

By: Gallego

H.B. No. 1754

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the reorganization of powers and duties among entities
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 permanent standing
20 committee of the council known as the Texas Indigent Defense
21 Commission.

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

1 representation and services to a group of unspecified indigent
2 defendants who appear before a particular court or group of courts.

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

4 (6) "Crime" means:

5 (A) a misdemeanor punishable by confinement; or

6 (B) a felony.

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

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

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

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

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

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

20 (A) a misdemeanor punishable by confinement; or

21 (B) a felony.

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

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

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

1 Sec. 79.002. ESTABLISHMENT OF COMMISSION. The Texas
2 Indigent Defense Commission is established as a permanent standing
3 committee of the council.

4 [Sections 79.003-79.010 reserved for expansion]

5 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

6 Sec. 79.011. ESTABLISHMENT OF BOARD; COMPOSITION. (a) The
7 commission is governed by a board consisting of eight ex officio
8 members and seven appointive members.

9 (b) Except as provided by Section 79.031, the board shall
10 exercise the powers and perform the duties under this chapter
11 independently of the council.

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

14 (b) The executive director:

15 (1) must be a licensed attorney;

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

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

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

22 Sec. 79.013. EX OFFICIO MEMBERS. The ex officio members of
23 the board are:

24 (1) the following two members of the council or the
25 designees of those members:

26 (A) the chief justice of the supreme court or the
27 chief justice's designee who is the judge of a trial court in this

1 state that has criminal jurisdiction; and

2 (B) the presiding judge of the court of criminal
3 appeals or the presiding judge's designee who is the judge of a
4 trial court in this state that has criminal jurisdiction;

5 (2) the following four members of the council:

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

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

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

12 (D) 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 (3) one other member of the senate appointed by the
18 lieutenant governor; and

19 (4) 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 seven 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) two members who are practicing criminal defense
2 attorneys;

3 (4) two members who are chief public defenders in this
4 state or who are attorneys each of whom is designated by a chief
5 public defender in this state; 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 three members' terms expiring February 1 of each odd-numbered
11 year and four 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. 79.0145. INITIAL BOARD MEMBERS. (a) The initial board
21 consists of the following members:

- 22 (1) Sharon Keller;
23 (2) Wallace Jefferson;
24 (3) Jeff Wentworth;
25 (4) Roberto Alonzo;
26 (5) Sherry Radack;
27 (6) Alfonso Charles;

1 (7) John Whitmire;

2 (8) Pete Gallego;

3 (9) Olen Underwood;

4 (10) Jon Burrows;

5 (11) Knox Fitzpatrick;

6 (12) Anthony Odiorne;

7 (13) Glen Whitley; and

8 (14) two members appointed by the governor as provided
9 by Section 79.014, with the term of one member expiring February 1
10 of the next odd-numbered year and the term of one member expiring
11 February 1 of the next even-numbered year.

12 (b) This section expires when the last member of the initial
13 board is appointed.

14 Sec. 79.015. PRESIDING OFFICER. The board shall select a
15 chair from among its members.

16 Sec. 79.016. DISCLOSURE REQUIRED. (a) A board member who is
17 a chief public defender or who is an attorney employed by a public
18 defender's office in a county that applies for funds under Section
19 79.038 shall disclose that fact before a vote by the board regarding
20 an award of funds to that county and may not participate in such a
21 vote.

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

25 (c) The commission may not award funds under Section 79.038
26 to a county served by a chief public defender or other attorney who
27 fails to make a disclosure to the board as required by Subsection

1 (a).

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

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

9 (b) Seven members of the board constitute a quorum for
10 purposes of transacting the business of the board. The board may
11 act only on the concurrence of six board members or a majority of
12 the board members present, whichever number is greater. The board
13 may adopt policies and standards under Section 79.035 only on the
14 concurrence of eight board members.

15 (c) A board member is entitled to vote on any matter before
16 the board, except as provided by Section 79.016 and as otherwise
17 provided by rules adopted by the board and ratified by the council.

