**BILL ANALYSIS**

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| Senate Research Center | S.B. 2111 |
| 89R8023 EAS-D | By: Zaffirini |
|  | Criminal Justice |
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**AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 2111 would implement recommendations from the Indigent Defense Commission to address a range of issues affecting public defenders' offices, managed assigned counsel programs (MACs), appointed private practice attorneys, and defendants. First, the bill would enhance the efficiency of public defenders' offices in post-conviction litigation by allowing them to investigate the validity of habeas corpus claims before accepting cases, reducing the burden of frivolous claims. What's more, it would permit the Texas Board on Criminal Justice—Corrections Division to appoint a public defender when an attorney representing an inmate encounters a conflict of interest.

Regarding MACs, which are charged with appointing attorneys for indigent defendants but suffer from unclear statutory duties, the bill would clarify their judicial functions, including appointing counsel and providing support services such as those provided by investigators and experts. It also would introduce policies for representing defendants in related matters, establishing withdrawal procedures, and maintaining confidentiality in juvenile justice data.

S.B. 2111 also would help address confusion in magistrate proceedings by requiring magistrates clearly to inform defendants of their rights, including the right to counsel, and ensure they can understand the proceedings effectively. This includes verifying video and audio connections in virtual hearings; assessing competency, language barriers and indigency; and making legal appointments as necessary, with records retained for at least two years after termination. The bill would permit counties to use funds specifically to appoint attorneys for defendants' magistrate appearances and allow private practice attorneys to serve part-time in public defenders' offices for the same purpose.

To ensure the goals of the Indigent Defense Commission are realized and indigent defense needs are met, S.B. 2111 would direct the Comptroller of Public Accounts of the State of Texas to allocate one percent of tax revenue from alcohol sales to the Fair Defense Fund (FDF), which supports the Texas Indigent Defense Commission (TIDC) and Office of Capital and Forensic Writs. This funding would be used to reimburse private attorneys for travel and communication expenses and to establish a student loan repayment assistance program for public defenders in rural or high-need counties. What's more, S.B. 2111 would create the Texas Public Defense Internship and Fellowship Program through TIDC to provide grants for students and recent graduates, helping alleviate the current strain on public defenders' offices. Lastly, it would protect the addresses of public defender and MAC program employees from public tax appraisal rolls to enhance their safety.

Overall, S.B. 2111 would streamline responsibilities and functions of MACs, reduce inefficiencies in post-conviction litigation for public defenders, alleviate confusion in magistrate proceedings, and expand access to counsel during these processes, while funding new programs and reimbursing existing costs for employees representing indigent defendants.

As proposed, S.B. 2111 amends current law relating to legal representation of indigent persons in this state and to proceedings before a magistrate including the appointment of counsel for an indigent defendant.

**RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 9 (Section 61.9618, Education Code) of this bill.

**SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 11.074, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires the court, if at any time the state represents to the convicting court that an eligible indigent defendant under Article 1.051 (Right to Representation by Counsel) has under a writ of habeas corpus a potentially meritorious claim for relief from a judgment described by Subsection (a) (relating to providing that Article 11.074 (Court-Appointed Representation Required in Certain Cases) applies only to a felony or misdemeanor case in which the applicant seeks relief on a writ of habeas corpus from certain judgments of conviction), to 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. Deletes existing text requiring the court, if at any time the state represents to the convicting court that an eligible indigent defendant under Article 1.051 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, to appoint an attorney to 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) Provides that, 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 is or may be actually innocent of the offense, is or may be guilty of only a lesser offense, was or may have been convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court, or was or may have been convicted or sentenced in violation of the constitution of this state or the United States.

SECTION 2. Amends Articles 15.17(a) and (f), Code of Criminal Procedure, as follows:

(a)(1) Creates this subdivision from existing text. Authorizes the arrested person to be taken before the magistrate in person or the image and sound of the arrested person to be presented to the magistrate by means of a videoconference. Defines "videoconference." Makes nonsubstantive changes.

