

House Bill 1318
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION (IE)

CONFERENCE

SECTION __. (a) Effective September 1, 2014, Article 26.04(j), Code of Criminal Procedure, is amended to read as follows:

(j) An attorney appointed under this article shall:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed;

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record; ~~and~~

(3) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:

(A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;

(B) if the defendant wishes to pursue either or both remedies described by Paragraph (A), assist the defendant in requesting the prompt appointment of replacement counsel; and

(C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal; and

(4) not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code.

(b) The change in law made by this section to Article 26.04(j),

House Bill 1318
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

Code of Criminal Procedure, applies only to a criminal proceeding that commences on or after September 1, 2014. A criminal proceeding that commences before September 1, 2014, is governed by the law in effect when the proceeding commenced, and the former law is continued in effect for that purpose. [FA1]

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

SECTION 1. Same as House version.

House Bill 1318
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

SECTION 2. Section 51.101(a), Family Code, is amended to read as follows:
(a) If an attorney is appointed under Section 54.01(b-1) or (d) to represent a child at the initial detention hearing and the child is detained, the attorney shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.

SECTION 2. Same as House version.

SECTION 3. Section 54.01, Family Code, is amended by adding Subsection (b-1) and amending Subsection (d) to read as follows:
(b-1) Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.
(d) A detention hearing may be held without the presence of the child's parents if the court has been unable to locate them. If no parent or guardian is present, the court shall appoint counsel or a guardian ad litem for the child, subject to the requirements of Subsection (b-1).

SECTION 3. Same as House version.

SECTION 4. Sections 51.101(a) and 54.01, Family Code, as amended by this Act, apply only to a detention hearing that is

SECTION 4. Same as House version.

House Bill 1318
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

held for a child taken into custody on or after the effective date of this Act.

No equivalent provision.

SECTION __. Effective September 1, 2013, Section 79.036(a), Government Code, is amended to read as follows:

(a) ~~Not~~ ~~[In each county, not]~~ later than November 1 of each odd-numbered year and in the form and manner prescribed by the commission, each county ~~[the following information]~~ shall prepare ~~[be prepared]~~ and provide ~~[provided]~~ to the commission:

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

(2) any plan or proposal submitted to the commissioners court under Article 26.044, Code of Criminal Procedure;

(3) any plan of operation submitted to the commissioners court under Article 26.047, Code of Criminal Procedure;

(4) any contract for indigent defense services required under rules adopted by the commission relating to a contract defender program;

(5) [(2)] any revisions to rules, [or] forms, plans, proposals, or contracts previously submitted under this section; or

(6) [(3)] verification that rules, [and] forms, plans, proposals, or contracts previously submitted under this section still remain in effect. [FA1]

No equivalent provision.

SECTION __. Effective September 1, 2014, Section 79.036, Government Code, is amended by adding Subsection (a-1) to

House Bill 1318
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

read as follows:

(a-1) Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j)(4), Code of Criminal Procedure. [FA1]

SECTION __. (a) This section takes effect September 1, 2013.

(b) Not later than January 1, 2015, the Texas Indigent Defense Commission shall conduct and publish a study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that, when the attorney's total caseload, including appointments made under Article 26.04, Code of Criminal Procedure, appointments made under Title 3, Family Code, and other work, is considered, allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation. The study must be based on relevant policies, performance guidelines, and best practices.

(c) In conducting the study under Subsection (b) of this section, the commission shall consult with criminal defense attorneys, criminal defense attorney associations, the judiciary, and any other organization engaged in the development of criminal indigent defense policy that the commission considers appropriate. [FA1]

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House Bill 1318
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

SENATE VERSION (IE)

SECTION 5. Same as House version.

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