18 Sec. 79.019. COMPENSATION. A board member may not receive
19 compensation for services on the board but is entitled to be
20 reimbursed for actual and necessary expenses incurred in
21 discharging board duties. The expenses are paid from funds
22 appropriated to the board.

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

26 Sec. 79.021. RULES. The board shall adopt rules as
27 necessary to implement this chapter. The board shall submit rules

1 adopted under this chapter to the council for ratification. The
2 council shall ratify a rule as appropriate.

3 [Sections 79.022-79.030 reserved for expansion]

4 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF COMMISSION

5 Sec. 79.031. ADMINISTRATIVE ATTACHMENT; SUPPORT. (a) The
6 commission is administratively attached to the Office of Court
7 Administration of the Texas Judicial System.

8 (b) The office of court administration shall provide
9 administrative support services, including human resources,
10 budgetary, accounting, purchasing, payroll, information
11 technology, and legal support services, to the commission as
12 necessary to carry out the purposes of this chapter.

13 (c) Information exchanged between the commission and the
14 office of court administration for purposes of providing or
15 receiving legal support services is protected by the
16 attorney-client privilege.

17 Sec. 79.032. FAIR DEFENSE ACCOUNT. The fair defense
18 account is an account in the general revenue fund that may be
19 appropriated only to:

20 (1) the commission for the purpose of implementing
21 this chapter; and

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

24 Sec. 79.033. ACCEPTANCE OF GIFTS, GRANTS, AND OTHER FUNDS;
25 STATE GRANTS TEAM. (a) The commission may accept gifts, grants,
26 and other funds from any public or private source to pay expenses
27 incurred in performing its duties under this chapter.

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

5 Sec. 79.034. LEGISLATIVE APPROPRIATIONS REQUEST. The
6 board, in accordance with the rules and procedures of the
7 Legislative Budget Board, shall prepare, approve, and submit a
8 legislative appropriations request that is separate from the
9 legislative appropriations request for the council and is used to
10 develop the budget structure for the board and the commission. The
11 board shall maintain the legislative appropriations request and
12 budget structure separately from those of the council and shall
13 make the legislative appropriations request and budget structure
14 available to the council on request.

15 Sec. 79.035. POLICIES AND STANDARDS. (a) The commission
16 shall develop policies and standards for providing legal
17 representation and other defense services to indigent defendants at
18 trial, on appeal, and in postconviction proceedings. The policies
19 and standards may include:

20 (1) performance standards for counsel appointed to
21 represent indigent defendants;

22 (2) qualification standards under which attorneys may
23 qualify for appointment to represent indigent defendants,
24 including:

25 (A) qualifications commensurate with the
26 seriousness of the nature of the proceeding;

27 (B) qualifications appropriate for

1 representation of mentally ill defendants and noncitizen
2 defendants;

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

5 (D) testing and certification standards;

6 (3) standards for ensuring appropriate appointed
7 caseloads for counsel appointed to represent indigent defendants;

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

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

12 (6) policies and standards governing the organization
13 and operation of a public defender's office consistent with
14 recognized national policies and standards;

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

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

20 (9) standards governing the availability and
21 reasonable compensation of providers of indigent defense support
22 services for counsel appointed to represent indigent defendants;

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

27 (11) policies and standards governing the appointment

1 of attorneys to represent children in proceedings under Title 3,
2 Family Code;

3 (12) policies and standards governing the
4 organization and operation of a managed assigned counsel program
5 consistent with nationally recognized policies and standards; and

6 (13) other policies and standards for providing
7 indigent defense services as determined by the commission to be
8 appropriate.

9 (b) The commission shall submit its proposed policies and
10 standards developed under Subsection (a) to the board for adoption
11 and subsequently to the council for ratification. The board shall
12 adopt and the council shall ratify the proposed policies and
13 standards as appropriate.

14 (c) Any qualification standards adopted by the board under
15 Subsection (b) that relate to the appointment of counsel in a death
16 penalty case must be consistent with the standards specified under
17 Article 26.052(d), Code of Criminal Procedure. An attorney who is
18 identified by the commission as not satisfying performance or
19 qualification standards adopted by the board under Subsection (b)
20 may not accept an appointment in a capital case.

