

1 AN ACT

2 relating to the reorganization of powers and duties among agencies
3 in this state that provide representation to indigent defendants in
4 criminal cases and to the reorganization of funding sources for
5 indigent defense.

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

7 SECTION 1. Subtitle F, Title 2, Government Code, is amended
8 by adding Chapter 79 to read as follows:

9 CHAPTER 79. TEXAS INDIGENT DEFENSE COMMISSION

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 79.001. DEFINITIONS. In this chapter:

12 (1) "Assigned counsel program" means a system under
13 which private attorneys, acting as independent contractors and
14 compensated with public funds, are individually appointed to
15 provide legal representation and services to a particular indigent
16 defendant accused of a crime or juvenile offense.

17 (2) "Board" means the governing board of the Texas
18 Indigent Defense Commission.

19 (3) "Commission" means the permanent standing
20 committee of the council known as the Texas Indigent Defense
21 Commission.

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

1 representation and services to a group of unspecified indigent
2 defendants who appear before a particular court or group of courts.

3 (5) "Council" means the Texas Judicial Council.

4 (6) "Crime" means:

5 (A) a misdemeanor punishable by confinement; or

6 (B) a felony.

7 (7) "Defendant" means a person accused of a crime or a
8 juvenile offense.

9 (8) "Executive director" means the executive director
10 of the Texas Indigent Defense Commission.

11 (9) "Indigent defense support services" means
12 criminal defense services that:

13 (A) are provided by licensed investigators,
14 experts, or other similar specialists, including forensic experts
15 and mental health experts; and

16 (B) are reasonable and necessary for appointed
17 counsel to provide adequate representation to indigent defendants.

18 (10) "Juvenile offense" means conduct committed by a
19 person while younger than 17 years of age that constitutes:

20 (A) a misdemeanor punishable by confinement; or

21 (B) a felony.

22 (11) "Managed assigned counsel program" has the
23 meaning assigned by Article 26.047, Code of Criminal Procedure.

24 (12) "Office of capital writs" means the office of
25 capital writs established under Subchapter B, Chapter 78.

26 (13) "Public defender's office" has the meaning
27 assigned by Article 26.044(a), Code of Criminal Procedure.

1 Sec. 79.002. ESTABLISHMENT OF COMMISSION. (a) The Texas
2 Indigent Defense Commission is established as a permanent standing
3 committee of the council.

4 (b) The commission operates under the direction and
5 supervision of a governing board.

6 [Sections 79.003-79.010 reserved for expansion]

7 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

8 Sec. 79.011. ESTABLISHMENT OF BOARD; COMPOSITION. (a) The
9 commission is governed by a board consisting of eight ex officio
10 members and five appointive members.

11 (b) Except as provided by Section 79.033(b), the board shall
12 exercise the powers and perform the duties under this chapter
13 independently of the council.

14 Sec. 79.012. EXECUTIVE DIRECTOR. (a) The executive
15 director is appointed by the board.

16 (b) The executive director:

17 (1) must be a licensed attorney;

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

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

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

24 Sec. 79.013. EX OFFICIO MEMBERS. The ex officio members of
25 the board are:

26 (1) the following six members of the council:

27 (A) the chief justice of the supreme court;

1 (B) the presiding judge of the court of criminal
2 appeals;

3 (C) one of the members of the senate serving on
4 the council who is designated by the lieutenant governor;

5 (D) the member of the house of representatives
6 appointed by the speaker of the house;

7 (E) one of the courts of appeals justices serving
8 on the council who is designated by the governor; and

9 (F) one of the county court or statutory county
10 court judges serving on the council who is designated by the
11 governor or, if a county court or statutory county court judge is
12 not serving on the council, one of the statutory probate court
13 judges serving on the council who is designated by the governor;

14 (2) one other member of the senate appointed by the
15 lieutenant governor; and

16 (3) the chair of the House Criminal Jurisprudence
17 Committee.

18 Sec. 79.014. APPOINTMENTS. (a) The governor shall appoint
19 with the advice and consent of the senate five members of the board
20 as follows:

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

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

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

27 (4) one member who is a chief public defender in this

1 state or the chief public defender's designee, who must be an
2 attorney employed by the public defender's office; and

3 (5) one member who is a judge of a constitutional
4 county court or who is a county commissioner of a county with a
5 population of 250,000 or more.

6 (b) The board members serve staggered terms of two years,
7 with two members' terms expiring February 1 of each odd-numbered
8 year and three members' terms expiring February 1 of each
9 even-numbered year.

10 (c) In making appointments to the board, the governor shall
11 attempt to reflect the geographic and demographic diversity of the
12 state.

13 (d) A person may not be appointed to the board if the person
14 is required to register as a lobbyist under Chapter 305 because of
15 the person's activities for compensation on behalf of a profession
16 related to the operation of the commission or the council.

17 Sec. 79.015. PRESIDING OFFICER. The board shall select a
18 chair from among its members.

19 Sec. 79.016. DISCLOSURE REQUIRED. (a) A board member who is
20 a chief public defender or who is an attorney employed by a public
21 defender's office in a county that applies for funds under Section
22 79.037 shall disclose that fact before a vote by the board regarding
23 an award of funds to that county and may not participate in such a
24 vote.

25 (b) A board member's disclosure under Subsection (a) must be
26 entered into the minutes of the board meeting at which the
27 disclosure is made or reported, as applicable.

1 (c) The commission may not award funds under Section 79.037
2 to a county served by a chief public defender or other attorney who
3 fails to make a disclosure to the board as required by Subsection
4 (a).

