

Jury still out on defense lawyer plan

COURTS Tarrant County's new system for providing court-appointed attorneys to the poor is raising questions.

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For years, Tarrant County inmates trooped into the basement of the Criminal Justice Center seeking a court-appointed attorney.

Wearing faded khaki jumpsuits and plastic sandals, they stood in groups of three before a magistrate who asked a few questions and assigned them one of the lawyers waiting nearby. Many inmates had been in jail for at least a week.

It was no-frills justice for those too poor to pay.

But no more.

Beginning Jan. 1, an elaborate procedure controlled by judges in courtrooms throughout the county took its place, part of a state-mandated program to speed up the appointment of qualified lawyers for the poor.

Now attorneys are selected randomly by a computer from a so-called "appointment wheel" in a central office. Lawyers are then notified by e-mail and fax messages that they have been assigned to

defendants.

Overall, the county expects to spend about \$7 million to meet the new state mandates, a \$1 million increase.

Some defense attorneys and judges, however, contend that the new program wastes time and money and discourages experienced attorneys from signing up.

But others are confident it will work.

"I think if a person wants and needs a lawyer, they will get one that is well qualified to handle the cases," said County Criminal Court Judge Billy Mills, chairman of the judicial committee that developed the new system.

So far, however, only about 130 attorneys have signed up to handle felony cases. One court coordinator said about 250 attorneys were signed up to handle felony cases last year.

Criminal defense attorney Greg Westfall is among those who did not sign up, even though it will mean cutting back his business about 20 percent.

"The Tarrant County system was not broken before," Westfall said, "but now we've fixed it and we'll have to see how it goes."

The Fair Defense Act requires all Texas counties to change how they provide legal services to the poor, including how lawyers are selected and paid and which defendants qualify as indigent.

The law also requires judges to adopt a common system. Previously, judges had great leeway in developing standards for indigent defense. Almost all of the counties — 251 of 254 — had submitted plans to the state by Jan. 1.

The arrangements vary, with some counties deciding to have one procedure for all of courts and others opting for separate systems for county criminal courts and criminal district courts.

Bill Beardall, director of the Equal Justice Center, a non-profit, public-interest law center in Austin, said that Tarrant, unlike some counties, took a "thoughtful approach."

A 19-member Tarrant County Board of Criminal Judges remodeled its system based on recommendations from a committee of judges, prosecutors and defense attorneys.

Among the changes the judges adopted were:

■ Guidelines for who gets a court-appointed attorney.

Defendants must fill out a financial questionnaire. Using federal poverty guidelines, a defendant making \$10,738 a year or less qualifies for a

court-appointed attorney. For a family of four, the income can be no more than \$22,063.

■ Establishment of an "appointment wheel" to assign lawyers within the 48-hour limit required in urban counties such as Tarrant.

Judges here will use a rotation system to select from a central list of eligible attorneys approved by the Board of Criminal Judges.

About 130 attorneys have agreed to handle felony cases and about 160 have signed up for misdemeanors.

■ Graduated standards for attorneys requesting court appointments depending on the difficulty of the case.

Attorneys willing to take death-penalty cases, for example, must have at least five years' experience in criminal cases with a significant number of felony cases, including homicide trials and the use of expert witnesses.

■ Boosted attorney pay in some categories by up to 50 percent.

An attorney can now earn up to \$1,200 a day for a felony jury trial — up from a maximum of \$750 a day. Hourly pay for out-of-court work on felony cases was increased to up to \$125 an hour from a previous maximum of \$100 an hour.

"I think the county's program is one of the best, if not the best, in the state on this thing," said County Administrator G.K. Maenius. "They rolled up their sleeves and went to work on it."

But just how well it's going to work, and how much it will cost, even Maenius doesn't know.

"The first six months will be critical," he said.

Holly Webb acknowledges that answering all of the questions about the new system "makes her head hurt."

The new coordinator of attorney appointments, Webb spends hours talking on the phone to befuddled police officers and holding impromptu meetings at her desk with confused court clerks.

So far, the county has spent \$150,000 to set up the new office for attorney appointments.

"Most of my job is education at this point, of others and ourselves," Webb said. "Everyone used to do it their own little way. Now they are trying to adjust to a whole new system."

A few glitches have arisen. There are questions about what to do with parole violators, and Webb worries that more than one attorney may be inadvertently appointed to a defendant. Tarrant County magistrates have found defendants who mistakenly waived

their right to a court-appointed attorney.

Some attorneys are signing up to take only lower-level felonies out of fear that a lack of attorneys on the wheel will leave them with cases they don't want, such as child sexual-abuse cases.

Lawyer Deborah Nekhom Harris calls it the "wheel of misfortune."

A criminal defense attorney for about 12 years, Harris did not sign up because there is too much paperwork, not enough time to contact a new client and too few attorneys who meet the new standards to take cases.

"It is ridiculous for the onerous burden they are putting on attorneys for the privilege of taking court appointments," Harris said.

Lawyer Avery McDaniel said he signed up for only lower-level felony cases because, despite the increased fees, the more serious cases would take too much time away from higher-paying retained cases.

"If I'm at the top and there aren't as many taking those cases, my name will keep coming up and keep coming up," McDaniel said. "With criminal law, the better you get the worse the cases become."

Chief Municipal Judge Nancy Robb of Grand Prairie said that it will be "fascinating to see what happens."

Besides creating more paperwork for jail and court personnel, the system may also pressure law enforcement agencies to file charges quickly when they might have dropped or reduced them given more time, Robb said.

She questioned whether someone really wants an attorney randomly selected and not picked for a case by a judge because of the attorneys' expertise.

"I'd be a little squeamish about getting an attorney off of a wheel. What if you are being defended by an attorney who has done nothing but car theft and you have a sexual charge?" Robb asked.

But Tarrant County Magistrate Allan Butcher is confident the county's new procedures will work after smoothing over its "rough spots."

Butcher studied Texas' indigent defense system for the State Bar of Texas, and his report is credited with bringing about statewide reform.

"We didn't have the disaster situation you had in some counties where people were detained for months or the attorney appointments were being used as rewards or punishments. ... But that doesn't mean it couldn't stand examination and improvement," Butcher said. "It's not the best of all worlds, but it's a step in the right direction."