



## Recommended Legislative Proposals 2026

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### Family Protection Representation Proposals

| Proposal # | Description                                                                                                                                                                                                                                                          |
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| 1          | Require Texas Counties to follow statutory fee schedule requirements for Family Protection Representation.                                                                                                                                                           |
| 2          | Require the Department of Family and Protective Services provide timely information regarding psychiatric hospitalizations of children in the foster care system to the Courts and legal counsel.                                                                    |
| 3          | Allow the Department of Family and Protective Services to have access to any acknowledgment or denial of paternity filed with the vital statistics unit.                                                                                                             |
| 4          | Require notice and hearing requirement when transferring venue under Texas Family Code § 262.203.                                                                                                                                                                    |
| 5          | Require the Court ask Attorney ad Litem for children if they have met their statutory duties pursuant to Texas Family Code § 107.004 (d)(1) and whether the attorney is substituting judgment for the child.                                                         |
| 6          | Require the appointment of an attorney ad litem and a guardian ad litem for a child while the child is in the managing conservatorship of DFPS.                                                                                                                      |
| 7          | Require an attorney ad litem for a child to meet with the child upon the initial prescription of a psychotropic medication, and review circumstances factored into the prescription including any non-pharmacological interventions that were provided to the child. |

|    | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| 1. | <p><b>Background and Purpose:</b> Require all Texas counties to follow statutory fee schedule requirements for court-appointed legal representation of children and indigent parents in cases filed by the Texas Department of Family and Protective Services (DFPS).</p> <p>Pursuant to Section 79.0365 of the Texas Government Code, all counties are required to biennially submit any fee schedule used for family protection services representation to the Texas Indigent Defense Commission. Family protection services is defined in Section 79.001(8-a) of the Texas Government Code as services by an attorney, attorney ad litem, licensed investigator, social worker, forensic expert, mental health expert or other similar expert or specialist to an indigent parent or child in a suit filed by the Texas Department of Family and Protective Services (DFPS) against a parent or a DFPS investigation against the parent. Section 107.015(c) of the Texas Family Code requires that an attorney appointed to represent a parent or child in a suit filed by DFPS shall be paid according to a fee schedule found in Chapter 51 of the Family Code, which in turn references Article 26.05 of the Texas Code of Criminal Procedure. Article 26.05 of the Code of Criminal Procedure discusses compensation for attorneys appointed as a defense counsel in criminal cases. There is no clear direction for fee schedules that describe payment for attorneys that are appointed to represent children and indigent parents in DFPS cases. Without statutory guidance, counties have broad differentiation in fee schedules including having no fee schedule at all. Providing statutory guidance is necessary to promote fairness in pay for all attorneys who accept court appointments in suits filed by DFPS.</p> <p><b>Proposal:</b> Amend Section 107.015 of the Texas Family Code to remove the reference to Title 3, Chapter 51, add a reference to a new section in Title 5, Chapter 107 that is tailored to court-appointed counsel in suits filed by DFPS, edit Chapter 107 to align with these changes, and create a new section in Title 5, Chapter 107 that describes requirements for fee schedules specifically related to payment for attorneys that are appointed to represent children and indigent parents in DFPS cases as follows:</p> <p>Sec. 107.013 MANDATORY APPOINTMENT OF ATTORNEY AD LITEM FOR PARENT</p> <p>(a) In a suit filed by a governmental entity <del>[under Subtitle E]</del> in which termination of the parent-child relationship or the appointment of a conservator for a child is requested, the court shall appoint an attorney ad litem to represent the interests of:</p> <ol style="list-style-type: none"> <li>(1) an indigent parent of the child who responds in opposition to the termination or appointment;</li> <li>(2) a parent served by citation by publication;</li> </ol> |

- (3) an alleged father who failed to register with the registry under Chapter 160 and whose identity or location is unknown; and
- (4) an alleged father who registered with the paternity registry under Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful.

Sec. 107.015. ATTORNEY FEES.

- (a) An attorney appointed under this chapter or Subtitle E to serve as an attorney ad litem for a child, an attorney in the dual role, or an attorney ad litem for a parent is entitled to reasonable fees and expenses in the amount set by the court to be paid by the parents of the child unless the parents are indigent.
- (b) If the court determines that one or more of the parties are able to defray the fees and expenses of an attorney ad litem or guardian ad litem for the child as determined by the reasonable and customary fees for similar services in the county of jurisdiction, the fees and expenses may be ordered paid by one or more of those parties, or the court may order one or more of those parties, prior to final hearing, to pay the sums into the registry of the court or into an account authorized by the court for the use and benefit of the payee on order of the court. The sums may be taxed as costs to be assessed against one or more of the parties.
- (c) If indigency of the parents is shown, an attorney ad litem appointed to represent a child or parent in a suit filed by a governmental entity who is not an employee of an office of child representation, office of parent representation, or other entity that uses public money to provide legal representation to children and parents in a suit filed by a governmental entity shall be paid from the general funds of the county according to the fee schedule adopted under Section 107.0155 ~~[that applies to an attorney appointed to represent a child in a suit under Title 3 as provided by Chapter 51]~~. The court may not award attorney ad litem fees under this chapter against the state, a state agency, or a political subdivision of the state except as provided by this subsection.
- (d) A person appointed as a guardian ad litem or attorney ad litem shall complete and submit to the court a voucher or claim for payment that lists the fees charged and hours worked by the guardian ad litem or attorney ad litem. Information submitted under this section is subject to disclosure under Chapter 552, Government Code.
- (e) A court may remove a person from the list maintained by the court of persons qualified for appointment as attorney or guardian ad litem if, after notice and a hearing, the court determines the person submitted a voucher or claim for payment under Subsection (d) for services the person did not perform.

(f) A person whose voucher or claim for payment under Subsection (d) was denied or modified by the court or has not been approved by the court by the 60th day after the date the voucher or claim for payment was submitted may file a petition addressed to the presiding judge of the administrative judicial region to compel payment or to appeal the denial or modification of the payment. The presiding judge of the administrative judicial region shall review the petition for payment filed under this section, determine the amount due to the petitioner, and order the commissioners court to pay that amount not later than the 45th day after the date a petition is filed under this subsection. The presiding judge of the administrative judicial region may hold a hearing in a proceeding described by this subsection.

New Family Code Sec. 107.0155. FEE SCHEDULE FOR CERTAIN ATTORNEYS AD LITEM.

(a) Each court in a county hearing suits filed by a governmental entity shall jointly develop, adopt, and submit to the commissioners court of the county a fee schedule for the compensation of an attorney ad litem described by Section 107.015(c) that includes:

(1) payments for:

(A) time spent in court making an appearance on behalf of the parent or child in the case, including in an appellate court; and

(B) reasonable and necessary time spent out of court on the case, including in preparation of an appeal; and

(2) reimbursement for reasonable and necessary expenses, including:

(A) mileage and other case-related travel expenses; and

(B) costs for expert witnesses.

(b) a fee schedule adopted under Subsection (a) must:

(1) describe with specificity services and expenses eligible for payment or reimbursement;

(2) include an hourly or fixed payment rate based on:

(A) reasonable and necessary time spent on a case;

(B) reasonable and necessary overhead costs associated with a case; and

(C) the availability of qualified attorneys willing to serve at the rate; and

(3) include a form for the itemization of services and expenses for a claim for payment under Section 107.015(d).

**Person Proposing/  
Other Parties:**  
TIDC Staff

**89<sup>th</sup> Bill/ Sponsor:**  
SB 1838 / Senator Zaffirini  
HB 5551 / Representative Moody

**Status:**  
SB 1838 – vetoed by Governor  
HB 5551 – placed on general state  
calendar

| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| 2. | <p><b>Background and Purpose:</b> Editing placement change to include discharge notices by a child's placement allows attorneys to timely and efficiently advocate for placements for children. Additionally, to allow parents and advocates for parents and children meaningful notification of a child's admission to an inpatient mental health facility, the Department of Family and Protective Services should provide timely notification of significant mental health events.</p> <p><i>Texas Health and Safety Code</i> § 572.001 (c-3) defines a child's admission to an inpatient facility as a significant event and requires the Department of Family and Protective Services to notify the Court and other individuals of the child's admission. However, the notification requirement for a significant event in <i>Texas Family Code</i> § 264.018 does not include admission to an inpatient mental health facility nor does it require notice to the Court. Additionally, a conflict exists between the notification timelines in the two statutes. The <i>Texas Family Code</i> should be amended to include a notice requirement similar to the <i>Texas Health and Safety Code</i> § 572.001(c-3) for admission in an inpatient mental health facility of a child in the conservatorship of the Department. The <i>Texas Health and Safety Code</i> notice requirement on admissions should also be amended to harmonize with the <i>Texas Family Code</i>. This notification requirement allows for attorney's appointed to represent such a child to have a meaningful opportunity to advise and advocate for their client.</p> <p><b>Proposal:</b> Edit placement change to include discharge notices by a child's placement and incorporate the notice requirements for children admitted to an inpatient mental health facility under Texas Health and Safety Code § 572.001 into Texas Family Code § 264.018 as follows:</p> <p>Sec. 264.018 REQUIRED NOTIFICATIONS</p> <p>(a) In this section:</p> <p>...</p> <p>(5) "Significant event" means:</p> <p>(A) a placement change, including <u>a discharge notice given to the department or a single source continuum contractor by a subject child's current placement or a failure</u> by the department to locate an appropriate placement for at least one night;</p> <p>...</p> <p>(F) <u>Admission to an inpatient mental health facility as defined by Texas Health and Safe Code § 571.003(9); or</u><br/> <del>—(F)(G)</del> any event determined to be significant under department rule.</p> <p>....</p> |

(d) Not later than 24 hours after an event described by this subsection, the department shall ~~make a reasonable effort to notify~~ an attorney ad litem appointed for a child under Chapter 107, a guardian ad litem appointed for a child under Chapter 107, a volunteer advocate appointed for a child under Chapter 107, and a parent of a child in the managing conservatorship of the department and the parent's attorney, if represented by an attorney, unless an exception applies in subsection (h), of:

- (1) a significant change in medical condition of the child;
- (2) the enrollment or participation of the child in a drug research program under Section 266.0041;
- (3) an initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication; ~~and~~
- (4) a change in the child's placement; and
- (5) admission in an inpatient mental health facility.

