

By: Collier

H.B. No. 416

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of attorneys representing indigent defendants in criminal proceedings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 26.047(a), Code of Criminal Procedure, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

(2) "Managed assigned counsel program" or "program" means a program operated with public funds:

(A) by a governmental entity, nonprofit corporation, or bar association under a written agreement with a governmental entity, other than an individual judge or court; ~~and~~

(B) for the purpose of appointing counsel under Article 26.04 or 26.052 of this code or Section 51.10, Family Code; and

(C) for the purpose of appointing or providing an investigator, expert, or other support services for appointed counsel or indigent defendants.

(3) "Oversight board" means an oversight board established under Article 26.048.

SECTION 2. Articles 26.047(b) and (f), Code of Criminal Procedure, are amended to read as follows:

(b) The commissioners court of any county, on written approval of a judge of the juvenile court of a county or a county

1 court, statutory county court, or district court trying criminal
2 cases in the county, may appoint a governmental entity, nonprofit
3 corporation, or bar association to operate a managed assigned
4 counsel program. The commissioners courts of two or more counties
5 may enter into a written agreement to jointly appoint and fund a
6 governmental entity, nonprofit corporation, or bar association to
7 operate a managed assigned counsel program. In appointing an
8 entity to operate a managed assigned counsel program under this
9 subsection, the commissioners court shall specify or the
10 commissioners courts shall jointly specify:

11 (1) the types of cases in which the program may appoint
12 counsel under Article [26.04](#) or [26.052](#) of this code or Section [51.10](#),
13 Family Code, and the courts in which the counsel appointed by the
14 program may be required to appear; ~~and~~

15 (2) the term of any agreement establishing a program
16 and how the agreement may be terminated or renewed; and

17 (3) if an oversight board is established under Article
18 26.048 for the managed assigned counsel program, the powers and
19 duties that have been delegated to the oversight board.

20 (f) The program's public appointment list from which an
21 attorney is appointed must contain the names of qualified
22 attorneys, each of whom:

23 (1) applies to be included on the list;

24 (2) meets any applicable requirements specified by the
25 procedures [~~procedure~~] for appointing counsel adopted under
26 Article [26.04](#)(a) or provided under Article [26.052](#) and any other
27 requirements specified by the Texas Indigent Defense Commission;

1 and

2 (3) is approved by the program director or review
3 committee, as applicable.

4 SECTION 3. Chapter 26, Code of Criminal Procedure, is
5 amended by adding Article 26.048 to read as follows:

6 Art. 26.048. MANAGED ASSIGNED COUNSEL OVERSIGHT BOARD. (a)
7 The commissioners court of a county or the commissioners courts of
8 two or more counties may establish an oversight board for a managed
9 assigned counsel program established in accordance with this
10 chapter.

11 (b) The commissioners court or courts that establish an
12 oversight board under this article shall appoint members of the
13 board. The following persons participating in the criminal justice
14 system may not serve on the board:

15 (1) a criminal trial judge;

16 (2) a prosecutor;

17 (3) an attorney who receives appointments through the
18 managed assigned counsel program; or

19 (4) a peace officer.

20 (c) The commissioners court or courts may delegate to the
21 board any power or duty of the commissioners court to provide
22 oversight of the program under Article 26.047, including:

23 (1) recommending selection and removal of a director;

24 (2) setting policy for the program; and

25 (3) developing a budget proposal for the program.

26 (d) An oversight board established under this article may
27 not gain access to privileged or confidential communication.

1 SECTION 4. Article [26.052](#), Code of Criminal Procedure, is
2 amended by amending Subsections (b) and (e) and adding Subsections
3 (b-1), (b-2), and (b-3) to read as follows:

4 (b) If a county is served by a public defender's office,
5 trial counsel and counsel for direct appeal or to apply for a writ
6 of certiorari may be appointed as provided by the guidelines
7 established by the public defender's office. [~~In all other cases in
8 which the death penalty is sought, counsel shall be appointed as
9 provided by this article.~~]

10 (b-1) If a county is served by a managed assigned counsel
11 program, trial counsel and counsel for direct appeal or to apply for
12 a writ of certiorari may be appointed as provided by the written
13 plan of operation for the managed assigned counsel program. An
14 attorney appointed by a managed assigned counsel program in a death
15 penalty case must be on the list of attorneys qualified for
16 appointment in death penalty cases in the administrative judicial
17 region in which the managed assigned counsel program operates.

18 (b-2) If a county is served by a public defender's office
19 and a managed assigned counsel program, subject to Articles
20 [26.04](#)(f)(1), (2), and (3), the presiding judge of the district
21 court in which a capital felony is filed shall give priority in
22 appointing counsel from the public defender's office.

23 (b-3) In a county not served by a public defender's office
24 or a managed assigned counsel program, counsel shall be appointed
25 as provided by this article in each case in which the death penalty
26 is sought.

27 (e) The presiding judge of the district court in which a

1 capital felony case is filed or the managed assigned counsel
2 program, if authorized by this article, shall appoint two
3 attorneys [~~, at least one of whom must be qualified under this~~
4 ~~chapter,~~] to represent an indigent defendant as soon as practicable
5 after charges are filed, unless the state gives notice in writing
6 that the state will not seek the death penalty. At least one of the
7 attorneys must be qualified under this chapter.

8 SECTION 5. This Act takes effect September 1, 2023.