

By: Smith

H.B. No. 1528

A BILL TO BE ENTITLED

AN ACT

1
2 relating to magistration proceedings for criminal defendants and
3 the retention of related records, to services and representation
4 provided to indigent criminal defendants and indigent juveniles,
5 and to the governance and administration of the Texas Indigent
6 Defense Commission.

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

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

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

24 (b-1) For purposes of Subsection (b), a potentially

1 meritorious claim is any claim the court determines is likely to
2 provide relief, including a claim that the defendant:

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

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

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

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

10 SECTION 2. 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 silent
6 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 the
13 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 applicable, the magistrate shall inform the
22 person that the person may file the affidavit described by Article
23 [17.028\(f\)](#).

24 (4) If the person does not speak and understand the
25 English language or is deaf, the magistrate shall inform the person
26 in a manner consistent with Articles [38.30](#) and [38.31](#), as
27 appropriate.

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

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

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

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

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

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

22 (9) If the ~~person~~ arrested person is indigent and
23 requests appointment of counsel and if the magistrate is authorized
24 under Article 26.04 to appoint counsel for indigent defendants in
25 the county, the magistrate shall appoint counsel in accordance with
26 Article 1.051. If the magistrate is not authorized to appoint
27 counsel, the magistrate shall without unnecessary delay, but not

1 later than 24 hours after the [~~person~~] arrested person requests
2 appointment of counsel, transmit, or cause to be transmitted to the
3 court or to the courts' designee authorized under Article 26.04 to
4 appoint counsel in the county, the necessary forms for requesting
5 and ruling on the appointment of counsel. [~~The magistrate shall~~
6 ~~also inform the person arrested that he is not required to make a~~
7 ~~statement and that any statement made by him may be used against~~
8 ~~him.~~]

9 (10) The magistrate shall allow the [~~person~~] arrested
10 person reasonable time and opportunity to consult counsel and
11 shall, after determining whether the person is currently on bail
12 for a separate criminal offense and whether the bail decision is
13 subject to Article 17.027, admit the person [~~arrested~~] to bail if
14 allowed by law.

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

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

26 (f) A record required under Subsection (a) or (e) may
27 consist of written forms, electronic recordings, or other

1 documentation as authorized by procedures adopted in the county
2 under Article 26.04(a). The record must be retained for at least
3 three years after final judgment is entered in the case or the
4 proceedings are otherwise terminated. The counsel for the defendant
5 may obtain a copy of the record on payment of a reasonable amount to
6 cover the costs of reproduction or, if the defendant is indigent,
7 the court shall provide a copy to the defendant without charging a
8 cost for the copy.

9 SECTION 3. Article 26.04, Code of Criminal Procedure, is
10 amended by amending Subsection (f-1) and adding Subsection (i-1) to
11 read as follows:

12 (f-1) In a county in which a managed assigned counsel
13 program is operated in accordance with Article 26.047, the managed
14 assigned counsel program may appoint counsel to represent the
15 defendant, remove counsel from representing a defendant, or remove
16 counsel from an appointment list in accordance with the guidelines
17 established for the program. The managed assigned counsel program
18 must have good cause to remove counsel from representing a
19 defendant.

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

1 SECTION 4. Article 26.044, Code of Criminal Procedure, is
2 amended by adding Subsection (i-1) and amending Subsection (1) to
3 read as follows:

4 (i-1) Notwithstanding Subsection (i)(1), an attorney
5 engaged in the private practice of criminal law may be employed by a
6 public defender's office on a part-time basis for the sole purpose
7 of providing counsel in relation to an indigent person's appearance
8 before a magistrate as required by Article 14.06(a), 15.17(a), or
9 15.18(a).

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

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

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

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

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

26 (C) for the purpose of appointing or providing an
27 investigator, expert, or other support services for appointed

1 counsel and their clients;

2 (D) for the purpose of approving a payment to an
3 attorney, investigator, or expert, and for other reasonable and
4 necessary expenses under Article 26.05 or 26.052; and

5 (E) for the purpose of overseeing and improving
6 the quality of representation provided to clients by attorneys
7 appointed under this article.

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

10 SECTION 6. Article 26.047, Code of Criminal Procedure, is
11 amended by amending Subsections (b), (c), and (f) and adding
12 Subsection (j) to read as follows:

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

25 (1) the types of cases in which the program may appoint
26 counsel under Article 26.04 or 26.052 of this code or Section 51.10,
27 Family Code, and the courts in which the counsel appointed by the

1 program may be required to appear; [~~and~~]

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

4 (3) if an oversight board is established under Article
5 26.048 for the managed assigned counsel program, the powers and
6 duties that have been delegated to the oversight board.

