By:  Hinojosa S.B. No. 1322

A BILL TO BE ENTITLED

AN ACT

relating to indigent defense.

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

SECTION 1.  Article 11.074, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b)  If at any time the state represents to the convicting court that an eligible indigent defendant under Article 1.051 has under a writ of habeas corpus a potentially meritorious claim for relief from a judgment described by Subsection (a) [~~who was sentenced or had a sentence suspended is not guilty, is guilty of only a lesser offense, or was convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court~~], the court shall appoint an attorney to investigate the claim and represent the indigent defendant for purposes of filing an application for a writ of habeas corpus, if an application has not been filed, or to otherwise represent the indigent defendant in a proceeding based on the application for the writ.

(b-1)  For purposes of Subsection (b), a potentially meritorious claim is any claim the court determines is likely to provide relief, including a claim that the defendant:

(1)  is or may be actually innocent of the offense;

(2)  is or may be guilty of only a lesser offense;

(3)  was or may have been convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court; or

(4)  was or may have been convicted or sentenced in violation of the constitution of this state or the United States.

SECTION 2.  The change in law made by this Act relating to the application of writ of habeas corpus applies regardless of whether the offense for which the applicant is in custody was committed before, on, or after the effective date of this Act.

SECTION 3.  Articles 15.17(a) and (f), Code of Criminal Procedure, are amended to read as follows:

(a)  (1) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have the person [~~him~~] taken before some magistrate of the county where the person [~~accused~~] was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state. The arrested person may be taken before the magistrate in person or the image and sound of the arrested person may be presented to the magistrate by means of a videoconference. For purposes of this subsection, "videoconference" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.

(2)  The magistrate shall inform in clear language the person arrested, either in person or through a videoconference, of:

(A)  the accusation against the person [~~him~~] and of any affidavit filed with the accusation;

(B)  the person's [~~therewith, of his~~] right to retain counsel;

(C)  the person's [~~, of his~~] right to remain silent and to not make a statement;

(D)  the fact that any statement the person makes may be used against the person;

(E)  the person's [~~, of his~~] right to have an attorney present during any interview with peace officers or attorneys representing the state;

(F)  the person's [~~, of his~~] right to terminate the interview at any time;

(G)  the person's [~~, and of his~~] right to have an examining trial;

(H)  [~~. The magistrate shall also inform the person arrested of~~] the person's right to request the appointment of counsel if the person cannot afford counsel; and

(I)  [~~. The magistrate shall inform the person arrested of~~] the procedures for requesting appointment of counsel.

(3)  If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate.

(4)  If the proceeding is conducted through a videoconference, the magistrate shall ensure that the arrested person is able to connect to and understand the image and sound of the videoconference.

(5)  If the magistrate has reasonable cause to believe that the arrested person has a mental illness or is a person with an intellectual disability, the magistrate shall follow the procedures under Article 16.22.

(6)  If the magistrate is unable to ensure that the arrested person is able to understand and participate in the proceeding, the magistrate shall:

(A)  if the magistrate has appointing authority, appoint counsel for the person; or

(B)  if the magistrate does not have appointing authority, notify the appointing authority of the person's inability to understand and participate in the proceeding.

(7)  The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the arrested person at the same time the person is informed of the person's rights under this subsection.

(8)  If the arrested person [~~arrested~~] is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the arrested person [~~arrested~~] requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the necessary forms for requesting and ruling on the appointment of counsel. [~~The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him.~~]

(9)  The magistrate shall allow the arrested person [~~arrested~~] reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person [~~arrested~~] to bail if allowed by law.

(10)  A record of the communication between the arrested person and the magistrate shall be made. [~~The record shall be preserved until the earlier of the following dates:~~

[~~(1)  the date on which the pretrial hearing ends; or~~

[~~(2)  the 91st day after the date on which the record is made if the person is charged with a misdemeanor or the 120th day after the date on which the record is made if the person is charged with a felony. For purposes of this subsection, "videoconference" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.~~]

(f)  A record required under Subsection (a) or (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a). The record must be retained for at least three years after final judgment is entered in the case or the proceedings are otherwise terminated. The counsel for the defendant may obtain a copy of the record on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

SECTION 4.  The change in law made by this Act applies only to a person who is arrested on or after the effective date of this Act. A person arrested before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 5.  Article 26.05, Code of Criminal Procedure, is amended by amending Subsection (d) and adding Subsection (d-1) to read as follows:

(d)  A counsel in a noncapital case, other than an attorney with a public defender's office, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for:

(1)  investigation;

(2)  [~~and for~~] mental health and other experts; and

(3)  if the defendant is imprisoned in a correctional facility located more than 50 miles from the court in which the defendant's proceeding is pending:

(A)  travel to the defendant's location for a confidential interview; or

(B)  any costs associated with remotely conducting a confidential interview with the defendant.

