By:  Zaffirini, Sparks S.B. No. 2120

(In the Senate - Filed March 9, 2023; March 21, 2023, read first time and referred to Committee on State Affairs; April 19, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 10, Nays 0; April 19, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Hughes          X

Paxton          X

Bettencourt     X

Birdwell        X

LaMantia        X

Menéndez        X

Middleton       X

Parker          X

Perry                     X

Schwertner      X

Zaffirini       X

COMMITTEE SUBSTITUTE FOR S.B. No. 2120 By:  Zaffirini

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a family protection representation program within the Texas Indigent Defense Commission.

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

SECTION 1.  Section 79.001, Government Code, is amended by amending Subdivisions (1) and (4) and adding Subdivisions (1-a), (7-a), (8-a), (12-a), and (12-b) to read as follows:

(1)  "Assigned counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to:

(A)  provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense; or

(B)  serve as an attorney ad litem.

(1-a)  "Attorney ad litem" means an attorney appointed by a court to represent and advocate on behalf of an indigent parent or child in a suit filed by the department against a parent.

(4)  "Contract defender program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to:

(A)  a group of unspecified indigent defendants who appear before a particular court or group of courts; or

(B)  indigent parents or children named in a suit filed by the department against a parent.

(7-a)  "Department" means the Department of Family and Protective Services.

(8-a)  "Family protection services" means services provided under this chapter by an attorney, attorney ad litem, licensed investigator, social worker, forensic expert, mental health expert, or other similar expert or specialist to an indigent parent or child in:

(A)  a suit filed by the department against the parent; or

(B)  a department investigation of the parent.

(12-a)  "Office of child representation" has the meaning assigned by Section 107.254, Family Code.

(12-b)  "Office of parent representation" has the meaning assigned by Section 107.255, Family Code.

SECTION 2.  Section 79.012(b), Government Code, is amended to read as follows:

(b)  The executive director:

(1)  must be a licensed attorney;

(2)  must demonstrate an interest in the standards for and provision of criminal defense services and family protection services to indigent individuals;

(3)  may not engage in the private practice of law; and

(4)  may not accept money, property, or any other thing of value not authorized by law for services rendered under this chapter.

SECTION 3.  Section 79.034, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  The commission shall develop policies and standards for providing:

(1)  legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings; and

(2)  family protection services to indigent parents and children.

(a-1)  The policies and standards may include:

(1)  performance standards for counsel appointed to represent indigent individuals [~~defendants~~];

(2)  qualification standards under which attorneys may qualify for appointment to represent:

(A)  indigent defendants, including:

(i) [~~(A)~~]  qualifications commensurate with the seriousness of the nature of the proceeding;

(ii) [~~(B)~~]  qualifications appropriate for representation of mentally ill defendants and noncitizen defendants;

(iii) [~~(C)~~]  successful completion of relevant continuing legal education programs approved by the council; and

(iv) [~~(D)~~]  testing and certification standards; or

(B)  indigent parents and children in suits filed by the department, including:

(i)  qualifications appropriate for representing an indigent parent;

(ii)  qualifications appropriate for representing a child;

(iii)  successful completion of relevant continuing legal education programs required by law or the State Bar of Texas and approved by the council; and

(iv)  testing and certification standards;

(3)  standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent individuals [~~defendants~~];

(4)  standards for determining whether a person accused of a crime or juvenile offense or named in a suit filed by the department is indigent;

(5)  policies and standards governing the organization and operation of an assigned counsel program;

(6)  policies and standards governing the organization and operation of a public defender's office consistent with recognized national policies and standards;

(7)  policies and standards governing the organization and operation of an office of child representation or office of parent representation consistent with recognized national policies and standards;

(8)  standards for providing indigent defense services or family protection services under a contract defender program consistent with recognized national policies and standards;

(9) [~~(8)~~]  standards governing the reasonable compensation of counsel appointed to represent indigent individuals [~~defendants~~];

(10) [~~(9)~~]  standards governing the availability and reasonable compensation of providers of indigent defense support services or family protection services for counsel appointed to represent indigent individuals [~~defendants~~];

(11) [~~(10)~~]  standards governing the operation of a legal clinic or program that provides legal services to indigent individuals [~~defendants~~] and is sponsored by a law school approved by the supreme court;

(12) [~~(11)~~]  policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code;

(13)  policies and standards governing the appointment of attorneys to represent indigent parents and children in proceedings with the department under Title 5, Family Code;

(14) [~~(12)~~]  policies and standards governing the organization and operation of a managed assigned counsel program consistent with nationally recognized policies and standards; and

(15) [~~(13)~~]  other policies and standards for providing indigent defense services and family protection services as determined by the commission to be appropriate.

SECTION 4.  Sections 79.035(a), (b), and (d), Government Code, are amended to read as follows:

(a)  The commission shall develop a plan that establishes statewide requirements for counties relating to reporting indigent defense information and family protection services information.  The plan must include provisions designed to reduce redundant reporting by counties and provisions that take into consideration the costs to counties of implementing the plan statewide. The commission shall use the information reported by a county to monitor the effectiveness of the county's indigent defense and family protection services policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense and family protection services.  The commission may revise the plan as necessary to improve monitoring of indigent defense and family protection services policies, standards, and procedures in this state.