5 Sec. 79.017. VACANCIES. A vacancy on the board must be
6 filled for the unexpired term in the same manner as the original
7 appointment.

8 Sec. 79.018. MEETINGS; QUORUM; VOTING. (a) The board shall
9 meet at least four times each year and at such other times as it
10 considers necessary or convenient to perform its duties.

11 (b) Six members of the board constitute a quorum for
12 purposes of transacting the business of the board. The board may
13 act only on the concurrence of five board members or a majority of
14 the board members present, whichever number is greater. The board
15 may adopt policies and standards under Section 79.034 only on the
16 concurrence of seven board members.

17 (c) Except as provided by Section 79.016, a board member is
18 entitled to vote on any matter before the board, except as otherwise
19 provided by rules adopted by the board.

20 Sec. 79.019. COMPENSATION. A board member may not receive
21 compensation for services on the board but is entitled to be
22 reimbursed for actual and necessary expenses incurred in
23 discharging board duties. The expenses are paid from funds
24 appropriated to the board.

25 Sec. 79.020. IMMUNITY FROM LIABILITY. A member of the board
26 performing duties on behalf of the board is not liable for damages
27 arising from an act or omission within the scope of those duties.

1 Sec. 79.021. RULES. The board shall adopt rules as
2 necessary to implement this chapter.

3 [Sections 79.022-79.030 reserved for expansion]

4 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF COMMISSION

5 Sec. 79.031. FAIR DEFENSE ACCOUNT. The fair defense
6 account is an account in the general revenue fund that may be
7 appropriated only to:

8 (1) the commission for the purpose of implementing
9 this chapter; and

10 (2) the office of capital writs for the purpose of
11 implementing Subchapter B, Chapter 78.

12 Sec. 79.032. ACCEPTANCE OF GIFTS, GRANTS, AND OTHER FUNDS;
13 STATE GRANTS TEAM. (a) The commission may accept gifts, grants,
14 and other funds from any public or private source to pay expenses
15 incurred in performing its duties under this chapter.

16 (b) The State Grants Team of the Governor's Office of
17 Budget, Planning, and Policy may assist the commission in
18 identifying grants and other resources available for use by the
19 commission in performing its duties under this chapter.

20 Sec. 79.033. ADMINISTRATIVE ATTACHMENT; SUPPORT; BUDGET.
21 (a) The commission is administratively attached to the Office of
22 Court Administration of the Texas Judicial System.

23 (b) The office of court administration shall provide
24 administrative support services, including human resources,
25 budgetary, accounting, purchasing, payroll, information
26 technology, and legal support services, to the commission as
27 necessary to carry out the purposes of this chapter.

1 (c) The commission, in accordance with the rules and
2 procedures of the Legislative Budget Board, shall prepare, approve,
3 and submit a legislative appropriations request that is separate
4 from the legislative appropriations request for the Office of Court
5 Administration of the Texas Judicial System and is used to develop
6 the commission's budget structure. The commission shall maintain
7 the legislative appropriations request and budget structure
8 separately from those of the office of court administration.

9 Sec. 79.034. POLICIES AND STANDARDS. (a) The commission
10 shall develop policies and standards for providing legal
11 representation and other defense services to indigent defendants at
12 trial, on appeal, and in postconviction proceedings. The policies
13 and standards may include:

14 (1) performance standards for counsel appointed to
15 represent indigent defendants;

16 (2) qualification standards under which attorneys may
17 qualify for appointment to represent indigent defendants,
18 including:

19 (A) qualifications commensurate with the
20 seriousness of the nature of the proceeding;

21 (B) qualifications appropriate for
22 representation of mentally ill defendants and noncitizen
23 defendants;

24 (C) successful completion of relevant continuing
25 legal education programs approved by the council; and

26 (D) testing and certification standards;

27 (3) standards for ensuring appropriate appointed

- 1 caseloads for counsel appointed to represent indigent defendants;
2 (4) standards for determining whether a person accused
3 of a crime or juvenile offense is indigent;
4 (5) policies and standards governing the organization
5 and operation of an assigned counsel program;
6 (6) policies and standards governing the organization
7 and operation of a public defender's office consistent with
8 recognized national policies and standards;
9 (7) standards for providing indigent defense services
10 under a contract defender program consistent with recognized
11 national policies and standards;
12 (8) standards governing the reasonable compensation
13 of counsel appointed to represent indigent defendants;
14 (9) standards governing the availability and
15 reasonable compensation of providers of indigent defense support
16 services for counsel appointed to represent indigent defendants;
17 (10) standards governing the operation of a legal
18 clinic or program that provides legal services to indigent
19 defendants and is sponsored by a law school approved by the supreme
20 court;
21 (11) policies and standards governing the appointment
22 of attorneys to represent children in proceedings under Title 3,
23 Family Code;
24 (12) policies and standards governing the
25 organization and operation of a managed assigned counsel program
26 consistent with nationally recognized policies and standards; and
27 (13) other policies and standards for providing

1 indigent defense services as determined by the commission to be
2 appropriate.

3 (b) The commission shall submit its proposed policies and
4 standards developed under Subsection (a) to the board for adoption.
5 The board shall adopt the proposed policies and standards as
6 appropriate.

7 (c) Any qualification standards adopted by the board under
8 Subsection (b) that relate to the appointment of counsel in a death
9 penalty case must be consistent with the standards specified under
10 Article 26.052(d), Code of Criminal Procedure. An attorney who is
11 identified by the commission as not satisfying performance or
12 qualification standards adopted by the board under Subsection (b)
13 may not accept an appointment in a capital case.