(2) Creates this subdivision from existing text. Requires the magistrate to inform in clear language the person arrested, either in person or through a videoconference, of:

(A) the accusation against the person and of any affidavit filed with the accusation;

(B) creates this paragraph from existing text and makes nonsubstantive changes;

(C) the person's right to remain silent and to not make a statement;

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

(E)-(I) creates these paragraphs from existing text and makes nonsubstantive changes.

Makes nonsubstantive changes to this subdivision.

(3)-(4) Creates these subdivisions from existing text.

(5) Requires the magistrate, if the proceeding is conducted through a videoconference, to ensure that the arrested person is able to connect to and understand the image and sound of the videoconference.

(6) Requires the magistrate, if the magistrate has reasonable cause to believe that the arrested person has a mental illness or is a person with an intellectual disability, to follow the procedures under Article 16.22 (Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability).

(7) Requires the magistrate, if the magistrate is unable to ensure that the arrested person is able to understand and participate in the proceeding, to, if the magistrate has appointing authority, appoint counsel for the person or if the magistrate does not have appointing authority, notify the appointing authority of the person's inability to understand and participate in the proceeding.

(8) Creates this subdivision from existing text. Requires the magistrate to ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the arrested person at the same time the person is informed of the person's rights under this subsection.

(9) Creates this subdivision from existing text. Requires the magistrate, if the magistrate is not authorized to appoint counsel, without unnecessary delay, but not later than 24 hours after the arrested person requests appointment of counsel, to transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 (Procedures for Appointing Counsel) to appoint counsel in the county, the necessary forms for requesting and ruling on the appointment of counsel. Deletes existing text requiring the magistrate to also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. Makes nonsubstantive changes.

(10) Creates this subdivision from existing text and makes nonsubstantive changes.

(11) Creates this subdivision from existing text. Deletes existing text requiring that the record of the communication between the arrested person and the magistrate be preserved until the earlier of certain dates.

(f) Requires that the record be retained for at least two years after final judgment is entered in the case or the proceedings are otherwise terminated.

SECTION 3. Amends Article 26.04, Code of Criminal Procedure, by adding Subsection (i-1), as follows:

(i-1) Authorizes an attorney, notwithstanding Subsection (j)(2) (relating to requiring an attorney appointed under Article 26.04 to make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed) or any other law, and if funds are appropriated by a county for this purpose, to be appointed under this article to represent an indigent person for the sole purpose of providing counsel in relation to that person's appearance before a magistrate as required by certain articles. Authorizes the attorney to represent the person in subsequent proceedings of that case, only if appointed for that purpose under the other provisions of Article 26.044 (Public Defender's Office).

SECTION 4. Amends Article 26.044, Code of Criminal Procedure, by adding Subsection (i-1) and amending Subsection (l), as follows:

(i-1) Authorizes an attorney engaged in the private practice of criminal law, notwithstanding Subsection (i)(1) (relating to prohibiting the chief public defender and other attorneys employed by a public defender's office from engaging in the private practice of criminal law), to be employed by a public defender's office on a part-time basis for the sole purpose of providing counsel in relation to an indigent person's appearance before a magistrate as required by certain provisions.

(1) Deletes existing text requiring the public defender's office to report the results of the investigation of the financial condition of a person the public defender's office is appointed to represent to the appointing judge. Deletes existing text authorizing the judge to hold a hearing to determine if the person is indigent and entitled to representation under this article.

SECTION 5. Amends Article 26.047(a)(2), Code of Criminal Procedure, to redefine "managed assigned counsel program" and "program."

SECTION 6. Amends Article 26.047, Code of Criminal Procedure, by amending Subsections (c), (f), and (g) and adding Subsection (j), as follows:

(c) Requires that the plan of operation from an entity operating a program to perform delegated judicial functions using public funds under Article 26.047 (Managed Assigned Counsel Program) include certain provisions, including a policy describing the circumstances under which the program is authorized to allow appointed counsel to provide representation in a related matter for the purpose of ensuring the right to counsel in the primary matter, a policy describing the circumstances under which an attorney is authorized to withdraw from a case and good cause is established to remove an attorney from a case, and procedures the program will use to maintain the confidentiality of data related to clients whose information is held in the juvenile justice system, including which staff are authorized to access that data. Makes nonsubstantive changes.

