

By: Gallego

H.B. No. 1754

Substitute the following for H.B. No. 1754:

By: Aliseda

C.S.H.B. No. 1754

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the reorganization of powers and duties among agencies
3 in this state that provide representation to indigent defendants in
4 criminal cases and to the reorganization of funding sources for
5 indigent defense.

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

7 SECTION 1. Subtitle F, Title 2, Government Code, is amended
8 by adding Chapter 79 to read as follows:

9 CHAPTER 79. TEXAS INDIGENT DEFENSE COMMISSION

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 79.001. DEFINITIONS. In this chapter:

12 (1) "Assigned counsel program" means a system under
13 which private attorneys, acting as independent contractors and
14 compensated with public funds, are individually appointed to
15 provide legal representation and services to a particular indigent
16 defendant accused of a crime or juvenile offense.

17 (2) "Board" means the governing board of the Texas
18 Indigent Defense Commission.

19 (3) "Commission" means the agency known as the Texas
20 Indigent Defense Commission.

21 (4) "Contract defender program" means a system under
22 which private attorneys, acting as independent contractors and
23 compensated with public funds, are engaged to provide legal
24 representation and services to a group of unspecified indigent

1 defendants who appear before a particular court or group of courts.

2 (5) "Council" means the Texas Judicial Council.

3 (6) "Crime" means:

4 (A) a misdemeanor punishable by confinement; or

5 (B) a felony.

6 (7) "Defendant" means a person accused of a crime or a
7 juvenile offense.

8 (8) "Executive director" means the executive director
9 of the Texas Indigent Defense Commission.

10 (9) "Indigent defense support services" means
11 criminal defense services that:

12 (A) are provided by licensed investigators,
13 experts, or other similar specialists, including forensic experts
14 and mental health experts; and

15 (B) are reasonable and necessary for appointed
16 counsel to provide adequate representation to indigent defendants.

17 (10) "Juvenile offense" means conduct committed by a
18 person while younger than 17 years of age that constitutes:

19 (A) a misdemeanor punishable by confinement; or

20 (B) a felony.

21 (11) "Managed assigned counsel program" has the
22 meaning assigned by Article 26.047, Code of Criminal Procedure.

23 (12) "Office of capital writs" means the office of
24 capital writs established under Subchapter B, Chapter 78.

25 (13) "Public defender's office" has the meaning
26 assigned by Article 26.044(a), Code of Criminal Procedure.

27 Sec. 79.002. ESTABLISHMENT OF COMMISSION. (a) The Texas

1 Indigent Defense Commission is established. The commission is an
2 agency in the judicial branch of this state.

3 (b) The commission operates under the direction and
4 supervision of a governing board.

5 Sec. 79.003. SUNSET PROVISION. The commission is subject
6 to Chapter 325 (Texas Sunset Act). Unless continued in existence as
7 provided by that chapter, the commission is abolished and this
8 chapter expires September 1, 2023.

9 [Sections 79.004-79.010 reserved for expansion]

10 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

11 Sec. 79.011. ESTABLISHMENT OF BOARD; COMPOSITION. (a) The
12 commission is governed by a board consisting of eight ex officio
13 members and five appointive members.

14 (b) Except as provided by Section 79.038, the board shall
15 exercise the powers and perform the duties under this chapter
16 independently of the council.

17 Sec. 79.012. EXECUTIVE DIRECTOR. (a) The executive
18 director is appointed by the board.

19 (b) The executive director:

20 (1) must be a licensed attorney;

21 (2) must demonstrate an interest in the standards for
22 and provision of criminal defense services to indigent individuals;

23 (3) may not engage in the private practice of law; and

24 (4) may not accept money, property, or any other thing
25 of value not authorized by law for services rendered under this
26 chapter.

27 Sec. 79.013. EX OFFICIO MEMBERS. The ex officio members of

1 the board are:

2 (1) the following six members of the council:

3 (A) the chief justice of the supreme court;

4 (B) the presiding judge of the court of criminal
5 appeals;

6 (C) one of the members of the senate serving on
7 the council who is designated by the lieutenant governor;

8 (D) the member of the house of representatives
9 appointed by the speaker of the house;

10 (E) one of the courts of appeals justices serving
11 on the council who is designated by the governor; and

12 (F) one of the county court or statutory county
13 court judges serving on the council who is designated by the
14 governor or, if a county court or statutory county court judge is
15 not serving on the council, one of the statutory probate court
16 judges serving on the council who is designated by the governor;

17 (2) one other member of the senate appointed by the
18 lieutenant governor; and

19 (3) the chair of the House Criminal Jurisprudence
20 Committee.

21 Sec. 79.014. APPOINTMENTS. (a) The governor shall appoint
22 with the advice and consent of the senate five members of the board
23 as follows:

24 (1) one member who is a district judge serving as a
25 presiding judge of an administrative judicial region;

26 (2) one member who is a judge of a constitutional
27 county court or who is a county commissioner;

1 (3) one member who is a practicing criminal defense
2 attorney;

3 (4) one member who is a chief public defender in this
4 state or the chief public defender's designee, who must be an
5 attorney employed by the public defender's office; and

6 (5) one member who is a judge of a constitutional
7 county court or who is a county commissioner of a county with a
8 population of 250,000 or more.

9 (b) The board members serve staggered terms of two years,
10 with two members' terms expiring February 1 of each odd-numbered
11 year and three members' terms expiring February 1 of each
12 even-numbered year.

