

By: Zaffirini, Sparks

S.B. No. 2120

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a family protection representation program within the Texas Indigent Defense Commission.

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

SECTION 1. Section 79.001, Government Code, is amended by amending Subdivisions (1) and (4) and adding Subdivisions (1-a), (7-a), (8-a), (12-a), and (12-b) to read as follows:

(1) "Assigned counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to:

(A) provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense; or

(B) serve as an attorney ad litem.

(1-a) "Attorney ad litem" means an attorney appointed by a court to represent and advocate on behalf of an indigent parent or child in a suit filed by the department against a parent.

(4) "Contract defender program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to:

(A) a group of unspecified indigent defendants who appear before a particular court or group of courts; or

(B) indigent parents or children named in a suit

1 filed by the department against a parent.

2 (7-a) "Department" means the Department of Family and
3 Protective Services.

4 (8-a) "Family protection services" means services
5 provided under this chapter by an attorney ad litem, licensed
6 investigator, social worker, forensic expert, mental health
7 expert, or other similar expert or specialist to an indigent parent
8 or child in a suit filed by the department against the parent.

9 (12-a) "Office of child representation" has the
10 meaning assigned by Section 107.254, Family Code.

11 (12-b) "Office of parent representation" has the
12 meaning assigned by Section 107.255, Family Code.

13 SECTION 2. Section 79.012(b), Government Code, is amended
14 to read as follows:

15 (b) The executive director:

16 (1) must be a licensed attorney;

17 (2) must demonstrate an interest in the standards for
18 and provision of criminal defense services and family protection
19 services to indigent individuals;

20 (3) may not engage in the private practice of law; and

21 (4) may not accept money, property, or any other thing
22 of value not authorized by law for services rendered under this
23 chapter.

24 SECTION 3. Section 79.034, Government Code, is amended by
25 amending Subsection (a) and adding Subsection (a-1) to read as
26 follows:

27 (a) The commission shall develop policies and standards for

1 providing:

2 (1) legal representation and other defense services to
3 indigent defendants at trial, on appeal, and in postconviction
4 proceedings; and

5 (2) family protection services to indigent parents and
6 children.

7 (a-1) The policies and standards may include:

8 (1) performance standards for counsel appointed to
9 represent indigent individuals [~~defendants~~];

10 (2) qualification standards under which attorneys may
11 qualify for appointment to represent:

12 (A) indigent defendants, including:

13 (i) [~~(A)~~] qualifications commensurate with
14 the seriousness of the nature of the proceeding;

15 (ii) [~~(B)~~] qualifications appropriate for
16 representation of mentally ill defendants and noncitizen
17 defendants;

18 (iii) [~~(C)~~] successful completion of
19 relevant continuing legal education programs approved by the
20 council; and

21 (iv) [~~(D)~~] testing and certification
22 standards; or

23 (B) indigent parents and children in suits filed
24 by the department, including:

25 (i) qualifications appropriate for
26 representing an indigent parent;

27 (ii) qualifications appropriate for

1 representing an indigent child;

2 (iii) successful completion of relevant
3 continuing legal education programs required by law or the State
4 Bar of Texas and approved by the council; and

5 (iv) testing and certification standards;

6 (3) standards for ensuring appropriate appointed
7 caseloads for counsel appointed to represent indigent individuals
8 ~~[defendants]~~;

9 (4) standards for determining whether a person accused
10 of a crime or juvenile offense or named in a suit filed by the
11 department is indigent;

12 (5) policies and standards governing the organization
13 and operation of an assigned counsel program;

14 (6) policies and standards governing the organization
15 and operation of a public defender's office consistent with
16 recognized national policies and standards;

17 (7) policies and standards governing the organization
18 and operation of an office of child representation or office of
19 parent representation consistent with recognized national policies
20 and standards;

21 (8) standards for providing indigent defense services
22 or family protection services under a contract defender program
23 consistent with recognized national policies and standards;

24 (9) ~~(8)~~ standards governing the reasonable
25 compensation of counsel appointed to represent indigent
26 individuals ~~[defendants]~~;

27 (10) ~~(9)~~ standards governing the availability and

1 reasonable compensation of providers of indigent defense support
2 services or family protection services for counsel appointed to
3 represent indigent individuals [~~defendants~~];

4 (11) [~~(10)~~] standards governing the operation of a
5 legal clinic or program that provides legal services to indigent
6 individuals [~~defendants~~] and is sponsored by a law school approved
7 by the supreme court;

8 (12) [~~(11)~~] policies and standards governing the
9 appointment of attorneys to represent children in proceedings under
10 Title 3, Family Code;

11 (13) policies and standards governing the appointment
12 of attorneys to represent indigent parents and children in
13 proceedings with the department under Title 5, Family Code;

14 (14) [~~(12)~~] policies and standards governing the
15 organization and operation of a managed assigned counsel program
16 consistent with nationally recognized policies and standards; and

17 (15) [~~(13)~~] other policies and standards for
18 providing indigent defense services and family protection services
19 as determined by the commission to be appropriate.