21 Sec. 79.036. COUNTY REPORTING PLAN; COMMISSION REPORTS.

22 (a) The commission shall develop a plan that establishes statewide
23 requirements for counties relating to reporting indigent defense
24 information. The plan must include provisions designed to reduce
25 redundant reporting by counties and provisions that take into
26 consideration the costs to counties of implementing the plan
27 statewide. The commission shall use the information reported by a

1 county to monitor the effectiveness of the county's indigent
2 defense policies, standards, and procedures and to ensure
3 compliance by the county with the requirements of state law
4 relating to indigent defense. The commission may revise the plan as
5 necessary to improve monitoring of indigent defense policies,
6 standards, and procedures in this state.

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

10 (1) containing any information submitted to the
11 commission by a county under Section 79.037; and

12 (2) regarding:

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

15 (B) current indigent defense practices in the
16 state as compared to state and national standards;

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

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

21 (c) The commission shall annually submit to the Legislative
22 Budget Board and council and shall publish in written and
23 electronic form a detailed report of all expenditures made under
24 this subchapter, including distributions under Section 79.038.

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

27 Sec. 79.037. INDIGENT DEFENSE INFORMATION. (a) In each

1 county, at the time and in the form and manner prescribed by the
2 commission and as otherwise requested by the commission, the
3 following information shall be prepared and provided to the
4 commission:

5 (1) an initial report containing a copy of all formal
6 and informal rules and forms that describe the procedures used in
7 the county to provide indigent defendants with counsel in
8 accordance with the Code of Criminal Procedure, including the
9 schedule of fees required under Article 26.05 of that code; and

10 (2) a supplemental report containing any revisions to
11 the rules or forms previously submitted to the commission under
12 this section.

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

14 (1) the local administrative district judge in each
15 county, or the person designated by the judge, shall perform the
16 action required by Subsection (a) with respect to all rules and
17 forms adopted by the judges of the district courts trying felony
18 cases in the county; and

19 (2) the local administrative statutory county court
20 judge in each county, or the person designated by the judge, shall
21 perform the action required by Subsection (a) with respect to all
22 rules and forms adopted by the judges of the county courts and
23 statutory county courts trying misdemeanor cases in the county.

24 (c) If the judges of two or more levels of courts described
25 by Subsection (b) adopt the same formal and informal rules and
26 forms, the local administrative judge serving the courts having
27 jurisdiction over offenses with the highest classification of

1 punishment, or the person designated by the judge, shall perform
2 the action required by Subsection (a).

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

7 (e) In each county, the county auditor, or the person
8 designated by the commissioners court if the county does not have a
9 county auditor, shall prepare and send to the commission in the form
10 and manner prescribed by the commission and on a monthly,
11 quarterly, or annual basis, with respect to legal services provided
12 in the county to indigent defendants during each fiscal year,
13 information showing the total amount expended by the county to
14 provide indigent defense services and an analysis of the amount
15 expended by the county:

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

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

20 (3) in cases for which a public defender's office is
21 appointed for an indigent defendant;

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

24 (5) for investigation expenses, expert witness
25 expenses, or other litigation expenses.

26 (f) As a duty of office, each district and county clerk
27 shall cooperate with the county auditor or the person designated by

1 the commissioners court and the commissioners court in retrieving
2 information required to be sent to the commission under this
3 section.

4 Sec. 79.038. TECHNICAL SUPPORT; GRANTS. (a) The
5 commission shall:

6 (1) provide technical support to:

7 (A) assist counties in improving their indigent
8 defense systems; and

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

11 (2) direct the comptroller to distribute funds,
12 including grants, to counties to provide indigent defense services
13 in the county; and

14 (3) monitor each county that receives a grant and
15 enforce compliance by the county with the conditions of the grant,
16 including enforcement by directing the comptroller to:

17 (A) withdraw grant funds; or

18 (B) require reimbursement of grant funds by the
19 county.