13 (c) In making appointments to the board, the governor shall
14 attempt to reflect the geographic and demographic diversity of the
15 state.

16 (d) A person may not be appointed to the board if the person
17 is required to register as a lobbyist under Chapter 305 because of
18 the person's activities for compensation on behalf of a profession
19 related to the operation of the commission or the council.

20 Sec. 79.015. PRESIDING OFFICER. The board shall select a
21 chair from among its members.

22 Sec. 79.016. DISCLOSURE REQUIRED. (a) A board member who is
23 a chief public defender or who is an attorney employed by a public
24 defender's office in a county that applies for funds under Section
25 79.037 shall disclose that fact before a vote by the board regarding
26 an award of funds to that county and may not participate in such a
27 vote.

1 (b) A board member's disclosure under Subsection (a) must be
2 entered into the minutes of the board meeting at which the
3 disclosure is made or reported, as applicable.

4 (c) The commission may not award funds under Section 79.037
5 to a county served by a chief public defender or other attorney who
6 fails to make a disclosure to the board as required by Subsection
7 (a).

8 Sec. 79.017. VACANCIES. A vacancy on the board must be
9 filled for the unexpired term in the same manner as the original
10 appointment. An appointment to fill a vacancy shall be made not
11 later than the 90th day after the date the vacancy occurs.

12 Sec. 79.018. MEETINGS; QUORUM; VOTING. (a) The board shall
13 meet at least four times each year and at such other times as it
14 considers necessary or convenient to perform its duties.

15 (b) Six members of the board constitute a quorum for
16 purposes of transacting the business of the board. The board may
17 act only on the concurrence of five board members or a majority of
18 the board members present, whichever number is greater. The board
19 may adopt policies and standards under Section 79.034 only on the
20 concurrence of seven board members.

21 (c) Except as provided by Section 79.016, a board member is
22 entitled to vote on any matter before the board, except as otherwise
23 provided by rules adopted by the board.

24 Sec. 79.019. COMPENSATION. A board member may not receive
25 compensation for services on the board but is entitled to be
26 reimbursed for actual and necessary expenses incurred in
27 discharging board duties. The expenses are paid from funds

1 appropriated to the board.

2 Sec. 79.020. IMMUNITY FROM LIABILITY. A member of the board
3 performing duties on behalf of the board is not liable for damages
4 arising from an act or omission within the scope of those duties.

5 Sec. 79.021. RULES. The board shall adopt rules as
6 necessary to implement this chapter.

7 [Sections 79.022-79.030 reserved for expansion]

8 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF COMMISSION

9 Sec. 79.031. FAIR DEFENSE ACCOUNT. The fair defense
10 account is an account in the general revenue fund that may be
11 appropriated only to:

12 (1) the commission for the purpose of implementing
13 this chapter; and

14 (2) the office of capital writs for the purpose of
15 implementing Subchapter B, Chapter 78.

16 Sec. 79.032. ACCEPTANCE OF GIFTS, GRANTS, AND OTHER FUNDS;
17 STATE GRANTS TEAM. (a) The commission may accept gifts, grants,
18 and other funds from any public or private source to pay expenses
19 incurred in performing its duties under this chapter.

20 (b) The State Grants Team of the Governor's Office of
21 Budget, Planning, and Policy may assist the commission in
22 identifying grants and other resources available for use by the
23 commission in performing its duties under this chapter.

24 Sec. 79.033. LEGISLATIVE APPROPRIATIONS REQUEST. The
25 board, in accordance with the rules and procedures of the
26 Legislative Budget Board, shall prepare, approve, and submit a
27 legislative appropriations request.

1 Sec. 79.034. POLICIES AND STANDARDS. (a) The commission
2 shall develop policies and standards for providing legal
3 representation and other defense services to indigent defendants at
4 trial, on appeal, and in postconviction proceedings. The policies
5 and standards may include:

6 (1) performance standards for counsel appointed to
7 represent indigent defendants;

8 (2) qualification standards under which attorneys may
9 qualify for appointment to represent indigent defendants,
10 including:

11 (A) qualifications commensurate with the
12 seriousness of the nature of the proceeding;

13 (B) qualifications appropriate for
14 representation of mentally ill defendants and noncitizen
15 defendants;

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

18 (D) testing and certification standards;

19 (3) standards for ensuring appropriate appointed
20 caseloads for counsel appointed to represent indigent defendants;

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

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

25 (6) policies and standards governing the organization
26 and operation of a public defender's office consistent with
27 recognized national policies and standards;

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

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

6 (9) standards governing the availability and
7 reasonable compensation of providers of indigent defense support
8 services for counsel appointed to represent indigent defendants;

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

13 (11) policies and standards governing the appointment
14 of attorneys to represent children in proceedings under Title 3,
15 Family Code;

16 (12) policies and standards governing the
17 organization and operation of a managed assigned counsel program
18 consistent with nationally recognized policies and standards; and

19 (13) other policies and standards for providing
20 indigent defense services as determined by the commission to be
21 appropriate.

22 (b) The commission shall submit its proposed policies and
23 standards developed under Subsection (a) to the board for adoption.
24 The board shall adopt the proposed policies and standards as
25 appropriate.

26 (c) Any qualification standards adopted by the board under
27 Subsection (b) that relate to the appointment of counsel in a death

1 penalty case must be consistent with the standards specified under
2 Article 26.052(d), Code of Criminal Procedure. An attorney who is
3 identified by the commission as not satisfying performance or
4 qualification standards adopted by the board under Subsection (b)
5 may not accept an appointment in a capital case.

