

MEMORANDUM

TO: CONSTITUTIONAL COUNTY JUDGES

FROM: REX HALL, ASSOCIATE GENERAL COUNSEL, TEXAS
ASSOCIATION OF COUNTIES

JIM ALLISON, GENERAL COUNSEL, COUNTY JUDGES
& COMMISSIONERS ASSOCIATION OF TEXAS

RE: SB 7: THE TEXAS FAIR DEFENSE ACT

DATE: DECEMBER 13, 2001

The 77th Legislature passed Senate Bill 7, commonly known as the *Texas Fair Defense Act*. The *Act* requires the judges of county and district courts trying criminal cases to adopt and publish written countywide plans for appointing counsel. The commissioners court has no duty to adopt a plan; the judge or judges in the county with jurisdiction over felony cases must adopt a plan for felony cases, and the judge or judges in the county with jurisdiction over misdemeanor cases must adopt a plan for misdemeanor cases. Copies of the plans must be submitted to the Office of Court Administration no later than January 1, 2002.

The *Act* provides for various methods of appointing counsel. The default method for appointing counsel requires courts to appoint counsel from a list of qualified attorneys using a system of rotation. If a rotation system is not suitable for your county, SB 7 also allows trial courts to fashion an alternative program for appointing counsel. Counties across the state have expressed interest in adopting an alternative program for appointment of counsel. Under SB 7, this is the only option that allows trial judges to tailor a plan to meet the needs and resources of their county.

Enclosed is a sample plan for both felony and misdemeanor cases that can be used if the judges find it appropriate. The plan should be reviewed carefully, and revised as necessary to meet the needs of your county. Also, the sample plan requires input from the county. Prior to submitting it for approval, you will have to complete Section III, which requires you to describe the procedure the county intends to use in appointing counsel.

If your county chooses to use an alternative plan, the felony plan must be approved by two-thirds of the judges with jurisdiction over felony cases and the misdemeanor plan must be approved by two-thirds of the judges with jurisdiction over misdemeanor cases. If the felony judges do not approve the sample plan, it can still be used as the basis for the county's plan for misdemeanor cases--just delete all references to felony cases.

Also attached is a one-page guide to preparing an alternative plan. If you want to modify the sample plan substantially or create an entirely different plan, please refer to these guidelines. They are devised to help you craft a plan that complies with SB 7. We also suggest that you review SB 7 in its entirety. Your alternative plan must be submitted to the Presiding Judge of the Administrative Judicial Region, and must also be published.

If you have questions, Mr. Allison can be reached at 1-800-733-0699. Mr. Hall can be reached at 1-888-275-8224.

Note: The Guidelines and Sample Plan are not offered in the context of an attorney-client relationship. This information is provided to assist you, but does not constitute legal counsel, and is not a substitute for legal counsel.

GUIDELINES FOR PREPARING ALTERNATIVE PROGRAMS FOR APPOINTMENT OF COUNSEL IN MISDEMEANOR AND FELONY CASES

SB 7 requires local trial judges to adopt a county-wide plan for appointing counsel to indigent defendants prior to January 2002. In some counties, the local trial judges already have a system in place that is providing quality representation efficiently, and this may serve as the basis for an alternative plan under SB 7. Whether you want to tailor your present system to satisfy SB 7, or devise an entirely new alternative plan, certain statutory requirements must be satisfied. If you follow these guidelines in structuring an alternative plan, it should meet your county's needs and comply with SB 7:

- Include in the plan objective qualifications for attorneys. These qualifications may be, but need not be, graduated according to the seriousness of the offense. You may consider the qualifications of available attorneys in establishing objective qualifications.
- Specify in the plan that only the judge or the judge's designee will appoint counsel and that only qualified attorneys will be appointed.
- Consult with affected county officials to clarify and discuss his or her role in administering the proposed plan. This will increase the plan's effectiveness and avoid unnecessary logistical problems.
- Consult with the commissioners court concerning the plan's fiscal impact, and obtain the commissioners court's approval for any increased expenditure of funds.
- Insure that the felony plan provides that, in death penalty cases, counsel shall be appointed in accordance with Article 26.052 of the Code of Criminal Procedure.
- Reduce your alternative program to writing and adopt it by formal action in which two-thirds of the appropriate judges approve the plan.
- Submit the plan creating your alternative program to the Presiding Judge of the Administrative Judicial Region for approval.
- Publish the plan