20 (b) The commission shall direct the comptroller to
21 distribute funds as required by Subsection (a)(2) based on a
22 county's compliance with standards adopted by the board and the
23 county's demonstrated commitment to compliance with the
24 requirements of state law relating to indigent defense.

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

1 (d) The commission shall submit policies and standards
2 adopted by the board under this section to the council for
3 ratification. The council shall ratify a policy or a standard as
4 appropriate.

5 (e) A county may not reduce the amount of funds provided for
6 indigent defense services in the county because of funds provided
7 by the commission under this section.

8 SECTION 2. Section 71.001, Government Code, is amended to
9 read as follows:

10 Sec. 71.001. DEFINITIONS. In this chapter:

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

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

17 (2) ~~[(3)]~~ ~~"Contract defender program" means a system~~
18 ~~under which private attorneys, acting as independent contractors~~
19 ~~and compensated with public funds, are engaged to provide legal~~
20 ~~representation and services to a group of unspecified indigent~~
21 ~~defendants who appear before a particular court or group of courts.~~

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

23 (3) ~~[(5)]~~ ~~"Crime" means:~~

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

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

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

1 (4) [~~(7)~~] "~~Indigent defense support services~~" means
2 ~~criminal defense services that:~~

3 [~~(A)~~] ~~are provided by licensed investigators,~~
4 ~~experts, or other similar specialists, including forensic experts~~
5 ~~and mental health experts; and~~

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

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

10 [~~(A)~~] ~~a misdemeanor punishable by confinement; or~~

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

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

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

16 (b) The office shall receive funds for personnel costs and
17 expenses:

18 (1) as specified in the General Appropriations Act;
19 and

20 (2) from the fair defense account under Section 79.032
21 [~~71.058~~], in an amount sufficient to cover personnel costs and
22 expenses not covered by appropriations described by Subdivision
23 (1).

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

26 (b) The Office of Court Administration of the Texas Judicial
27 System and the Texas [~~Task Force on~~] Indigent Defense Commission

1 shall provide administrative support necessary under this section.

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

4 (c) Fees shall be paid to the clerk of the supreme court.
5 The clerk shall retain the fees, other than fees collected under
6 Subsection (j), until distributed to the state bar for expenditure
7 under the direction of the supreme court to administer this
8 chapter. The clerk shall retain the fees collected under
9 Subsection (j) until distribution is approved by an order of the
10 supreme court. In ordering that distribution, the supreme court
11 shall order that the fees collected under Subsection (j) be
12 remitted to the comptroller at least as frequently as quarterly.
13 The comptroller shall credit 50 percent of the remitted fees to the
14 credit of the judicial fund for programs approved by the supreme
15 court that provide basic civil legal services to the indigent and
16 shall credit the remaining 50 percent of the remitted fees to the
17 fair defense account in the general revenue fund which is
18 established under Section 79.032 [~~71.058~~], to be used, subject to
19 all requirements of Section 79.038 [~~71.062~~], for demonstration or
20 pilot projects that develop and promote best practices for the
21 efficient delivery of quality representation to indigent
22 defendants in criminal cases at trial, on appeal, and in
23 postconviction proceedings.

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

26 (c) The task force is composed of the following:

27 (1) the governor or the governor's designee;

1 (2) the attorney general or the attorney general's
2 designee;

3 (3) the executive commissioner of the Health and Human
4 Services Commission or the executive commissioner's designee;

5 (4) the commissioner of the Department of Family and
6 Protective Services or the commissioner's designee;

7 (5) the public safety director of the Department of
8 Public Safety or the director's designee;

9 (6) one representative from each of the following
10 state agencies, appointed by the chief administrative officer of
11 the respective agency:

12 (A) the Texas Workforce Commission;

13 (B) the Texas Department of Criminal Justice;

14 (C) the Texas Youth Commission;

15 (D) the Texas Juvenile Probation Commission; and

16 (E) the Texas Alcoholic Beverage Commission; and

17 (7) as appointed by the attorney general:

18 (A) a chief public defender employed by a public
19 defender's office, as defined by Article 26.044(a) [~~26.044~~], Code
20 of Criminal Procedure, or an attorney designated by the chief
21 public defender;

22 (B) an attorney representing the state;

23 (C) a representative of:

24 (i) a hotel and motel association;

25 (ii) a district and county attorneys
26 association; and

27 (iii) a state police association;

- 1 (D) representatives of sheriff's departments;
- 2 (E) representatives of local law enforcement
3 agencies affected by human trafficking; and
- 4 (F) representatives of nongovernmental entities
5 making comprehensive efforts to combat human trafficking by:
- 6 (i) identifying human trafficking victims;
- 7 (ii) providing legal or other services to
8 human trafficking victims;
- 9 (iii) participating in community outreach
10 or public awareness efforts regarding human trafficking;
- 11 (iv) providing or developing training
12 regarding the prevention of human trafficking; or
- 13 (v) engaging in other activities designed
14 to prevent human trafficking.

15 SECTION 7. Article 26.04, Code of Criminal Procedure, is
16 amended by amending Subsections (a), (d), and (f) and adding
17 Subsection (f-1) to read as follows:

18 (a) The judges of the county courts, statutory county
19 courts, and district courts trying criminal cases in each county,
20 by local rule, shall adopt and publish written countywide
21 procedures for timely and fairly appointing counsel for an indigent
22 defendant in the county arrested for or charged with a misdemeanor
23 punishable by confinement or a felony. The procedures must be
24 consistent with this article and Articles 1.051, 15.17, 26.05, and
25 26.052. A court shall appoint an attorney from a public appointment
26 list using a system of rotation, unless the court appoints an
27 attorney under Subsection (f), (f-1), (h), or (i). The court shall

1 appoint attorneys from among the next five names on the appointment
2 list in the order in which the attorneys' names appear on the list,
3 unless the court makes a finding of good cause on the record for
4 appointing an attorney out of order. An attorney who is not
5 appointed in the order in which the attorney's name appears on the
6 list shall remain next in order on the list.

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

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

11 (2) meets the objective qualifications specified by
12 the judges under Subsection (e);

13 (3) meets any applicable qualifications specified by
14 the Texas [~~Task Force on~~] Indigent Defense Commission; and

15 (4) is approved by a majority of the judges who
16 established the appointment list under Subsection (e).

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

22 (f-1) In a county in which a managed assigned counsel
23 program is operated in accordance with Article 26.047, the managed
24 assigned counsel program may appoint counsel to represent the
25 defendant in accordance with the guidelines established for the
26 program.

27 SECTION 8. The heading to Article 26.044, Code of Criminal

1 Procedure, is amended to read as follows:

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

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

7 (a) In this chapter:

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

13 (2) "Office of capital writs" means the office of
14 capital writs established under Subchapter B, Chapter 78,
15 Government Code.

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

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

20 (A) is either:

21 (i) a governmental entity; or

22 (ii) a nonprofit corporation [+

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

25 (B) uses [~~using~~] public funds to provide [~~, and~~

26 [~~(C) providing~~] legal representation and

27 services to indigent defendants accused of a crime or juvenile

1 offense, as those terms are defined by Section 79.001 [~~71.001~~],
2 Government Code.

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

6 (b) The commissioners court of any county, on written
7 approval of a judge of a county court, statutory county court, or
8 district court trying criminal cases or cases under Title 3, Family
9 Code, in the county, may create a department of the county or by
10 contract may designate a [~~appoint a governmental entity or~~
11 nonprofit corporation to serve as a public defender's office
12 [~~defender~~]. The commissioners courts of two or more counties may
13 enter into a written agreement to jointly create or designate
14 [~~appoint~~] and jointly fund a regional public defender's office
15 [~~defender~~]. In creating or designating [~~appointing~~] a public
16 defender's office [~~defender~~] under this subsection, the
17 commissioners court shall specify or the commissioners courts shall
18 jointly specify, if creating or designating [~~appointing~~] a regional
19 public defender's office [~~defender~~]:

20 (1) the duties of the public defender's office
21 [~~defender~~];

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

26 (3) if the public defender's office is a nonprofit
27 corporation, the term during which the contract designating the

1 public defender's office is effective and how that contract may be
2 renewed on expiration of the term [~~whether the public defender is~~
3 ~~appointed to serve a term or serve at the pleasure of the~~
4 ~~commissioners court or the commissioners courts~~]; and

5 (4) if an oversight board is established under Article
6 26.045 for the public defender's office, the powers and duties that
7 have been delegated to the oversight board [~~the public defender is~~
8 ~~appointed to serve a term, the term of appointment and the~~
9 ~~procedures for removing the public defender~~].

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

13 (c) Before contracting with a nonprofit corporation to
14 serve as [~~appointing~~] a public defender's office [~~defender~~] under
15 Subsection (b), the commissioners court or commissioners courts
16 shall solicit proposals for the public defender's office
17 [~~defender~~].

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

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

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

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

26 (4) provisions for personnel training;

27 (5) a description of anticipated overhead costs for

1 the public defender's office [~~defender~~]; [~~and~~]

2 (6) policies regarding the use of licensed
3 investigators and expert witnesses by the public defender's office;
4 and

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

10 (d) After considering each proposal for the public
11 defender's office [~~defender~~] submitted by a [~~governmental entity~~
12 ~~or~~] nonprofit corporation under Subsection (c), the commissioners
13 court or commissioners courts shall select a proposal that
14 reasonably demonstrates that the public defender's office
15 [~~proponent~~] will provide adequate quality representation for
16 indigent defendants in the county or counties.

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

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

- 22 (1) is a member of the State Bar of Texas;
23 (2) has practiced law for at least three years; and
24 (3) has substantial experience in the practice of
25 criminal law.

26 (g) A public defender's office [~~defender~~] is entitled to
27 receive funds for personnel costs and expenses incurred in

1 operating as a public defender's office [~~defender~~] in amounts fixed
2 by the commissioners court and paid out of the appropriate county
3 fund, or jointly fixed by the commissioners courts and
4 proportionately paid out of each appropriate county fund if the
5 public defender's office [~~defender~~] serves more than one county.

6 (h) A public defender's office [~~defender~~] may employ
7 attorneys, licensed investigators, and other personnel necessary
8 to perform the duties of the public defender's office [~~defender~~] as
9 specified by the commissioners court or commissioners courts under
10 Subsection (b)(1).

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

- 14 (1) engage in the private practice of criminal law; or
15 (2) accept anything of value not authorized by this
16 article for services rendered under this article.

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

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

21 (2) the public defender's office [~~defender~~] has
22 insufficient resources to provide adequate representation for the
23 defendant;

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

27 (4) the public defender's office [~~defender~~] shows

1 other good cause for not accepting [~~refusing~~] the appointment.

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

4 (l) A public defender's office [~~defender~~] may investigate
5 the financial condition of any person the public defender's office
6 [~~defender~~] is appointed to represent. The public defender's office
7 [~~defender~~] shall report the results of the investigation to the
8 appointing judge. The judge may hold a hearing to determine if the
9 person is indigent and entitled to representation under this
10 article.

11 (m) If it is necessary that an attorney who is not employed
12 by [~~other than~~] a public defender's office [~~defender~~] be appointed,
13 the attorney is entitled to the compensation provided by Article
14 26.05 of this code.

15 SECTION 10. Chapter 26, Code of Criminal Procedure, is
16 amended by adding Article 26.045 to read as follows:

17 Art. 26.045. PUBLIC DEFENDER OVERSIGHT BOARD. (a) The
18 commissioners court of a county or the commissioners courts of two
19 or more counties may establish an oversight board for a public
20 defender's office created or designated in accordance with this
21 chapter.