14 Sec. 79.035. COUNTY REPORTING PLAN; COMMISSION REPORTS.

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

27 (b) The commission shall annually submit to the governor,

1 lieutenant governor, speaker of the house of representatives, and
2 council and shall publish in written and electronic form a report:

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

5 (2) regarding:

6 (A) the quality of legal representation provided
7 by counsel appointed to represent indigent defendants;

8 (B) current indigent defense practices in the
9 state as compared to state and national standards;

10 (C) efforts made by the commission to improve
11 indigent defense practices in the state;

12 (D) recommendations made by the commission for
13 improving indigent defense practices in the state; and

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

16 (c) The commission shall annually submit to the Legislative
17 Budget Board and council and shall publish in written and
18 electronic form a detailed report of all expenditures made under
19 this subchapter, including distributions under Section 79.037.

20 (d) The commission may issue other reports relating to
21 indigent defense as determined to be appropriate by the commission.

22 Sec. 79.036. INDIGENT DEFENSE INFORMATION. (a) In each
23 county, not later than November 1 of each odd-numbered year and in
24 the form and manner prescribed by the commission, the following
25 information shall be prepared and provided to the commission:

26 (1) a copy of all formal and informal rules and forms
27 that describe the procedures used in the county to provide indigent

1 defendants with counsel in accordance with the Code of Criminal
2 Procedure, including the schedule of fees required under Article
3 26.05 of that code;

4 (2) any revisions to rules or forms previously
5 submitted under this section; or

6 (3) verification that rules and forms previously
7 submitted under this section still remain in effect.

8 (b) Except as provided by Subsection (c):

9 (1) the local administrative district judge in each
10 county, or the person designated by the judge, shall perform the
11 action required by Subsection (a) with respect to all rules and
12 forms adopted by the judges of the district courts trying felony
13 cases in the county; and

14 (2) the local administrative statutory county court
15 judge in each county, or the person designated by the judge, shall
16 perform the action required by Subsection (a) with respect to all
17 rules and forms adopted by the judges of the county courts and
18 statutory county courts trying misdemeanor cases in the county.

19 (c) If the judges of two or more levels of courts described
20 by Subsection (b) adopt the same formal and informal rules and
21 forms, the local administrative judge serving the courts having
22 jurisdiction over offenses with the highest classification of
23 punishment, or the person designated by the judge, shall perform
24 the action required by Subsection (a).

25 (d) The chair of the juvenile board in each county, or the
26 person designated by the chair, shall perform the action required
27 by Subsection (a) with respect to all rules and forms adopted by the

1 juvenile board.

2 (e) In each county, the county auditor, or the person
3 designated by the commissioners court if the county does not have a
4 county auditor, shall prepare and send to the commission in the form
5 and manner prescribed by the commission and on a monthly,
6 quarterly, or annual basis, with respect to legal services provided
7 in the county to indigent defendants during each fiscal year,
8 information showing the total amount expended by the county to
9 provide indigent defense services and an analysis of the amount
10 expended by the county:

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

13 (2) in cases for which a private attorney is appointed
14 for an indigent defendant;

15 (3) in cases for which a public defender is appointed
16 for an indigent defendant;

17 (4) in cases for which counsel is appointed for an
18 indigent juvenile under Section 51.10(f), Family Code; and

19 (5) for investigation expenses, expert witness
20 expenses, or other litigation expenses.

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

26 Sec. 79.037. TECHNICAL SUPPORT; GRANTS. (a) The
27 commission shall:

1 (1) provide technical support to:

2 (A) assist counties in improving their indigent
3 defense systems; and

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

6 (2) to assist counties in providing indigent defense
7 services in the county, distribute in the form of grants any funds
8 appropriated for the purposes of this section; and

9 (3) monitor each county that receives a grant and
10 enforce compliance by the county with the conditions of the grant,
11 including enforcement by:

12 (A) withdrawing grant funds; or

13 (B) requiring reimbursement of grant funds by the
14 county.

15 (b) The commission shall distribute funds as required by
16 Subsection (a)(2) based on a county's compliance with standards
17 adopted by the board and the county's demonstrated commitment to
18 compliance with the requirements of state law relating to indigent
19 defense.

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

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

26 Sec. 79.039. EXONERATION REPORT. (a) Each legal clinic or
27 program in this state that is operated by a law school and that

1 receives financial support from the commission shall submit to the
2 commission an annual report regarding criminal cases:

3 (1) in which the clinic or program has provided legal
4 services to an indigent defendant during the preceding calendar
5 year; and

6 (2) in which:

7 (A) based on a finding of actual innocence, the
8 court of criminal appeals overturns a conviction; or

9 (B) the governor issues a pardon based on actual
10 innocence.

11 (b) The report required under Subsection (a) must:

12 (1) identify each likely cause of a wrongful
13 conviction listed in the report; and

14 (2) recommend to the judiciary and the legislature
15 best practices, policies, and statutory changes to address or
16 mitigate those likely causes with respect to future criminal cases.

17 SECTION 2. Section 71.001, Government Code, is amended to
18 read as follows:

19 Sec. 71.001. DEFINITIONS. In this chapter:

20 (1) [~~"Assigned counsel program" means a system under~~
21 ~~which private attorneys, acting as independent contractors and~~
22 ~~compensated with public funds, are individually appointed to~~
23 ~~provide legal representation and services to a particular indigent~~
24 ~~defendant accused of a crime or juvenile offense.~~

25 [~~2~~] "Chair" means the chair of the council.