(f) Requires that the program's public appointment list from which an attorney is appointed contain the names of qualified attorneys, each of whom meets certain requirements, including any applicable requirements specified by the procedure for appointing counsel adopted under Article 26.04(a) (relating to written countywide procedures for timely and fairly appointing counsel for certain indigent defendants) and any other requirements specified by the Texas Indigent Defense Commission (commission).

(g) Requires that the notice and reason for the replacement of counsel be documented in the same manner as the original appointment.

(j) Authorizes a program to receive information necessary to perform the program's functions under this article, including materials that are subject to attorney-client privilege, subject to attorney work-product privilege, or otherwise protected by constitutional or statutory rights of a client represented by an attorney appointed under this article. Provides that information and materials described by this subsection and information and materials related to a purpose described by Subsection (a)(2)(C) are confidential and not subject to disclosure, and the program, the attorneys appointed under this article, and other individuals, as applicable, are required to maintain the confidentiality of any information or materials described by this subsection.

SECTION 7. Amends Article 26.05, Code of Criminal Procedure, by amending Subsections (a), (c), and (d) and adding Subsection (d-1), as follows:

(a) Requires a counsel, other than an attorney with a public defender's office or an attorney employed by the office of capital and forensic writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, to be paid a reasonable attorney's fee for performing certain services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel, including reasonable and necessary time spent out of court on the case, including time spent traveling to perform legal services outside the county where the case is pending, supported by any documentation that the court requires.

(c) Requires that no payment be made under Article 26.05 (Compensation of Counsel Appointed to Defend) until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program or the director's designee, and until the judge or the director or director's designee, as applicable, approves the payment. Makes conforming changes.

(d) Requires a counsel in a noncapital case, other than an attorney with a public defender's office, appointed to represent a defendant under the Code of Criminal Procedure to be reimbursed for certain reasonable and necessary expenses, including expenses for, if the defendant is confined in a correctional facility located more than 50 miles from the court in which the defendant's proceeding is pending, travel to the defendant's location for a confidential communication and food and lodging related to that travel and any costs associated with remotely entering into a confidential communication with the defendant. Makes nonsubstantive changes.

(d-1) Creates this subsection from existing text and makes conforming changes.

SECTION 8. Amends Article 26.051, Code of Criminal Procedure, by amending Subsections (g), (h), and (i) and adding Subsection (h-1), as follows:

(g) Requires the court to appoint the public defender's office or an attorney other than an attorney provided by the Texas Board of Criminal Justice (TBCJ) if the court determines for certain reasons that a conflict of interest could arise from the use of an attorney provided by TBCJ under Subsection (e) (relating to requiring TBCJ to provide legal representation for inmates). Makes a nonsubstantive change.

(h) Provides that when the court appoints the public defender's office or an attorney other than an attorney provided by TBCJ, except as otherwise provided by Article 26.051 (Indigent Inmate Defense), the inmate's legal defense is subject to certain articles, including Article 26.044.

(h-1) Requires the public defender's office, if the court appoints a public defender's office under Subsection (g), to certify to the court the amount of expenses incurred in the representation. Requires the court to submit the certified amount to the Comptroller of Public Accounts of the State of Texas (comptroller) for reimbursement of the county by the state as described by Subsection (i).

(i) Requires the state to reimburse a county for attorney compensation and expenses awarded under Subsection (h) and for any expenses of a public defender's office that are certified under Subsection (h-1). Makes a nonsubstantive change.

SECTION 9. Amends Chapter 61, Education Code, by adding Subchapter Y-1, as follows:

SUBCHAPTER Y-1. REPAYMENT OF CERTAIN EDUCATION LOANS: PUBLIC DEFENSE ATTORNEY

Sec. 61.9611. APPLICABILITY. Provides that this subchapter applies only to a county with a population of 300,000 or less or designated by the commission under Section 61.9620.

