

By: Collier

H.B. No. 743

A BILL TO BE ENTITLED

AN ACT

relating to a maximum allowable caseload for certain attorneys.

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

SECTION 1. Article 26.04(b), Code of Criminal Procedure, is amended to read as follows:

(b) Procedures adopted under Subsection (a) shall:

(1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;

(2) apply to each appointment of counsel made by a judge or the judges' designee in the county;

(3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;

(4) require appointments for defendants in capital cases in which the death penalty is sought to comply with any applicable requirements under Articles 11.071 and 26.052;

(5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable

1 rules of ethics; ~~and~~

2 (6) ensure that appointments are allocated among  
3 qualified attorneys in a manner that is fair, neutral, and  
4 nondiscriminatory; and

5 (7) ensure that an appointment will not result in the  
6 applicable attorney having a caseload that is larger than the  
7 maximum allowable caseload established under Section 79.043,  
8 Government Code.

9 SECTION 2. Article 26.047(c), Code of Criminal Procedure,  
10 is amended to read as follows:

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

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

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

17 (3) the maximum allowable caseload for each attorney  
18 appointed by the program, not to exceed the maximum allowable  
19 caseload established under Section 79.043, Government Code;

20 (4) provisions for training personnel of the program  
21 and attorneys appointed under the program;

22 (5) a description of anticipated overhead costs for  
23 the program;

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

26 (7) a policy to ensure that appointments are  
27 reasonably and impartially allocated among qualified attorneys;

1 and

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

6 SECTION 3. Subchapter C, Chapter 79, Government Code, is  
7 amended by adding Section 79.043 to read as follows:

8 Sec. 79.043. MAXIMUM ALLOWABLE CASELOAD FOR CRIMINAL  
9 DEFENSE ATTORNEYS. (a) The commission shall establish a maximum  
10 allowable caseload for a criminal defense attorney that,  
11 considering the attorney's total caseload, including appointments  
12 made under Article 26.04, Code of Criminal Procedure, appointments  
13 made under Title 3, Family Code, and other work, would allow the  
14 attorney to give each criminal defendant the time and effort  
15 necessary to ensure effective and diligent representation.

16 (b) The commission shall revise the maximum allowable  
17 caseload established under Subsection (a) as necessary.

18 (c) The commission shall post the maximum allowable  
19 caseload established under Subsection (a) on the commission's  
20 Internet website.

21 (d) The commission shall adopt rules to promote compliance  
22 by each county in this state with the maximum allowable caseload  
23 established under Subsection (a). The commission shall impose a  
24 remedy for noncompliance occurring in any county in which the  
25 commission provided, for the preceding state fiscal year, grant  
26 funds under Section 79.037 in an amount that equaled more than 50  
27 percent of the county's expenditures on indigent defense services

1 for that year.

2           SECTION 4. Not later than November 1, 2021, the Texas  
3 Indigent Defense Commission shall establish and post on its  
4 Internet website the maximum allowable caseload described by  
5 Section 79.043, Government Code, as added by this Act.

6           SECTION 5. The changes in law made by this Act apply only to  
7 a criminal case in which the indictment or information is filed on  
8 or after November 1, 2021. A criminal case in which the indictment  
9 or information was filed before November 1, 2021, is governed by the  
10 law in effect immediately before the effective date of this Act, and  
11 the former law is continued in effect for that purpose.

12           SECTION 6. This Act takes effect September 1, 2021.