

By: Duncan

S.B. No. 1710

A BILL TO BE ENTITLED

AN ACT

relating to the creation of independent assigned counsel programs.

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

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

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (f-1), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(f-1) In a county in which an independent assigned counsel program is operated in accordance with Article 26.047, the

1 independent assigned counsel program may appoint counsel to  
2 represent the defendant in accordance with guidelines established  
3 for the program.

4 SECTION 2. Chapter 26, Code of Criminal Procedure, is  
5 amended by adding Article 26.047 to read as follows:

6 Art. 26.047. INDEPENDENT ASSIGNED COUNSEL PROGRAM. (a) In  
7 this article:

8 (1) "Governmental entity" has the meaning assigned by  
9 Article 26.044.

10 (2) "Independent assigned counsel program" or  
11 "program" means a program operated with public funds:

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

15 (B) for the purpose of appointing counsel under  
16 Article 26.04 or Section 51.10, Family Code.

17 (b) The commissioners court of any county, on written  
18 approval of a judge of the juvenile court of a county or a county  
19 court, statutory county court, or district court trying criminal  
20 cases in the county, may appoint a governmental entity, nonprofit  
21 corporation, or bar association to operate an independent assigned  
22 counsel program. The commissioners courts of two or more counties  
23 may enter into a written agreement to jointly appoint and fund a  
24 governmental entity, nonprofit corporation, or bar association to  
25 operate an independent assigned counsel program. In appointing an  
26 entity to operate an independent assigned counsel program under  
27 this subsection, the commissioners court shall specify or the

1 commissioners courts shall jointly specify:

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

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

8 (c) The commissioners court or commissioners courts shall  
9 require a written plan of operation from an entity operating a  
10 program under this article. The plan of operation must include:

11 (1) a budget for the program, including salaries;

12 (2) a description of each personnel position,  
13 including the program's director;

14 (3) the maximum allowable caseload for each attorney  
15 appointed by the program;

16 (4) provisions for training personnel of the program  
17 and attorneys appointed under the program;

18 (5) a description of anticipated overhead costs for  
19 the program;

20 (6) a policy regarding licensed investigators and  
21 expert witnesses used by attorneys appointed under the program;

22 (7) a policy to ensure that appointments are  
23 reasonably and impartially allocated among qualified attorneys;  
24 and

25 (8) a policy to ensure that an attorney appointed  
26 under the program does not accept appointment in a case that  
27 involves a conflict of interest for the attorney that has not been

1 waived by all affected clients.

2 (d) A program under this article must have a director.  
3 Unless the program uses a review committee appointed under  
4 Subsection (e), a program under this article must be directed by a  
5 person who:

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

7 (2) has practiced law for at least three years; and

8 (3) has substantial experience in the practice of  
9 criminal law.

10 (e) The governmental entity, nonprofit corporation, or bar  
11 association appointed under Subsection (b) may appoint a review  
12 committee of three or more individuals to appoint attorneys to the  
13 program's public appointment list described by Subsection (f).  
14 Each member of the committee:

15 (1) must meet the requirements described by Subsection  
16 (d);

17 (2) may not be employed as a prosecutor; and

18 (3) may not be included on or apply for inclusion on  
19 the public appointment list described by Subsection (f).

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 procedure for appointing counsel adopted under Article 26.04(a) and  
26 the Task Force on Indigent Defense; and

27 (3) is approved by the program director or review

1 committee, as applicable.

2 (g) A court may replace an attorney appointed by the program  
3 for the same reasons and in the same manner described by Article  
4 26.04(k).

5 (h) An independent assigned counsel program is entitled to  
6 receive funds for personnel costs and expenses incurred in amounts  
7 fixed by the commissioners court and paid out of the appropriate  
8 county fund, or jointly fixed by the commissioners courts and  
9 proportionately paid out of each appropriate county fund if the  
10 program serves more than one county.

11 (i) An independent assigned counsel program may employ  
12 personnel and enter into contracts necessary to perform the  
13 program's duties as specified by the commissioners court or  
14 commissioners courts under this article.

