BILL ANALYSIS

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S.B. 592
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Indigent defense systems that do not have checks and balances in place to protect against massive caseloads are at risk of wasting countless taxpayer dollars, jeopardizing public safety, and violating the protection of the constitutional right to counsel. Without caseload standards, these systems are too often unaccountable, ineffective, and wasteful.

In Harris County, the lack of checks and balances has allowed individual criminal defense lawyers to be appointed to almost one thousand cases in a single year. These lawyers earn between $300,000 and $400,000 per year from indigent defense appointments alone. The attorneys with the most cases have double the number of recommended cases as prescribed by national standards.

The system's failure to ensure that people accused of criminal offenses receive quality legal representation undermines not only the Constitution, but also jeopardizes public safety. When attorneys spend very little time on cases, it undermines the reliability of convictions in courtrooms and the core goal of the justice system: protecting public safety by ensuring that the innocent are protected and the guilty are brought to justice. Attorneys with overwhelming caseloads run the risk of providing incompetent representation, which runs the risk of placing innocent defendants behind bars at taxpayers' expense, while citizens remain at the mercy of guilty perpetrators who are not punished for their crimes.

Currently, there is no legislation that monitors the caseloads of appointed attorneys practicing indigent defense. However, public defender offices and contract attorneys practicing indigent defense must set caseload maximums.

S.B. 592 standardizes the law between all attorneys practicing indigent defense by requiring judges to establish a maximum caseload allowable for an attorney, taking into consideration appointments and the attorney's other work. Also, for an attorney to be on a public appointment list, the attorney must certify that the attorney can accept an appointment without exceeding the attorney's maximum caseload. The bill also requires an attorney to submit information to the county that describes the attorney's caseload for the most recent fiscal year, including cases taken on retainer. Finally, the bill requires the county to submit statistics and other information for the preceding fiscal year on the caseloads of appointed attorneys to the Texas Indigent Defense Commission.

The American Bar Association Principle #5 states unequivocally that a defense counsel's workload must be "controlled to permit the rendering of quality representation" and that "counsel is obligated to decline appointments" when caseload limitations are breached. This legislation will prevent constitutional violations by allowing for an adequate defense for every defendant, stop wasteful spending of tax dollars on an inefficient system, and protect the public from dangerous criminals who need to be locked up.

As proposed, S.B. 592 amends current law relating to caseloads for attorneys who are appointed to represent indigent defendants in criminal cases.

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(b), (d), (e), and (j), Code of Criminal Procedure, as follows:

(b) Requires that procedures adopted under Subsection (a), among other requirements, ensure that an appointment will not result in the applicable attorney having a caseload that is larger than the maximum allowable caseload established under Subsection (e).

(d) Requires that a public appointment list from which an attorney is appointed as required by Subsection (a) (relating to establishing procedures for the appointment of counsel for an indigent defendant arrested for, charged with, or taking an appeal from a conviction of a misdemeanor punishable by confinement or a felony) contain the names of qualified attorneys, each of whom, among other qualifications, annually provides information necessary to establish that the attorney is able to accept an appointment under the program without exceeding the attorney's maximum allowable caseload specified by the judges under Subsection (e).

(e) Provides that in a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action, are required, among other requirements and authorizations, to establish a maximum allowable caseload for a qualified attorney that, when the attorney's total caseload including appointments made under this article and other work is considered, ensures that the defendant will be diligently represented; and

(2) the judges of the district courts trying felony cases in the county, by formal action, are required, among other requirements and authorizations, to establish a maximum allowable caseload for a qualified attorney that, when the attorney's total caseload including appointments made under this article and other work is considered, ensures that the defendant will be diligently represented.

(j) Requires an attorney appointed under this article, not later than October 1 of each year and in the form and manner prescribed by the Texas Indigent Defense Commission (TIDC), to submit to the county information that describes the attorney's caseload for the most recent state fiscal year, including cases taken on a retainer, among other requirements.

SECTION 2. Amends Section 79.036(a), Government Code, as follows:

(a) Requires that each county prepare and provide statistics and other information that describe for the preceding state fiscal year the caseloads of attorneys receiving appointments under Article 26.04, Code of Criminal Procedure, and other certain information not later than November 1 of each year and in the form and manner prescribed by TIDC. Deletes existing text requiring that certain information be prepared and provided to TIDC in each county, not later than November 1 of each odd-numbered year.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: January 1, 2014.