20 SECTION 4. Sections 79.035(a), (b), and (d), Government
21 Code, are amended to read as follows:

22 (a) The commission shall develop a plan that establishes
23 statewide requirements for counties relating to reporting indigent
24 defense information and family protection services
25 information. The plan must include provisions designed to reduce
26 redundant reporting by counties and provisions that take into
27 consideration the costs to counties of implementing the plan

1 statewide. The commission shall use the information reported by a
2 county to monitor the effectiveness of the county's indigent
3 defense and family protection services policies, standards, and
4 procedures and to ensure compliance by the county with the
5 requirements of state law relating to indigent defense and family
6 protection services. The commission may revise the plan as
7 necessary to improve monitoring of indigent defense and family
8 protection services policies, standards, and procedures in this
9 state.

10 (b) The commission shall annually submit to the governor,
11 lieutenant governor, speaker of the house of representatives, and
12 council and shall publish in written and electronic form a report:

13 (1) containing any information submitted to the
14 commission by a county under Section 79.036; and

15 (2) regarding:

16 (A) the quality of legal representation provided
17 by counsel appointed to represent indigent individuals
18 [~~defendants~~];

19 (B) current indigent defense practices and
20 family protection services practices in the state as compared to
21 state and national standards;

22 (C) efforts made by the commission to improve
23 indigent defense practices and family protection services
24 practices in the state;

25 (D) recommendations made by the commission for
26 improving indigent defense practices and family protection
27 services practices in the state; and

1 (E) the findings of a report submitted to the
2 commission under Section 79.039.

3 (d) The commission may issue other reports relating to
4 indigent defense and family protection services as determined to be
5 appropriate by the commission.

6 SECTION 5. Subchapter C, Chapter 79, Government Code, is
7 amended by adding Section 79.0365 to read as follows:

8 Sec. 79.0365. FAMILY PROTECTION SERVICES
9 INFORMATION. (a) Not later than November 1 of each odd-numbered
10 year and in the form and manner prescribed by the commission, each
11 county shall prepare and provide to the commission:

12 (1) a copy of all formal and informal rules and forms
13 governing the procedures the county uses to provide indigent
14 parents and children with counsel in accordance with Title 5,
15 Family Code;

16 (2) any fee schedule the court uses for family
17 protection services representation; and

18 (3) information on the court's compliance with Chapter
19 37, including the lists and rotation system required under that
20 chapter.

21 (b) Not later than November 1 of each year and in the form
22 and manner prescribed by the commission, each county shall prepare
23 and provide to the commission for the preceding state fiscal year:

24 (1) information on the number of appointments made to
25 each attorney accepting appointments in the county for proceedings
26 filed by the department under Title 5, Family Code; and

27 (2) information provided to the county by those

1 attorneys under Section 107.0042, Family Code, if the attorneys do
2 not report the information directly to the commission.

3 (c) Except as provided by Subsection (d):

4 (1) the local administrative district judge in each
5 county, or the person designated by the judge, shall perform the
6 action required by Subsection (a) with respect to all rules and
7 forms adopted by the judges of the district courts trying felony
8 cases in the county; and

9 (2) the local administrative statutory county court
10 judge in each county, or the person designated by the judge, shall
11 perform the action required by Subsection (a) with respect to all
12 rules and forms adopted by the judges of the county courts and
13 statutory county courts trying misdemeanor cases in the county.

14 (d) If the judges of two or more levels of courts described
15 by Subsection (c) adopt the same formal and informal rules and
16 forms, the local administrative judge serving the courts having
17 jurisdiction over offenses with the highest classification of
18 punishment, or the person designated by the judge, shall perform
19 the action required by Subsection (a).

20 (e) In each county, the county auditor, or the person
21 designated by the commissioners court if the county does not have a
22 county auditor, shall prepare and send to the commission in the form
23 and manner prescribed by the commission and on a monthly,
24 quarterly, or annual basis, with respect to legal services provided
25 in the county to indigent parents and children during each state
26 fiscal year, information showing the total amount expended by the
27 county to provide family protection services and an analysis of the

1 amount expended by the county:

2 (1) in each district, county, statutory county, and
3 appellate court;

4 (2) in cases for which a private attorney is appointed
5 for an indigent parent or child; and

6 (3) for investigation expenses, expert witness
7 expenses, or other litigation expenses.

