

1-1 By: Duncan S.B. No. 1710
1-2 (In the Senate - Filed March 10, 2009; March 20, 2009, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 14, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 14, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1710 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the creation of independent assigned counsel programs.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Article 26.04, Code of Criminal Procedure, is
1-13 amended by amending Subsection (a) and adding Subsection (f-1) to
1-14 read as follows:

1-15 (a) The judges of the county courts, statutory county
1-16 courts, and district courts trying criminal cases in each county,
1-17 by local rule, shall adopt and publish written countywide
1-18 procedures for timely and fairly appointing counsel for an indigent
1-19 defendant in the county arrested for or charged with a misdemeanor
1-20 punishable by confinement or a felony. The procedures must be
1-21 consistent with this article and Articles 1.051, 15.17, 26.05, and
1-22 26.052. A court shall appoint an attorney from a public appointment
1-23 list using a system of rotation, unless the court appoints an
1-24 attorney under Subsection (f), (f-1), (h), or (i). The court shall
1-25 appoint attorneys from among the next five names on the appointment
1-26 list in the order in which the attorneys' names appear on the list,
1-27 unless the court makes a finding of good cause on the record for
1-28 appointing an attorney out of order. An attorney who is not
1-29 appointed in the order in which the attorney's name appears on the
1-30 list shall remain next in order on the list.

1-31 (f-1) In a county in which an independent assigned counsel
1-32 program is operated in accordance with Article 26.047, the
1-33 independent assigned counsel program may appoint counsel to
1-34 represent the defendant in accordance with guidelines established
1-35 for the program.

1-36 SECTION 2. Chapter 26, Code of Criminal Procedure, is
1-37 amended by adding Article 26.047 to read as follows:

1-38 Art. 26.047. INDEPENDENT ASSIGNED COUNSEL PROGRAM. (a) In
1-39 this article:

1-40 (1) "Governmental entity" has the meaning assigned by
1-41 Article 26.044.

1-42 (2) "Independent assigned counsel program" or
1-43 "program" means a program operated with public funds:

1-44 (A) by a governmental entity, nonprofit
1-45 corporation, or bar association under a written agreement with a
1-46 governmental entity, other than an individual judge or court; and

1-47 (B) for the purpose of appointing counsel under
1-48 Article 26.04 or Section 51.10, Family Code.

1-49 (b) The commissioners court of any county, on written
1-50 approval of a judge of the juvenile court of a county or a county
1-51 court, statutory county court, or district court trying criminal
1-52 cases in the county, may appoint a governmental entity, nonprofit
1-53 corporation, or bar association to operate an independent assigned
1-54 counsel program. The commissioners courts of two or more counties
1-55 may enter into a written agreement to jointly appoint and fund a
1-56 governmental entity, nonprofit corporation, or bar association to
1-57 operate an independent assigned counsel program. In appointing an
1-58 entity to operate an independent assigned counsel program under
1-59 this subsection, the commissioners court shall specify or the
1-60 commissioners courts shall jointly specify:

1-61 (1) the types of cases in which the program may appoint
1-62 counsel under Article 26.04 or Section 51.10, Family Code, and the
1-63 courts in which the counsel appointed by the program may be required

