

- SUBJECT:** Appointing counsel for appeals, probation revocation hearings
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Gallego, Christian, Fletcher, Miklos, Moody, Riddle, Vaught, Vo
0 nays
3 absent — Hodge, Kent, Pierson
- SENATE VOTE:** On final passage, April 30 — 31-0
- WITNESSES:** No public hearing
- BACKGROUND:** Courts must appoint attorneys for indigent criminal defendants, for both trials and appeals. As part of the Fair Defense Act, Code of Criminal Procedure, art. 26.04 requires judges in each county to adopt countywide procedures for appointing attorneys for indigent defendants arrested for or charged with felonies or misdemeanors punishable by confinement. Courts are required to appoint attorneys from a public appointment list using a system of rotation that complies with Code of Criminal Procedure, ch. 26 and other laws. Judges establish the appointment list and determine objective qualifications necessary to be on it. Art. 26.04 also allows counties to use public defenders offices and other alternative programs to provide indigent defense if they meet specific criteria.
- Code of Criminal Appeals, art. 42.12, sec. 21 deals with hearings held for person accused of violating probation. Subsection (d) states that a defendant has a right to counsel for hearings under the section.
- DIGEST:** SB 2162 would include appeals of convictions and probation revocation hearings for indigent defendants in the types of criminal proceedings for which courts would have to appoint attorneys by using a public appointment list and a rotation system.
- The bill would take effect September 1, 2009, and would apply to criminal proceedings that began on or after that date.

**SUPPORTERS
SAY:**

SB 2162 would clarify that state law requiring the appointment of attorneys in an impartial way for indigent defendants applies to appeals in criminal cases and to probation revocation hearings. While many judges currently use the mandated impartial appointment system when making appointments for appeals and probation revocation hearings, some do not. Some of these judges may claim that current law requiring the use of a rotation system does not state explicitly that the system must be used for appeals and probation revocation hearings. This violates the intent of the state's Fair Defense Act that competent attorneys be appointed in a fair, impartial way. It can give the appearance that judges disproportionately are appointing friends or donors or others with whom they have a relationship. SB 2162 would remedy this by stating clearly that the rotation appointment system be used for these proceedings.

The goal of the Fair Defense Act is not to move cases as quickly as possible. Providing competent counsel in a fair and impartial way should not be sacrificed to dispose of cases quickly.

SB 2162 would not expand who qualified for an appointed attorney. Under current law, indigent defendants must be appointed attorneys for appeals and probation revocation hearings. The bill would change only the way in which those attorneys were appointed. SB 2162 would have no fiscal impact for counties or the state.

**OPPONENTS
SAY:**

SB 2162 would take away judicial discretion for appointments for appeals and probation revocation hearings. In some cases, judges may choose not to use the rotation system in order to give defendants a competent attorney who also can move a case quickly. For example, a judge may know that an attorney was present in the courthouse and could handle a case without delay or had particular expertise that would be useful on a case. Appointing that attorney could allow a defendant to be released sooner than if the judge used the rotation system.