

BILL ANALYSIS

Senate Research Center

S.B. 1322
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Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1322 is an omnibus bill to improve our state's indigent defense system. It consists of all ten proposals adopted by the governing board of the Texas Indigent Defense Commission (TIDC).

The proposals were initially developed and vetted by a diverse stakeholders workgroup. This bill only contains proposals adopted by TIDC's full governing board. These are all consensus recommendations.

As proposed, S.B. 1322 amends current law relating to indigent defense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

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 certain felony or misdemeanor cases in which an applicant seeks relief on a writ of habeas corpus from certain convictions), 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 certain purposes.

(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:

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

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

(3) 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

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

SECTION 2. Provides that the change in law made by this Act relating to the application of writ of habeas corpus 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 3. Amends Articles 15.17(a) and (f), Code of Criminal Procedure, as follows:

(a) (1) Creates this subdivision from existing text. Provides that, in each case enumerated in this code, the person making the arrest or the person having custody of the person arrested is required to without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have the person taken before some magistrate of the county where the person, rather than the accused, was arrested or, to provide more expeditiously to the person arrested the warnings described by Article 15.17 (Duties of Arresting Officer and Magistrate), before a magistrate in any other county of this state. Authorizes the arrested person to be taken before the magistrate in person or the image and sound of the arrested person, rather than the image of the arrested person, is authorized to be presented to the magistrate by means of a videoconference. Defines "videoconference." Makes a nonsubstantive change.

(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 certain information, including the person's right to remain silent and to not make a statement and the fact that any statement the person makes may be used against the person. Makes nonsubstantive changes.

(3) Creates this subdivision from existing text and makes no changes.

(4) 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.

(5) 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).

(6) 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.

(7) 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.

(8) Creates this subdivision from existing text. 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 conforming and nonsubstantive changes.

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

(10) Creates this subdivision from existing text. Deletes existing text requiring that the record of communication between the arrested person and the magistrate be preserved until the earlier of the following dates: the date on which the pretrial hearing ends; or the 91st day after the date on which the record is made if the person is charged with a misdemeanor or the 120th day after the date on which

the record is made if the person is charged with a felony. Deletes existing text defining "videoconference."

(f) Requires that a record under Subsection (a) or (e) (relating to certain required arraignment records) be retained for at least three years after final judgment is entered in the case or the proceedings are otherwise terminated.

SECTION 4. Makes application of this Act prospective in regards to arrest.

SECTION 5. Amends Article 26.05, Code of Criminal Procedure, by amending Subsection (d) and adding Subsection (d-1), as follows:

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

(1) and (2) Creates these subdivisions from existing text and makes nonsubstantive changes; and

(3) if the defendant is imprisoned 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 interview, or any costs associated with remotely conducting a confidential interview with the defendant.

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

SECTION 6. Makes application of this Act prospective in regards to expenses.

SECTION 7. Amends Article 26.047(a), Code of Criminal Procedure, by amending Subdivision (2) and adding Subdivision (3), to redefine "managed assigned counsel program" or "program" and to define "oversight board."

SECTION 8. Amends Articles 26.047(b) and (f), Code of Criminal Procedure, as follows:

(b) Requires the commissioners court or commissioners courts, in appointing an entity to operate a managed assigned counsel program under this subsection, to specify or jointly specify certain items, including if an oversight board is established under Article 26.048 for the managed assigned counsel program, the powers and duties that have been delegated to the oversight board.

(f) Requires that the managed assigned counsel program's public appointment list from which an attorney is appointed contain the names of qualified attorneys, each of whom meets any applicable requirements specified by the procedures for appointing counsel adopted under Article 26.04(a) (relating to requiring certain judges to adopt and publish written countywide procedures for appointing counsel for certain defendants) or provided under Article 26.052 (Appointment of Counsel in Death Penalty Case), rather than under Article 26.04(a) only, and any other requirements specified by the Texas Indigent Defense Commission (commission).

SECTION 9. Amends Chapter 26, Code of Criminal Procedure, by adding Article 26.048, as follows:

Art. 26.048. MANAGED ASSIGNED COUNSEL OVERSIGHT BOARD. (a) Authorizes the commissioners court of a county or the commissioners courts of two or more counties to establish an oversight board for a managed assigned counsel program established in accordance with Chapter 26 (Arraignment).

(b) Requires that the commissioners court or courts that establish an oversight board under this article appoint members of the board. Prohibits the following persons participating in the criminal justice system from serving on the board:

- (1) a criminal trial judge;
- (2) a prosecutor;
- (3) an attorney who receives appointments through the managed assigned counsel program; or
- (4) a peace officer.

(c) Authorizes the commissioners court or courts to delegate to the board any power or duty of the commissioners court to provide oversight of the program under Article 26.047 (Managed Assigned Counsel Program), including recommending selection and removal of a director; setting policy for the program; and developing a budget proposal for the program.

(d) Prohibits an oversight board established under this article from gaining access to privileged or confidential communication.