2-1 to appear; and
2-2 (2) the term of any agreement establishing a program
2-3 and how the agreement may be terminated or renewed.
2-4 (c) The commissioners court or commissioners courts shall
2-5 require a written plan of operation from an entity operating a
2-6 program under this article. The plan of operation must include:
2-7 (1) a budget for the program, including salaries;
2-8 (2) a description of each personnel position,
2-9 including the program's director;
2-10 (3) the maximum allowable caseload for each attorney
2-11 appointed by the program;
2-12 (4) provisions for training personnel of the program
2-13 and attorneys appointed under the program;
2-14 (5) a description of anticipated overhead costs for
2-15 the program;
2-16 (6) a policy regarding licensed investigators and
2-17 expert witnesses used by attorneys appointed under the program;
2-18 (7) a policy to ensure that appointments are
2-19 reasonably and impartially allocated among qualified attorneys;
2-20 and
2-21 (8) a policy to ensure that an attorney appointed
2-22 under the program does not accept appointment in a case that
2-23 involves a conflict of interest for the attorney that has not been
2-24 waived by all affected clients.
2-25 (d) A program under this article must have a director.
2-26 Unless the program uses a review committee appointed under
2-27 Subsection (e), a program under this article must be directed by a
2-28 person who:
2-29 (1) is a member of the State Bar of Texas;
2-30 (2) has practiced law for at least three years; and
2-31 (3) has substantial experience in the practice of
2-32 criminal law.
2-33 (e) The governmental entity, nonprofit corporation, or bar
2-34 association appointed under Subsection (b) may appoint a review
2-35 committee of three or more individuals to appoint attorneys to the
2-36 program's public appointment list described by Subsection (f).
2-37 Each member of the committee:
2-38 (1) must meet the requirements described by Subsection
2-39 (d);
2-40 (2) may not be employed as a prosecutor; and
2-41 (3) may not be included on or apply for inclusion on
2-42 the public appointment list described by Subsection (f).
2-43 (f) The program's public appointment list from which an
2-44 attorney is appointed must contain the names of qualified
2-45 attorneys, each of whom:
2-46 (1) applies to be included on the list;
2-47 (2) meets any applicable requirements specified by the
2-48 procedure for appointing counsel adopted under Article 26.04(a) and
2-49 the Task Force on Indigent Defense; and
2-50 (3) is approved by the program director or review
2-51 committee, as applicable.
2-52 (g) A court may replace an attorney appointed by the program
2-53 for the same reasons and in the same manner described by Article
2-54 26.04(k).
2-55 (h) An independent assigned counsel program is entitled to
2-56 receive funds for personnel costs and expenses incurred in amounts
2-57 fixed by the commissioners court and paid out of the appropriate
2-58 county fund, or jointly fixed by the commissioners courts and
2-59 proportionately paid out of each appropriate county fund if the
2-60 program serves more than one county.
2-61 (i) An independent assigned counsel program may employ
2-62 personnel and enter into contracts necessary to perform the
2-63 program's duties as specified by the commissioners court or
2-64 commissioners courts under this article.
2-65 SECTION 3. Subsection (c), Article 26.05, Code of Criminal
2-66 Procedure, is amended to read as follows:
2-67 (c) Each fee schedule adopted shall state reasonable fixed
2-68 rates or minimum and maximum hourly rates, taking into
2-69 consideration reasonable and necessary overhead costs and the

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

3-27 SECTION 4. Section 71.001, Government Code, is amended by
 3-28 adding Subdivision (6-a) to read as follows:

3-29 (6-a) "Independent assigned counsel program" has the
 3-30 meaning assigned by Article 26.047, Code of Criminal Procedure.

3-31 SECTION 5. Subsection (a), Section 71.060, Government Code,
 3-32 is amended to read as follows:

3-33 (a) The Task Force on Indigent Defense shall develop
 3-34 policies and standards for providing legal representation and other
 3-35 defense services to indigent defendants at trial, on appeal, and in
 3-36 postconviction proceedings. The policies and standards may
 3-37 include:

3-38 (1) performance standards for counsel appointed to
 3-39 represent indigent defendants;

3-40 (2) qualification standards under which attorneys may
 3-41 qualify for appointment to represent indigent defendants,
 3-42 including:

3-43 (A) qualifications commensurate with the
 3-44 seriousness of the nature of the proceeding;

3-45 (B) qualifications appropriate for
 3-46 representation of mentally ill defendants and noncitizen
 3-47 defendants;

3-48 (C) successful completion of relevant continuing
 3-49 legal education programs approved by the council; and

3-50 (D) testing and certification standards;

3-51 (3) standards for ensuring appropriate appointed
 3-52 caseloads for counsel appointed to represent indigent defendants;

3-53 (4) standards for determining whether a person accused
 3-54 of a crime or juvenile offense is indigent;

3-55 (5) policies and standards governing the organization
 3-56 and operation of an assigned counsel program;

3-57 (6) policies and standards governing the organization
 3-58 and operation of a public defender consistent with recognized
 3-59 national policies and standards;

3-60 (7) standards for providing indigent defense services
 3-61 under a contract defender program consistent with recognized
 3-62 national policies and standards;

3-63 (8) standards governing the reasonable compensation
 3-64 of counsel appointed to represent indigent defendants;

3-65 (9) standards governing the availability and
 3-66 reasonable compensation of providers of indigent defense support
 3-67 services for counsel appointed to represent indigent defendants;

3-68 (10) standards governing the operation of a legal
 3-69 clinic or program that provides legal services to indigent

4-1 defendants and is sponsored by a law school approved by the supreme
4-2 court;

4-3 (11) policies and standards governing the appointment
4-4 of attorneys to represent children in proceedings under Title 3,
4-5 Family Code; ~~and~~

4-6 (12) policies and standards governing the
4-7 organization and operation of an independent assigned counsel
4-8 program consistent with nationally recognized policies and
4-9 standards; and

4-10 (13) other policies and standards for providing
4-11 indigent defense services as determined by the task force to be
4-12 appropriate.

4-13 SECTION 6. This Act takes effect September 1, 2009.

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