26 (2) [~~3~~] "Contract defender program" means a system
27 under which private attorneys, acting as independent contractors

1 ~~and compensated with public funds, are engaged to provide legal~~
2 ~~representation and services to a group of unspecified indigent~~
3 ~~defendants who appear before a particular court or group of courts.~~

4 ~~[(4)] "Council" means the Texas Judicial Council.~~

5 ~~(3) [(5) "Crime" means:~~

6 ~~[(A) a misdemeanor punishable by confinement, or~~

7 ~~[(B) a felony.~~

8 ~~[(6)] "Defendant" means a person accused of a crime or~~
9 ~~[a] juvenile offense, as those terms are defined by Section 79.001.~~

10 ~~(4) [(7) "Indigent defense support services" means~~
11 ~~criminal defense services that:~~

12 ~~[(A) are provided by licensed investigators,~~
13 ~~experts, or other similar specialists, including forensic experts~~
14 ~~and mental health experts; and~~

15 ~~[(B) are reasonable and necessary for appointed~~
16 ~~counsel to provide adequate representation to indigent defendants.~~

17 ~~[(8) "Juvenile offense" means conduct committed by a~~
18 ~~person while younger than 17 years of age that constitutes:~~

19 ~~[(A) a misdemeanor punishable by confinement, or~~

20 ~~[(B) a felony.~~

21 ~~[(9)] "Public defender's office [~~defender~~]" has the~~
22 ~~meaning assigned by Article 26.044(a), Code of Criminal Procedure.~~

23 SECTION 3. Section 78.052(b), Government Code, is amended
24 to read as follows:

25 (b) The office shall receive funds for personnel costs and
26 expenses:

27 (1) as specified in the General Appropriations Act;

1 and

2 (2) from the fair defense account under Section 79.031
3 [~~71.058~~], in an amount sufficient to cover personnel costs and
4 expenses not covered by appropriations described by Subdivision
5 (1).

6 SECTION 4. Section 78.056(b), Government Code, is amended
7 to read as follows:

8 (b) The Office of Court Administration of the Texas Judicial
9 System and the Texas [~~Task Force on~~] Indigent Defense Commission
10 shall provide administrative support necessary under this section.

11 SECTION 5. Section 81.054(c), Government Code, is amended
12 to read as follows:

13 (c) Fees shall be paid to the clerk of the supreme court.
14 The clerk shall retain the fees, other than fees collected under
15 Subsection (j), until distributed to the state bar for expenditure
16 under the direction of the supreme court to administer this
17 chapter. The clerk shall retain the fees collected under
18 Subsection (j) until distribution is approved by an order of the
19 supreme court. In ordering that distribution, the supreme court
20 shall order that the fees collected under Subsection (j) be
21 remitted to the comptroller at least as frequently as quarterly.
22 The comptroller shall credit 50 percent of the remitted fees to the
23 credit of the judicial fund for programs approved by the supreme
24 court that provide basic civil legal services to the indigent and
25 shall credit the remaining 50 percent of the remitted fees to the
26 fair defense account in the general revenue fund which is
27 established under Section 79.031 [~~71.058~~], to be used, subject to

1 all requirements of Section 79.037 [~~71.062~~], for demonstration or
2 pilot projects that develop and promote best practices for the
3 efficient delivery of quality representation to indigent
4 defendants in criminal cases at trial, on appeal, and in
5 postconviction proceedings.

6 SECTION 6. Section 402.035(c), Government Code, is amended
7 to read as follows:

8 (c) The task force is composed of the following:

9 (1) the governor or the governor's designee;

10 (2) the attorney general or the attorney general's
11 designee;

12 (3) the executive commissioner of the Health and Human
13 Services Commission or the executive commissioner's designee;

14 (4) the commissioner of the Department of Family and
15 Protective Services or the commissioner's designee;

16 (5) the public safety director of the Department of
17 Public Safety or the director's designee;

18 (6) one representative from each of the following
19 state agencies, appointed by the chief administrative officer of
20 the respective agency:

21 (A) the Texas Workforce Commission;

22 (B) the Texas Department of Criminal Justice;

23 (C) the Texas Youth Commission;

24 (D) the Texas Juvenile Probation Commission; and

25 (E) the Texas Alcoholic Beverage Commission; and

26 (7) as appointed by the attorney general:

27 (A) a chief public defender employed by a public

1 defender's office, as defined by Article 26.044(a) [~~26.044~~], Code
2 of Criminal Procedure, or an attorney designated by the chief
3 public defender;

4 (B) an attorney representing the state;

5 (C) a representative of:

6 (i) a hotel and motel association;

7 (ii) a district and county attorneys
8 association; and

9 (iii) a state police association;

10 (D) representatives of sheriff's departments;

11 (E) representatives of local law enforcement
12 agencies affected by human trafficking; and

13 (F) representatives of nongovernmental entities
14 making comprehensive efforts to combat human trafficking by:

15 (i) identifying human trafficking victims;

16 (ii) providing legal or other services to
17 human trafficking victims;

18 (iii) participating in community outreach
19 or public awareness efforts regarding human trafficking;

20 (iv) providing or developing training
21 regarding the prevention of human trafficking; or

22 (v) engaging in other activities designed
23 to prevent human trafficking.