15 SECTION 3. Subsection (c), Article 26.05, Code of Criminal  
16 Procedure, is amended to read as follows:

17 (c) Each fee schedule adopted shall state reasonable fixed  
18 rates or minimum and maximum hourly rates, taking into  
19 consideration reasonable and necessary overhead costs and the  
20 availability of qualified attorneys willing to accept the stated  
21 rates, and shall provide a form for the appointed counsel to itemize  
22 the types of services performed. No payment shall be made under  
23 this article until the form for itemizing the services performed is  
24 submitted to the judge presiding over the proceedings or, if the  
25 county operates an independent assigned counsel program under  
26 Article 26.047, the director of the program, and the judge or  
27 director, as applicable, approves the payment. If the judge or

1 director disapproves the requested amount of payment, the judge or  
2 director shall make written findings stating the amount of payment  
3 that the judge or director approves and each reason for approving an  
4 amount different from the requested amount. An attorney whose  
5 request for payment is disapproved or is not otherwise acted on by  
6 the 60th day after the date the request for payment is submitted may  
7 appeal the disapproval or failure to act by filing a motion with the  
8 presiding judge of the administrative judicial region. On the  
9 filing of a motion, the presiding judge of the administrative  
10 judicial region shall review the disapproval of payment or failure  
11 to act and determine the appropriate amount of payment. In  
12 reviewing the disapproval or failure to act, the presiding judge of  
13 the administrative judicial region may conduct a hearing. Not  
14 later than the 45th day after the date an application for payment of  
15 a fee is submitted under this article, the commissioners court  
16 shall pay to the appointed counsel the amount that is approved by  
17 the presiding judge of the administrative judicial region and that  
18 is in accordance with the fee schedule for that county.

19 SECTION 4. Section 71.001, Government Code, is amended by  
20 adding Subdivision (6-a) to read as follows:

21 (6-a) "Independent assigned counsel program" has the  
22 meaning assigned by Article 26.047, Code of Criminal Procedure.

23 SECTION 5. Subsection (a), Section 71.060, Government Code,  
24 is amended to read as follows:

25 (a) The Task Force on Indigent Defense shall develop  
26 policies and standards for providing legal representation and other  
27 defense services to indigent defendants at trial, on appeal, and in

1 postconviction proceedings. The policies and standards may  
2 include:

3 (1) performance standards for counsel appointed to  
4 represent indigent defendants;

5 (2) qualification standards under which attorneys may  
6 qualify for appointment to represent indigent defendants,  
7 including:

8 (A) qualifications commensurate with the  
9 seriousness of the nature of the proceeding;

10 (B) qualifications appropriate for  
11 representation of mentally ill defendants and noncitizen  
12 defendants;

13 (C) successful completion of relevant continuing  
14 legal education programs approved by the council; and

15 (D) testing and certification standards;

16 (3) standards for ensuring appropriate appointed  
17 caseloads for counsel appointed to represent indigent defendants;

18 (4) standards for determining whether a person accused  
19 of a crime or juvenile offense is indigent;

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

22 (6) policies and standards governing the organization  
23 and operation of a public defender consistent with recognized  
24 national policies and standards;

25 (7) standards for providing indigent defense services  
26 under a contract defender program consistent with recognized  
27 national policies and standards;

1           (8) standards governing the reasonable compensation  
2 of counsel appointed to represent indigent defendants;

3           (9) standards governing the availability and  
4 reasonable compensation of providers of indigent defense support  
5 services for counsel appointed to represent indigent defendants;

6           (10) standards governing the operation of a legal  
7 clinic or program that provides legal services to indigent  
8 defendants and is sponsored by a law school approved by the supreme  
9 court;

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

13          (12) policies and standards governing the  
14 organization and operation of an independent assigned counsel  
15 program consistent with nationally recognized policies and  
16 standards; and

17          (13) other policies and standards for providing  
18 indigent defense services as determined by the task force to be  
19 appropriate.

20          SECTION 6. This Act takes effect September 1, 2009.