6 Sec. 79.035. COUNTY REPORTING PLAN; COMMISSION REPORTS.

7 (a) The commission shall develop a plan that establishes statewide
8 requirements for counties relating to reporting indigent defense
9 information. The plan must include provisions designed to reduce
10 redundant reporting by counties and provisions that take into
11 consideration the costs to counties of implementing the plan
12 statewide. The commission shall use the information reported by a
13 county to monitor the effectiveness of the county's indigent
14 defense policies, standards, and procedures and to ensure
15 compliance by the county with the requirements of state law
16 relating to indigent defense. The commission may revise the plan as
17 necessary to improve monitoring of indigent defense policies,
18 standards, and procedures in this state.

19 (b) The commission shall annually submit to the governor,
20 lieutenant governor, speaker of the house of representatives, and
21 council and shall publish in written and electronic form a report:

22 (1) containing any information submitted to the
23 commission by a county under Section 79.036; and

24 (2) regarding:

25 (A) the quality of legal representation provided
26 by counsel appointed to represent indigent defendants;

27 (B) current indigent defense practices in the

1 state as compared to state and national standards;

2 (C) efforts made by the commission to improve
3 indigent defense practices in the state; and

4 (D) recommendations made by the commission for
5 improving indigent defense practices in the state.

6 (c) The commission shall annually submit to the Legislative
7 Budget Board and council and shall publish in written and
8 electronic form a detailed report of all expenditures made under
9 this subchapter, including distributions under Section 79.037.

10 (d) The commission may issue other reports relating to
11 indigent defense as determined to be appropriate by the commission.

12 Sec. 79.036. INDIGENT DEFENSE INFORMATION. (a) In each
13 county, not later than November 1 of each odd-numbered year and in
14 the form and manner prescribed by the commission, the following
15 information shall be prepared and provided to the commission:

16 (1) a copy of all formal and informal rules and forms
17 that describe the procedures used in the county to provide indigent
18 defendants with counsel in accordance with the Code of Criminal
19 Procedure, including the schedule of fees required under Article
20 26.05 of that code;

21 (2) any revisions to rules or forms previously
22 submitted under this section; or

23 (3) verification that rules and forms previously
24 submitted under this section still remain in effect.

25 (b) Except as provided by Subsection (c):

26 (1) the local administrative district judge in each
27 county, or the person designated by the judge, shall perform the

1 action required by Subsection (a) with respect to all rules and
2 forms adopted by the judges of the district courts trying felony
3 cases in the county; and

4 (2) the local administrative statutory county court
5 judge in each county, or the person designated by the judge, shall
6 perform the action required by Subsection (a) with respect to all
7 rules and forms adopted by the judges of the county courts and
8 statutory county courts trying misdemeanor cases in the county.

9 (c) If the judges of two or more levels of courts described
10 by Subsection (b) adopt the same formal and informal rules and
11 forms, the local administrative judge serving the courts having
12 jurisdiction over offenses with the highest classification of
13 punishment, or the person designated by the judge, shall perform
14 the action required by Subsection (a).

15 (d) The chair of the juvenile board in each county, or the
16 person designated by the chair, shall perform the action required
17 by Subsection (a) with respect to all rules and forms adopted by the
18 juvenile board.

19 (e) In each county, the county auditor, or the person
20 designated by the commissioners court if the county does not have a
21 county auditor, shall prepare and send to the commission in the form
22 and manner prescribed by the commission and on a monthly,
23 quarterly, or annual basis, with respect to legal services provided
24 in the county to indigent defendants during each fiscal year,
25 information showing the total amount expended by the county to
26 provide indigent defense services and an analysis of the amount
27 expended by the county:

1 (1) in each district, county, statutory county, and
2 appellate court;

3 (2) in cases for which a private attorney is appointed
4 for an indigent defendant;

5 (3) in cases for which a public defender is appointed
6 for an indigent defendant;

7 (4) in cases for which counsel is appointed for an
8 indigent juvenile under Section 51.10(f), Family Code; and

9 (5) for investigation expenses, expert witness
10 expenses, or other litigation expenses.

11 (f) As a duty of office, each district and county clerk
12 shall cooperate with the county auditor or the person designated by
13 the commissioners court and the commissioners court in retrieving
14 information required to be sent to the commission under this
15 section.

16 Sec. 79.037. TECHNICAL SUPPORT; GRANTS. (a) The
17 commission shall:

18 (1) provide technical support to:

19 (A) assist counties in improving their indigent
20 defense systems; and

21 (B) promote compliance by counties with the
22 requirements of state law relating to indigent defense;

23 (2) to assist counties in providing indigent defense
24 services in the county, distribute in the form of grants any funds
25 appropriated for the purposes of this section; and

26 (3) monitor each county that receives a grant and
27 enforce compliance by the county with the conditions of the grant,

1 including enforcement by:

2 (A) withdrawing grant funds; or

3 (B) requiring reimbursement of grant funds by the
4 county.

5 (b) The commission shall distribute funds as required by
6 Subsection (a)(2) based on a county's compliance with standards
7 adopted by the board and the county's demonstrated commitment to
8 compliance with the requirements of state law relating to indigent
9 defense.

10 (c) The board shall adopt policies to ensure that funds
11 under Subsection (a)(2) are allocated and distributed to counties
12 in a fair manner.

13 (d) A county may not reduce the amount of funds provided for
14 indigent defense services in the county because of funds provided
15 by the commission under this section.