24 SECTION 7. Article 26.04, Code of Criminal Procedure, is
25 amended by amending Subsections (a), (d), and (f) and adding
26 Subsection (f-1) to read as follows:

27 (a) The judges of the county courts, statutory county

1 courts, and district courts trying criminal cases in each county,
2 by local rule, shall adopt and publish written countywide
3 procedures for timely and fairly appointing counsel for an indigent
4 defendant in the county arrested for or charged with a misdemeanor
5 punishable by confinement or a felony. The procedures must be
6 consistent with this article and Articles 1.051, 15.17, 26.05, and
7 26.052. A court shall appoint an attorney from a public appointment
8 list using a system of rotation, unless the court appoints an
9 attorney under Subsection (f), (f-1), (h), or (i). The court shall
10 appoint attorneys from among the next five names on the appointment
11 list in the order in which the attorneys' names appear on the list,
12 unless the court makes a finding of good cause on the record for
13 appointing an attorney out of order. An attorney who is not
14 appointed in the order in which the attorney's name appears on the
15 list shall remain next in order on the list.

16 (d) A public appointment list from which an attorney is
17 appointed as required by Subsection (a) shall contain the names of
18 qualified attorneys, each of whom:

- 19 (1) applies to be included on the list;
- 20 (2) meets the objective qualifications specified by
21 the judges under Subsection (e);
- 22 (3) meets any applicable qualifications specified by
23 the Texas [~~Task Force on~~] Indigent Defense Commission; and
- 24 (4) is approved by a majority of the judges who
25 established the appointment list under Subsection (e).

26 (f) In a county in which a public defender's office is
27 created or designated [~~defender is appointed~~] under Article 26.044,

1 the court or the courts' designee may appoint that office [~~the~~
2 ~~public defender~~] to represent the defendant in accordance with
3 guidelines established for the office [~~public defender~~].

4 (f-1) In a county in which a managed assigned counsel
5 program is operated in accordance with Article 26.047, the managed
6 assigned counsel program may appoint counsel to represent the
7 defendant in accordance with the guidelines established for the
8 program.

9 SECTION 8. The heading to Article 26.044, Code of Criminal
10 Procedure, is amended to read as follows:

11 Art. 26.044. PUBLIC DEFENDER'S OFFICE [~~DEFENDER~~].

12 SECTION 9. Article 26.044, Code of Criminal Procedure, is
13 amended by amending Subsections (a), (b), (c), (d), (e), (f), (g),
14 (h), (i), (j), (k), (l), and (m) and adding Subsections (b-1) and
15 (c-1) to read as follows:

16 (a) In this chapter:

17 (1) "Governmental entity" includes a county, a group
18 of counties, a department [~~branch or agency~~] of a county, an
19 administrative judicial region created by Section 74.042,
20 Government Code, and any entity created under the Interlocal
21 Cooperation Act as permitted by Chapter 791, Government Code.

22 (2) "Office of capital writs" means the office of
23 capital writs established under Subchapter B, Chapter 78,
24 Government Code.

25 (3) "Oversight board" means an oversight board
26 established in accordance with Article 26.045.

27 (4) "Public defender's office [~~defender~~]" means an

1 entity that:

2 (A) is either:

3 (i) a governmental entity; or

4 (ii) a nonprofit corporation[+]

5 ~~[(A)]~~ operating under a written agreement with a
6 governmental entity, other than an individual judge or court; and

7 (B) uses [using] public funds to provide[+] ~~and~~

8 ~~[(C) providing]~~ legal representation and

9 services to indigent defendants accused of a crime or juvenile
10 offense, as those terms are defined by Section 79.001 ~~[71.001]~~,

11 Government Code.

12 ~~[(3) "Office of capital writs" means the office of~~
13 ~~capital writs established under Subchapter B, Chapter 78,~~
14 ~~Government Code.]~~

15 (b) The commissioners court of any county, on written
16 approval of a judge of a county court, statutory county court, or

17 district court trying criminal cases or cases under Title 3, Family
18 Code, in the county, may create a department of the county or by

19 contract may designate a [appoint a governmental entity or]
20 nonprofit corporation to serve as a public defender's office

21 ~~[defender]~~. The commissioners courts of two or more counties may
22 enter into a written agreement to jointly create or designate

23 ~~[appoint]~~ and jointly fund a regional public defender's office

24 ~~[defender]~~. In creating or designating [appointing] a public
25 defender's office ~~[defender]~~ under this subsection, the

26 commissioners court shall specify or the commissioners courts shall
27 jointly specify, if creating or designating [appointing] a regional

1 public defender's office [~~defender~~]:

2 (1) the duties of the public defender's office
3 [~~defender~~];

4 (2) the types of cases to which the public defender's
5 office [~~defender~~] may be appointed under Article 26.04(f) and the
6 courts in which an attorney employed by the public defender's
7 office [~~defender~~] may be required to appear;

8 (3) if the public defender's office is a nonprofit
9 corporation, the term during which the contract designating the
10 public defender's office is effective and how that contract may be
11 renewed on expiration of the term [~~whether the public defender is~~
12 ~~appointed to serve a term or serve at the pleasure of the~~
13 ~~commissioners court or the commissioners courts~~]; and

14 (4) if an oversight board is established under Article
15 26.045 for the public defender's office, the powers and duties that
16 have been delegated to the oversight board [~~the public defender is~~
17 ~~appointed to serve a term, the term of appointment and the~~
18 ~~procedures for removing the public defender~~].

19 (b-1) The applicable commissioners court or commissioners
20 courts shall require a written plan from a governmental entity
21 serving as a public defender's office.

