

BILL ANALYSIS

Senate Research Center
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S.B. 247
By: Ellis
Criminal Justice
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As Filed

DIGEST

In 1965, the legislature sought to accommodate a nascent body of federal constitutional law in which courts held that each poor person must have the opportunity to obtain legal representation at state expense if the state wished to incarcerate the person for a crime. S.B. 247 would establish defense and pretrial information gathering standards for indigent people who are accused of a crime.

PURPOSE

As proposed, S.B. 247 establishes defense and pretrial information gathering standards for indigent people who are accused of a crime.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 1.051(c), Code of Criminal Procedure, to require the court to appoint counsel not later than the seventh day after the date on which a defendant requests counsel, if an indigent defendant remains incarcerated pending trial after a hearing under Article 15.17. Specifies that failure to assign an attorney within the seven-day period is harmless error, unless failure is intentional or prejudice is established.

SECTION 2. Amends Article 15.17(a), Code of Criminal Procedure, to require the magistrate to orally inform the indigent defendant of procedures used in the county to provide counsel, and to provide the person with a written statement in a language understood by the person. Sets forth language of the written statement. Makes nonsubstantive changes.

SECTION 3. Amends Chapter 26, Code of Criminal Procedure, by adding Article 26.059, as follows:

Art. 26.059. COUNTY AUTHORITY TO APPOINT PUBLIC DEFENDER; COOPERATIVE EFFORTS. Authorizes the commissioners court of any county to appoint an attorney to serve as the public defender. Authorizes commissioners courts of two or more counties to appoint an attorney as a regional public defender. Provides that the public defender serves at the pleasure of the appointing courts. Authorizes the public defender to hire and supervise other attorneys and staff, if necessary. Sets forth requirements for eligibility of a public defender. Establishes payment of the public defender's salary from the appropriate funds. Requires commissioners courts of two or more counties to fix the amount of the public defender's salary and its payment source, if the counties agree to jointly appoint the defender. Prohibits a public defender from engaging in the private practice of criminal law, or accepting any unauthorized items for services rendered. Requires a public defender or certain attorneys to represent each indigent person charged with a criminal offense and each indigent minor who is a party to a juvenile delinquency proceeding. Provides that the public defender may investigate and shall report the financial condition of a person the public defender is appointed to represent. Authorizes the judge to determine if a person is indigent and eligible under this article. Establishes that an attorney, other than the public defender appointed, is entitled to compensation. Provides that this article does not apply to the appointment of a public defender under certain articles.

SECTION 4. Amends Chapter 72C, Government Code, by adding Section 72.029, as follows:

Sec. 72.029. INDIGENT DEFENSE STATISTICS. Requires each county auditor and each county judge of a county with an appointed auditor to prepare a report, and send it to the office of the county clerk not later than September 30th of each year. Requires the county auditor, county judge, and the district and county clerk offices to cooperate on information included in the report, and to send the report in a form prescribed by the office, which may include electronic data transfer. Requires the report to include certain information with respect to legal services provided by the county to indigent defendants during the preceding fiscal year.

SECTION 5. Effective date: September 1, 1999. Requires a county auditor or judge to send to the Office of Court Administration the first report required by Section 72.029, Government Code, on or before September 30, 2000.

SECTION 6. Emergency clause.