16 Sec. 79.038. ADMINISTRATIVE SUPPORT. The Office of Court
17 Administration of the Texas Judicial System shall provide
18 administrative support, including information technology services
19 support, to the commission as necessary to carry out this chapter.

20 SECTION 2. Section 71.001, Government Code, is amended to
21 read as follows:

22 Sec. 71.001. DEFINITIONS. In this chapter:

23 (1) [~~"Assigned counsel program" means a system under~~
24 ~~which private attorneys, acting as independent contractors and~~
25 ~~compensated with public funds, are individually appointed to~~
26 ~~provide legal representation and services to a particular indigent~~
27 ~~defendant accused of a crime or juvenile offense.~~

1 ~~[(2)]~~ "Chair" means the chair of the council.

2 (2) ~~[(3)] "Contract defender program" means a system~~
3 ~~under which private attorneys, acting as independent contractors~~
4 ~~and compensated with public funds, are engaged to provide legal~~
5 ~~representation and services to a group of unspecified indigent~~
6 ~~defendants who appear before a particular court or group of courts.~~

7 ~~[(4)]~~ "Council" means the Texas Judicial Council.

8 (3) ~~[(5)] "Crime" means:~~

9 ~~[(A)] a misdemeanor punishable by confinement, or~~

10 ~~[(B)] a felony.~~

11 ~~[(6)]~~ "Defendant" means a person accused of a crime or
12 [a] juvenile offense, as those terms are defined by Section 79.001.

13 (4) ~~[(7)] "Indigent defense support services" means~~
14 ~~criminal defense services that:~~

15 ~~[(A)] are provided by licensed investigators,~~
16 ~~experts, or other similar specialists, including forensic experts~~
17 ~~and mental health experts, and~~

18 ~~[(B)] are reasonable and necessary for appointed~~
19 ~~counsel to provide adequate representation to indigent defendants.~~

20 ~~[(8)] "Juvenile offense" means conduct committed by a~~
21 ~~person while younger than 17 years of age that constitutes:~~

22 ~~[(A)] a misdemeanor punishable by confinement, or~~

23 ~~[(B)] a felony.~~

24 ~~[(9)]~~ "Public defender's office ~~[defender]~~" has the
25 meaning assigned by Article 26.044(a), Code of Criminal Procedure.

26 SECTION 3. Section 78.052(b), Government Code, is amended
27 to read as follows:

1 (b) The office shall receive funds for personnel costs and
2 expenses:

3 (1) as specified in the General Appropriations Act;
4 and

5 (2) from the fair defense account under Section 79.031
6 [~~71.058~~], in an amount sufficient to cover personnel costs and
7 expenses not covered by appropriations described by Subdivision
8 (1).

9 SECTION 4. Section 78.056(b), Government Code, is amended
10 to read as follows:

11 (b) The Office of Court Administration of the Texas Judicial
12 System and the Texas [~~Task Force on~~] Indigent Defense Commission
13 shall provide administrative support necessary under this section.

14 SECTION 5. Section 81.054(c), Government Code, is amended
15 to read as follows:

16 (c) Fees shall be paid to the clerk of the supreme court.
17 The clerk shall retain the fees, other than fees collected under
18 Subsection (j), until distributed to the state bar for expenditure
19 under the direction of the supreme court to administer this
20 chapter. The clerk shall retain the fees collected under
21 Subsection (j) until distribution is approved by an order of the
22 supreme court. In ordering that distribution, the supreme court
23 shall order that the fees collected under Subsection (j) be
24 remitted to the comptroller at least as frequently as quarterly.
25 The comptroller shall credit 50 percent of the remitted fees to the
26 credit of the judicial fund for programs approved by the supreme
27 court that provide basic civil legal services to the indigent and

1 shall credit the remaining 50 percent of the remitted fees to the
2 fair defense account in the general revenue fund which is
3 established under Section 79.031 [~~71.058~~], to be used, subject to
4 all requirements of Section 79.037 [~~71.062~~], for demonstration or
5 pilot projects that develop and promote best practices for the
6 efficient delivery of quality representation to indigent
7 defendants in criminal cases at trial, on appeal, and in
8 postconviction proceedings.

9 SECTION 6. Section 402.035(c), Government Code, is amended
10 to read as follows:

- 11 (c) The task force is composed of the following:
- 12 (1) the governor or the governor's designee;
 - 13 (2) the attorney general or the attorney general's
14 designee;
 - 15 (3) the executive commissioner of the Health and Human
16 Services Commission or the executive commissioner's designee;
 - 17 (4) the commissioner of the Department of Family and
18 Protective Services or the commissioner's designee;
 - 19 (5) the public safety director of the Department of
20 Public Safety or the director's designee;
 - 21 (6) one representative from each of the following
22 state agencies, appointed by the chief administrative officer of
23 the respective agency:
 - 24 (A) the Texas Workforce Commission;
 - 25 (B) the Texas Department of Criminal Justice;
 - 26 (C) the Texas Youth Commission;
 - 27 (D) the Texas Juvenile Probation Commission; and

- 1 (E) the Texas Alcoholic Beverage Commission; and
2 (7) as appointed by the attorney general:
3 (A) a chief public defender employed by a public
4 defender's office, as defined by Article 26.044(a) [~~26.044~~], Code
5 of Criminal Procedure, or an attorney designated by the chief
6 public defender;
7 (B) an attorney representing the state;
8 (C) a representative of:
9 (i) a hotel and motel association;
10 (ii) a district and county attorneys
11 association; and
12 (iii) a state police association;
13 (D) representatives of sheriff's departments;
14 (E) representatives of local law enforcement
15 agencies affected by human trafficking; and
16 (F) representatives of nongovernmental entities
17 making comprehensive efforts to combat human trafficking by:
18 (i) identifying human trafficking victims;
19 (ii) providing legal or other services to
20 human trafficking victims;
21 (iii) participating in community outreach
22 or public awareness efforts regarding human trafficking;
23 (iv) providing or developing training
24 regarding the prevention of human trafficking; or
25 (v) engaging in other activities designed
26 to prevent human trafficking.