22 (c) Before contracting with a nonprofit corporation to
23 serve as [~~appointing~~] a public defender's office [~~defender~~] under
24 Subsection (b), the commissioners court or commissioners courts
25 shall solicit proposals for the public defender's office
26 [~~defender~~].

27 (c-1) A written plan under Subsection (b-1) or a proposal

1 under Subsection (c) must include:

2 (1) a budget for the public defender's office
3 [~~defender~~], including salaries;

4 (2) a description of each personnel position,
5 including the chief public defender position;

6 (3) the maximum allowable caseloads for each attorney
7 employed by the public defender's office [~~proponent~~];

8 (4) provisions for personnel training;

9 (5) a description of anticipated overhead costs for
10 the public defender's office [~~defender~~]; [~~and~~]

11 (6) policies regarding the use of licensed
12 investigators and expert witnesses by the public defender's office;
13 and

14 (7) a policy to ensure that the chief public defender
15 and other attorneys employed by the public defender's office do not
16 provide representation to a defendant if doing so would create a
17 conflict of interest that has not been waived by the client
18 [~~proponent~~].

19 (d) After considering each proposal for the public
20 defender's office [~~defender~~] submitted by a [~~governmental entity~~
21 ~~or~~] nonprofit corporation under Subsection (c), the commissioners
22 court or commissioners courts shall select a proposal that
23 reasonably demonstrates that the public defender's office
24 [~~proponent~~] will provide adequate quality representation for
25 indigent defendants in the county or counties.

26 (e) The total cost of the proposal under Subsection (c) may
27 not be the sole consideration in selecting a proposal.

1 (f) A [~~To be eligible for appointment as a~~] public
2 defender's office [~~defender, the governmental entity or nonprofit~~
3 ~~corporation~~] must be directed by a chief public defender who:

- 4 (1) is a member of the State Bar of Texas;
5 (2) has practiced law for at least three years; and
6 (3) has substantial experience in the practice of
7 criminal law.

8 (g) A public defender's office [~~defender~~] is entitled to
9 receive funds for personnel costs and expenses incurred in
10 operating as a public defender's office [~~defender~~] in amounts fixed
11 by the commissioners court and paid out of the appropriate county
12 fund, or jointly fixed by the commissioners courts and
13 proportionately paid out of each appropriate county fund if the
14 public defender's office [~~defender~~] serves more than one county.

15 (h) A public defender's office [~~defender~~] may employ
16 attorneys, licensed investigators, and other personnel necessary
17 to perform the duties of the public defender's office [~~defender~~] as
18 specified by the commissioners court or commissioners courts under
19 Subsection (b)(1).

20 (i) Except as authorized by this article, the chief public
21 defender and other attorneys [~~or an attorney~~] employed by a public
22 defender's office [~~defender~~] may not:

- 23 (1) engage in the private practice of criminal law; or
24 (2) accept anything of value not authorized by this
25 article for services rendered under this article.

26 (j) A public defender's office [~~defender~~] may not accept
27 [~~refuse~~] an appointment under Article 26.04(f) if:

1 (1) a conflict of interest exists that has not been
2 waived by the client;

3 (2) the public defender's office [~~defender~~] has
4 insufficient resources to provide adequate representation for the
5 defendant;

6 (3) the public defender's office [~~defender~~] is
7 incapable of providing representation for the defendant in
8 accordance with the rules of professional conduct; or

9 (4) the public defender's office [~~defender~~] shows
10 other good cause for not accepting [~~refusing~~] the appointment.

11 (k) The judge may remove from a case a person [~~public~~
12 ~~defender~~] who violates a provision of Subsection (i).

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

20 (m) If it is necessary that an attorney who is not employed
21 by [~~other than~~] a public defender's office [~~defender~~] be appointed,
22 the attorney is entitled to the compensation provided by Article
23 26.05 of this code.

24 SECTION 10. Chapter 26, Code of Criminal Procedure, is
25 amended by adding Article 26.045 to read as follows:

26 Art. 26.045. PUBLIC DEFENDER OVERSIGHT BOARD. (a) The
27 commissioners court of a county or the commissioners courts of two

1 or more counties may establish an oversight board for a public
2 defender's office created or designated in accordance with this
3 chapter.

4 (b) The commissioners court or courts that establish an
5 oversight board under this article shall appoint members of the
6 board. Members may include one or more of the following:

7 (1) an attorney;

8 (2) the judge of a trial court in this state;

9 (3) a county commissioner;

10 (4) a county judge;

11 (5) a community representative; and

12 (6) a former client or a family member of a former
13 client of the public defender's office for which the oversight
14 board was established under this article.

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 office under Article 26.044, including:

18 (1) recommending selection and removal of a chief
19 public defender;

20 (2) setting policy for the office; and

21 (3) developing a budget proposal for the office.

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

24 SECTION 11. Chapter 26, Code of Criminal Procedure, is
25 amended by adding Article 26.047 to read as follows:

26 Art. 26.047. MANAGED ASSIGNED COUNSEL PROGRAM. (a) In this
27 article:

1 (1) "Governmental entity" has the meaning assigned by
2 Article 26.044.

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

5 (A) by a governmental entity, nonprofit
6 corporation, or bar association under a written agreement with a
7 governmental entity, other than an individual judge or court; and

8 (B) for the purpose of appointing counsel under
9 Article 26.04 of this code or Section 51.10, Family Code.

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

22 (1) the types of cases in which the program may appoint
23 counsel under Article 26.04 of this code or Section 51.10, Family
24 Code, and the courts in which the counsel appointed by the program
25 may be required to appear; and

26 (2) the term of any agreement establishing a program
27 and how the agreement may be terminated or renewed.