SECTION 10. Amends Article 26.052, Code of Criminal Procedure, by amending Subsections (b) and (e) and adding Subsections (b-1), (b-2), and (b-3), as follows:

(b) Deletes existing text requiring that counsel, in all other cases in which the death penalty is sought, be appointed as provided by this article.

(b-1) Authorizes trial counsel and counsel for direct appeal or to apply for a writ of certiorari, if a county is served by a managed assigned counsel program, to be appointed as provided by the written plan of operation for the managed assigned counsel program. Requires an attorney appointed by a managed assigned counsel program in a death penalty case to be on the list of attorneys qualified for appointment in death penalty cases in the administrative judicial region in which the managed assigned counsel program operates.

(b-2) Requires the presiding judge of the district court in which a capital felony is filed, if a county is served by a public defender's office and a managed assigned counsel program, subject to Articles 26.04(f)(1), (2), and (3) (relating to circumstances in which a county is not required to appoint the public defender's office) to give priority in appointing counsel from the public defender's office.

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

(e) Requires the presiding judge of the district court in which a capital felony case is filed or the managed assigned counsel program, if authorized by this article, to appoint two attorneys to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty. Requires at least one of the attorneys to be qualified under Chapter 26.

SECTION 11. Amends Sections 79.014(a) and (b), Government Code, as follows:

(a) Requires the governor to appoint with the advice and consent of the Texas Senate seven, rather than five, members of the governing board of the commission (board) as follows:

(1) - (3) makes no changes in these subdivisions;

(4) one member who is a chief public defender in this state, rather than one member who is a chief public defender in this state or the chief public defender's designee, who must be an attorney employed by the public defender's office;

(5) makes a nonsubstantive change in this subdivision;

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

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

(b) Provides that the board members serve staggered terms of two years, with three members', rather than two members', terms expiring February 1 of each odd-numbered year and four members', rather than three members', terms expiring February 1 of each even-numbered year.

SECTION 12. Amends Sections 79.016(a) and (c), Government Code, as follows:

(a) Provides that a board member who is a chief public defender or a director of a managed assigned counsel program for an entity, rather than a board member who is a chief public defender for or an attorney employed by an entity, that applies for funds under Section 79.037 (Technical Support; Grants) is required to disclose that fact before a vote by the board regarding an award of funds to that entity and is prohibited from participating in that vote.

(c) Makes a conforming change in this subsection.

SECTION 13. Amends Article 26.044(1), Code of Criminal Procedure, as follows:

(1) Deletes existing text requiring a public defender's office to report the results of the investigation to the appointing judge and text authorizing the judge to hold a hearing to determine if the person is indigent and entitled to representation under Article 26.044 (Public Defender's Office).

SECTION 15. 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 certain attorneys representing the defendant until certain requirements are met) or any other law, to be appointed under Article 26.04 (Procedures for Appointing Counsel) 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 Article 14.06(a), 15.17(a), or 15.18(a). Authorizes the attorney to represent the person in subsequent proceedings of that case, only if appointed for that purpose under the other provisions of this article.

SECTION 16. Amends Article 26.044, Code of Criminal Procedure, by adding Subsection (i-1), as follows:

(i-1) Authorizes an attorney engaged in the private practice of criminal law, notwithstanding Subsection (i)(1), 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 Article 14.06(a), 15.17(a), or 15.18(a).

SECTION 17. Makes application of Article 26.04(i-1), Code of Criminal Procedure, as added by this Act, prospective in regards to arrest.

SECTION 18. Amends Section 79.037(a), Government Code, as follows:

(a) Requires the commission to:

(1) provide technical support to achieve certain goals, including to assist counties in improving their systems for providing indigent defense services, including indigent defense support services, rather than indigent defense systems; and

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

(A) makes no changes in this paragraph;

(B) and (C) makes nonsubstantive changes in these paragraphs;

(D) an entity described by Section 791.013 (Contract Supervision and Administration) that provides to a county administrative services under an interlocal contract entered into for the purpose of providing or improving the provision of indigent defense services in the county; and

(E) a nonprofit corporation that provides indigent defense services or indigent defense support services in the county; and

(3) Makes no changes in this subdivision.

SECTION 19. Reenacts Section 79.037(b), Government Code, as amended by Chapters 56 (S.B. 1353) and 476 (S.B. 1057), Acts of the 84th Legislature, Regular Session, 2015, and amends it, as follows:

(b) Requires the commission to determine for each county the entity or entities, rather than entity or entities within the county, that are eligible to receive funds for the provision of or improvement in the provision of indigent defense services under Subsection (a)(2).

SECTION 20. Reenacts Section 79.037(c), Government Code, as amended by Chapters 56 (S.B. 1353) and 476 (S.B. 1057), Acts of the 84th Legislature, Regular Session, 2015.

SECTION 21. Repealer: Section 79.037(e) (relating to authorizing the commission to award a grant to certain entities for the purpose of providing or improving the provision of indigent defense services in the county), Government Code, as added by Chapter 56 (S.B. 1353), Acts of the 84th Legislature, Regular Session, 2015.

SECTION 22. Effective date: September 1, 2021.