

BILL ANALYSIS

Senate Research Center
76R13183 PEP-D

C.S.S.B. 247
By: Ellis
Criminal Justice
4/26/1999
Committee Report (Substituted)

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. C.S.S.B. 247 would establish defense and pretrial information gathering standards for indigent people who are accused of a crime.

PURPOSE

As proposed, C.S.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 20th 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 20-day period may result in required release of the defendant. Establishes that the release of the defendant is the exclusive remedy for a failure to appoint counsel within the 20-day period.

SECTION 2. Amends Article 15.17(a), Code of Criminal Procedure, to require the magistrate to inform orally and in writing 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 Article 17.151, Code of Criminal Procedure, by amending Section 1 and 2, and by adding Section 4, as follows:

Sec. 1. Makes conforming changes.

Sec. 2. Provides that Section 1(1), rather than provisions, of this article does not apply to certain defendants.

Sec. 4. Provides that if the appointing authority fails to appoint counsel before the specified deadline, the defendant may be detained at any time after counsel is appointed and the defendant is provided an opportunity to confer with appointed counsel.

SECTION 4. Amends the heading to Article 26.04, Code of Criminal Procedure, as follows:

Art. 26.04. New heading: APPOINTMENT OF COUNSEL.

SECTION 5. Amends Article 26.04(a), Code of Criminal Procedure, to require the county commissioners court to establish procedures to govern the provision of legal services to an indigent person accused of having committed a criminal offense in the county and to designate the appointing authority for the county. Sets forth conditions regarding the appointed attorney and the extent to which the attorney shall represent the defendant.

SECTION 6. Amends Article 26.044, Code of Criminal Procedure, as follows:

Art. 26.044. New heading: REGIONAL PUBLIC DEFENDERS. Authorizes the commissioners court of any county to appoint an attorney or a nonprofit corporation established to provide legal services to the indigent to serve as the public defender. Authorizes the commissioners court of two or more counties to enter a written agreement to jointly fund and appoint a regional public defender. Authorizes each public defender to hire and supervise other attorneys and staff in order to carry out all necessary duties. Sets forth requirements for eligibility for individuals to be appointed as a public defender. Sets forth conditions prohibited for a public defender or an attorney employed by the office of the public defender. Authorizes the commissioners court to remove a public defender under certain conditions. Authorizes the judge having jurisdiction over the complaint or other charging instrument to hold a hearing in order to determine whether a person is indigent. Deletes text regarding requirements of at least four county courts. Makes conforming changes.

SECTION 7. Amends Article 26.05, Code of Criminal Procedure, to set forth conditions by which a county auditor, appointed by the commissioners court, shall determine appropriate payment schedule for the appointed counsel. Sets forth reimbursement for appointed counsel that is not with a public defender's office. Deletes text requiring prior court approval for a reimbursement and the requirement for certain judges to create the fee payment schedule. Makes conforming changes.

SECTION 8. Amends Chapter 71C, Government Code, by adding Section 71.0351, as follows:

Sec. 71.0351. INDIGENT DEFENSE INFORMATION. Requires each county auditor to prepare and send a report to council's office of court administration, not later than September 30th of each year. Requires the county commissioners court to designate a person to carry out the responsibilities described by this section. Requires each district and county clerk to cooperate with the county auditor or judge in retrieving information for inclusion in the report. Requires the county auditor or judge to send the report to the office in a prescribed form. Authorizes the office to authorize the form to be sent by electronic data transfer. Sets forth the form, manner, and necessary information by the council's office of court administration by which the report shall be prepared.

SECTION 9. Repealers: Articles 26.041, 26.042, 26.043, 26.045, 26.046, 26.047, 26.048, 26.049, and 26.050, Code of Criminal Procedure (regarding assistance for court-appointed counsel in Harris County, Tarrant County public defender, public defender in Wichita County, public defender in 33rd judicial district, public defender in Colorado County, public defender in Webb County, public defender in Cherokee County, public defender in Tom Green County, and the public defender in the 293rd and 365th judicial districts).

SECTION 10. (a) Effective date: September 1, 1999.

Makes application of this Act prospective.

(b) Requires a county auditor or judge to send to the office of court administration the first report required by Section 71.0351, Government Code, on or before September 30, 2000.

SECTION 11. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Article 1.051(c), Code of Criminal Procedure, to require the court to appoint counsel not later than the 20th day, rather 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 20-day, rather than 7-day, period may result in required release of the defendant. Establishes that the release of the defendant is the exclusive remedy for a failure to appoint counsel within the 20-day period, rather than 7-day period.

SECTION 2.

Amends Article 15.17(a), Code of Criminal Procedure, to require a defendant to be informed of certain procedures orally and in writing.

SECTION 3.

Amends Article 17.151, Code of Criminal Procedure, by amending Section 1 and 2, and by adding Section 4, to provide that Section 1(1), rather than provisions, of this article does not apply to certain defendants. Provides that if the appointing authority fails to appoint counsel before the specified deadline, the defendant may be detained at any time after counsel is appointed and the defendant is provided an opportunity to confer with appointed counsel. Makes conforming changes. Deletes proposed SECTIONS 3 and 4.

SECTION 4.

Amends Article 26.04, Code of Criminal Procedure, to add a new heading.

SECTION 5.

Amends Article 26.04(a), Code of Criminal Procedure, to require the county commissioners court to establish procedures to govern the provision of legal services to an indigent person accused of having committed a criminal offense in the county and to designate the appointing authority for the county. Sets forth conditions regarding the appointed attorney and the extent to which the attorney shall represent the defendant.

SECTION 6.

Amends Article 26.044, Code of Criminal Procedure, to add a new heading. Sets forth provisions regarding the requirements for, duties of, and appointment of regional public defenders.

SECTION 7.

Amends Article 26.05, Code of Criminal Procedure, to set forth conditions by which a county auditor, appointed by the commissioners court, shall determine appropriate payment schedule for the appointed counsel. Sets forth reimbursement for appointed counsel that is not with a public defender's office. Deletes text requiring prior court approval for a reimbursement and the requirement for certain judges to create the fee payment schedule. Makes conforming changes.

SECTION 8.

Amends Chapter 71C, Government Code, by adding Section 71.035, regarding indigent defense information.

SECTION 9.

Repealers: Articles 26.041, 26.042, 26.043, 26.045, 26.046, 26.047, 26.048, 26.049, and 26.050, Code of Criminal Procedure (regarding assistance for court-appointed counsel in Harris County, Tarrant County public defender, public defender in Wichita County, public defender in 33rd judicial district, public defender in Colorado County, public defender in Webb County, public defender in Cherokee County, public defender in Tom Green County, and the public defender in the 293rd and 365th judicial districts).

SECTION 10.

Makes application of this Act prospective. Redesignated from proposed SECTION 5.

SECTION 11.

Redesignated from proposed SECTION 6.