27 SECTION 7. Article 26.04, Code of Criminal Procedure, is

1 amended by amending Subsections (a), (d), and (f) and adding
2 Subsection (f-1) to read as follows:

3 (a) The judges of the county courts, statutory county
4 courts, and district courts trying criminal cases in each county,
5 by local rule, shall adopt and publish written countywide
6 procedures for timely and fairly appointing counsel for an indigent
7 defendant in the county arrested for or charged with a misdemeanor
8 punishable by confinement or a felony. The procedures must be
9 consistent with this article and Articles 1.051, 15.17, 26.05, and
10 26.052. A court shall appoint an attorney from a public appointment
11 list using a system of rotation, unless the court appoints an
12 attorney under Subsection (f), (f-1), (h), or (i). The court shall
13 appoint attorneys from among the next five names on the appointment
14 list in the order in which the attorneys' names appear on the list,
15 unless the court makes a finding of good cause on the record for
16 appointing an attorney out of order. An attorney who is not
17 appointed in the order in which the attorney's name appears on the
18 list shall remain next in order on the list.

19 (d) A public appointment list from which an attorney is
20 appointed as required by Subsection (a) shall contain the names of
21 qualified attorneys, each of whom:

- 22 (1) applies to be included on the list;
- 23 (2) meets the objective qualifications specified by
24 the judges under Subsection (e);
- 25 (3) meets any applicable qualifications specified by
26 the Texas [~~Task Force on~~] Indigent Defense Commission; and
- 27 (4) is approved by a majority of the judges who

1 established the appointment list under Subsection (e).

2 (f) In a county in which a public defender's office is
3 created or designated [~~defender is appointed~~] under Article 26.044,
4 the court or the courts' designee may appoint that office [~~the~~
5 ~~public defender~~] to represent the defendant in accordance with
6 guidelines established for the office [~~public defender~~].

7 (f-1) In a county in which a managed assigned counsel
8 program is operated in accordance with Article 26.047, the managed
9 assigned counsel program may appoint counsel to represent the
10 defendant in accordance with the guidelines established for the
11 program.

12 SECTION 8. The heading to Article 26.044, Code of Criminal
13 Procedure, is amended to read as follows:

14 Art. 26.044. PUBLIC DEFENDER'S OFFICE [~~DEFENDER~~].

15 SECTION 9. Article 26.044, Code of Criminal Procedure, is
16 amended by amending Subsections (a), (b), (c), (d), (e), (f), (g),
17 (h), (i), (j), (k), (l), and (m) and adding Subsections (b-1) and
18 (c-1) to read as follows:

19 (a) In this chapter:

20 (1) "Governmental entity" includes a county, a group
21 of counties, a department [~~branch or agency~~] of a county, an
22 administrative judicial region created by Section 74.042,
23 Government Code, and any entity created under the Interlocal
24 Cooperation Act as permitted by Chapter 791, Government Code.

25 (2) "Office of capital writs" means the office of
26 capital writs established under Subchapter B, Chapter 78,
27 Government Code.

1 (3) "Oversight board" means an oversight board
2 established in accordance with Article 26.045.

3 (4) "Public defender's office [defender]" means an
4 entity that:

5 (A) is either:

6 (i) a governmental entity; or

7 (ii) a nonprofit corporation[+]

8 ~~[(A)]~~ operating under a written agreement with a
9 governmental entity, other than an individual judge or court; and

10 (B) uses [using] public funds to provide[+] ~~and~~

11 ~~[(C) providing]~~ legal representation and
12 services to indigent defendants accused of a crime or juvenile
13 offense, as those terms are defined by Section 79.001 [71.001],
14 Government Code.

15 ~~[(3) "Office of capital writs" means the office of~~
16 ~~capital writs established under Subchapter B, Chapter 78,~~
17 ~~Government Code.]~~

18 (b) The commissioners court of any county, on written
19 approval of a judge of a county court, statutory county court, or
20 district court trying criminal cases or cases under Title 3, Family
21 Code, in the county, may create a department of the county or by
22 contract may designate a [appoint a governmental entity or]
23 nonprofit corporation to serve as a public defender's office
24 ~~[defender]~~. The commissioners courts of two or more counties may
25 enter into a written agreement to jointly create or designate
26 ~~[appoint]~~ and jointly fund a regional public defender's office
27 ~~[defender]~~. In creating or designating [appointing] a public

1 defender's office [~~defender~~] under this subsection, the
2 commissioners court shall specify or the commissioners courts shall
3 jointly specify, if creating or designating [~~appointing~~] a regional
4 public defender's office [~~defender~~]:

5 (1) the duties of the public defender's office
6 [~~defender~~];

7 (2) the types of cases to which the public defender's
8 office [~~defender~~] may be appointed under Article 26.04(f) and the
9 courts in which an attorney employed by the public defender's
10 office [~~defender~~] may be required to appear;

11 (3) if the public defender's office is a nonprofit
12 corporation, the term during which the contract designating the
13 public defender's office is effective and how that contract may be
14 renewed on expiration of the term [~~whether the public defender is~~
15 ~~appointed to serve a term or serve at the pleasure of the~~
16 ~~commissioners court or the commissioners courts~~]; and

17 (4) if an oversight board is established under Article
18 26.045 for the public defender's office, the powers and duties that
19 have been delegated to the oversight board [~~the public defender is~~
20 ~~appointed to serve a term, the term of appointment and the~~
21 ~~procedures for removing the public defender~~].