(f) Except as provided by Subsections (d) and (d-1), as soon as possible but not later than 48 hours after the department becomes aware of a significant event affecting a child in the conservatorship of the department, the department shall provide notice of the significant event to:

....

(7) the court with jurisdiction to conduct reviews of the child's placement, education, and medical care under Chapters 263 and 266 of the Texas Family Code, or

~~(7)~~(8) any other person determined by a court to have an interest in the child's welfare.

**Amend the notice requirements for children admitted to an inpatient mental health facility under *Texas Health and Safety Code* § 572.001 to harmonize with Texas Family Code § 264.018 as follows:**

Sec. 572.001 Request for Admission

...

(c-3) The admission to an inpatient mental health facility under Subsection (c-2) of a minor in the managing conservatorship of the Department of Family and Protective Services is a significant event for purposes of Section 264.018, Family Code, and the Department of Family and Protective Services shall provide notice of the significant event:

- ~~(1) — in accordance with that section to all parties entitled to notice under that section; and~~
- ~~(2) — to the court with continuing jurisdiction before the expiration of three business days after the minor's admission.~~

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|  | <b>Person Proposing/<br/>Other Parties:</b><br>Former Judge April Propst | <b>88<sup>th</sup> Bill/ Sponsor:</b><br>n/a | <b>Status:</b> |
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| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| 3. | <p><b>Background and Purpose: Modernize access to acknowledgments and denials of paternity requested by the Department of Family and Protective Services to ensure that legally presumed fathers with a right to court-appointed legal representation are afforded access to counsel without delay.</b></p> <p>In the 89th Legislative Session, HB 4795 was enacted to provide electronic access by the Department of Family and Protective Services to electronically request and receive a certificate of continuing jurisdiction (See Texas Family Code Section 160.422). The changes by HB 4795 have been successful in reducing the time to resolve due process issues in cases. The proposal below seeks to use the same successful process to give DFPS quick and efficient access to any acknowledgment of paternity or denial of paternity maintained by the Vital Statistics Unit.</p> <p>Many suits affecting the parent-child relationship brought by DFPS involve fathers without a known presumption of paternity. Although the alleged father may have signed an acknowledgement of paternity, very few maintain a copy of that form to present when seeking standing as a parent to exercise his constitutional parental rights. Currently, the Vital Statistics Unit provides access to the Office of the Attorney General through TexSaver (See Texas Family Code Sections 160.313-315); however, the Department of Family and Protective Services is not granted the same access to this same modernized, electronic format. Providing the Department of Family and Protective Services this type of access will accelerate the Department's ability to identify legally presumed fathers. Without immediate access to this data, presumed Fathers are often unable to prove they are entitled to statutorily require counsel until months into a case.</p> <p><b>Proposal: Amend <i>Texas Family Code</i> Section 160.313 to provide access to any acknowledgment or denial of paternity to the Department of Family and Protective Services and to the Courts using existing resources (e.g. TexSaver) as follows:</b></p> <p>Sec. 160.313 RELEASE OF INFORMATION</p> <p><u>(a)</u> the vital statistics unit may release information relating to the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to the courts and the Title IV-E agency of this or another state.</p> <p><u>(b)</u> The vital statistics unit shall release to the Department of Family and Protective Services and, if applicable, its designated Single Source Continuum Contractor information relating to an acknowledgment of paternity or denial</p> |

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|  | <p><u>of paternity for any father, alleged father, or unknown father pled as a party in a suit filed by the Department of Family and Protective Services.</u></p> <p><u>(c)Using existing resources, the vital statistics unit shall establish an electronic process through which the Department of Family and Protective Services and, if applicable, its designated Single Source Continuum Contractor may request and receive a copy of any acknowledgment of paternity or denial of paternity for a father, alleged or unknown father pled as a party in a suit filed by the Department of Family and Protective Services.</u></p> |                                                      |                       |
|  | <p><b>Person Proposing/<br/>Other Parties:</b><br/>Former Judge April Propst</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p><b>88<sup>th</sup> Bill/ Sponsor:</b><br/>n/a</p> | <p><b>Status:</b></p> |

| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| 4. | <p><b>Background and Purpose: Require a hearing and notification between courts when transferring venue under Texas Family Code § 262.203.</b></p> <p>When a conservatorship case brought by the Department of Family and Protective Services under Chapter 262 of the <i>Texas Family Code</i> is transferred from one county to another county, communication between the Courts should occur to ensure that no statutorily required hearing, trial, dismissal or other deadline is missed. Further, parents and children are statutorily entitled to legal representation, but current law can, and has, created a gap in that representation during a transfer. With the emergence of and continued roll-out of Single Source Continuum Contractors, greater communication before and during a transfer is essential to ensure that vulnerable families are not left without required legal representation and that courts can comply with statutory deadlines.</p> <p><b>Proposal: Amend Texas Family Code Section 262.203 to require a court that renders an order transferring a suit to notify the local administrative judge and any child protection court judge assigned to that county of the receiving county that the case is being transferred as follows:</b></p> <p>Sec. 262.203 TRANSFER OF SUIT</p> <p>(a) On the motion of a party or the court's own motion, if application, the court that rendered the temporary order shall in accordance with the procedures provided by Chapter 155:</p> <p>(1) transfer the suit to the court of continuing, exclusive jurisdiction, if any, within the time required by Section 155.207(a), if the court finds that that the transfer is:</p> <p>(A) necessary for the convenience of the parties; and</p> <p>(B) in the best interest of the child;</p> <p>(2) order transfer of the suit from the court of continuing, exclusive jurisdiction; or</p> <p>(3) if grounds exist for transfer based on improper venue, order transfer of the suit to the court having venue of the suit under Chapter 103.</p> <p>(b) Notwithstanding Section 155.204, a motion to transfer relating to a suit filed under this chapter may be filed separately from the petition and is timely if filed while the case is pending.</p> <p>(c) Notwithstanding Section 6.407 and 103.002, a court exercising jurisdiction under this chapter is not required to transfer the suit to a court in which a parent has filed a suit for dissolution of marriage before a final order for the protection of the child has been rendered under Subchapter E, Chapter 263.</p> |

(d) If a court determines a transfer should be ordered under this section, the transferring court shall schedule and conduct a virtual or telephonic hearing with the receiving court within five business days. The transferring court shall send notice of the hearing to the following who shall appear at the hearing:

(1) The associate judge appointed under Subchapter C of Chapter 201 to the child protection court in the receiving county;

(2) If the receiving county does not have an associate judge appointed under Subchapter C of Chapter 201, the presiding judge of the receiving district court or county court at law;

(3) All parties or their attorneys in the transferring court's case;

(4) Attorney ad litem, in the transferring court's case; and

(5) Guardian ad litem, if any, in the transferring court's case.

(e) During a hearing described in subsection (d), the courts and participants shall discuss the current scheduling deadlines in the case, and the receiving court shall determine whether to continue any attorney ad litem or guardian ad litem appointments for the parents and child. If the receiving court does not retain an attorney ad litem or guardian ad litem, the receiving court shall provide to the transferring court the name, email, and phone number of each attorney ad litem and guardian ad litem being substituted.

~~(d)~~(f) An order of transfer must include:

(1) the date of any future hearings in the case that have been scheduled by the transferring court;

(2) any date scheduled by the transferring court for the dismissal of the suit under Section 263.401; and

(3) the name and contact information of each attorney ad litem and/or guardian ad litem appointed, retained, or substituted in the suit.

~~(e)~~(g) The court to which a suit is transferred may retain an attorney ad litem or guardian ad litem appointed by the transferring court. If the court finds that the appointment of a new attorney ad litem or guardian ad litem is appropriate, the court shall appoint that attorney ad litem or guardian ad litem before the earlier of:

(1) the 10th day after the date of receiving the order of transfer; or

(2) the date of the first scheduled hearing after the transfer.