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

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

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

7 (3) the maximum allowable caseload for each attorney
8 appointed by the program;

9 (4) provisions for training personnel of the program
10 and attorneys appointed under the program;

11 (5) a description of anticipated overhead costs for
12 the program;

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

15 (7) a policy to ensure that appointments are
16 reasonably and impartially allocated among qualified attorneys;
17 and

18 (8) a policy to ensure that an attorney appointed
19 under the program does not accept appointment in a case that
20 involves a conflict of interest for the attorney that has not been
21 waived by all affected clients.

22 (d) A program under this article must have a director.
23 Unless the program uses a review committee appointed under
24 Subsection (e), a program under this article must be directed by a
25 person who:

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

27 (2) has practiced law for at least three years; and

1 (3) has substantial experience in the practice of
2 criminal law.

3 (e) The governmental entity, nonprofit corporation, or bar
4 association operating the program may appoint a review committee of
5 three or more individuals to approve attorneys for inclusion on the
6 program's public appointment list described by Subsection (f).
7 Each member of the committee:

8 (1) must meet the requirements described by Subsection
9 (d);

10 (2) may not be employed as a prosecutor; and

11 (3) may not be included on or apply for inclusion on
12 the public appointment list described by Subsection (f).

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

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

17 (2) meets any applicable requirements specified by the
18 procedure for appointing counsel adopted under Article 26.04(a) and
19 the Texas Indigent Defense Commission; and

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

22 (g) A court may replace an attorney appointed by the program
23 for the same reasons and in the same manner described by Article
24 26.04(k).

25 (h) A managed assigned counsel program is entitled to
26 receive funds for personnel costs and expenses incurred in amounts
27 fixed by the commissioners court and paid out of the appropriate

1 county fund, or jointly fixed by the commissioners courts and
2 proportionately paid out of each appropriate county fund if the
3 program serves more than one county.

4 (i) A managed assigned counsel program may employ personnel
5 and enter into contracts necessary to perform the program's duties
6 as specified by the commissioners court or commissioners courts
7 under this article.

8 SECTION 12. Articles 26.05(a), (c), and (d), Code of
9 Criminal Procedure, are amended to read as follows:

10 (a) A counsel, other than an attorney with a public
11 defender's office [~~defender~~] or an attorney employed by the office
12 of capital writs, appointed to represent a defendant in a criminal
13 proceeding, including a habeas corpus hearing, shall be paid a
14 reasonable attorney's fee for performing the following services,
15 based on the time and labor required, the complexity of the case,
16 and the experience and ability of the appointed counsel:

17 (1) time spent in court making an appearance on behalf
18 of the defendant as evidenced by a docket entry, time spent in
19 trial, and time spent in a proceeding in which sworn oral testimony
20 is elicited;

21 (2) reasonable and necessary time spent out of court
22 on the case, supported by any documentation that the court
23 requires;

24 (3) preparation of an appellate brief and preparation
25 and presentation of oral argument to a court of appeals or the Court
26 of Criminal Appeals; and

27 (4) preparation of a motion for rehearing.

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

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

3 (d) A counsel in a noncapital case, other than an attorney
4 with a public defender's office [~~defender~~], appointed to represent
5 a defendant under this code shall be reimbursed for reasonable and
6 necessary expenses, including expenses for investigation and for
7 mental health and other experts. Expenses incurred with prior
8 court approval shall be reimbursed in the same manner provided for
9 capital cases by Articles 26.052(f) and (g), and expenses incurred
10 without prior court approval shall be reimbursed in the manner
11 provided for capital cases by Article 26.052(h).

12 SECTION 13. Section 11(a), Article 42.12, Code of Criminal
13 Procedure, is amended to read as follows:

14 (a) The judge of the court having jurisdiction of the case
15 shall determine the conditions of community supervision and may, at
16 any time during the period of community supervision, alter or
17 modify the conditions. The judge may impose any reasonable
18 condition that is designed to protect or restore the community,
19 protect or restore the victim, or punish, rehabilitate, or reform
20 the defendant. Conditions of community supervision may include,
21 but shall not be limited to, the conditions that the defendant
22 shall:

23 (1) Commit no offense against the laws of this State or
24 of any other State or of the United States;

25 (2) Avoid injurious or vicious habits;

26 (3) Avoid persons or places of disreputable or harmful
27 character, including any person, other than a family member of the

1 defendant, who is an active member of a criminal street gang;

2 (4) Report to the supervision officer as directed by
3 the judge or supervision officer and obey all rules and regulations
4 of the community supervision and corrections department;

5 (5) Permit the supervision officer to visit the
6 defendant at the defendant's home or elsewhere;

7 (6) Work faithfully at suitable employment as far as
8 possible;

9 (7) Remain within a specified place;

10 (8) Pay the defendant's fine, if one is assessed, and
11 all court costs whether a fine is assessed or not, in one or several
12 sums;

13 (9) Support the defendant's dependents;

14 (10) Participate, for a time specified by the judge,
15 in any community-based program, including a community-service work
16 program under Section 16 of this article;

17 (11) Reimburse the county in which the prosecution was
18 instituted for compensation paid to appointed counsel for defending
19 the defendant in the case, if counsel was appointed, or if the
20 defendant was represented by a [~~county-paid~~] public defender's
21 office [~~defender~~], in an amount that would have been paid to an
22 appointed attorney had the county not had a public defender's
23 office [~~defender~~];

