

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;

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

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

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

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

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

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

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

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

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

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

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

12 (F) the person's [of his] right to terminate
13 the interview at any time;i

14 (G) the person's [and of his] right to have an
15 examining trial;i

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

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

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

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

1 the videoconference.

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

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

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

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

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

19 (8) If the arrested person [~~arrested~~] is indigent and
20 requests appointment of counsel and if the magistrate is authorized
21 under Article 26.04 to appoint counsel for indigent defendants in
22 the county, the magistrate shall appoint counsel in accordance with
23 Article 1.051. If the magistrate is not authorized to appoint
24 counsel, the magistrate shall without unnecessary delay, but not
25 later than 24 hours after the arrested person [~~arrested~~] requests
26 appointment of counsel, transmit, or cause to be transmitted to the
27 court or to the courts' designee authorized under Article 26.04 to

1 appoint counsel in the county, the necessary forms for requesting
2 and ruling on the appointment of counsel. [~~The magistrate shall~~
3 ~~also inform the person arrested that he is not required to make a~~
4 ~~statement and that any statement made by him may be used against~~
5 ~~him.~~]

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

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

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

22 (f) A record required under Subsection (a) or (e) may
23 consist of written forms, electronic recordings, or other
24 documentation as authorized by procedures adopted in the county
25 under Article 26.04(a). The record must be retained for at least
26 three years after final judgment is entered in the case or the
27 proceedings are otherwise terminated. The counsel for the defendant

1 may obtain a copy of the record on payment of a reasonable amount to
2 cover the costs of reproduction or, if the defendant is indigent,
3 the court shall provide a copy to the defendant without charging a
4 cost for the copy.

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

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

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

- 18 (1) investigation;
- 19 (2) ~~[and for]~~ mental health and other experts; and
- 20 (3) if the defendant is imprisoned in a correctional
21 facility located more than 50 miles from the court in which the
22 defendant's proceeding is pending:

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

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

27 (d-1) Expenses under Subsection (d) incurred with prior

1 court approval shall be reimbursed in the same manner provided for
2 capital cases by Articles 26.052(f) and (g), and expenses under
3 that subsection incurred without prior court approval shall be
4 reimbursed in the manner provided for capital cases by Article
5 26.052(h).

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

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

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

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

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

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

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

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

26 (b) The commissioners court of any county, on written
27 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 9. 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 10. 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 11. Sections 79.014(a) and (b), Government Code,
9 are amended to read as follows:

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

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

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

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

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

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

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

26 (7) one member who is a justice of the peace, municipal
27 court judge, or appointed magistrate under Article 2.09, Code of

1 Criminal Procedure, whose regular duties include presiding over
2 hearings under Article 15.17, Code of Criminal Procedure.

3 (b) The board members serve staggered terms of two years,
4 with three [~~two~~] members' terms expiring February 1 of each
5 odd-numbered year and four [~~three~~] members' terms expiring February
6 1 of each even-numbered year.

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

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

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

18 SECTION 13. Article 26.044(1), Code of Criminal Procedure,
19 is amended to read as follows:

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

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

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

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

11 (i-1) Notwithstanding Subsection (i)(1), an attorney
12 engaged in the private practice of criminal law may be employed by a
13 public defender's office on a part-time basis for the sole purpose
14 of providing counsel in relation to an indigent person's appearance
15 before a magistrate as required by Article 14.06(a), 15.17(a), or
16 15.18(a).

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

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

25 (a) The commission shall:

26 (1) provide technical support to:

27 (A) assist counties in improving their systems

1 for providing indigent defense services, including indigent
2 defense support services [~~systems~~]; and

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

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

9 (A) the county;

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

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

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

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

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

25 (A) withdrawing grant funds; or

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

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

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

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

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

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

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

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

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