Sec. 61.9612. REPAYMENT ASSISTANCE AUTHORIZED. (a) Requires the Texas Higher Education Coordinating Board (THECB) to provide, using funds appropriated for that purpose and in accordance with this subchapter and THECB rules, assistance in the repayment of student loans for attorneys who apply and qualify for the assistance.

(b) Provides that the provision of financial assistance in the repayment of education loans under this subchapter promotes a public purpose.

Sec. 61.9613. ELIGIBILITY. Requires an attorney licensed in this state, to be eligible to receive repayment assistance, to:

(1) apply to THECB;

(2) at the time of application, be:

(A) currently employed as an attorney by a public defender's office, office of child representation, office of parent representation, or attorney for a managed assigned counsel program that serves a county to which this subchapter applies; or

(B) an attorney providing appointed representation to indigent defendants, juvenile respondents, or indigent parents or children in proceedings brought by the Department of Family and Protective Services (DFPS) in one or more counties to which this subchapter applies and where representation is, on average, at least 30 hours per week of the attorney's practice time in the most recent state fiscal year; and

(3) have completed one, two, three, or four consecutive years of practice as described by Subdivision (2).

Sec. 61.9614. ELIGIBLE LOANS. (a) Authorizes THECB to provide repayment assistance for the repayment of any loan received by the attorney through any lender for education at an institution of higher education, including a loan for undergraduate education.

(b) Prohibits THECB from providing repayment assistance for an education loan that is in default at the time of the attorney's application.

(c) Requires THECB, each state fiscal biennium, to attempt to allocate all money appropriated to THECB for the purpose of providing repayment assistance under this subchapter.

Sec. 61.9615. REPAYMENT. Requires THECB to deliver any repayment made under this subchapter in a lump sum payable to both the attorney and the lender or other holder of the affected loan or directly to the lender or other holder of the loan on the attorney's behalf.

Sec. 61.9616. ADVISORY COMMITTEES. Authorizes THECB to appoint advisory committees from outside THECB's membership to assist THECB in performing its duties under this subchapter.

Sec. 61.9617. ACCEPTANCE OF FUNDS. Authorizes THECB to accept gifts, grants, and donations for the purposes of this subchapter.

Sec. 61.9618. RULES. (a) Requires THECB to adopt rules necessary for the administration of this subchapter, including a rule that sets the maximum amount of repayment assistance that an attorney is authorized to receive in one year.

(b) Requires THECB to distribute a copy of the rules adopted under this section and pertinent information in this subchapter to each school of law authorized by THECB to award a degree that satisfies the law study requirements for licensure as an attorney in this state and the commission.

Sec. 61.9619. AMOUNT OF REPAYMENT ASSISTANCE. (a) Authorizes an attorney to receive repayment assistance under this subchapter in the amount determined by board rule, not to exceed certain amounts for each year for which the attorney establishes eligibility for the assistance.

(b) Prohibits the total amount of repayment assistance distributed by THECB from exceeding the total amount of money appropriated to THECB and received by THECB from gifts, grants, and donations for the purposes of this subchapter.

(c) Prohibits the total amount of repayment assistance made under this subchapter to an individual attorney from exceeding $180,000.

Sec. 61.9620. DESIGNATION OF HIGH NEED COUNTY. Authorizes the commission to designate a county in which the need for public defenders exceeds the statewide average as a county to which this subchapter applies.

SECTION 10. Amends Section 79.037(a), Government Code, to require the Texas Indigent Defense Commission to take certain actions, including providing grants and awards through the Texas Public Defense Internship and Fellowship Program (program) described by Section 79.038, and to make nonsubstantive changes.

SECTION 11. Amends Subchapter C, Chapter 79, Government Code, by adding Section 79.038, as follows:

Sec. 79.038. TEXAS PUBLIC DEFENSE INTERNSHIP AND FELLOWSHIP PROGRAM. (a) Requires the commission to establish program to provide grants to entities described by Section 79.037 (Technical Support; Grants) to provide, with the assistance of students enrolled at and recent graduates of public and private institutions of higher education in this state, legal representation to indigent persons under certain provisions of the Code of Criminal Procedure and the Family Code.

