

BILL ANALYSIS

S.B. 1682
By: Ellis
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

S.B. 1682 would clearly define and authorize local jurisdictions to establish managed assigned counsel programs.

Managed assigned counsel programs involve 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, 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 an 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)).

The concept for the program came from San Mateo County, California. San Mateo County has this type of program and it has proved to be an exemplary model to provide indigent defense services. Lubbock County has established a pilot managed assigned counsel program to represent mentally ill offenders. The program has been successful and the county wants to expand the program to handle all indigent criminal cases. Montgomery County is also in the process of establishing a managed counsel program. Other counties around Texas have expressed interest in establishing this type of program. The Lubbock County and Montgomery County programs cannot be fully implemented without this legislation.

The Texas statutes are silent on the operation or establishment of this type of program. Current law does not explicitly authorize counties to establish managed assigned counsel programs. Article 26.04 (Procedures for Appointing Counsel), Code of Criminal Procedure, authorizes a county to establish an indigent defense system based on the default rotation model, which includes a public defender officer, or that fits into the definition of an "alternative program." A managed assigned counsel program does not qualify either as a default rotation system or an alternative program because in both of those systems Texas statutes require judges to screen defense attorneys seeking to receive appointments. A managed 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 a managed 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.

As proposed, S.B. 1682 amends current law relating to the creation of managed 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 authorizing the court or the courts' designee to appoint a public defender), (f-1), (h) (relating to authorizing a court or the courts' designee to represent an indigent defendant by using the alternative program), or (i) (relating to authorizing to appoint an attorney from any county located in the court's administrative judicial region).

(f-1) Authorizes the managed assigned counsel program, in a county in which a managed 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. MANAGED ASSIGNED COUNSEL PROGRAM. (a) Defines "governmental entity," "managed assigned counsel program," and "program" in this article.

(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 managed assigned counsel program (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 the commissioners courts to jointly specify:

(1) the types of cases in which the program may appoint counsel under Article 26.04 (Procedures for Appointing Counsel) or Section 51.10 (Right to Assistance of Attorney), 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. Requires that the plan of operation include:

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

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

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

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

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

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

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

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

(d) Requires that a program under this article have a director. Requires that a program, unless the program uses a review committee appointed under Subsection (e), be directed by a person who:

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

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

(3) 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:

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

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

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

(f) Requires that the program's public appointment list from which an attorney is appointed to contain the names of qualified attorneys, each of whom:

(1) applies to be included on the list;

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

(3) is approved by the program director or review committee, as applicable.

(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 the replacement of 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, as follows:

(c) Requires that no payment be 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 the program, and the judge or director, as applicable, approves the payment. Requires the judge or director, if the judge or director disapproves the requested amount of payment, 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.

SECTION 4. Amends Section 71.001, Government Code, by adding Subdivision (8-a) to define "managed assigned counsel program."

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

(a) Requires the Task Force on Indigent Defense to develop certain policies and standards, among which may be policies and standards governing the organization and operation of a program consistent with nationally recognized policies and standards; and other policies and standards, for providing indigent defense services as determined by the task force to be appropriate. Makes a nonsubstantive change.

EFFECTIVE DATE

September 1, 2011