22 (b-1) The applicable commissioners court or commissioners
23 courts shall require a written plan from a governmental entity
24 serving as a public defender's office.

25 (c) Before contracting with a nonprofit corporation to
26 serve as [~~appointing~~] a public defender's office [~~defender~~] under
27 Subsection (b), the commissioners court or commissioners courts

1 shall solicit proposals for the public defender's office
2 [~~defender~~].

3 (c-1) A written plan under Subsection (b-1) or a proposal
4 under Subsection (c) must include:

5 (1) a budget for the public defender's office
6 [~~defender~~], including salaries;

7 (2) a description of each personnel position,
8 including the chief public defender position;

9 (3) the maximum allowable caseloads for each attorney
10 employed by the public defender's office [~~proponent~~];

11 (4) provisions for personnel training;

12 (5) a description of anticipated overhead costs for
13 the public defender's office [~~defender~~]; [~~and~~]

14 (6) policies regarding the use of licensed
15 investigators and expert witnesses by the public defender's office;
16 and

17 (7) a policy to ensure that the chief public defender
18 and other attorneys employed by the public defender's office do not
19 provide representation to a defendant if doing so would create a
20 conflict of interest that has not been waived by the client
21 [~~proponent~~].

22 (d) After considering each proposal for the public
23 defender's office [~~defender~~] submitted by a [~~governmental entity~~
24 ~~or~~] nonprofit corporation under Subsection (c), the commissioners
25 court or commissioners courts shall select a proposal that
26 reasonably demonstrates that the public defender's office
27 [~~proponent~~] will provide adequate quality representation for

1 indigent defendants in the county or counties.

2 (e) The total cost of the proposal under Subsection (c) may
3 not be the sole consideration in selecting a proposal.

4 (f) A [~~To be eligible for appointment as a~~] public
5 defender's office [~~defender, the governmental entity or nonprofit~~
6 ~~corporation~~] must be directed by a chief public defender who:

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

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

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

11 (g) A public defender's office [~~defender~~] is entitled to
12 receive funds for personnel costs and expenses incurred in
13 operating as a public defender's office [~~defender~~] in amounts fixed
14 by the commissioners court and paid out of the appropriate county
15 fund, or jointly fixed by the commissioners courts and
16 proportionately paid out of each appropriate county fund if the
17 public defender's office [~~defender~~] serves more than one county.

18 (h) A public defender's office [~~defender~~] may employ
19 attorneys, licensed investigators, and other personnel necessary
20 to perform the duties of the public defender's office [~~defender~~] as
21 specified by the commissioners court or commissioners courts under
22 Subsection (b)(1).

23 (i) Except as authorized by this article, the chief public
24 defender and other attorneys [~~or an attorney~~] employed by a public
25 defender's office [~~defender~~] may not:

26 (1) engage in the private practice of criminal law; or

27 (2) accept anything of value not authorized by this

1 article for services rendered under this article.

2 (j) A public defender's office [~~defender~~] may not accept
3 [~~refuse~~] an appointment under Article 26.04(f) if:

4 (1) a conflict of interest exists that has not been
5 waived by the client;

6 (2) the public defender's office [~~defender~~] has
7 insufficient resources to provide adequate representation for the
8 defendant;

9 (3) the public defender's office [~~defender~~] is
10 incapable of providing representation for the defendant in
11 accordance with the rules of professional conduct; or

12 (4) the public defender's office [~~defender~~] shows
13 other good cause for not accepting [~~refusing~~] the appointment.

14 (k) The judge may remove from a case a person [~~public~~
15 ~~defender~~] who violates a provision of Subsection (i).

16 (l) A public defender's office [~~defender~~] may investigate
17 the financial condition of any person the public defender's office
18 [~~defender~~] is appointed to represent. The public defender's office
19 [~~defender~~] shall report the results of the investigation to the
20 appointing judge. The judge may hold a hearing to determine if the
21 person is indigent and entitled to representation under this
22 article.

23 (m) If it is necessary that an attorney who is not employed
24 by [~~other than~~] a public defender's office [~~defender~~] be appointed,
25 the attorney is entitled to the compensation provided by Article
26 26.05 of this code.

27 SECTION 10. Chapter 26, Code of Criminal Procedure, is

1 amended by adding Article 26.045 to read as follows:

2 Art. 26.045. PUBLIC DEFENDER OVERSIGHT BOARD. (a) The
3 commissioners court of a county or the commissioners courts of two
4 or more counties may establish an oversight board for a public
5 defender's office created or designated in accordance with this
6 chapter.

7 (b) The commissioners court or courts that establish an
8 oversight board under this article shall appoint members of the
9 board. Members may include one or more of the following:

- 10 (1) an attorney;
11 (2) the judge of a trial court in this state;
12 (3) a county commissioner;
13 (4) a county judge;
14 (5) a community representative; and
15 (6) a former client or a family member of a former
16 client of the public defender's office for which the oversight
17 board was established under this article.

