

By: Zaffirini, et al.
(Cook)

S.B. No. 2120

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

1 filed by the department against a parent.

2 (7-a) "Department" means the Department of Family and
3 Protective Services.

4 (8-a) "Family protection services" means services
5 provided under this chapter by an attorney, attorney ad litem,
6 licensed investigator, social worker, forensic expert, mental
7 health expert, or other similar expert or specialist to an indigent
8 parent or child in:

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

11 (B) a department investigation of the parent.

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

14 (12-b) "Office of parent representation" has the
15 meaning assigned by Section 107.255, Family Code.

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

18 (b) The executive director:

19 (1) must be a licensed attorney;

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

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

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

27 SECTION 3. Section 79.034, Government Code, is amended by

1 amending Subsection (a) and adding Subsection (a-1) to read as
2 follows:

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

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

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

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

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

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

15 (A) indigent defendants, including:

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

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

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

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

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

1 (i) qualifications appropriate for
2 representing an indigent parent;

3 (ii) qualifications appropriate for
4 representing a child;

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

8 (iv) testing and certification standards;

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

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

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

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

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

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

27 (9) [~~(8)~~] standards governing the reasonable

1 compensation of counsel appointed to represent indigent
2 individuals [~~defendants~~];

3 (10) [~~(9)~~] standards governing the availability and
4 reasonable compensation of providers of indigent defense support
5 services or family protection services for counsel appointed to
6 represent indigent individuals [~~defendants~~];

7 (11) [~~(10)~~] standards governing the operation of a
8 legal clinic or program that provides legal services to indigent
9 individuals [~~defendants~~] and is sponsored by a law school approved
10 by the supreme court;

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

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

17 (14) [~~(12)~~] policies and standards governing the
18 organization and operation of a managed assigned counsel program
19 consistent with nationally recognized policies and standards; and

20 (15) [~~(13)~~] other policies and standards for
21 providing indigent defense services and family protection services
22 as determined by the commission to be appropriate.

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

25 (a) The commission shall develop a plan that establishes
26 statewide requirements for counties relating to reporting indigent
27 defense information and family protection services

1 information. The plan must include provisions designed to reduce
2 redundant reporting by counties and provisions that take into
3 consideration the costs to counties of implementing the plan
4 statewide. The commission shall use the information reported by a
5 county to monitor the effectiveness of the county's indigent
6 defense and family protection services policies, standards, and
7 procedures and to ensure compliance by the county with the
8 requirements of state law relating to indigent defense and family
9 protection services. The commission may revise the plan as
10 necessary to improve monitoring of indigent defense and family
11 protection services policies, standards, and procedures in this
12 state.

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

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

18 (2) regarding:

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

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

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

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

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

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

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

11 Sec. 79.0365. FAMILY PROTECTION SERVICES INFORMATION.

12 (a) Not later than November 1 of each odd-numbered year and in the
13 form and manner prescribed by the commission, each county shall
14 prepare and provide to the commission:

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

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

21 (3) information on the court's compliance with Chapter
22 37, including the lists and rotation system required under that
23 chapter.

24 (b) Not later than November 1 of each year and in the form
25 and manner prescribed by the commission, each county shall prepare
26 and provide to the commission for the preceding state fiscal year:

27 (1) information on the number of appointments made to

1 each attorney accepting appointments in the county for proceedings
2 filed by the department under Title 5, Family Code; and

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

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

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

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

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

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

25 (e) As a duty of office, each district and county clerk
26 shall cooperate with the county auditor or the person designated by
27 the commissioners court and the commissioners court in retrieving

1 information required to be sent to the commission under this
2 section.

3 SECTION 6. Sections 79.037(a), (b), and (d), Government
4 Code, are amended to read as follows:

5 (a) The commission shall:

6 (1) provide technical support to:

7 (A) assist counties in improving their systems
8 for providing indigent defense services, including indigent
9 defense support services; ~~and~~

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

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

15 (2) to assist a county in providing or improving the
16 provision of indigent defense services and family protection
17 services in the county, distribute in the form of grants any funds
18 appropriated for the purposes of this section to one or more of the
19 following entities:

20 (A) the county;

21 (B) a law school's legal clinic or program that
22 provides indigent defense services in the county;

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

26 (D) an entity described by Section 791.013 that
27 provides to a county administrative services under an interlocal

1 contract entered into for the purpose of providing or improving the
2 provision of indigent defense services or family protection
3 services in the county; ~~and~~

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

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

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

13 (A) withdrawing grant funds; or

14 (B) requiring reimbursement of grant funds by the
15 entity.

16 (b) The commission shall determine for each county the
17 entity or entities that are eligible to receive funds for the
18 provision of or improvement in the provision of indigent defense
19 services or family protection services under Subsection (a)(2).

20 The determination must be made based on the entity's:

21 (1) compliance with standards adopted by the board;
22 and

23 (2) demonstrated commitment to compliance with the
24 requirements of state law relating to indigent defense or family
25 protection services.

26 (d) A county may not reduce the amount of funds provided for
27 indigent defense services or family protection services in the

1 county because of funds provided by the commission under this
2 section.

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

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

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

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

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

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

26 Sec. 107.0042. REPORT ON PERCENTAGE OF PROFESSIONAL
27 PRACTICE TIME AS ATTORNEY AD LITEM. Not later than October 15 of

1 each year and on a form prescribed by the Texas Indigent Defense
2 Commission, an attorney appointed as an attorney ad litem in a
3 proceeding filed by the Department of Family and Protective
4 Services under Title 5 shall submit to the county or the Texas
5 Indigent Defense Commission a report for the preceding state fiscal
6 year that describes the percentage of the attorney's professional
7 practice time that was dedicated to the attorney's appointment as
8 an attorney ad litem in the county under Title 5.

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

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

- 13 (1) is a member of the State Bar of Texas;
14 (2) has practiced law for at least five [~~three~~] years;

15 and

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

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

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

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

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

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