(h) The Court that renders an order transferring a suit under these provisions shall email a signed copy of the order transferring the case to the local administrative judge and any associate judge appointed under Subchapter C of Chapter 201 for a child protection court in the receiving county and any counsel of record appointed, retained or substituted any Guardian Ad Litem appointed or substituted within 10 days after entry of the transfer order.

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|  | <b>Person Proposing/<br/>Other Parties:</b><br>Former Judge April Propst | <b>88<sup>th</sup> Bill/ Sponsor:</b><br>n/a | <b>Status:</b> |
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| 5. | <p><b>Background and Purpose:</b> Although attorneys are required to meet with child clients, attorneys still do not do this regularly before each statutory hearing. Many children go significant periods of time without statutorily required contact with their attorney. Additionally, attorneys often substitute judgment for their child client without informing the court or the other parties that this is occurring. Serious decisions are made by the court and often factor in advocacy by the child's attorney. A court and the other parties in the case should be made aware when an attorney for a child is substituting judgment for their client.</p> <p><b>Proposal:</b> At each statutory hearing, require the court ask the attorney ad litem for the child whether the attorney has complied with the meeting requirements found in Texas Family Code § 107.004(d)(1). Additionally, beginning at the initial permanency hearing, require the court ask the attorney ad litem for the child whether the attorney is substituting judgment for the child. Requiring the court solicit these two pieces of information from the attorney ad litem for the child will assist in ensuring that statutorily required contact with the child is occurring and the child has access to counsel, and that an attorney must disclose whether they are substituting judgment for a child enhancing due process for the child and all parties in the case.</p> <p>Sec. 262.201 FULL ADVERSARY HEARING; FINDINGS OF THE COURT</p> <p>...</p> <p><u>(g) if an attorney ad litem has been appointed for the child, the court shall ask the attorney ad litem for the child whether the attorney ad litem met with the child as required by Section 107.004(d)(1).</u></p> <p><del>(g)(h)</del> In a suit filed under Section 262.101 or 262.105, at the conclusion of the full adversary hearing...</p> <p>Sec. 263.202 STATUS HEARING; FINDINGS</p> <p>...</p> <p><u>(h) if an attorney ad litem has been appointed for the child, the court shall ask the attorney ad litem for the child whether the attorney met with the child as required by Section 107.004(d)(1).</u></p> <p><del>(h)(i)</del> if a proposed child placement resources from as described by Section 261.307 has not been submitted, the court shall require each parent, alleged father, or other person to...</p> |

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|  | <p>Sec. 263.306 PERMANENCY HEARINGS BEFORE FINAL ORDER</p> <p>(a-1) At each permanency hearing before a final order is rendered, the court shall:</p> <p>...</p> <p><u>(9) ask the attorney ad litem for the child whether:</u></p> <p><u>(A) the attorney has met with the child as required by Section 107.004(d)(1); and</u></p> <p><u>(B) the attorney’s presentation of the child’s position at the hearing represents the child’s expressed objectives of representation or the substituted judgment of the attorney.</u></p> <p>...</p> <p>Sec. 263.5031 PERMANENCY HEARINGS FOLLOWING FINAL ORDER</p> <p>(a) At each permanency hearing after the court renders a final order, the court shall:</p> <p>...</p> <p><u>(5) ask the attorney ad litem for the child whether:</u></p> <p><u>(A) the attorney has met with the child as required by Section 107.004(d)(1); and</u></p> <p><u>(B) the attorney’s presentation of the child’s position at the hearing represents the child’s expressed objectives of representation or the substituted judgment of the attorney.</u></p> <p>...</p> |                                                      |                       |
|  | <p><b>Person Proposing/<br/>Other Parties:</b><br/>Barbara Elias-Perciful, Texas Lawyers<br/>for Children</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p><b>88<sup>th</sup> Bill/ Sponsor:</b><br/>n/a</p> | <p><b>Status:</b></p> |

| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                      |                       |
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| 6. | <p><b>Background and Purpose:</b> Require all Texas counties to continue appointed counsel for children throughout their Permanent Managing Conservatorship cases.</p> <p>Pursuant to Section 107.016(1)(B) of the Texas Family Code, continuing appointment of the attorney ad litem for the child is discretionary when a child is in the Permanent Managing Conservatorship of DFPS. This permits children in Permanent Managing Conservatorship of the Department to remain without legal counsel even while the case for which they were initially entitled to counsel is still pending via Permanent Managing Conservatorship. Left without a voice, these children are particularly vulnerable and unable to seek redress for violations of their rights while in Permanent Managing Conservatorship of the Department.</p> <p><b>Proposal:</b> Amend Section 107.016(1)(B) of the Texas Family Code to require continuing appointment of the attorney ad litem as long as the child remains in Permanent Managing Conservatorship of the Department. Include a Nelson Amendment with the bill indicating the passage of the bill is contingent upon state funding availability to support the cost of the representation.</p> <p>Sec. 107.016(1)(B) CONTINUED REPRESENTATION; DURATION OF APPOINTMENT<br/>In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of the entity as conservator of the child is requested:<br/>(1) an order appointing the Department of Family and Protective Services as the child's managing conservator: <del>(A)</del> shall provide for the continuation of the appointment of the guardian ad litem <del>or</del> <u>and</u> the attorney ad litem for the child, or an attorney appointed to serve in the dual role, as long as the child remains in the conservatorship of the department; and <del>(B) may provide for the continuation of the appointment of both the attorney ad litem and the guardian ad litem for the child if both have been appointed, as long as the child remains in the conservatorship of the department</del></p> |                                                      |                       |
|    | <p><b>Person Proposing/<br/>Other Parties:</b><br/>TIDC Staff &amp; Barbara Elias Perciful,<br/>Texas Lawyers for Children</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p><b>88<sup>th</sup> Bill/ Sponsor:</b><br/>n/a</p> | <p><b>Status:</b></p> |

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| 7. | <p><b>Background and Purpose:</b> Require an attorney ad litem for a child to meet with the child upon the initial prescription of a psychotropic medication, and review circumstances factored into the prescription including any non-pharmacological interventions that were provided to the child.</p> <p>Many children in the conservatorship of the Texas Department of Family and Protective Services are prescribed psychotropic medications even before the child has access to non-pharmacological interventions such as special education services, therapy or evidence-based mental health services. While Texas continues to make progress towards expanding non-pharmacological interventions for children in foster care, extra care should be taken by the child's attorney ad litem to determine how to advocate regarding an initial prescription for psychotropic medication. In the 88th Legislative Session, S.B. 1930 added requirements for an attorney ad litem under § 107.004 of the Texas Family Code when a child is being considered for placement in a residential treatment center. Using this framework, similar duties should be added for an attorney ad litem when a child is prescribed an initial psychotropic medication.</p> <p><b>Proposal:</b> Amend <i>Texas Family Code</i> § 107.004 to clarify the duties of an attorney ad litem for child when an initial prescription for psychotropic medication is made as follows:</p> <p>Sec. 107.004 Additional Duties of Attorney Ad Litem for Child</p> <p>.....</p> <p><u>(g) Upon receiving notice of an initial prescription for a psychotropic medication as defined by Section 266.001(7) for a child, the attorney ad litem shall:</u></p> <p><u>(1) review any available information related to the child's needs, including but not limited to the child and adolescent needs and strengths assessment ("C.A.N.S."), any psychological or psychiatric evaluation, discharge notices from current or past placements, recent incident reports, counseling notes, any admission, review and dismissal ("A.R.D.") documentation or individual education plan ("I.E.P.");</u></p> <p><u>(2) review whether the child's trauma was considered before the psychotropic medication was prescribed;</u></p> <p><u>(3) review whether consent was validly obtained under Section 266.0042;</u></p> <p><u>(4) meet with the child in a developmentally appropriate manner to</u></p> <p><u>i. elicit the child's expressed opinion and concerns regarding the prescribed psychotropic medication,</u></p> |

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|  | <p>ii. <u>review with the child whether any non-pharmacological interventions, psychosocial therapies, behavior strategies or other accepted alternatives were attempted before the psychotropic medication was prescribed, and</u></p> <p>iii. <u>for a child 16 years of age or older, advise the child of the child's right to request the court to authorize the child to consent to the child's own medical care under Section 266.010;</u></p> <p>(5) <u>advocate to the court for the child's specific desires regarding the prescribed psychotropic medication in accordance with Subsection (a)(2); and</u></p> <p>(6) <u>request a hearing, if warranted, including but not limited to a judicial medical review under Section 266.007 and 266.011.</u></p> |                                              |                |
|  | <b>Person Proposing/<br/>Other Parties:</b><br>Former Judge April Propst                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>88<sup>th</sup> Bill/ Sponsor:</b><br>n/a | <b>Status:</b> |