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

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

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

13 (3) the maximum allowable caseload for each attorney
14 appointed by the program;

15 (4) provisions for training personnel of the program
16 and attorneys appointed under the program;

17 (5) a description of anticipated overhead costs for
18 the program;

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

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

23 [~~and~~]

24 (8) a policy to ensure that an attorney appointed
25 under the program does not accept appointment in a case that
26 involves a conflict of interest for the attorney that has not been
27 waived by all affected clients; and

1 (9) a policy describing the circumstances under which:

2 (A) an attorney may withdraw from a case; and

3 (B) good cause is established to remove an
4 attorney from a case.

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

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

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

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

16 (j) A program may receive information necessary to perform
17 the program's functions under this article, including materials
18 that are subject to attorney-client privilege, attorney
19 work-product privilege, or otherwise protected by constitutional
20 or statutory rights of a client represented by an attorney
21 appointed under this article. Information and materials described
22 by this subsection are confidential and not subject to disclosure,
23 and the program and the attorneys appointed under this article
24 shall maintain the confidentiality of any information or materials
25 described by this subsection.

26 SECTION 7. Chapter [26](#), Code of Criminal Procedure, is
27 amended by adding Article 26.048 to read as follows:

1 Art. 26.048. MANAGED ASSIGNED COUNSEL OVERSIGHT BOARD. (a)

2 The commissioners court of a county or the commissioners courts of
3 two or more counties may establish an oversight board for a managed
4 assigned counsel program established in accordance with this
5 chapter.

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

10 (1) a criminal trial judge;

11 (2) a prosecutor;

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

14 (4) a peace officer.

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

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

19 (2) setting policy for the program; and

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

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

23 SECTION 8. Article 26.05, Code of Criminal Procedure, is
24 amended by amending Subsections (c) and (d) and adding Subsection
25 (d-1) to read as follows:

26 (c) Each fee schedule adopted shall state reasonable fixed
27 rates or minimum and maximum hourly rates, taking into

1 consideration reasonable and necessary overhead costs and the
2 availability of qualified attorneys willing to accept the stated
3 rates, and shall provide a form for the appointed counsel to itemize
4 the types of services performed. No payment shall be made under
5 this article until the form for itemizing the services performed is
6 submitted to the judge presiding over the proceedings or, if the
7 county operates a managed assigned counsel program under Article
8 [26.047](#), to the director of the program or the director's designee,
9 and until the judge or the director or director's designee, as
10 applicable, approves the payment. If the judge or the director or
11 director's designee disapproves the requested amount of payment,
12 the judge or the director or director's designee shall make written
13 findings stating the amount of payment that the judge or the
14 director or director's designee approves and each reason for
15 approving an amount different from the requested amount. An
16 attorney whose request for payment is disapproved or is not
17 otherwise acted on by the 60th day after the date the request for
18 payment is submitted may appeal the disapproval or failure to act by
19 filing a motion with the presiding judge of the administrative
20 judicial region. On the filing of a motion, the presiding judge of
21 the administrative judicial region shall review the disapproval of
22 payment or failure to act and determine the appropriate amount of
23 payment. In reviewing the disapproval or failure to act, the
24 presiding judge of the administrative judicial region may conduct a
25 hearing. Not later than the 45th day after the date an application
26 for payment of a fee is submitted under this article, the
27 commissioners court shall pay to the appointed counsel the amount

1 that is approved by the presiding judge of the administrative
2 judicial region and that is in accordance with the fee schedule for
3 that county.

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

8 (1) investigation;

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

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

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

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

17 (d-1) Expenses under Subsection (d) incurred with prior
18 court approval shall be reimbursed in the same manner provided for
19 capital cases by Articles 26.052(f) and (g), and expenses under
20 that subsection incurred without prior court approval shall be
21 reimbursed in the manner provided for capital cases by Article
22 26.052(h).

23 SECTION 9. Article 26.051, Code of Criminal Procedure, is
24 amended by amending Subsections (g), (h), and (i) and adding
25 Subsection (h-1) to read as follows:

26 (g) The court shall appoint the public defender's office or
27 an attorney other than an attorney provided by the board if the

1 court determines for any of the following reasons that a conflict of
2 interest could arise from the use of an attorney provided by the
3 board under Subsection (e) of this article:

4 (1) the case involves more than one inmate and the
5 representation of more than one inmate could impair the attorney's
6 effectiveness;

7 (2) the case is appealed and the court is satisfied
8 that conflict of interest would prevent the presentation of a good
9 faith allegation of ineffective assistance of counsel by a trial
10 attorney provided by the board; or

11 (3) any conflict of interest exists under the Texas
12 Disciplinary Rules of Professional Conduct of the State Bar of
13 Texas that precludes representation by an attorney appointed by the
14 board.

