. Courts are required to appoint attorneys from a public appointment list. Article 26.04 also allows counties to use public defenders' offices and other alternative programs if they meet specific criteria.

Under independent assigned counsel programs, the management of appointing attorneys for indigent defendants is outsourced to a government office or nonprofit agency independent of the judiciary.

DIGEST: SB 1710, as amended, would authorize counties to establish and use independent assigned counsel programs to appoint attorneys to represent indigent criminal defendants. These would be programs operated with public funds by governmental entities, nonprofit corporations, or bar associations under an agreement with a governmental entity other than a judge or court. Commissioners courts, with the written approval of judges, could appoint an entity to operate an independent assigned counsel program. The commissioners courts of two or more counties could enter into agreements to appoint and fund jointly independent counsel programs.

Commissioners courts would have to specify the types of cases in which the program would appoint attorneys and the courts in which attorneys appointed by the program could appear. Commissioners courts would have

to require a written plan from an entity operating and assigned independent counsel program. SB 1710 lists what would have to be in the plan, including a budget, the maximum caseload for each attorney, and policies of the office.

Programs would have to have a director. Unless the program used a review committee to appoint attorneys to defendants, the director would have to meet specific qualifications, including having substantial experience in the practice of criminal law.

An assigned counsel program could use a review committee to place attorneys on an appointment list. A committee would have to have at least three persons who each met the specific qualifications in SB 1710. Appointment lists would have to include attorneys who applied to be on the list, met the qualifications specified by the Task Force on Indigent Defense, and were approved by the director of the program or a review committee.

Independent assigned counsel programs would be entitled to receive funds for personnel costs and expenses in amounts fixed by the commissioners court and paid by county funds. The programs could employ personnel and enter into contracts as specified by commissioners courts.

The Task Force on Indigent Defense would be required to develop policies and standards governing the organization and operation of independent assigned counsel programs consistent with nationally recognized policies and standards.

The bill would take effect September 1, 2009.

NOTES:

The committee amendment would correct the number of a new section of code that would be added by the bill.