24 (12) Remain under custodial supervision in a community
25 corrections facility, obey all rules and regulations of the
26 facility, and pay a percentage of the defendant's income to the
27 facility for room and board;

1 (13) Pay a percentage of the defendant's income to the
2 defendant's dependents for their support while under custodial
3 supervision in a community corrections facility;

4 (14) Submit to testing for alcohol or controlled
5 substances;

6 (15) Attend counseling sessions for substance abusers
7 or participate in substance abuse treatment services in a program
8 or facility approved or licensed by the Department of State Health
9 Services [~~Texas Commission on Alcohol and Drug Abuse~~];

10 (16) With the consent of the victim of a misdemeanor
11 offense or of any offense under Title 7, Penal Code, participate in
12 victim-defendant mediation;

13 (17) Submit to electronic monitoring;

14 (18) Reimburse the compensation to victims of crime
15 fund for any amounts paid from that fund to or on behalf of a victim,
16 as defined by Article 56.32, of the defendant's offense or if no
17 reimbursement is required, make one payment to the compensation to
18 victims of crime fund in an amount not to exceed \$50 if the offense
19 is a misdemeanor or not to exceed \$100 if the offense is a felony;

20 (19) Reimburse a law enforcement agency for the
21 analysis, storage, or disposal of raw materials, controlled
22 substances, chemical precursors, drug paraphernalia, or other
23 materials seized in connection with the offense;

24 (20) Pay all or part of the reasonable and necessary
25 costs incurred by the victim for psychological counseling made
26 necessary by the offense or for counseling and education relating
27 to acquired immune deficiency syndrome or human immunodeficiency

1 virus made necessary by the offense;

2 (21) Make one payment in an amount not to exceed \$50 to
3 a crime stoppers organization as defined by Section 414.001,
4 Government Code, and as certified by the Texas Crime Stoppers
5 Council;

6 (22) Submit a DNA sample to the Department of Public
7 Safety under Subchapter G, Chapter 411, Government Code, for the
8 purpose of creating a DNA record of the defendant;

9 (23) In any manner required by the judge, provide
10 public notice of the offense for which the defendant was placed on
11 community supervision in the county in which the offense was
12 committed; and

13 (24) Reimburse the county in which the prosecution was
14 instituted for compensation paid to any interpreter in the case.

15 SECTION 14. Section 133.107, Local Government Code, is
16 amended to read as follows:

17 Sec. 133.107. FEE FOR SUPPORT OF INDIGENT DEFENSE
18 REPRESENTATION. (a) A person convicted of any offense, other than
19 an offense relating to a pedestrian or the parking of a motor
20 vehicle, shall pay as a court cost, in addition to other costs, a
21 fee of \$2 to be used to fund indigent defense representation through
22 the fair defense account established under Section 79.031 [~~71.058~~],
23 Government Code.

24 (b) The treasurer shall remit a fee collected under this
25 section to the comptroller in the manner provided by Subchapter B.
26 The comptroller shall credit the remitted fees to the credit of the
27 fair defense account established under Section 79.031 [~~71.058~~],

1 Government Code.

2 SECTION 15. The following are repealed:

- 3 (1) Article 26.05(i), Code of Criminal Procedure;
- 4 (2) Section 71.0351, Government Code; and
- 5 (3) Subchapter D, Chapter 71, Government Code.

6 SECTION 16. As soon as possible after the effective date of
7 this Act, the governor shall appoint the initial governing board of
8 the Texas Indigent Defense Commission in accordance with Subchapter
9 B, Chapter 79, Government Code, as added by this Act. To enable the
10 staggering of terms as required by Section 79.014(b) of that
11 subchapter, the governor shall appoint two members whose terms
12 expire on February 1 of the next odd-numbered year and three members
13 whose terms expire on February 1 of the next even-numbered year.

14 SECTION 17. (a) On the date the last appointee to the
15 initial governing board of the Texas Indigent Defense Commission
16 takes office, the Task Force on Indigent Defense established under
17 Subchapter D, Chapter 71, Government Code, is abolished. On that
18 date, the powers, duties, obligations, rights, contracts, records,
19 personnel, property, and unspent appropriations of the task force
20 are transferred to the commission.

21 (b) All rules of the Task Force on Indigent Defense are
22 continued in effect as rules of the Texas Indigent Defense
23 Commission until superseded by a rule of the commission.

24 (c) Notwithstanding the changes in law made by this Act,
25 until the date the Task Force on Indigent Defense is abolished as
26 provided by this section, the members and the director of the task
27 force on the effective date of this Act may continue in office and

1 exercise their powers and duties under the law that governed the
2 task force before the effective date of this Act, and the prior law
3 is continued in effect for that purpose.

4 SECTION 18. Not later than December 1, 2011, the Texas
5 Indigent Defense Commission and the Texas Judicial Council shall
6 adopt a memorandum of understanding to facilitate the timely
7 implementation of this Act.

8 SECTION 19. Not later than December 1, 2012, each legal
9 clinic or program in this state that is operated by a law school and
10 that receives financial support from the Texas Indigent Defense
11 Commission shall submit the initial report required by Section
12 79.039, Government Code, as added by this Act.

13 SECTION 20. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 1754 was passed by the House on April 21, 2011, by the following vote: Yeas 147, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1754 on May 26, 2011, by the following vote: Yeas 83, Nays 58, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1754 was passed by the Senate, with amendments, on May 24, 2011, by the following vote: Yeas 27, Nays 3.

Secretary of the Senate

APPROVED: _____

Date

Governor