### **Family Protection/Criminal/Juvenile Combined Proposals**

| <b>Proposal #</b> | <b>Description</b>                                                                                   |
|-------------------|------------------------------------------------------------------------------------------------------|
| <b>1</b>          | Authorize TIDC to contract to provide indigent defense and family protection representation services |
| <b>2</b>          | Authorize TIDC to establish and operate managed assigned counsel programs                            |

| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| 1. | <p data-bbox="176 108 2003 186"><b>Background and Purpose: Authorize TIDC to contract to provide indigent defense and family protection representation services</b></p> <p data-bbox="176 232 2003 565">Under current law, indigent defense and family protection representation (FPR) services are provided at the local or regional level by a county or groups of counties. TIDC currently only has authority to provide grants to counties, law schools, or non-profit organizations to provide indigent defense or FPR services. This can take a long time for counties to plan, get approved by commissioners court(s), and set up. Some counties are ill-equipped to apply for and administer grants. Additionally, in some areas, the pool of qualified attorneys willing to apply for and be placed on local appointment lists is insufficient to meet caseload demand. Shortages may require quick action by TIDC to ensure the right to counsel is protected. Authorizing TIDC to directly contract for representation in criminal, juvenile, and FPR cases would give the state a new tool to address such shortages — enabling TIDC to recruit and deploy qualified attorneys into underserved regions more quickly, if needed.</p> <p data-bbox="176 610 2003 688">The proposed language below would authorize TIDC to contract with an attorney, law firm, nonprofit corporation, or other qualified entity to provide indigent defense and FPR services in one or more counties across the state.</p> <p data-bbox="176 734 2003 773"><b>Proposal:</b> Section 79.037(a), Government Code, is amended to read as follows:</p> <p data-bbox="176 818 2003 857">(a) The commission shall:</p> <ul style="list-style-type: none"> <li data-bbox="277 902 2003 941">(1) provide technical support to: <ul style="list-style-type: none"> <li data-bbox="373 987 2003 1104">(A) assist counties in improving their systems for providing indigent defense services, including indigent defense support services;</li> <li data-bbox="373 1149 2003 1188">(B) assist counties in improving their systems for providing family protection services; and</li> <li data-bbox="277 1234 2003 1351">(C) promote compliance by counties with the requirements of state law relating to indigent defense and family protection services;</li> </ul> </li> <li data-bbox="277 1396 2003 1435">(2) to assist a county in providing or improving the provision of indigent defense services and family protection services</li> </ul> |

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) the county;

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

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

(D) an entity described by Section 791.013 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 or family protection services in the county;

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

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

(2-a) to assist a county or counties in providing or improving the provision of indigent defense services and family protection services, contract with an attorney, law firm, nonprofit corporation, or other service provider to provide indigent

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|  | <u>defense or family protection representation services in a county or counties; and</u><br><br>(3) monitor each entity that receives a grant under Subdivision (2) and enforce compliance with the conditions of the grant, including enforcement by:<br><br>(A) withdrawing grant funds; or<br><br>(B) requiring reimbursement of grant funds by the entity. |                                              |                |
|  | <b>Person Proposing/<br/>Other Parties:</b><br>TIDC Staff                                                                                                                                                                                                                                                                                                      | <b>89<sup>th</sup> Bill/ Sponsor:</b><br>n/a | <b>Status:</b> |

| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| 2. | <p data-bbox="163 102 1995 139"><b>Background and Purpose: Authorize TIDC to establish and operate managed assigned counsel programs</b></p> <p data-bbox="163 183 1995 472">Under current law, a county or group of counties may, with the approval of at least one judge, establish a managed assigned counsel (MAC) program to administer the appointment of counsel for criminal, juvenile, and family protection representation (FPR) cases in the region. Authorizing TIDC to establish and operate one or more MAC programs directly would enable the state to provide appointment services in regions where local appointment lists lack sufficient attorneys to meet the volume of cases requiring appointed counsel. A TIDC-operated MAC could also be used to appoint counsel in subject matter areas that local systems struggle to staff adequately. One such area under consideration is a statewide MAC program to oversee the appointment of counsel in FPR appellate cases.</p> <p data-bbox="163 516 1995 678">The proposed language below would authorize TIDC to create MAC programs to serve a portion or all the state. TIDC could contract with a nonprofit corporation, governmental entity, or other qualified entity to operate a program or do so directly with its own staff. A court may request a MAC to appoint counsel under the terms of the program. The proposal would not limit the authority of a county to create or operate its own MAC program.</p> <p data-bbox="163 722 1995 808">TIDC is including a \$40.2 million Exceptional Item in its Legislative Appropriations Request to improve rural attorney availability and the quality of representation through a statewide MAC option.</p> <p data-bbox="163 852 310 889"><b>Proposal:</b></p> <p data-bbox="258 894 1942 932">SECTION 1. Subchapter B, Chapter 79, Government Code, is amended by adding Section 79.038 to read as follows:</p> <p data-bbox="258 976 1549 1013"><u>Sec. 79.038. STATE-OPERATED MANAGED ASSIGNED COUNSEL PROGRAMS.</u></p> <p data-bbox="258 1057 1486 1094"><u>(a) In this section, "managed assigned counsel program" has the meaning assigned by:</u></p> <p data-bbox="352 1138 1096 1175"><u>(1) Article 26.047, Code of Criminal Procedure; and</u></p> <p data-bbox="352 1219 1003 1256"><u>(2) Subchapter H, Chapter 107, Family Code.</u></p> <p data-bbox="258 1300 1984 1433"><u>(b) The commission may establish, operate, and administer one or more managed assigned counsel programs to provide representation for individuals in:</u></p> |

(1) criminal cases;

(2) juvenile proceedings under Title 3, Family Code; and

(3) proceedings with the department under Title 5, Family Code.

(c) A program established under this section may serve one or more counties.

(d) In operating a program under this section, the commission:

(1) shall adopt policies for:

(A) attorney qualification and selection;

(B) appointment procedures;

(C) attorney caseload management;

(D) compensation; and

(E) attorney performance monitoring and removal;

(2) may contract with a nonprofit corporation, governmental entity, or other qualified entity to administer all or part of a program; and

(3) may employ staff necessary to operate the program.

(e) A court may request appointment of counsel through a program established under this section in accordance with

procedures adopted by the commission. If appointment of counsel through the program requires the commitment of county funds, the commissioners court must provide written approval to participate in the managed assigned counsel program.

(f) A program established under this section does not limit or preempt a county's authority to establish or operate a managed assigned counsel program under other law.

(h) The commission shall adopt rules as necessary to implement this section.

SECTION 2. Article 26.047, Code of Criminal Procedure, is amended by adding Subsection (l) to read as follows:

(l) A managed assigned counsel program operated by the Texas Indigent Defense Commission under Section 79.038, Government Code, may be used to provide representation in cases described by this article.

SECTION 3. Subchapter H, Chapter 107, Family Code, is amended by adding Section 107.3015 to read as follows:

Sec. 107.3015. STATE-OPERATED MANAGED ASSIGNED COUNSEL PROGRAM.

(a) A managed assigned counsel program operated by the Texas Indigent Defense Commission under Section 79.038, Government Code, may be used to provide representation in cases described by this subchapter.

(b) A program described by this section is considered a program established under this subchapter for purposes of this code.

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| <b>Person Proposing/<br/>Other Parties:</b><br>TIDC Staff | <b>89<sup>th</sup> Bill/ Sponsor:</b><br>n/a | <b>Status:</b> |
|-----------------------------------------------------------|----------------------------------------------|----------------|

## **Criminal and Juvenile Legislative Proposals**

| <b>Proposal #</b> | <b>Description</b>                                                                                                                                                                               |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1</b>          | Provide indigent defendants access to counsel for limited-scope representation for 15.17 hearing                                                                                                 |
| <b>2</b>          | Definition Managed Assigned Counsel Program; Areas of MAC appointments; Confidentiality Client Information                                                                                       |
| <b>3</b>          | Make managed assigned counsel programs staff home-address information confidential in tax-appraisal records                                                                                      |
| <b>4</b>          | Authorize public defender office investigators to access driver's license photos in the DPS database                                                                                             |
| <b>5</b>          | Ensure payment of expenses for attorneys to meet with defendants held in out-of-county jails                                                                                                     |
| <b>6</b>          | Provide Managed Assigned Counsel Programs with Access to DPS' Criminal History Information                                                                                                       |
| <b>7</b>          | Allow counties to be reimbursed for representation provided by a public defender's office when it is appointed to represent an indigent inmate when the State Counsel for Offenders cannot do so |
| <b>8</b>          | Repeal the requirement that public defender attorneys must inform the appointing judge of the results of any investigation into a defendant's financial circumstances                            |

