

- SUBJECT:** Appointing public defender's offices for indigent criminal defendants
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Collier, Zedler, K. Bell, J. González, Murr, Pacheco
- 0 nays
- 3 absent — Hunter, P. King, Moody
- SENATE VOTE:** On final passage, April 29 — 27-4 (Hancock, Huffman, Nichols, Taylor)
- WITNESSES:** For — Elsa Alcala, Texas Defender Service; Christi Dean, Dallas County Public Defender's Office; Emily Gerrick, Texas Fair Defense Project; *(Registered, but did not testify:* Warren Burkley and Chas Moore, Austin Justice Coalition; Mary Mergler, Texas Appleseed; Kathleen Mitchell, Just Liberty; Lauren Oertel, Texas Inmate Families Association, Charles Reed, Dallas County Commissioners Court; Windy Johnson, Texas Conference of Urban Counties; and seven individuals)
- Against — None
- On — *(Registered, but did not testify:* Wesley Shackelford, Texas Indigent Defense Commission; Darwin Hamilton; Craig Schiebel)
- BACKGROUND:** Code of Criminal Appeals art. 26.04 requires judges trying criminal cases in each county to adopt and publish countywide procedures for appointing counsel for an indigent defendant in cases involving felonies and misdemeanors that carry potential jail time.
- Under art. 26.04(f), in counties with public defender's offices, courts are required to give priority in appointing that office to represent defendants. Courts are not required to appoint the public defender's office if:
- the court has reason to appoint other counsel; or
 - a managed assigned counsel program also exists in the county and

an attorney will be appointed under that program.

DIGEST:

SB 583 would require countywide procedures adopted by judges for appointing attorneys for indigent criminal defendants to provide for the priority appointment of a public defender's office if one existed in the county. The bill would specify that capital murder cases are included among the proceedings for which courts must give priority to appointing public defender's offices.

The bill would revise the circumstances under which courts did not have to appoint a public defender's office. In addition to the current exception if a managed assigned counsel program was being used, courts would not have to appoint a public defender's office if:

- the court made a finding of good cause on the record for appointing other counsel;
- the appointment would be contrary to the office's written plan for the public defender's office; or
- the office was prohibited from accepting the appointment because of a conflict of interest, insufficient resources, a reason related to the rules of professional conduct, the case violated the maximum allowable caseloads, or other good cause shown by the public defender's office.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

SB 583 would ensure that judges followed the intent of current law to appoint public defender's offices for indigent criminal defendants when the offices were available and appropriate. Currently, some judges routinely pass over public defender's offices and appoint private attorneys, including in capital murder cases. While judges must have a reason to bypass the public defender's office and make these private appointments, they do not have to put that reason on record, even if they are doing it routinely. Litigation to enforce current law has proved unsuccessful, with courts pointing out that the law is unclear.

Public defender's offices provide highly qualified attorneys in a cost-effective manner, and when judges appoint private attorneys over the offices, it costs taxpayers more to meet the constitutionally required duty to provide these attorneys. Counties with public defender's offices have chosen to fund the offices as a way to meet this requirement, and judges bypassing the offices should have to go on record explaining their choice. SB 583 is needed to ensure a consistent statewide approach to these appointments in all counties.

The bill would address this issue in a reasonable manner by establishing requirements when a judge used an attorney other than a public defender and making it clear that the offices should be given priority in capital murder cases. These changes would not reduce the ability of judges to appoint a private attorney, including a capital case, if appropriate. Judges could do so if they first made a finding of good cause or if the appointment was necessary due to other factors such as a conflict of interest or insufficient resources. It would not be difficult for judges to comply with the bill as they routinely have to put findings and other information on the record.

**OPPONENTS
SAY:**

Current law is clear that judges should give priority to public defender's offices, and concerns about individual judges not following the law could be addressed in ways other than SB 583. Judges might not want to state publicly if they feel public defender's offices cannot do the best job because such statements might harm their relationships with the public defender's offices or call into question the appointment of the office in other cases. If there are problems with current law being followed, other approaches such as discussing the issue on the local level could be used rather than the approach taken by the bill.