

By: Collier

H.B. No. 2608

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the appointment of attorneys representing indigent  
3 defendants in criminal proceedings.

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

5 SECTION 1. Article 26.047(a), Code of Criminal Procedure,  
6 is amended by amending Subdivision (2) and adding Subdivision (3)  
7 to read as follows:

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

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

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

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

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

21 SECTION 2. Articles 26.047(b) and (f), Code of Criminal  
22 Procedure, are amended to read as follows:

23 (b) The commissioners court of any county, on written  
24 approval of a judge of the juvenile court of a county or a county

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

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

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

17 (3) if an oversight board is established under Article  
18 26.048 for the managed assigned counsel program, the powers and  
19 duties that have been delegated to the oversight board.

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

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

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

1 and

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

4 SECTION 3. Chapter 26, Code of Criminal Procedure, is  
5 amended by adding Article 26.048 to read as follows:

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

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

15 (1) a criminal trial judge;

16 (2) a prosecutor;

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

19 (4) a peace officer.

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

23 (1) recommending selection and removal of a director;

24 (2) setting policy for the program; and

25 (3) developing a budget proposal for the program.

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

1 SECTION 4. Article [26.052](#), Code of Criminal Procedure, is  
2 amended by amending Subsections (b) and (e) and adding Subsections  
3 (b-1), (b-2), and (b-3) to read as follows:

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

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

18 (b-2) If a county is served by a public defender's office  
19 and a managed assigned counsel program, subject to Articles  
20 [26.04](#)(f)(1), (2), and (3), the presiding judge of the district  
21 court in which a capital felony is filed shall give priority in  
22 appointing counsel from the public defender's office.

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

27 (e) The presiding judge of the district court in which a

1 capital felony case is filed or the managed assigned counsel  
2 program, if authorized by this article, shall appoint two  
3 attorneys [~~, at least one of whom must be qualified under this~~  
4 ~~chapter,~~] to represent an indigent defendant as soon as practicable  
5 after charges are filed, unless the state gives notice in writing  
6 that the state will not seek the death penalty. At least one of the  
7 attorneys must be qualified under this chapter.

8 SECTION 5. This Act takes effect September 1, 2021.