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S.B. 1681

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of S.B. 1681, which clarifies appointed counsel requirements and thus improves the state's indigent defense system, and which has the support of Texas' Task Force on Indigent Defense.

S.B. 1681 BY SENATOR RODNEY ELLIS

This bill makes three important clarifications to ensure that indigent defendants on appeal and in probation revocation proceedings are guaranteed their right to appointed counsel.

(1) S.B. 1681 clarifies that Texas' Fair Defense Act (FDA, effective 2002) applies to attorney appointments for probation revocations and appeals.

The FDA requires judges in each county to adopt countywide procedures for appointing attorneys for indigent defendants arrested for or charged with felonies or misdemeanors punishable by confinement. Courts are required to appoint attorneys from a public appointment list using a system of rotation, an alternative appointment program, or a public defender.

- **PROBLEM:** Some jurisdictions believe the FDA requirements apply to attorney appointments for appeals and probation revocation hearings, while others do not.
- **SOLUTION:** S.B. 1681 clarifies that appointment requirements do apply during probation revocation hearings and on appeal.

(2) S.B. 1681 clarifies procedures for withdrawal of trial counsel and appointment of appellate counsel.

- **PROBLEM:** Many jurisdictions routinely allow appointed trial counsel to withdraw after the plea or trial, and these jurisdictions maintain a separate list of attorneys to represent defendants on appeal. However, this practice can result in Sixth Amendment violations if the transition from trial counsel to appellate counsel is not handled properly.
- **SOLUTION:** S.B. 1681 requires trial counsel to (a) advise a defendant of his or her right to file a motion for new trial or motion for appeal, and (b) help the defendant request appointment of replacement counsel if the defendant wishes to pursue either remedy, before being permitted by the court to withdraw representation.

(3) S.B. 1681 authorizes any magistrate to provide warnings to probation revocation arrestees about the right to counsel.

Like other judges, magistrates already provide warnings on defendants' rights, including the right to counsel, if the arrest is for a new offense. In some areas, they also provide the warnings to probation revocation arrestees.

- ***PROBLEM:*** Current law requires defendants arrested for Motions to Revoke Probation to be brought back before the judge overseeing their probation, who then will administer required warnings. This may result in long delays in rural parts of the state where judges must sit in multiple counties.
- ***SOLUTION:*** S.B. 1681 provides magistrates clear authority to give required warnings to persons arrested on Motions to Revoke Probation, while not permitting magistrates to release such persons on bail. S.B. 1681 also requires the warnings be provided within 48 hours of arrest as they are when a person is arrested for a new offense.

Note: Additionally, S.B. 1681 requires the court to hear the Motion to Revoke Probation Case within 20 day of arrest, rather than within 20 days of the filing of the motion, if the defendant has not been released on bail.

Thank you again for allowing me the opportunity to present testimony in favor of S.B. 1681, which will clarify defendants' rights to counsel at various stages throughout the criminal justice process, as well as strengthen the integrity of the justice system.