

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 Subsections (a) and (g) and adding Subsection (s) 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), (h), or (i) or, if applicable, an independent assigned counsel program appoints an attorney under Article 26.047. 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.

1 (g) A countywide alternative program for appointing counsel
2 for indigent defendants in criminal cases is established by a
3 formal action in which two-thirds of the judges of the courts
4 designated under this subsection vote to establish the alternative
5 program. An alternative program for appointing counsel in
6 misdemeanor and felony cases may be established in the manner
7 provided by this subsection by the judges of the county courts,
8 statutory county courts, and district courts trying criminal cases
9 in the county. An alternative program for appointing counsel in
10 misdemeanor cases may be established in the manner provided by this
11 subsection by the judges of the county courts and statutory county
12 courts trying criminal cases in the county. An alternative program
13 for appointing counsel in felony cases may be established in the
14 manner provided by this subsection by the judges of the district
15 courts trying criminal cases in the county. In a county in which an
16 alternative program is established:

17 (1) the alternative program may:

18 (A) use a single method for appointing counsel or
19 a combination of methods; and

20 (B) use a multicounty appointment list using a
21 system of rotation; and

22 (2) the procedures adopted under Subsection (a) must
23 ensure that:

24 (A) attorneys appointed using the alternative
25 program to represent defendants in misdemeanor cases punishable by
26 confinement:

27 (i) meet specified objective

1 qualifications, which may be graduated according to the degree of
2 seriousness of the offense, for providing representation in
3 misdemeanor cases punishable by confinement; and

4 (ii) are approved by a majority of the
5 judges of the county courts and statutory county courts trying
6 misdemeanor cases in the county or, if applicable, the director of
7 an independent assigned counsel program operated under Article
8 26.047;

9 (B) attorneys appointed using the alternative
10 program to represent defendants in felony cases:

11 (i) meet specified objective
12 qualifications, which may be graduated according to the degree of
13 seriousness of the offense, for providing representation in felony
14 cases; and

15 (ii) are approved by a majority of the
16 judges of the district courts trying felony cases in the county or
17 the independent assigned counsel program director;

18 (C) appointments for defendants in capital cases
19 in which the death penalty is sought comply with the requirements of
20 Article 26.052; and

21 (D) appointments are reasonably and impartially
22 allocated among qualified attorneys.

23 (s) For purposes of this article, an independent assigned
24 counsel program under Article 26.047 is a designee of a judge or
25 court.

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

1 Art. 26.047. INDEPENDENT ASSIGNED COUNSEL PROGRAM. (a) In
2 this article:

3 (1) "Governmental entity" has the meaning assigned by
4 Article 26.044.

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

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

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

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

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

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

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

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

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

9 (3) the maximum allowable caseload for each attorney
10 appointed by the program;

11 (4) provisions for training personnel of the program
12 and attorneys appointed under the program;

13 (5) a description of anticipated overhead costs for
14 the program;

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

17 (7) a policy to ensure that appointments are
18 reasonably and impartially allocated among qualified attorneys;
19 and

20 (8) a policy to ensure that an attorney appointed
21 under the program does not accept appointment in a case that
22 involves a conflict of interest for the attorney that has not been
23 waived by all affected clients.

24 (d) The director of a program under this article must be
25 directed by a person who:

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

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

1 (3) has substantial experience in the practice of
2 criminal law.

3 (e) The program's public appointment list from which an
4 attorney is appointed must contain the names of qualified
5 attorneys, each of whom:

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

7 (2) meets any applicable requirements specified by the
8 procedure for appointing counsel adopted under Article 26.04(a) and
9 the Task Force on Indigent Defense; and

10 (3) is approved by the program director.

11 (f) A court may replace an attorney appointed by the program
12 for the same reasons and in the same manner described by Article
13 26.04(k).

14 (g) An independent assigned counsel program is entitled to
15 receive funds for personnel costs and expenses incurred in amounts
16 fixed by the commissioners court and paid out of the appropriate
17 county fund, or jointly fixed by the commissioners courts and
18 proportionately paid out of each appropriate county fund if the
19 program serves more than one county.

20 (h) An independent assigned counsel program may employ
21 personnel and enter into contracts necessary to perform the
22 program's duties as specified by the commissioners court or
23 commissioners courts under this article.

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

26 (c) Each fee schedule adopted shall state reasonable fixed
27 rates or minimum and maximum hourly rates, taking into

1 consideration reasonable and necessary overhead costs and the
2 availability of qualified attorneys willing to accept the stated
3 rates, and shall provide a form for the appointed counsel to itemize
4 the types of services performed. No payment shall be made under this
5 article until the form for itemizing the services performed is
6 submitted to the judge presiding over the proceedings or, if the
7 county operates an independent assigned counsel program under
8 Article 26.047, the director of that program and the judge or
9 director, as applicable, approves the payment. If the judge or
10 director disapproves the requested amount of payment, the judge or
11 director shall make written findings stating the amount of payment
12 that the judge or director approves and each reason for approving an
13 amount different from the requested amount. An attorney whose
14 request for payment is disapproved or is not otherwise acted on by
15 the 60th day after the date the request for payment is submitted may
16 appeal the disapproval or failure to act by filing a motion with the
17 presiding judge of the administrative judicial region. On the
18 filing of a motion, the presiding judge of the administrative
19 judicial region shall review the disapproval of payment or failure
20 to act and determine the appropriate amount of payment. In
21 reviewing the disapproval or failure to act, the presiding judge of
22 the administrative judicial region may conduct a hearing. Not
23 later than the 45th day after the date an application for payment of
24 a fee is submitted under this article, the commissioners court
25 shall pay to the appointed counsel the amount that is approved by
26 the presiding judge of the administrative judicial region and that
27 is in accordance with the fee schedule for that county.

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

3 (6-a) "Independent assigned counsel program" has the
4 meaning assigned by Article 26.047, Code of Criminal Procedure.

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

7 (a) The Task Force on Indigent Defense shall develop
8 policies and standards for providing legal representation and other
9 defense services to indigent defendants at trial, on appeal, and in
10 postconviction proceedings. The policies and standards may
11 include:

12 (1) performance standards for counsel appointed to
13 represent indigent defendants;

14 (2) qualification standards under which attorneys may
15 qualify for appointment to represent indigent defendants,
16 including:

17 (A) qualifications commensurate with the
18 seriousness of the nature of the proceeding;

19 (B) qualifications appropriate for
20 representation of mentally ill defendants and noncitizen
21 defendants;

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

24 (D) testing and certification standards;

25 (3) standards for ensuring appropriate appointed
26 caseloads for counsel appointed to represent indigent defendants;

27 (4) standards for determining whether a person accused

1 of a crime or juvenile offense is indigent;

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

4 (6) policies and standards governing the organization
5 and operation of a public defender consistent with recognized
6 national policies and standards;

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

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

12 (9) standards governing the availability and
13 reasonable compensation of providers of indigent defense support
14 services for counsel appointed to represent indigent defendants;

15 (10) standards governing the operation of a legal
16 clinic or program that provides legal services to indigent
17 defendants and is sponsored by a law school approved by the supreme
18 court;

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

22 (12) policies and standards governing the
23 organization and operation of an independent assigned counsel
24 program consistent with nationally recognized policies and
25 standards; and

26 (13) other policies and standards for providing
27 indigent defense services as determined by the task force to be

1 appropriate.

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