| Proposal # | Description                                                                                                                                                                                                                          |
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| 9          | Allow attorneys with a private criminal defense practice to work part-time for public defender offices to represent an arrestee at the Article 15.17, Code of Criminal Procedure, hearing (“magistration”)                           |
| 10         | Enumerate and clarify the duties of magistrates at 15.17 hearings; ensure that magistration records are properly preserved.                                                                                                          |
| 11         | Allocation of alcohol tax revenue to the Fair Defense Account                                                                                                                                                                        |
| 12         | Create and fund an internship and fellowship program at TIDC as part of a pipeline program to support law students and attorneys work on appointed criminal, juvenile delinquency, and family protection cases in underserved areas. |
| 13         | Create and fund a student loan repayment program for attorneys working in appointed criminal, juvenile delinquency, and family protection cases in underserved areas as part of a pipeline program.                                  |
| 14         | Expand the pool of attorneys qualified to represent indigent defendants in death penalty cases                                                                                                                                       |
| 15         | Managed Assigned Counsel Program Access to Juvenile Records                                                                                                                                                                          |

| #                                                               | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                 |                          |
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| 1.                                                              | <p><b>Background and Purpose: Specifically provide for a limited scope attorney appointment to represent an arrestee at the Article 15.17, Code of Criminal Procedure, hearing if the commissioners court approves funding for such representation</b></p> <p>Several Texas counties are now providing representation to arrestees at the Art. 15.17 or magistration hearing where a person is warned of their rights, bail is set, and they are provided their first opportunity to request the appointment of counsel. Under current law, Art. 26.04(j)(2) provides that once an attorney is appointed on a case, the attorney must stay on the case until its conclusion unless the judge makes a good cause finding on the record. That provision was in the original SB 7 in 2001 when there was no provision nor consideration of providing counsel at this early stage of the proceedings. The provision has raised concerns about limited scope appointments, although many jurisdictions have nonetheless implemented representation at Art. 15.17 hearings under court issued standing orders that defined them as limited in scope to these hearings only. This proposal would provide clear authority in statute for appointments in Art. 15.17 hearings.</p> <p>During the last legislative session, some counties raised concerns that the proposed language would allow judges to begin appointing attorneys to represent arrestees at magistration hearings without any input or approval by a commissioners court, while obligating a county to additional spending. The proposal below is revised to add a clause requiring the commissioner court to approve funding for such representation.</p> <p><b>Proposal:</b> Amend Article 26.04 by adding subsection (i-1) to read as follows:</p> <p><u>(i-1) Notwithstanding Subsection (j)(2) or any other law, and if funds are appropriated by a county for this purpose, an attorney may 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 Article 14.06(a), 15.17(a), or 15.18(a). The attorney may represent the person in subsequent proceedings of that case, only if appointed for that purpose under the other provisions of this article.</u></p> |                                                                 |                          |
| <b>Person Proposing/ Other Parties:</b><br>TIDC Staff           | <table border="1"> <tr> <td data-bbox="512 1305 1757 1474"> <b>89<sup>th</sup> Bill/ Sponsor:</b><br/>SB 2111 §3 / Zaffirini </td><td data-bbox="1757 1305 2003 1474"> <b>Status:</b><br/>Vetoed </td></tr> </table>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>89<sup>th</sup> Bill/ Sponsor:</b><br>SB 2111 §3 / Zaffirini | <b>Status:</b><br>Vetoed |
| <b>89<sup>th</sup> Bill/ Sponsor:</b><br>SB 2111 §3 / Zaffirini | <b>Status:</b><br>Vetoed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                 |                          |

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| 2. | <p data-bbox="201 142 1953 264"><b>Background and Purpose: Clarify the definition of Managed Assigned Counsel Programs and areas in which MAC programs may appoint counsel, authority of MAC programs to remove counsel from appointed cases, and address confidentiality of client case information received by a MAC program.</b></p> <p data-bbox="201 310 1953 557">Managed Assigned Counsel programs (MACs) were added to the Code of Criminal Procedure to codify an alternative method for appointing counsel which may be adopted by the judges hearing criminal and/or juvenile cases in a County or Judicial District. The current definition does not specify that MACs authority is a delegation of judicial authority and does not fully reflect the areas in which a MAC program may be authorized to appoint counsel, or the circumstances in which a MAC may not only remote an attorney from consideration for future appointments, but also when removal from appointed cases may be necessary. The proposed language addresses these issues.</p> <p data-bbox="201 602 1953 760">Currently Article 26.05(c), Code of Criminal Procedure, refers to the MAC director approving voucher payments but does not refer to a designee being able to approve payments. Many MACs now operating have too many cases for a single person to be able to approve all vouchers and so an amendment authorizing MAC director designees to approve vouchers is also added.</p> <p data-bbox="201 805 1953 930">The proposed language also recognizes that in performing the oversight and support of appointed counsel roles, MACs may be privy to attorney-client matters, or other information which is confidential by law. The proposal requires MACs, MAC staff, and agents to keep such information confidential and not subject to public disclosure.</p> <p data-bbox="317 976 464 1016"><b>Proposal:</b></p> <p data-bbox="317 1040 1682 1081">SECTION 1. Article 26.047(a)(2), Code of Criminal Procedure, is amended to read as follows:</p> <p data-bbox="201 1105 1953 1182">(2) "Managed assigned counsel program" or "program" means a program <u>to perform delegated judicial functions using public funds that is</u> operated <del>[with public funds]</del>:</p> <p data-bbox="201 1206 1829 1287">(A) by a governmental entity, nonprofit corporation, or bar association under a written agreement with a governmental entity, other than an individual judge or court; [and]</p> <p data-bbox="317 1312 1843 1352">(B) for the purpose of appointing counsel under Article 26.04 of this code or Section 51.10, Family Code;</p> <p data-bbox="201 1377 1913 1453">(C) <u>for the purpose of appointing or providing an investigator, expert, or other support services for appointed counsel and their clients;</u></p> |

(D) for the purpose of approving a payment to an attorney, investigator, or expert, and for other reasonable and necessary expenses under Article 26.05 or 26.052, including a payment for legal representation in a related matter for the purpose of ensuring the right to counsel in the primary matter; and

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

SECTION 2. Article 26.047, Code of Criminal Procedure, is amended by amending Subsections (c), (f), and (g) and adding Subsection (j) to read as follows:

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

- (1) a budget for the program, including salaries;
- (2) a description of each personnel position, including the program's director;
- (3) the maximum allowable caseload for each attorney appointed by the program;
- (4) provisions for training personnel of the program and attorneys appointed under the program;
- (5) a description of anticipated overhead costs for the program;
- (6) a policy regarding licensed investigators and expert witnesses used by attorneys appointed under the program;
- (7) a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys; [and]
- (8) a policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for the attorney that has not been waived by all affected clients;

(9) a policy describing the circumstances under which the program may allow appointed counsel to provide representation in a related matter for the purpose of ensuring the right to counsel in the primary matter;

(10) a policy describing the circumstances under which:

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

(B) good cause is established to remove an attorney from a case; and

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                         |                          |
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|  | <p><u>(11) 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 may access that data.</u></p> <p>(f) The program's public appointment list from which an attorney is appointed must contain the names of qualified attorneys, each of whom:</p> <ul style="list-style-type: none"> <li>(1) applies to be included on the list;</li> <li>(2) meets any applicable requirements specified by the procedure for appointing counsel adopted under Article 26.04(a) and <u>any other requirements specified by the Texas Indigent Defense Commission</u>; and</li> <li>(3) is approved by the program director or review committee, as applicable.</li> </ul> <p>(g) A court may replace an attorney appointed by the program for the same reasons and in the same manner described by Article 26.04(k). <u>The notice and reason for the replacement of counsel must be documented in the same manner as the original appointment.</u></p> <p><u>(j) A program may 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. 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, shall maintain the confidentiality of any information or materials described by this subsection.</u></p> |                                                                         |                          |
|  | <b>Person Proposing/<br/>Other Parties:</b><br>TIDC MAC<br>Legislative<br>Workgroup                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>89<sup>th</sup> Bill/ Sponsor:</b><br>SB 2111 §§5-6 / Sen. Zaffirini | <b>Status:</b><br>Vetoed |

| #  | Description staff                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| 3. | <p data-bbox="205 212 1822 289"><b>Background and Purpose: Make managed assigned counsel programs staff home-address information confidential in tax-appraisal records.</b></p> <p data-bbox="205 337 1982 467">Appraisal districts hold information concerning real property. This information includes the address of real property within the district and the name of the owner of that property. Generally, this information is available to the public. Thus, a person is generally able to search for a property owner by name and determine that property-owner's home address.</p> <p data-bbox="205 492 1982 760">Defense attorneys often feel threatened when handling cases involving a measure of publicity. In one case, a defender received threatening letters and social media communications from strangers due to her perception that defending the accused person was a terrible thing. In another case, the defender was approached in person by a man who knew about the defender's involvement in a case. The person said he knew where the defender lived, and he knew she had three young daughters. Many of these somewhat frightening scenarios could be avoided if the public did not have access to the home addresses of public defenders.</p> <p data-bbox="205 784 1965 1076">The Texas Legislature has recognized that certain classes of persons have legitimate privacy concerns that are negatively affected by public access to appraisal-district information. Accordingly, the Legislature has enacted Section 25.025 of the Texas Tax Code. This statute allows certain persons to keep their information confidential insofar as appraisal-district records are concerned. These classes of persons include many individuals involved in the justice system such as judges, peace officers, sexual assault victims, and juvenile-probation officers. Current and former employees of a district attorney or county attorney are also on the list, as are federal public defenders. This proposal would add managed assigned counsel program staff to the list. Staff in a public defender's office was added to this list by the 89th Texas Legislature.</p> <p data-bbox="205 1117 1503 1157"><b>Proposal:</b> Section 25.025(a), Tax Code, is amended by adding subsection (38) as follows:</p> <p data-bbox="205 1214 653 1255">(a) This section applies only to:</p> <p data-bbox="205 1287 239 1312">...</p> <p data-bbox="205 1336 1913 1377"><u>(38) an employee of a managed assigned counsel program as defined by Article 27.047(a), Code of Criminal Procedure.</u></p> |