18 (c) The commissioners court or courts may delegate to the
19 board any power or duty of the commissioners court to provide
20 oversight of the office under Article 26.044, including:

- 21 (1) recommending selection and removal of a chief
22 public defender;
23 (2) setting policy for the office; and
24 (3) developing a budget proposal for the office.

25 (d) An oversight board established under this article may
26 not gain access to privileged or confidential information.

27 SECTION 11. Chapter 26, Code of Criminal Procedure, is

1 amended by adding Article 26.047 to read as follows:

2 Art. 26.047. MANAGED ASSIGNED COUNSEL PROGRAM. (a) In this
3 article:

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

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

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

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

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

25 (1) the types of cases in which the program may appoint
26 counsel under Article 26.04 of this code or Section 51.10, Family
27 Code, and the courts in which the counsel appointed by the program

1 may be required to appear; and

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

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

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

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

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

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

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

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

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

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

25 (d) A program under this article must have a director.
26 Unless the program uses a review committee appointed under
27 Subsection (e), a program under this article must be directed by a

1 person who:

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

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

4 (3) has substantial experience in the practice of
5 criminal law.

6 (e) The governmental entity, nonprofit corporation, or bar
7 association operating the program may appoint a review committee of
8 three or more individuals to approve attorneys for inclusion on the
9 program's public appointment list described by Subsection (f).

10 Each member of the committee:

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

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

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

16 (f) The program's public appointment list from which an
17 attorney is appointed must contain the names of qualified
18 attorneys, each of whom:

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

20 (2) meets any applicable requirements specified by the
21 procedure for appointing counsel adopted under Article 26.04(a) and
22 the Texas Indigent Defense Commission; and

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

25 (g) A court may replace an attorney appointed by the program
26 for the same reasons and in the same manner described by Article
27 26.04(k).

1 (h) A managed assigned counsel program is entitled to
2 receive funds for personnel costs and expenses incurred in amounts
3 fixed by the commissioners court and paid out of the appropriate
4 county fund, or jointly fixed by the commissioners courts and
5 proportionately paid out of each appropriate county fund if the
6 program serves more than one county.

7 (i) A managed assigned counsel program may employ personnel
8 and enter into contracts necessary to perform the program's duties
9 as specified by the commissioners court or commissioners courts
10 under this article.

11 SECTION 12. Articles 26.05(a), (c), and (d), Code of
12 Criminal Procedure, are amended to read as follows:

13 (a) A counsel, other than an attorney with a public
14 defender's office [~~defender~~] or an attorney employed by the office
15 of capital writs, appointed to represent a defendant in a criminal
16 proceeding, including a habeas corpus hearing, shall be paid a
17 reasonable attorney's fee for performing the following services,
18 based on the time and labor required, the complexity of the case,
19 and the experience and ability of the appointed counsel:

20 (1) time spent in court making an appearance on behalf
21 of the defendant as evidenced by a docket entry, time spent in
22 trial, and time spent in a proceeding in which sworn oral testimony
23 is elicited;

24 (2) reasonable and necessary time spent out of court
25 on the case, supported by any documentation that the court
26 requires;

27 (3) preparation of an appellate brief and preparation

1 and presentation of oral argument to a court of appeals or the Court
2 of Criminal Appeals; and

3 (4) preparation of a motion for rehearing.

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

1 later than the 45th day after the date an application for payment of
2 a fee is submitted under this article, the commissioners court
3 shall pay to the appointed counsel the amount that is approved by
4 the presiding judge of the administrative judicial region and that
5 is in accordance with the fee schedule for that county.

6 (d) A counsel in a noncapital case, other than an attorney
7 with a public defender's office [~~defender~~], appointed to represent
8 a defendant under this code shall be reimbursed for reasonable and
9 necessary expenses, including expenses for investigation and for
10 mental health and other experts. Expenses incurred with prior
11 court approval shall be reimbursed in the same manner provided for
12 capital cases by Articles 26.052(f) and (g), and expenses incurred
13 without prior court approval shall be reimbursed in the manner
14 provided for capital cases by Article 26.052(h).

15 SECTION 13. Section 11(a), Article 42.12, Code of Criminal
16 Procedure, is amended to read as follows:

17 (a) The judge of the court having jurisdiction of the case
18 shall determine the conditions of community supervision and may, at
19 any time during the period of community supervision, alter or
20 modify the conditions. The judge may impose any reasonable
21 condition that is designed to protect or restore the community,
22 protect or restore the victim, or punish, rehabilitate, or reform
23 the defendant. Conditions of community supervision may include,
24 but shall not be limited to, the conditions that the defendant
25 shall:

26 (1) Commit no offense against the laws of this State or
27 of any other State or of the United States;

- 1 (2) Avoid injurious or vicious habits;
- 2 (3) Avoid persons or places of disreputable or harmful
3 character, including any person, other than a family member of the
4 defendant, who is an active member of a criminal street gang;
- 5 (4) Report to the supervision officer as directed by
6 the judge or supervision officer and obey all rules and regulations
7 of the community supervision and corrections department;
- 8 (5) Permit the supervision officer to visit the
9 defendant at the defendant's home or elsewhere;
- 10 (6) Work faithfully at suitable employment as far as
11 possible;
- 12 (7) Remain within a specified place;
- 13 (8) Pay the defendant's fine, if one is assessed, and
14 all court costs whether a fine is assessed or not, in one or several
15 sums;
- 16 (9) Support the defendant's dependents;
- 17 (10) Participate, for a time specified by the judge,
18 in any community-based program, including a community-service work
19 program under Section 16 of this article;
- 20 (11) Reimburse the county in which the prosecution was
21 instituted for compensation paid to appointed counsel for defending
22 the defendant in the case, if counsel was appointed, or if the
23 defendant was represented by a [~~county-paid~~] public defender's
24 office [~~defender~~], in an amount that would have been paid to an
25 appointed attorney had the county not had a public defender's
26 office [~~defender~~];
- 27 (12) Remain under custodial supervision in a community

