

BILL ANALYSIS

Senate Research Center

H.B. 1318
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Criminal Justice
5/11/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Despite the fact that certain children are entitled to appointed counsel to represent them in juvenile justice proceedings, many children are not represented by counsel at the first detention hearing. Interested parties say at least one Texas county appoints counsel for children before the first detention hearing, which, according to the parties, has greatly improved the county's efficiencies in processing youth through the juvenile justice system.

H.B. 1318 amends current law relating to the appointment of counsel to represent certain youths and indigent defendants.

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 Article 26.044, Code of Criminal Procedure, by amending Subsection (j) and adding Subsections (j-1) and (j-2), as follows:

(j) Prohibits a public defender's office from accepting an appointment under Article 26.04(f) (relating to authorizing the court or the courts' designee to appoint a public defender's office to represent the defendant in accordance with guidelines established for the office) if certain criteria is met, including that acceptance of the appointment would violate the maximum allowable caseloads established at the public defender's office.

(j-1) Requires a chief public defender, on refusing an appointment under Subsection (j), to file with the court a written statement that identifies any reason for refusing the appointment. Requires the court to determine whether the chief public defender has demonstrated adequate good cause for refusing the appointment and to include the statement with the papers in the case.

(j-2) Prohibits a chief public defender from being terminated, removed, or sanctioned for refusing in good faith to accept an appointment under Subsection (j).

SECTION 2. Amends Section 51.101(a), Family Code, to require the attorney, if an attorney is appointed under Section 54.01(b-1) or (d) to represent a child at the initial detention hearing and the child is detained, to continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court.

SECTION 3. Amends Section 54.01, Family Code, by adding Subsection (b-1) and amending Subsection (d), as follows:

(b-1) Requires the court, unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, to appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.

(d) Authorizes a detention hearing to be held without the presence of the child's parents if the court has been unable to locate them. Requires the court, if no parent or guardian is present, to appoint counsel or a guardian ad litem for the child, subject to the requirements of Subsection (b-1).

SECTION 4. Provides that Sections 51.101(a) and 54.01 (Detention Hearing), Family Code, as amended by this Act, apply only to a detention hearing that is held for a child taken into custody on or after the effective date of this Act.

SECTION 5. Effective date: September 1, 2013.