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|  | <b>Person Proposing/<br/>Other Parties:</b><br>Ted Wood, Harris County<br>Public Defender's Office | <b>89th Bill/ Sponsor:</b><br>SB 2111 §15 / Sen. Zaffirini<br><br>SB 491 / Sen. Miles<br>HB 1798 / Rep. Harless | <b>Status:</b><br>Vetoed<br><br>Both bills were referred to committee in first<br>chamber |
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| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| 4. | <p data-bbox="205 199 1990 272"><b>Background and Purpose: Authorize criminal defense lawyers and their investigators to access driver’s license photos in the DPS database.</b></p> <p data-bbox="205 321 1990 451">The definition of a “motor vehicle record” includes records that pertain to driver’s licenses.<sup>1</sup> As a general rule, the information contained in motor vehicle records is not open to the public.<sup>2</sup> However, there is a long list of exceptions to this general rule. These exceptions are listed in Sections 730.005, 730.006, and 730.007 of the Texas Transportation Code.</p> <p data-bbox="205 483 1990 654">Investigators for the Harris County Public Defender’s Office (PDO) would like to be able to obtain driver’s license photographs of persons they are investigating. With a person’s photograph in hand, the investigators are better able to locate that person. Often, investigators in search of a specific person may encounter that person and not even know it. If the investigators had a photograph of the person, they would better know when they encounter that person.<sup>3</sup></p> <p data-bbox="205 686 1990 808">The Department of Public Safety (DPS) will not provide the PDO with driver’s-license photos. The DPS believes there is no exception to the general rule making driver’s-license information private that would allow PDO investigators to obtain these photos. This belief appears to be correct.</p> <p data-bbox="205 841 1990 963">Section 730.007(a)(2)(A) permits the DPS to release “personal information” to “a government agency” if the information will be strictly limited to use by the agency. The PDO would seem to be a government agency and thus the release of personal information to PDO investigators appears to be statutorily authorized.<sup>4</sup></p> <p data-bbox="205 995 1696 1036">However, the release of “personal information” is limited by Section 730.007(b) which reads as follows:</p> <div data-bbox="300 1060 1896 1141" style="padding-left: 40px;"> <p>The only personal information an agency may release under this section is the individual’s: (1) name and address; (2) date of birth; and (3) driver’s license number.</p> </div> <p data-bbox="205 1174 1864 1214">But there is an exception to the foregoing limitation. The exception is codified as Section 730.007(c)(1) which says:</p> <div data-bbox="300 1239 1896 1360" style="padding-left: 40px;"> <p>This section does not: (1) prohibit the disclosure of a person’s photographic image to: (A) a law enforcement agency, the Texas Department of Motor Vehicles, a county tax assessor-collector, or a criminal justice agency for an official purpose;</p> </div> |

So, the upshot of the foregoing statutes is that PDO investigators cannot obtain driver's license photos. This is because the PDO is not a law-enforcement agency. Nor is the PDO clearly a criminal-justice agency.<sup>5</sup>

**Proposal:**

Section 730.007(c), Transportation Code, is amended to read as follows:

(c) This section does not:

(1) prohibit the disclosure of a person's photographic image to:

(A) a law enforcement agency, the Texas Department of Motor Vehicles, a county tax assessor-collector, or a criminal justice agency for an official purpose;

(B) an agency of this state investigating an alleged violation of a state or federal law relating to the obtaining, selling, or purchasing of a benefit authorized by Chapter 31 or 33, Human Resources Code; ~~or~~

(C) an agency of this state investigating an alleged violation of a state or federal law under authority provided by Title 4, Labor Code; or

(D) a private investigator licensed under Chapter 1702, Occupations Code, who is employed by a public

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<sup>1</sup> Tex. Transp. Code § 730.003(4).

<sup>2</sup> Tex. Transp. Code § 730.004.

<sup>3</sup> Access to photographs of potential witnesses would enhance investigator safety. By knowing what potential witnesses look like, investigators would be less likely to be "set up." Additionally, access to photographs would significantly decrease the time necessary in the investigation process.

<sup>4</sup> Additionally, Section 730.007(a)(2)(D) possibly authorizes DPS to release personal information to PDO investigators. The statute permits the information to be used in conjunction with a criminal proceeding.

<sup>5</sup> This is not to say the PDO is definitely not a criminal-justice agency. This is a debatable legal point.

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|  | <u>defender's office for an official purpose; or</u><br><br>(2) prevent a court from compelling by subpoena the production of a person's photographic image. |                                                                                      |                                                                           |
|  | <b>Person Proposing/<br/>Other Parties:</b><br>Ted Wood, Harris County Public<br>Defender's Office                                                           | <b>89<sup>th</sup> Bill/ Sponsor:</b><br>SB 2111 §17 / Sen. Zaffirini<br><br>HB 1421 | <b>Status:</b><br>Vetoed<br><br>Referred to committee in first<br>chamber |

| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| 5. | <p data-bbox="212 86 1793 164"><b>Background and Purpose: Ensure payment of expenses and attorney time for attorneys to meet with defendants held in out-of-county jails</b></p> <p data-bbox="212 212 1953 375">Counties throughout Texas house pretrial detainees in jails out-of-county, especially counties whose detained population exceeds their local jail capacity. As of July 1, 2026, the Texas Commission on Jail Standards reported 2,180 inmates being housed out-of-county and an additional 1,151 being housed out of state. Often these defendants are pretrial detainees, who are sometimes held over 100 miles away from the courthouse where their case will be tried.</p> <p data-bbox="212 423 1913 667">Court-appointed attorneys assigned to represent defendants who are housed an hour or more away from their normal place of business experience significant hardship in visiting their clients in jail. A number of these court-appointed attorneys are paid a flat-fee to represent the defendant, making it an extreme financial burden to devote the significant time and expense required to perform a jail visit for these clients. As a result, defendants housed far away in out-of-county jails report that they do not receive any attorney visits in jail, despite having an attorney assigned to represent them.</p> <p data-bbox="212 716 1944 837">This bill would require any county housing pretrial defendants in another county to amend their Indigent Defense Plan to provide compensation for reasonable and necessary expenses incurred in having confidential communications with their clients who are held in an out-of-county facility more than 50 miles away from the court in which they will be tried.</p> <p data-bbox="212 886 1887 959">The proposal also provides for the payment of attorneys for the time they are traveling outside the county where the case is pending to perform work on appointed cases.</p> <p data-bbox="212 1008 1953 1130"><b>Proposal:</b> Article 26.05, Code of Criminal Procedure, is amended by amending Subsections (a), (c), and (d) and adding Subsection (d-1) to read as follows:</p> <p data-bbox="212 1179 1953 1292">(a) 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, shall</p> |

be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

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

(2) 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;

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

(4) preparation of a motion for rehearing.

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article 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. If the judge or the director or director's designee disapproves the requested amount of payment, the judge or the director or director's designee shall make written findings stating the amount of payment that the judge or the director or director's designee approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

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

(1) investigation;