22 (b) The commissioners court or courts that establish an
23 oversight board under this article shall appoint members of the
24 board. Members may include:

25 (1) a criminal or juvenile defense attorney;

26 (2) the judge of a trial court in this state that has
27 criminal jurisdiction;

- 1 (3) a county commissioner;
- 2 (4) a county judge; and
- 3 (5) a community representative.

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

- 7 (1) recommending selection and removal of a chief
8 public defender;
- 9 (2) setting policy for the office; and
- 10 (3) developing a budget proposal for the office.

11 SECTION 11. Chapter 26, Code of Criminal Procedure, is
12 amended by adding Article 26.047 to read as follows:

13 Art. 26.047. MANAGED ASSIGNED COUNSEL PROGRAM. (a) In this
14 article:

15 (1) "Governmental entity" has the meaning assigned by
16 Article 26.044.

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

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

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

24 (b) The commissioners court of any county, on written
25 approval of a judge of the juvenile court of a county or a county
26 court, statutory county court, or district court trying criminal
27 cases in the county, may appoint a governmental entity, nonprofit

1 corporation, or bar association to operate a managed assigned
2 counsel program. The commissioners courts of two or more counties
3 may enter into a written agreement to jointly appoint and fund a
4 governmental entity, nonprofit corporation, or bar association to
5 operate a managed assigned counsel program. In appointing an
6 entity to operate a managed assigned counsel program under this
7 subsection, the commissioners court shall specify or the
8 commissioners courts shall jointly specify:

9 (1) the types of cases in which the program may appoint
10 counsel under Article 26.04 or Section 51.10, Family Code, and the
11 courts in which the counsel appointed by the program may be required
12 to appear; and

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

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

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

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

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

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

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

27 (6) a policy regarding licensed investigators and

1 expert witnesses used by attorneys appointed under the program;

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

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

9 (d) A program under this article must have a director.
10 Unless the program uses a review committee appointed under
11 Subsection (e), a program under this article must be directed by a
12 person who:

13 (1) is a member of the State Bar of Texas;
14 (2) has practiced law for at least three years; and
15 (3) has substantial experience in the practice of
16 criminal law.

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

21 Each member of the committee:

22 (1) must meet the requirements described by Subsection
23 (d);
24 (2) may not be employed as a prosecutor; and
25 (3) may not be included on or apply for inclusion on
26 the public appointment list described by Subsection (f).

27 (f) The program's public appointment list from which an

1 attorney is appointed must contain the names of qualified
2 attorneys, each of whom:

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

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

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

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

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

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

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

24 (a) A counsel, other than an attorney with a public
25 defender's office [~~defender~~] or an attorney employed by the office
26 of capital writs, appointed to represent a defendant in a criminal
27 proceeding, including a habeas corpus hearing, shall be paid a

1 reasonable attorney's fee for performing the following services,
2 based on the time and labor required, the complexity of the case,
3 and the experience and ability of the appointed counsel:

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

8 (2) reasonable and necessary time spent out of court
9 on the case, supported by any documentation that the court
10 requires;

11 (3) preparation of an appellate brief and preparation
12 and presentation of oral argument to a court of appeals or the Court
13 of Criminal Appeals; and

14 (4) preparation of a motion for rehearing.

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

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

17 (d) A counsel in a noncapital case, other than an attorney
18 with a public defender's office [~~defender~~], appointed to represent
19 a defendant under this code shall be reimbursed for reasonable and
20 necessary expenses, including expenses for investigation and for
21 mental health and other experts. Expenses incurred with prior
22 court approval shall be reimbursed in the same manner provided for
23 capital cases by Articles 26.052(f) and (g), and expenses incurred
24 without prior court approval shall be reimbursed in the manner
25 provided for capital cases by Article 26.052(h).