15 (h) When the court appoints the public defender's office or
16 an attorney other than an attorney provided by the board:

17 (1) except as otherwise provided by this article, the
18 inmate's legal defense is subject to Articles 1.051, 26.04, 26.044,
19 26.05, and 26.052, as applicable; and

20 (2) the county in which a facility of the correctional
21 institutions division or a correctional facility authorized by
22 Section 495.001, Government Code, is located shall pay from its
23 general fund the total costs of the aggregate amount allowed and
24 awarded by the court for attorney compensation and expenses under
25 Article 26.05 or 26.052, as applicable.

26 (h-1) If the court appoints a public defender's office under
27 Subsection (g), the public defender's office shall certify to the

1 court the amount of expenses incurred in the representation. The
2 court shall submit the certified amount to the comptroller for
3 reimbursement of the county by the state as described by Subsection
4 (i).

5 (i) The state shall reimburse a county for attorney
6 compensation and expenses awarded under Subsection (h) and for any
7 expenses of a public defender's office that are certified under
8 Subsection (h-1). A court seeking reimbursement for a county shall
9 certify to the comptroller of public accounts the amount of
10 compensation and expenses for which the county is entitled to be
11 reimbursed under this article. Not later than the 60th day after
12 the date the comptroller receives from the court the request for
13 reimbursement, the comptroller shall issue a warrant to the county
14 in the certified amount [~~certified by the court~~].

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

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

24 (b-1) If a county is served by a managed assigned counsel
25 program, trial counsel and counsel for direct appeal or to apply for
26 a writ of certiorari may be appointed as provided by the written
27 plan of operation for the managed assigned counsel program. An

1 attorney appointed by a managed assigned counsel program in a death
2 penalty case must be on the list of attorneys qualified for
3 appointment in death penalty cases in the administrative judicial
4 region in which the managed assigned counsel program operates.

5 (b-2) If a county is served by a public defender's office
6 and a managed assigned counsel program, subject to Articles
7 26.04(f)(1), (2), and (3), the presiding judge of the district
8 court in which a capital felony is filed shall give priority in
9 appointing counsel from the public defender's office.

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

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

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

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

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

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

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

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

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

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

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

17 (b) The board members serve staggered terms of two years,
18 with three ~~[two]~~ members' terms expiring February 1 of each
19 odd-numbered year and four ~~[three]~~ members' terms expiring February
20 1 of each even-numbered year.

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

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

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

5 SECTION 13. Section 411.082, Government Code, is amended by
6 adding Subdivision (4-a) to read as follows:

7 (4-a) "Managed assigned counsel program" has the
8 meaning assigned by Article 26.047, Code of Criminal Procedure.

9 SECTION 14. Section 411.088(a-1), Government Code, is
10 amended to read as follows:

11 (a-1) The department may not charge a fee under Subsection
12 (a) for providing criminal history record information to:

- 13 (1) a criminal justice agency;
14 (2) the office of capital and forensic writs; [~~or~~]
15 (3) a public defender's office; or
16 (4) a managed assigned counsel program.

17 SECTION 15. Section 411.1272, Government Code, is amended
18 to read as follows:

19 Sec. 411.1272. ACCESS TO CRIMINAL HISTORY RECORD
20 INFORMATION: OFFICE OF CAPITAL AND FORENSIC WRITS, [AND] PUBLIC
21 DEFENDER'S OFFICES, AND MANAGED ASSIGNED COUNSEL PROGRAMS. The
22 office of capital and forensic writs, [and] a public defender's
23 office, and a managed assigned counsel program are entitled to
24 obtain from the department criminal history record information
25 maintained by the department that relates to a criminal case in
26 which a court has appointed an attorney compensated by the office of
27 capital and forensic writs, [or by] the public defender's office,

1 or the managed assigned counsel program, as applicable [~~has been~~
2 ~~appointed~~].

3 SECTION 16. Article 11.074, Code of Criminal Procedure, as
4 amended by this Act, applies regardless of whether the offense for
5 which the applicant is in custody was committed before, on, or after
6 the effective date of this Act.

7 SECTION 17. Article 15.17, Code of Criminal Procedure, as
8 amended by this Act, and Article 26.04(i-1), Code of Criminal
9 Procedure, as added by this Act, apply only to a person who is
10 arrested on or after the effective date of this Act. A person
11 arrested before the effective date of this Act is governed by the
12 law in effect immediately before the effective date of this Act, and
13 the former law is continued in effect for that purpose.

14 SECTION 18. Article 26.05, Code of Criminal Procedure, as
15 amended by this Act, applies only to expenses incurred on or after
16 the effective date of this Act.

17 SECTION 19. This Act takes effect September 1, 2023.