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

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| <p><u>(3) 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:</u></p> <p><u>(A) travel to the defendant's location for a confidential communication and food and lodging related to that travel; and</u></p> <p><u>(B) any costs associated with remotely entering into a confidential communication with the defendant.</u></p> <p><u>(d-1) Expenses under Subsection (d) incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses under Subsection (d) incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).</u></p> <p>SECTION 2. Article 26.05, Code of Criminal Procedure, as amended by this Act, applies only to expenses incurred on or after the effective date of this Act.</p> |                                                                                                                                             |                                                                                                     |
| <p><b>Person Proposing/Other Parties:</b><br/>Nate Fennell, Texas Fair Defense Project</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p><b>89<sup>th</sup> Bill/ Sponsor:</b><br/>SB 2111 §7 &amp; 17 / Sen. Zaffirini</p> <p>SB 297 / Sen. Perry<br/>HB 3449 / Rep. Canales</p> | <p><b>Status:</b><br/>Vetoed</p> <p>Referred to committee in first chamber<br/>Passed the house</p> |

| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| 6. | <p data-bbox="195 219 1990 292"><b>Background and Purpose: Provide Managed Assigned Counsel Programs with Access to DPS' Criminal History Information</b></p> <p data-bbox="195 341 1990 462">In 2013, the Texas Legislature enacted, and Gov. Perry signed, S.B. 1044, which gave public defender offices and the Office of Capital and Forensic Writs free access to DPS's criminal history data. It did not give private assigned counsel or managed assigned counsel programs (MACs) access to the data.</p> <p data-bbox="195 511 1990 584">This proposal would give MACs access to this data to ensure that private assigned counsel working under a MAC has equal access to this critically important information about their clients and witnesses.</p> <p data-bbox="195 633 346 673"><b>Proposal:</b></p> <p data-bbox="289 673 1879 714">SECTION 1. Section 411.082, Government Code, is amended by adding Subdivision (4-a) to read as follows:</p> <p data-bbox="388 755 1995 795">(4-a) <u>"Managed assigned counsel program" has the meaning assigned by Article 26.047, Code of Criminal</u></p> <p data-bbox="195 836 357 876"><u>Procedure.</u></p> <p data-bbox="289 917 1543 958">SECTION 2. Section 411.088(a-1), Government Code, is amended to read as follows:</p> <p data-bbox="289 1006 1990 1047">(a-1) The department may not charge a fee under Subsection (a) for providing criminal history record information to:</p> <ul style="list-style-type: none"> <li data-bbox="388 1088 808 1128">(1) a criminal justice agency;</li> <li data-bbox="388 1169 1060 1209">(2) the office of capital and forensic writs; <del>or</del></li> <li data-bbox="388 1250 861 1291">(3) a public defender's office; <u>or</u></li> <li data-bbox="388 1331 987 1372">(4) <u>a managed assigned counsel program.</u></li> </ul> |

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|  | <p>SECTION 3. Section 411.1272, Government Code, is amended to read as follows:</p> <p>Sec. 411.1272. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF CAPITAL AND FORENSIC WRITS, <del>[AND]</del> PUBLIC DEFENDER'S OFFICES, <u>AND MANAGED ASSIGNED COUNSEL PROGRAMS</u>. The office of capital and forensic writs, <del>[and]</del> a public defender's office, <u>and a managed assigned counsel program</u> are entitled to obtain from the department criminal history record information maintained by the department 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 <u>has been appointed by the court or in which an attorney has been appointed by the managed assigned counsel program, as applicable</u> <del>[has been appointed]</del>.</p> |                                                                                        |                                  |
|  | <p><b>Person Proposing/Other Parties:</b><br/>Jim Bethke, Bexar County Managed Assigned Counsel Program</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p><b>89<sup>th</sup> Bill/ Sponsor:</b><br/>SB 2111 §§12, 13, 14 / Sen. Zaffirini</p> | <p><b>Status:</b><br/>Vetoed</p> |

| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| 7. | <p data-bbox="203 115 1984 188"><b>Background and Purpose: Allow counties to be reimbursed for representation provided by a public defender's office when it is appointed to represent an indigent inmate when the Office of Inmate Counsel cannot do so.</b></p> <p data-bbox="203 245 1984 756">Currently Article 26.051 of the Texas Code of Criminal Procedure allows for private bar attorneys to be appointed to indigent prison inmates in instances where attorneys at the Office of Inmate Counsel (formerly the State Counsel for Offenders) may have a conflict. The statute further provides that the State must reimburse the county for the appointment of these conflict attorneys, however the statute does not allow for the reimbursement of costs and fees when a court chooses to appoint the local Public Defenders Office in the representation of these indigent inmates who are conflicted out with the attorneys provided by the board. As a result, the local county public defender office in Bee County, run by Texas RioGrande Public Defender, provides representation for approximately 30-40 indigent prison inmates per year. Additionally, many of these clients, as of late have been exhibiting symptoms of incompetency, and therefore there are additional costs being incurred to evaluate these clients for competency. The proposal would allow a public defender's office to certify to the court the amount of expenses incurred. The court would then submit this to the comptroller for reimbursement to the county.</p> <p data-bbox="203 813 1984 927"><b>Proposal:</b> Article 26.051, Code of Criminal Procedure, is amended by amending Subsections (g), (h), and (i) and adding Subsection (h-1) to read as follows:</p> <p data-bbox="203 976 1984 1179">(g) The court shall appoint <u>the public defender's office or</u> an attorney other than an attorney provided by the board if the court determines for any of the following reasons that a conflict of interest could arise from the use of an attorney provided by the board under Subsection (e) <del>[of this article]</del>:</p> <p data-bbox="203 1227 1984 1349">(1) the case involves more than one inmate and the representation of more than one inmate could impair the attorney's effectiveness;</p> |

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

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

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

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

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

(h-1) If the court appoints a public defender's office under Subsection (g), the public defender's office shall certify to the court the amount of expenses incurred in the representation. The court shall submit the certified amount to the comptroller for reimbursement of the county by the state as described by Subsection (i).

(i) The state shall 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). A court seeking reimbursement for a

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|  | county shall certify to the comptroller of public accounts the amount of compensation and expenses for which the county is entitled to be reimbursed under this article. Not later than the 60th day after the date the comptroller receives from the court the request for reimbursement, the comptroller shall issue a warrant to the county in the <u>certified</u> amount [ <del>certified by the court</del> ]. |                                                                      |                          |
|  | <b>Person Proposing/Other Parties:</b><br>Texas RioGrande Public Defender (Bee County)                                                                                                                                                                                                                                                                                                                               | <b>89<sup>th</sup> Bill/ Sponsor:</b><br>SB 2111 §8 / Sen. Zaffirini | <b>Status:</b><br>Vetoed |

| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| 8. | <p><b>Background and Purpose: Repeal the requirement that public defender attorneys must inform the court of the results of any investigation into a defendant's financial circumstances.</b></p> <p>Article 26.044(l), Code of Criminal Procedure, authorizes a public defender's office to investigate the financial condition of a defendant the office is appointed to represent and requires the office to report the results of any investigation to the presiding judge in a case. This requirement appears to violate the attorney-client privilege, particularly since Texas has a stronger version of the privilege than most states. That privilege is found in Texas Rule of Evidence 503(b)(2) which provides:</p> <p><i>Special Rule in a Criminal Case:</i> In a criminal case, a client has a privilege to prevent a lawyer or lawyer's representative from disclosing any other fact that came to the knowledge of the lawyer or the lawyer's representative by reason of the attorney-client relationship.</p> <p>Significantly, there is no similar reporting obligation under Article 26.04 for private assigned counsel. Nor is there any comparable reporting requirement for managed assigned counsel under Article 26.047.</p> <p><b>Proposal:</b> Amend Article 26.044(l), Code of Criminal Procedure, as follows:</p> |

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|  | (l) A public defender's office may investigate the financial condition of any person the public defender's office is appointed to represent. <del>The public defender's office shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this article.</del> |                                                                      |                          |
|  | <b>Person Proposing/Other Parties:</b><br>Ted Wood, Harris County Public Defender's Office                                                                                                                                                                                                                                                                                         | <b>89<sup>th</sup> Bill/ Sponsor:</b><br>SB 2111 §4 / Sen. Zaffirini | <b>Status:</b><br>Vetoed |

| #  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                              |                                  |
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| 9. | <p><b>Background and Purpose: Allow attorneys with a private criminal practice to work part-time for public defender offices to represent an arrestee at the Article 15.17, Code of Criminal Procedure, hearing (“magistration”)</b></p> <p>Public defender offices in several counties have criminal defense attorneys representing defendants at hearings held under Article 15.17, Code of Criminal Procedure (commonly referred to as “magistration”). The public defender offices in Bexar and Ft. Bend County would like to use part-time public defenders for representation at these hearings. Despite their desire to use part-time staff, Art. 26.044(i), Code of Criminal Procedure, prohibits the use of part-time public defenders who engage in the private practice of criminal law. Due to this statutory prohibition, Ft. Bend has hired part-time public defenders who have a <i>civil</i> practice on the side. These attorneys have to learn basic criminal law in order to provide magistration representation. Bexar County continues to struggle with how best to hire attorneys to provide representation at magistration hearings.</p> <p>The bill would allow public defender offices to hire criminal defense attorneys on a part-time basis for the sole purpose of representing indigent persons in their appearance before a magistrate at hearings held under Article 14.06, 15.17, or 15.18. This will remove a potential barrier to providing such representation and encourage more jurisdictions to do so in a cost-effective manner.</p> <p><b>Proposal:</b></p> <p>Article 26.044, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:</p> <p><u>(i-1) Notwithstanding Subsection (i)(1), an attorney engaged in the private practice of criminal law may 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).</u></p> |                                                                              |                                  |
|    | <p><b>Person Proposing/<br/>Other Parties:</b> Roderick “Rocky” Glass, Fort Bend County Public Defender Office</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p><b>89<sup>th</sup> Bill/ Sponsor:</b><br/>SB 2111 §4 / Sen. Zaffirini</p> | <p><b>Status:</b><br/>Vetoed</p> |

