

BILL ANALYSIS

Senate Research Center
81R9951 SJM-D

S.B. 2162
By: Ellis
Criminal Justice
4/19/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Fair Defense Act was passed in 2001 to improve representation of indigent criminal defendants in Texas. Under Article 26.04(a), Code of Criminal Procedure, court appointments for indigent representation are required to be made "from a public appointment list using a system of rotation."

Virtually all county, statutory, and district courts are using this law to guide their appointments for appeals and community supervision revocation hearings, but some are not. This has led to the appearance that certain judges may be appointing friends or donors to handle appeals or community supervision revocation hearing cases.

As proposed, S.B. 2162 clarifies Fair Defense Act procedures for appointing counsel for community supervision revocation hearings or appellate proceedings.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Articles 26.04(a), (c), (i), and (o), Code of Criminal Procedure, as follows:

- (a) Requires the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, to 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. Makes nonsubstantive changes.
- (c) Requires the court or the courts' designee, whenever a court or the courts' designee authorized under Subsection (b) (relating to certain procedures adopted for appointing counsel) 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, rather than a criminal proceeding, to appoint one or more practicing attorneys to represent, rather than defend, the defendant in accordance with this subsection and the procedures adopted under Subsection (a). Requires the court or the courts' designee, 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, to make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.
- (i) Authorizes a court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused or convicted of a felony to appoint an attorney from any county located in the court's administrative judicial region.
- (o) Requires the court, before making a determination of whether a defendant is indigent, to request the defendant to sign under oath a statement substantially in a certain form.

SECTION 2. Amends Section 21(d), Article 42.12, Code of Criminal Procedure, to require the court to appoint counsel for an indigent defendant in accordance with Article 26.04 (Procedures for Appointing Counsel).

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.