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

1 (a) The judge of the court having jurisdiction of the case
2 shall determine the conditions of community supervision and may, at
3 any time during the period of community supervision, alter or
4 modify the conditions. The judge may impose any reasonable
5 condition that is designed to protect or restore the community,
6 protect or restore the victim, or punish, rehabilitate, or reform
7 the defendant. Conditions of community supervision may include,
8 but shall not be limited to, the conditions that the defendant
9 shall:

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

12 (2) Avoid injurious or vicious habits;

13 (3) Avoid persons or places of disreputable or harmful
14 character, including any person, other than a family member of the
15 defendant, who is an active member of a criminal street gang;

16 (4) Report to the supervision officer as directed by
17 the judge or supervision officer and obey all rules and regulations
18 of the community supervision and corrections department;

19 (5) Permit the supervision officer to visit the
20 defendant at the defendant's home or elsewhere;

21 (6) Work faithfully at suitable employment as far as
22 possible;

23 (7) Remain within a specified place;

24 (8) Pay the defendant's fine, if one is assessed, and
25 all court costs whether a fine is assessed or not, in one or several
26 sums;

27 (9) Support the defendant's dependents;

1 (10) Participate, for a time specified by the judge,
2 in any community-based program, including a community-service work
3 program under Section 16 of this article;

4 (11) Reimburse the county in which the prosecution was
5 instituted for compensation paid to appointed counsel for defending
6 the defendant in the case, if counsel was appointed, or if the
7 defendant was represented by a [~~county-paid~~] public defender's
8 office [~~defender~~], in an amount that would have been paid to an
9 appointed attorney had the county not had a public defender's
10 office [~~defender~~];

11 (12) Remain under custodial supervision in a community
12 corrections facility, obey all rules and regulations of the
13 facility, and pay a percentage of the defendant's income to the
14 facility for room and board;

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

18 (14) Submit to testing for alcohol or controlled
19 substances;

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

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

27 (17) Submit to electronic monitoring;

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

7 (19) Reimburse a law enforcement agency for the
8 analysis, storage, or disposal of raw materials, controlled
9 substances, chemical precursors, drug paraphernalia, or other
10 materials seized in connection with the offense;

11 (20) Pay all or part of the reasonable and necessary
12 costs incurred by the victim for psychological counseling made
13 necessary by the offense or for counseling and education relating
14 to acquired immune deficiency syndrome or human immunodeficiency
15 virus made necessary by the offense;

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

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

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

27 (24) Reimburse the county in which the prosecution was

1 instituted for compensation paid to any interpreter in the case.

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

4 Sec. 133.107. FEE FOR SUPPORT OF INDIGENT DEFENSE
5 REPRESENTATION. (a) A person convicted of any offense, other than
6 an offense relating to a pedestrian or the parking of a motor
7 vehicle, shall pay as a court cost, in addition to other costs, a
8 fee of \$2 to be used to fund indigent defense representation through
9 the fair defense account established under Section 79.032 [~~71.058~~],
10 Government Code.

11 (b) The treasurer shall remit a fee collected under this
12 section to the comptroller in the manner provided by Subchapter B.
13 The comptroller shall credit the remitted fees to the credit of the
14 fair defense account established under Section 79.032 [~~71.058~~],
15 Government Code.

16 SECTION 15. The following are repealed:

- 17 (1) Article 26.05(i), Code of Criminal Procedure; and
18 (2) Subchapter D, Chapter 71, Government Code.

19 SECTION 16. As soon as possible after the effective date of
20 this Act, the governor shall appoint the initial governing board of
21 the Texas Indigent Defense Commission in accordance with Subchapter
22 B, Chapter 79, Government Code, as added by this Act. To enable the
23 staggering of terms as required by Sections 79.014(b) and
24 79.0145(a)(14) of that subchapter, the governor shall appoint three
25 members whose terms expire on February 1 of the next odd-numbered
26 year and four members whose terms expire on February 1 of the next
27 even-numbered year.

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

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

11 (c) Notwithstanding the changes in law made by this Act,
12 until the date the Task Force on Indigent Defense is abolished as
13 provided by this section, the members and the director of the task
14 force on the effective date of this Act may continue in office and
15 exercise their powers and duties under the law that governed the
16 task force before the effective date of this Act, and the prior law
17 is continued in effect for that purpose.

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

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