

By: Turner of Harris, et al.

H.B. No. 1318

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of counsel to represent certain youths
and indigent defendants.

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

SECTION 1. Article 26.044, Code of Criminal Procedure, is
amended by amending Subsection (j) and adding Subsections (j-1) and
(j-2) to read as follows:

(j) A public defender's office may not accept an appointment
under Article 26.04(f) if:

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

(2) the public defender's office has insufficient
resources to provide adequate representation for the defendant;

(3) the public defender's office is incapable of
providing representation for the defendant in accordance with the
rules of professional conduct;

(4) the acceptance of the appointment would violate
the maximum allowable caseloads established at the public
defender's office; or

(5) [~~4~~] the public defender's office shows other
good cause for not accepting the appointment.

(j-1) On refusing an appointment under Subsection (j), a
chief public defender shall file with the court a written statement
that identifies any reason for refusing the appointment. The court

1 shall determine whether the chief public defender has demonstrated
2 adequate good cause for refusing the appointment and shall include
3 the statement with the papers in the case.

4 (j-2) A chief public defender may not be terminated,
5 removed, or sanctioned for refusing in good faith to accept an
6 appointment under Subsection (j).

7 SECTION 2. Section 51.101(a), Family Code, is amended to
8 read as follows:

9 (a) If an attorney is appointed under Section 54.01(b-1) or
10 (d) to represent a child at the initial detention hearing and the
11 child is detained, the attorney shall continue to represent the
12 child until the case is terminated, the family retains an attorney,
13 or a new attorney is appointed by the juvenile court. Release of
14 the child from detention does not terminate the attorney's
15 representation.

16 SECTION 3. Section 54.01, Family Code, is amended by adding
17 Subsection (b-1) and amending Subsection (d) to read as follows:

18 (b-1) Unless the court finds that the appointment of counsel
19 is not feasible due to exigent circumstances, the court shall
20 appoint counsel within a reasonable time before the first detention
21 hearing is held to represent the child at that hearing.

22 (d) A detention hearing may be held without the presence of
23 the child's parents if the court has been unable to locate them. If
24 no parent or guardian is present, the court shall appoint counsel or
25 a guardian ad litem for the child, subject to the requirements of
26 Subsection (b-1).

27 SECTION 4. Sections 51.101(a) and 54.01, Family Code, as

H.B. No. 1318

1 amended by this Act, apply only to a detention hearing that is held
2 for a child taken into custody on or after the effective date of
3 this Act.

4 SECTION 5. This Act takes effect September 1, 2013.