(d-1)  Expenses under Subsection (d) incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses under that subsection incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).

SECTION 6.  The change in law made by this Act applies only to expenses incurred on or after the effective date of this Act.

SECTION 7.  Article 26.047(a), Code of Criminal Procedure, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

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

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

(B)  for the purpose of appointing counsel under Article 26.04 or 26.052 of this code or Section 51.10, Family Code; and

(C)  for the purpose of appointing or providing an investigator, expert, or other support services for appointed counsel or indigent defendants.

(3)  "Oversight board" means an oversight board established under Article 26.048.

SECTION 8.  Articles 26.047(b) and (f), Code of Criminal Procedure, are amended to read as follows:

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

(1)  the types of cases in which the program may appoint counsel under Article 26.04 or 26.052 of this code or Section 51.10, Family Code, and the courts in which the counsel appointed by the program may be required to appear; [~~and~~]

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

(3)  if an oversight board is established under Article 26.048 for the managed assigned counsel program, the powers and duties that have been delegated to the oversight board.

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

(1)  applies to be included on the list;

(2)  meets any applicable requirements specified by the procedures [~~procedure~~] for appointing counsel adopted under Article 26.04(a) or provided under Article 26.052 and any other requirements specified by the Texas Indigent Defense Commission; and

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

SECTION 9.  Chapter 26, Code of Criminal Procedure, is amended by adding Article 26.048 to read as follows:

Art. 26.048.  MANAGED ASSIGNED COUNSEL OVERSIGHT BOARD. (a) The commissioners court of a county or the commissioners courts of two or more counties may establish an oversight board for a managed assigned counsel program established in accordance with this chapter.

(b)  The commissioners court or courts that establish an oversight board under this article shall appoint members of the board. The following persons participating in the criminal justice system may not serve on the board:

(1)  a criminal trial judge;

(2)  a prosecutor;

(3)  an attorney who receives appointments through the managed assigned counsel program; or

(4)  a peace officer.

(c)  The commissioners court or courts may delegate to the board any power or duty of the commissioners court to provide oversight of the program under Article 26.047, including:

(1)  recommending selection and removal of a director;

(2)  setting policy for the program; and

(3)  developing a budget proposal for the program.

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

SECTION 10.  Article 26.052, Code of Criminal Procedure, is amended by amending Subsections (b) and (e) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(b)  If a county is served by a public defender's office, trial counsel and counsel for direct appeal or to apply for a writ of certiorari may be appointed as provided by the guidelines established by the public defender's office. [~~In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article.~~]

(b-1)  If a county is served by a managed assigned counsel program, trial counsel and counsel for direct appeal or to apply for a writ of certiorari may be appointed as provided by the written plan of operation for the managed assigned counsel program. An attorney appointed by a managed assigned counsel program in a death penalty case must be on the list of attorneys qualified for appointment in death penalty cases in the administrative judicial region in which the managed assigned counsel program operates.

(b-2)  If a county is served by a public defender's office and a managed assigned counsel program, subject to Articles 26.04(f)(1), (2), and (3), the presiding judge of the district court in which a capital felony is filed shall give priority in appointing counsel from the public defender's office.

(b-3)  In a county not served by a public defender's office or a managed assigned counsel program, counsel shall be appointed as provided by this article in each case in which the death penalty is sought.

(e)  The presiding judge of the district court in which a capital felony case is filed or the managed assigned counsel program, if authorized by this article, shall appoint two attorneys[~~, at least one of whom must be qualified under this chapter,~~] to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty. At least one of the attorneys must be qualified under this chapter.