1 corrections facility, obey all rules and regulations of the
2 facility, and pay a percentage of the defendant's income to the
3 facility for room and board;

4 (13) Pay a percentage of the defendant's income to the
5 defendant's dependents for their support while under custodial
6 supervision in a community corrections facility;

7 (14) Submit to testing for alcohol or controlled
8 substances;

9 (15) Attend counseling sessions for substance abusers
10 or participate in substance abuse treatment services in a program
11 or facility approved or licensed by the Department of State Health
12 Services [~~Texas Commission on Alcohol and Drug Abuse~~];

13 (16) With the consent of the victim of a misdemeanor
14 offense or of any offense under Title 7, Penal Code, participate in
15 victim-defendant mediation;

16 (17) Submit to electronic monitoring;

17 (18) Reimburse the compensation to victims of crime
18 fund for any amounts paid from that fund to or on behalf of a victim,
19 as defined by Article 56.32, of the defendant's offense or if no
20 reimbursement is required, make one payment to the compensation to
21 victims of crime fund in an amount not to exceed \$50 if the offense
22 is a misdemeanor or not to exceed \$100 if the offense is a felony;

23 (19) Reimburse a law enforcement agency for the
24 analysis, storage, or disposal of raw materials, controlled
25 substances, chemical precursors, drug paraphernalia, or other
26 materials seized in connection with the offense;

27 (20) Pay all or part of the reasonable and necessary

1 costs incurred by the victim for psychological counseling made
2 necessary by the offense or for counseling and education relating
3 to acquired immune deficiency syndrome or human immunodeficiency
4 virus made necessary by the offense;

5 (21) Make one payment in an amount not to exceed \$50 to
6 a crime stoppers organization as defined by Section 414.001,
7 Government Code, and as certified by the Texas Crime Stoppers
8 Council;

9 (22) Submit a DNA sample to the Department of Public
10 Safety under Subchapter G, Chapter 411, Government Code, for the
11 purpose of creating a DNA record of the defendant;

12 (23) In any manner required by the judge, provide
13 public notice of the offense for which the defendant was placed on
14 community supervision in the county in which the offense was
15 committed; and

16 (24) Reimburse the county in which the prosecution was
17 instituted for compensation paid to any interpreter in the case.

18 SECTION 14. Section 133.107, Local Government Code, is
19 amended to read as follows:

20 Sec. 133.107. FEE FOR SUPPORT OF INDIGENT DEFENSE
21 REPRESENTATION. (a) A person convicted of any offense, other than
22 an offense relating to a pedestrian or the parking of a motor
23 vehicle, shall pay as a court cost, in addition to other costs, a
24 fee of \$2 to be used to fund indigent defense representation through
25 the fair defense account established under Section 79.031 [~~71.058~~],
26 Government Code.

27 (b) The treasurer shall remit a fee collected under this

1 section to the comptroller in the manner provided by Subchapter B.
2 The comptroller shall credit the remitted fees to the credit of the
3 fair defense account established under Section 79.031 [~~71.058~~],
4 Government Code.

5 SECTION 15. The following are repealed:

- 6 (1) Article 26.05(i), Code of Criminal Procedure;
- 7 (2) Section 71.0351, Government Code; and
- 8 (3) Subchapter D, Chapter 71, Government Code.

9 SECTION 16. As soon as possible after the effective date of
10 this Act, the governor shall appoint the initial governing board of
11 the Texas Indigent Defense Commission in accordance with Subchapter
12 B, Chapter 79, Government Code, as added by this Act. To enable the
13 staggering of terms as required by Section 79.014(b) of that
14 subchapter, the governor shall appoint two members whose terms
15 expire on February 1 of the next odd-numbered year and three members
16 whose terms expire on February 1 of the next even-numbered year.

17 SECTION 17. (a) On the date the last appointee to the
18 initial governing board of the Texas Indigent Defense Commission
19 takes office, the Task Force on Indigent Defense established under
20 Subchapter D, Chapter 71, Government Code, is abolished. On that
21 date, the powers, duties, obligations, rights, contracts, records,
22 personnel, property, and unspent appropriations of the task force
23 are transferred to the commission.

24 (b) All rules of the Task Force on Indigent Defense are
25 continued in effect as rules of the Texas Indigent Defense
26 Commission until superseded by a rule of the commission.

27 (c) Notwithstanding the changes in law made by this Act,

1 until the date the Task Force on Indigent Defense is abolished as
2 provided by this section, the members and the director of the task
3 force on the effective date of this Act may continue in office and
4 exercise their powers and duties under the law that governed the
5 task force before the effective date of this Act, and the prior law
6 is continued in effect for that purpose.

7 SECTION 18. Not later than December 1, 2011, the Texas
8 Indigent Defense Commission and the Texas Judicial Council shall
9 adopt a memorandum of understanding to facilitate the timely
10 implementation of this Act.

11 SECTION 19. This Act takes effect September 1, 2011.