

BILL ANALYSIS

S.B. 1710
By: Duncan
Criminal Jurisprudence
Committee Report (Amended)

BACKGROUND AND PURPOSE

At least one Texas county has expressed interest in establishing an independent assigned counsel program. Similar programs exist in Colorado; San Mateo, California; and Pima County, Arizona. This type of program involves outsourcing to a government office or nonprofit agency independent of the judiciary the responsibility for screening attorneys for court-appointment eligibility, assigning lawyers to individual cases, approving attorney fee requests, and approving requests for investigative and expert assistance. These programs also may have responsibility for determining whether defendants are eligible for appointed counsel.

This type of program provides jurisdictions with another option for delivering indigent defense services that affords more direct oversight of indigent defense services and relieves judges of most of the administrative burdens of managing indigent defense. This type of program also comes closer to meeting national standards for public defense services than do the judicially-managed assigned counsel systems now common in Texas. *See* American Bar Association, *Ten Principles Of A Public Defense System* (2002) ("[Principle] 1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.")

Current law does not explicitly authorize counties to establish independent assigned counsel programs. Art. 26.04 (Procedures for Appointing Counsel), Code of Criminal Procedure, authorizes counties to establish indigent defense systems based on the default rotation model, that include a public defender office, or that fit into the definition of an "alternative program." An independent assigned counsel program does not qualify either as a default rotation system or an alternative program because in both of those systems, Texas statute requires judges to screen defense attorneys seeking to receive appointments. An independent assigned counsel program also does not qualify as a public defender because the assigned counsel program does not itself provide legal representation to indigent defendants.

Current law regarding payment of indigent defense expenses also does not allow for payment of such expenses through an independent assigned counsel program. Article 26.05 (Compensation of Counsel Appointed to Defend), Code of Criminal Procedure, requires judicial approval of attorney fee vouchers unless the services are provided by an attorney employed by a public defender office. This is implicitly true for investigative and expert expenses, as well—judicial approval is required for investigator and expert expenses in specific cases, but many public defender offices have investigators on staff and are able to allocate investigator resources without seeking judicial approval.

S.B. 1710 relates to the creation of independent assigned counsel programs.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Article 26.04, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (f-1), as follows:

(a) Requires a court to appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f) (relating to the court or the courts' designee may appoint the public defender to represent the defendant in accordance with guidelines established for the public defender), (f-1), (h) (relating to appointing an attorney for an indigent defendant using the alternative program and the limitation on increasing expenditures for the alternative program), or (i) (relating to the appointment of an attorney and that attorney can be appointed from any county located in the court's administrative judicial region).

(f-1) Authorizes the independent assigned counsel program (program), in a county in which an independent assigned counsel program is operated in accordance with Article 26.047, to appoint counsel to represent the defendant in accordance with guidelines established for the program.

SECTION 2. Amends Chapter 26, Code of Criminal Procedure, by adding Article 26.047, as follows:

Art. 26.047. INDEPENDENT ASSIGNED COUNSEL PROGRAM. (a) Defines "governmental entity" and "independent assigned counsel program" or "program."

(b) Authorizes the commissioners court of any county, on written approval of a judge of the juvenile court of a county or a county court, statutory county court, or district court trying criminal cases in the county to appoint a governmental entity, nonprofit corporation, or bar association to operate a program. Authorizes the commissioners courts of two or more counties to enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a program. Requires the commissioners court, in appointing an entity to operate a program under this subsection, to specify or jointly specify:

(1) the types of cases in which the program may appoint counsel under Article 26.04 or Section 51.10, Family Code, and the courts in which the counsel appointed by the program may be required to appear; and

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

(c) Requires the commissioners court or commissioners courts to require a written plan of operation from an entity operating a program under this article. Sets forth the required content for a plan of operation.

(d) Requires a program under this article to have a director. Requires a program under this article, unless the program uses a review committee appointed under Subsection (e), to be directed by a person who is a member of the State Bar of Texas, has practiced law for at least three years, and has substantial experience in the practice of criminal law.

(e) Authorizes the governmental entity, nonprofit corporation, or bar association appointed under Subsection (b) to appoint a review committee of three or more individuals to appoint attorneys to the program's public appointment list described by Subsection (f). Provides that each member of the committee is required to meet the requirements described by Subsection (d); is prohibited from being employed as a prosecutor; and is prohibited from being included on or applying for inclusion on the public appointment list described by Subsection (f).

(f) Requires the program's public appointment list from which an attorney is appointed to contain the names of qualified attorneys each of whom meets certain requirements.

(g) Authorizes a court to replace an attorney appointed by the program for the same reasons and in the same manner described by Article 26.04(k) (relating to a court's authorization to replace an attorney).

(h) Entitles a program to receive funds for personnel costs and expenses incurred in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the program serves more than one county.

(i) Authorizes a program to employ personnel and enter into contracts necessary to perform the program's duties as specified by the commissioners court or commissioners courts under this article.

SECTION 3. Amends Article 26.05(c), Code of Criminal Procedure, to prohibit any payment from being made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a program under Article 26.047, the director of that program and the judge or director, as applicable, approves the payment. Requires the judge or director to make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount if the judge or director disapproves the requested amount of payment.

SECTION 4. Amends Section 71.001, Government Code, by adding Subdivision (6-a), to define "independent assigned counsel program."

SECTION 5. Amends Section 71.060(a), Government Code, as follows:

(a) Authorizes the policies and standards developed by the Task Force on Indigent Defense to include policies and standards governing the organization and operation of a program consistent with nationally recognized policies and standards. Makes nonsubstantive changes.

SECTION 6. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.

EXPLANATION OF AMENDMENTS

Committee Amendment 1 by Gallego makes necessary changes on lines 20 and 21, page 6 to reflect a change from "(6-a)" to "(6-b)".