SECTION 11.  Sections 79.014(a) and (b), Government Code, are amended to read as follows:

(a)  The governor shall appoint with the advice and consent of the senate seven [~~five~~] members of the board as follows:

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

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

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

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

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

(6)  one member who is a director of a managed assigned counsel program in this state; and

(7)  one member who is a justice of the peace, municipal court judge, or appointed magistrate under Article 2.09, Code of Criminal Procedure, whose regular duties include presiding over hearings under Article 15.17, Code of Criminal Procedure.

(b)  The board members serve staggered terms of two years, with three [~~two~~] members' terms expiring February 1 of each odd-numbered year and four [~~three~~] members' terms expiring February 1 of each even-numbered year.

SECTION 12.  Sections 79.016(a) and (c), Government Code, are amended to read as follows:

(a)  A board member who is a chief public defender or a director of a managed assigned counsel program for [~~or an attorney employed by~~] an entity that applies for funds under Section 79.037 shall disclose that fact before a vote by the board regarding an award of funds to that entity and may not participate in that vote.

(c)  The commission may not award funds under Section 79.037 to an entity served by a chief public defender or a director of a managed assigned counsel program [~~other attorney~~] who fails to make a disclosure to the board as required by Subsection (a).

SECTION 13.  Article 26.044(l), Code of Criminal Procedure, is amended to read as follows:

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

SECTION 15.  Article 26.04, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:

(i-1)  Notwithstanding Subsection (j)(2) or any other law, an attorney may be appointed under this article to represent an indigent person for the sole purpose of providing counsel in relation to that person's appearance before a magistrate as required by Article 14.06(a), 15.17(a), or 15.18(a). The attorney may represent the person in subsequent proceedings of that case, only if appointed for that purpose under the other provisions of this article.

SECTION 16.  Article 26.044, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:

(i-1)  Notwithstanding Subsection (i)(1), an attorney engaged in the private practice of criminal law may be employed by a public defender's office on a part-time basis for the sole purpose of providing counsel in relation to an indigent person's appearance before a magistrate as required by Article 14.06(a), 15.17(a), or 15.18(a).

SECTION 17.  Article 26.04(i-1), Code of Criminal Procedure, as added by this Act, applies only to a person who is arrested on or after the effective date of this Act. A person arrested before the effective date of this Act is governed by the law in effect on the date the person was arrested, and the former law is continued in effect for that purpose.

SECTION 18.  Section 79.037(a), Government Code, is amended to read as follows:

(a)  The commission shall:

(1)  provide technical support to:

(A)  assist counties in improving their systems for providing indigent defense services, including indigent defense support services [~~systems~~]; and

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

(2)  to assist a county in providing or improving the provision of indigent defense services in the county, distribute in the form of grants any funds appropriated for the purposes of this section to one or more of the following entities:

(A)  the county;

(B)  a law school's legal clinic or program that provides indigent defense services in the county; [~~and~~]

(C)  a regional public defender that meets the requirements of Subsection (e) and provides indigent defense services in the county; [~~and~~]

(D)  an entity described by Section 791.013 that provides to a county administrative services under an interlocal contract entered into for the purpose of providing or improving the provision of indigent defense services in the county; and

(E)  a nonprofit corporation that provides indigent defense services or indigent defense support services in the county; and

(3)  monitor each entity that receives a grant under Subdivision (2) and enforce compliance with the conditions of the grant, including enforcement by:

(A)  withdrawing grant funds; or

(B)  requiring reimbursement of grant funds by the entity.

SECTION 19.  Section 79.037(b), Government Code, as amended by Chapters 56 (S.B. 1353) and 476 (S.B. 1057), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(b)  The commission shall determine for each county the entity or entities [~~within the county~~] that are eligible to receive funds for the provision of or improvement in the provision of indigent defense services under Subsection (a)(2). The determination must be made based on the entity's:

(1)  compliance with standards adopted by the board; and

(2)  demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

SECTION 20.  Section 79.037(c), Government Code, as amended by Chapters 56 (S.B. 1353) and 476 (S.B. 1057), Acts of the 84th Legislature, Regular Session, 2015, is reenacted to read as follows:

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

SECTION 21.  Section 79.037(e), Government Code, as added by Chapter 56 (S.B. 1353), Acts of the 84th Legislature, Regular Session, 2015, is repealed.

SECTION 22.  This Act takes effect September 1, 2021.