(b)  The commission shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and council and shall publish in written and electronic form a report:

(1)  containing any information submitted to the commission by a county under Section 79.036; and

(2)  regarding:

(A)  the quality of legal representation provided by counsel appointed to represent indigent individuals [~~defendants~~];

(B)  current indigent defense practices and family protection services practices in the state as compared to state and national standards;

(C)  efforts made by the commission to improve indigent defense practices and family protection services practices in the state;

(D)  recommendations made by the commission for improving indigent defense practices and family protection services practices in the state; and

(E)  the findings of a report submitted to the commission under Section 79.039.

(d)  The commission may issue other reports relating to indigent defense and family protection services as determined to be appropriate by the commission.

SECTION 5.  Subchapter C, Chapter 79, Government Code, is amended by adding Section 79.0365 to read as follows:

Sec. 79.0365.  FAMILY PROTECTION SERVICES INFORMATION. (a)  Not later than November 1 of each odd-numbered year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission:

(1)  a copy of all formal and informal rules and forms governing the procedures the county uses to provide indigent parents and children with counsel in accordance with Title 5, Family Code;

(2)  any fee schedule the court uses for family protection services representation; and

(3)  information on the court's compliance with Chapter 37, including the lists and rotation system required under that chapter.

(b)  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 for the preceding state fiscal year:

(1)  information on the number of appointments made to each attorney accepting appointments in the county for proceedings filed by the department under Title 5, Family Code; and

(2)  information provided to the county by those attorneys under Section 107.0042, Family Code, if the attorneys do not report the information directly to the commission.

(c)  The local administrative district judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the county.

(d)  In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the commission in the form and manner prescribed by the commission and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent parents and children during each state fiscal year, information showing the total amount expended by the county to provide family protection services and an analysis of the amount expended by the county:

(1)  in each district, county, statutory county, and appellate court;

(2)  in cases for which a private attorney is appointed for an indigent parent or child; and

(3)  for investigation expenses, expert witness expenses, or other litigation expenses.

(e)  As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the commission under this section.

SECTION 6.  Sections 79.037(a), (b), and (d), Government Code, are 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; [~~and~~]

(B)  assist counties in improving their systems for providing family protection services; and

(C)  promote compliance by counties with the requirements of state law relating to indigent defense and family protection services;

(2)  to assist a county in providing or improving the provision of indigent defense services and family protection 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;

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

(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 or family protection services in the county; [~~and~~]

(E)  a nonprofit corporation that provides indigent defense services, [~~or~~] indigent defense support services, or family protection services in the county; and

(F)  an office of child representation or office of parent representation created under Subchapter G, Chapter 107, Family Code; 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.

(b)  The commission shall determine for each county the entity or entities that are eligible to receive funds for the provision of or improvement in the provision of indigent defense services or family protection 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 or family protection services.

(d)  A county may not reduce the amount of funds provided for indigent defense services or family protection services in the county because of funds provided by the commission under this section.

SECTION 7.  Subchapter C, Chapter 79, Government Code, is amended by adding Section 79.041 to read as follows:

Sec. 79.041.  FAMILY PROTECTION SERVICES INFORMATION SYSTEM.  (a)  By entering into an interlocal contract with one or more counties under Chapter 791, the commission may participate and assist counties in the creation, implementation, operation, and maintenance of a computerized system to be used to assist those counties in the provision and administration of family protection services and to be used to collect data from those counties regarding representation of indigent individuals in this state.

(b)  The commission may use appropriated funds to pay costs incurred under an interlocal contract described by Subsection (a), including license fees, implementation costs, maintenance and operations costs, administrative costs, and any other costs specified in the interlocal contract.

(c)  The commission may provide training services to counties on the use and operation of a system created, implemented, operated, or maintained by one or more counties under Subsection (a).

(d)  Subchapter L, Chapter 2054, does not apply to an indigent defense information system created under this section.

SECTION 8.  Subchapter A, Chapter 107, Family Code, is amended by adding Section 107.0042 to read as follows:

Sec. 107.0042.  REPORT ON PERCENTAGE OF PROFESSIONAL PRACTICE TIME AS ATTORNEY AD LITEM. Not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, an attorney appointed as an attorney ad litem in a proceeding filed by the Department of Family and Protective Services under Title 5 shall submit to the county or the Texas Indigent Defense Commission a report for the preceding state fiscal year that describes the percentage of the attorney's professional practice time that was dedicated to the attorney's appointment as an attorney ad litem in the county under Title 5.

SECTION 9.  Sections 107.259(a) and (d), Family Code, are amended to read as follows:

(a)  An office of child representation or office of parent representation must be directed by a chief counsel who:

(1)  is a member of the State Bar of Texas;

(2)  has practiced law for at least five [~~three~~] years; and

(3)  has substantial experience in the practice of child protection [~~welfare~~] law.

(d)  Except as authorized by this chapter, the chief counsel and other attorneys employed by an office of child representation or office of parent representation may not:

(1)  engage in the private practice of child protection [~~welfare~~] law; or

(2)  accept anything of value not authorized by this chapter for services rendered under this chapter.

SECTION 10.  Section 71.0355, Government Code, is repealed.

SECTION 11.  This Act takes effect September 1, 2023.

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