8 (f) As a duty of office, each district and county clerk
9 shall cooperate with the county auditor or the person designated by
10 the commissioners court and the commissioners court in retrieving
11 information required to be sent to the commission under this
12 section.

13 SECTION 6. Sections 79.037(a), (b), and (d), Government
14 Code, are amended to read as follows:

15 (a) The commission shall:

16 (1) provide technical support to:

17 (A) assist counties in improving their systems
18 for providing indigent defense services, including indigent
19 defense support services; ~~and~~

20 (B) assist counties in improving their systems
21 for providing family protection services; and

22 (C) promote compliance by counties with the
23 requirements of state law relating to indigent defense and family
24 protection services;

25 (2) to assist a county in providing or improving the
26 provision of indigent defense services and family protection
27 services in the county, distribute in the form of grants any funds

1 appropriated for the purposes of this section to one or more of the
2 following entities:

3 (A) the county;

4 (B) a law school's legal clinic or program that
5 provides indigent defense services in the county;

6 (C) a regional public defender that meets the
7 requirements of Subsection (e) and provides indigent defense
8 services in the county;

9 (D) an entity described by Section 791.013 that
10 provides to a county administrative services under an interlocal
11 contract entered into for the purpose of providing or improving the
12 provision of indigent defense services or legal family protection
13 services in the county; ~~and~~

14 (E) a nonprofit corporation that provides
15 indigent defense services, ~~or~~ indigent defense support services,
16 or legal family protection services in the county; and

17 (F) an office of child representation or office
18 of parent representation created under Subchapter G, Chapter 107,
19 Family Code; and

20 (3) monitor each entity that receives a grant under
21 Subdivision (2) and enforce compliance with the conditions of the
22 grant, including enforcement by:

23 (A) withdrawing grant funds; or

24 (B) requiring reimbursement of grant funds by the
25 entity.

26 (b) The commission shall determine for each county the
27 entity or entities that are eligible to receive funds for the

1 provision of or improvement in the provision of indigent defense
2 services or family protection services under Subsection (a)(2). The
3 determination must be made based on the entity's:

4 (1) compliance with standards adopted by the board;
5 and

6 (2) demonstrated commitment to compliance with the
7 requirements of state law relating to indigent defense or family
8 protection services.

9 (d) A county may not reduce the amount of funds provided for
10 indigent defense services or family protection services in the
11 county because of funds provided by the commission under this
12 section.

13 SECTION 7. Subchapter C, Chapter 79, Government Code, is
14 amended by adding Section 79.041 to read as follows:

15 Sec. 79.041. FAMILY PROTECTION SERVICES INFORMATION
16 SYSTEM. (a) By entering into an interlocal contract with one or
17 more counties under Chapter 791, the commission may participate and
18 assist counties in the creation, implementation, operation, and
19 maintenance of a computerized system to be used to assist those
20 counties in the provision and administration of family protection
21 services and to be used to collect data from those counties
22 regarding representation of indigent individuals in this state.

23 (b) The commission may use appropriated funds to pay costs
24 incurred under an interlocal contract described by Subsection (a),
25 including license fees, implementation costs, maintenance and
26 operations costs, administrative costs, and any other costs
27 specified in the interlocal contract.

1 (c) The commission may provide training services to
2 counties on the use and operation of a system created, implemented,
3 operated, or maintained by one or more counties under Subsection
4 (a).

5 (d) Subchapter L, Chapter 2054, does not apply to an
6 indigent defense information system created under this section.

7 SECTION 8. Subchapter A, Chapter 107, Family Code, is
8 amended by adding Section 107.0042 to read as follows:

9 Sec. 107.0042. REPORT ON PERCENTAGE OF PROFESSIONAL
10 PRACTICE TIME AS ATTORNEY AD LITEM. Not later than October 15 of
11 each year and on a form prescribed by the Texas Indigent Defense
12 Commission, an attorney appointed as an attorney ad litem in a
13 proceeding filed by the department under Title 5 shall submit to the
14 county or the Texas Indigent Defense Commission a report for the
15 preceding state fiscal year that describes the percentage of the
16 attorney's professional practice time that was dedicated to the
17 attorney's appointment as an attorney ad litem in the county under
18 Title 5.

19 SECTION 9. Section 107.259(a), Family Code, is amended to
20 read as follows:

21 (a) An office of child representation or office of parent
22 representation must be directed by a chief counsel who:

23 (1) is a member of the State Bar of Texas;

24 (2) has practiced law for at least five [~~three~~] years;

25 and

26 (3) has substantial experience in the practice of
27 child welfare law.

1 SECTION 10. Section [71.0355](#), Government Code, is repealed.

2 SECTION 11. This Act takes effect September 1, 2023.