(b) Authorizes the program to make direct awards to students and recent graduates described by Subsection (a) for purposes of providing legal representation as described by that subsection.

SECTION 12. Amends Section 411.082, Government Code, by adding Subdivision (4-a) to define "managed assigned counsel program."

SECTION 13. Amends Section 411.088(a-1), Government Code, to prohibit the Department of Public Safety of the State of Texas (DPS) from charging a fee under Subsection (a) (relating to authorizing DPS to charge a person a fee for processing inquiries for criminal history record information) for providing criminal history record information to certain entities, including a managed assigned counsel program, and to make nonsubstantive changes.

SECTION 14. Amends Section 411.1272, Government Code, as follows:

Sec. 411.1272. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF CAPITAL AND FORENSIC WRITS, PUBLIC DEFENDER'S OFFICES, AND MANAGED ASSIGNED COUNSEL PROGRAMS. Provides that the office of capital and forensic writs, a public defender's office, and a managed assigned counsel program are entitled to obtain from DPS criminal history record information maintained by DPS that relates to a criminal case in which an attorney compensated by the office of capital and forensic writs or by the public defender's office has been appointed by the court or in which an attorney has been appointed by the managed assigned counsel program, as applicable. Makes nonsubstantive changes.

SECTION 15. Reenacts Section 25.025(a), Tax Code, as amended by Chapters 76 (S.B. 617), 152 (S.B. 870), 430 (H.B. 1911), 765 (H.B. 4504), and 937 (S.B. 1525), Acts of the 88th Legislature, Regular Session, 2023, and amends it, as follows:

(a) Provides that Section 25.025 (Confidentiality of Certain Home Address Information) applies only to certain persons, including an employee of a public defender's office, as defined by Article 26.044, Code of Criminal Procedure and an employee of a managed assigned counsel program, as defined by Article 26.047, Code of Criminal Procedure. Deletes existing text providing that this section applies to a current or former attorney for DFPS. Makes nonsubstantive changes.

SECTION 16. Amends Subchapter C, Chapter 183, Tax Code, by adding Section 183.055, as follows:

Sec. 183.055. ALLOCATION OF CERTAIN REVENUE TO FAIR DEFENSE FUND. Requires the comptroller to deposit one percent of the taxes received under Subchapters B (Mixed Beverage Gross Receipts Tax) and B-1 (Mixed Beverage Sales Tax) to the credit of the fair defense account established under Section 79.031 (Fair Defense Account), Government Code. Provides that money deposited to the account under this section is authorized to be used only for the purposes described by Section 79.031, Government Code.

SECTION 17. Amends Section 730.007(c), Transportation Code, to provide that Section 730.007 (Permitted Disclosures of Certain Personal Information) does not prohibit the disclosure of a person's photographic image to certain entities, including a private investigator licensed under Chapter 1702 (Private Security), Occupations Code, who is employed by a public defender's office for an official purpose, and to make a nonsubstantive change.

SECTION 18. Provides that to the extent of any conflict, this Act prevails over another Act of the 89th Legislature, Regular Session, 2025, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 19. Provides that Article 11.074, Code of Criminal Procedure, as amended by this Act, applies regardless of whether the offense for which the applicant is in custody was committed before, on, or after the effective date of this Act.

SECTION 20. Makes application of Article 15.17 (Duties of Arresting Officer and Magistrate), Code of Criminal Procedure, as amended by this Act, and Article 26.04(i-1), Code of Criminal Procedure, as added by this Act, prospective.

SECTION 21. Makes application of Article 26.05, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 22. Requires THECB to adopt the rules for the repayment assistance program under Subchapter Y-1, Chapter 61, Education Code, as added by this Act, not later than December 1, 2025.

SECTION 23. Effective date: September 1, 2025.