| #   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| 10. | <p data-bbox="222 228 1860 310"><b>Background and Purpose: Enumerate and clarify the duties of magistrates at 15.17 hearings; ensure that magistration records are properly preserved</b></p> <p data-bbox="222 354 1995 475">Article 15.17(a) currently lists the duties of magistrates in one undivided subsection of over 500 words. In that block of text are six distinct rights of criminal defendants and detailed procedures for advising defendants of the right to counsel and processing requests for counsel. Breaking out and numbering the duties would improve the legibility of these requirements.</p> <p data-bbox="222 516 1995 678">TIDC and its Legislative Workgroup members have observed that defendants may not understand 15.17 proceedings, and are therefore unable to request counsel, because of barriers including language comprehension, faulty technology, and mental illness and intellectual disabilities. This proposal would require magistrates to remove these barriers or have counsel appointed for people unable to request counsel.</p> <p data-bbox="222 719 1995 881">TIDC also regularly observes that requests for counsel at magistration are not transferred to the appointing authority or are transferred and never ruled on due to incomplete financial forms. This proposal would clarify that magistrates must ensure that defendants are provided reasonable assistance with completing forms at the same time as magistration, and that those forms are transferred within 24 hours. These requirements are currently implied by 15.17(a) but not explicitly stated.</p> <p data-bbox="222 922 1995 1044">The proposal also amends art. 15.17(a) by removing inadequate records retention time periods and adds art. 15.17(f), Code of Criminal Procedure, to require records related to magistration and requests for counsel be retained for “at least 2 years after final judgment is entered in the case or the proceedings are otherwise terminated.”</p> <p data-bbox="222 1084 1995 1247">The 86<sup>th</sup> Legislature (2019) passed SB 815 to improve retention of these records but was vetoed by Gov. Abbott because the bill “delegated to an agency [Texas State Library and Archives Commission] the discretion to set—and change—the retention periods. Administrative flexibility is not a virtue in this instance. The Legislature should be the one to provide clear direction on this issue.”</p> <p data-bbox="222 1287 1995 1369">To address the Governor’s veto of SB 815, this new proposal would set a specific record retention period of two years after judgment or termination of the case proceedings.</p> |

**Proposal:**

Articles 15.17(a) and (f), Code of Criminal Procedure, are amended to read as follows:

(a) (1) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have the person ~~[him]~~ taken before some magistrate of the county where the person ~~[accused]~~ was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state. The arrested person may be taken before the magistrate in person or the image and sound of the arrested person may be presented to the magistrate by means of a videoconference. For purposes of this subsection, "videoconference" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.

(2) The magistrate shall inform in clear language the person arrested, either in person or through a videoconference, of:

(A) the accusation against the person ~~[him]~~ and of any affidavit filed with the accusation;

(B) the person's ~~[therewith, of his]~~ right to retain counsel;

(C) the person's ~~[, of his]~~ 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;

~~(E) the person's[, of his]~~ right to have an attorney present during any interview with peace officers or attorneys representing the state;

~~(F) the person's[, of his]~~ right to terminate the interview at any time;

~~(G) the person's[, and of his]~~ right to have an examining trial;

~~(H) [The magistrate shall also inform the person arrested of]~~ the person's right to request the appointment of counsel if the person cannot afford counsel; and

~~(I) [The magistrate shall inform the person arrested of]~~ the procedures for requesting appointment of counsel.

~~(3)~~ If applicable, the magistrate shall inform the person that the person may file the affidavit described by Article 17.028(f).

~~(4)~~ If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate.

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

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

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

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

(B) 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) The magistrate shall 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) If the ~~[person]~~ arrested person is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the ~~[person]~~ arrested person requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the

county, the necessary forms for requesting and ruling on the appointment of counsel. ~~[The magistrate shall 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.]~~

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

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

~~[(1) the date on which the pretrial hearing ends; or~~

~~[(2) 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. For purposes of this subsection, "videoconference" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.]~~

(f) A record required under Subsection (a) or (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a). The record must be retained for at least two years after final judgment is entered in the case or the proceedings are otherwise terminated. The counsel for

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| the defendant may obtain a copy of the record on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy. |                                                                      |                          |
| <b>Person Proposing/Other Parties:</b><br>TIDC Staff                                                                                                                                                                                       | <b>89<sup>th</sup> Bill/ Sponsor:</b><br>SB 2111 §2 / Sen. Zaffirini | <b>Status:</b><br>Vetoed |

| #   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| 11. | <p><b>Background and Purpose: Allocate of alcohol tax revenue to the Fair Defense Account</b></p> <p>The Fair Defense Account (FDA) is the primary source of funding for TIDC. Indigent defense services continue to be underfunded. It would be helpful to have additional dedicated sources of revenue to support the provision of services across the state.</p> <p><b>Proposal:</b> The proposal would allocate one percent of the mixed beverage gross receipts tax and mixed beverage sales tax to the Fair Defense Account, which by statute may only be used to fund TIDC.</p> <p>SECTION 1. Subchapter C, Chapter 183, Tax Code, is amended by adding Section 183.055 to read as follows:</p> <p><u>Sec. 183.055. ALLOCATION OF CERTAIN REVENUE TO FAIR DEFENSE FUND. The comptroller shall deposit one percent of the taxes received under Subchapters B and B-1 to the credit of the fair defense account established under Section 79.031, Government Code. Money deposited to the account under this section may be used only for the purposes described by Section 79.031, Government Code.</u></p> |

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|  | <b>Person Proposing/Other Parties:</b><br>TIDC Staff | <b>89<sup>th</sup> Bill/ Sponsor:</b><br>SB 2111 §16 / Sen. Zaffirini | <b>Status:</b><br>Removed from bill in Senate committee |
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| #   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| 12. | <p><b>Background and Purpose: Create and fund an internship and fellowship program at TIDC for law students and new attorneys working in appointed criminal, juvenile delinquency, and family protection cases in underserved areas.</b></p> <p>The percent of indigent cases is rising and there are fewer attorneys to take them. As the demand for attorney grows, the number of attorneys taking indigent cases is decreasing. Rural communities are hit particularly hard. 27% fewer attorneys took at least 1 indigent criminal case in rural counties over the past 8 years. And attorneys taking indigent cases are overburdened. One in four rural attorneys taking indigent criminal cases is overburdened.</p> <p>Studies show that having a professional experience in a rural community during or just after graduating from school can encourage longer term commitment to work in the area. Texas has several programs that offer incentives to students and professionals working in underserved areas, including the Physician Education Loan Repayment Program, Mental Health Professionals Loan Repayment Program, etc.</p> <p>TIDC is including \$8.85 million in its FY28/29 Legislative Appropriation Request to create and fund a "pipeline" to increase the number of indigent defense lawyers in rural and underserved areas, including in family protection representation; \$4.94 million of that is for an internship and fellowship program.</p> <p><b>Proposal:</b></p> <p>SECTION 1. Section 79.037(a), Government Code, is amended to read as follows:</p> <p style="padding-left: 40px;">(a) The commission shall:</p> <p style="padding-left: 80px;">(1) provide technical support to:</p> |

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|  | <p>(A) assist counties in improving their systems for providing indigent defense services, including indigent defense support services;</p> <p>(B) assist counties in improving their systems for providing family protection services; and</p> <p>(C) promote compliance by counties with the requirements of state law relating to indigent defense and family protection services;</p> <p>(2) to assist a county in providing or improving the provision of indigent defense services and family protection 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:</p> <p>(A) the county;</p> <p>(B) a law school's legal clinic or program that provides indigent defense services in the county;</p> <p>(C) a regional public defender that meets the requirements of Subsection (e) and provides indigent defense services in the county;</p> <p>(D) an entity described by Section 791.013 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 or family protection services in the county;</p> |
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(E) a nonprofit corporation that provides indigent defense services, indigent defense support services, or family protection services in the county; and

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

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

(A) withdrawing grant funds; or

(B) requiring reimbursement of grant funds by the entity; and

(4) provide grants and awards through the Texas Public Defense Internship and Fellowship Program described by Section 79.038.

SECTION 2. Subchapter C, Chapter 79, Government Code, is amended by adding Section 79.038 to read as follows:

Sec. 79.038. TEXAS PUBLIC DEFENSE INTERNSHIP AND FELLOWSHIP PROGRAM. (a) The commission shall establish the Texas Public Defense Internship and Fellowship Program to provide grants to entities described by Section 79.037 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:

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|  | <p><u>(1) Article 26.04, Code of Criminal Procedure;</u></p> <p><u>(2) Title 3, Family Code; and</u></p> <p><u>(3) Title 5, Family Code.</u></p> <p><u>(b) The program may make direct awards to students and recent graduates described by Subsection (a) for purposes of providing legal representation as described by that subsection.</u></p> |                                                                  |                                                                 |
|  | <p><b>Person Proposing/<br/>Other Parties:</b><br/>TIDC Staff</p>                                                                                                                                                                                                                                                                                  | <p><b>89<sup>th</sup> Bill/ Sponsor:</b><br/>SB 2111 §§10-11</p> | <p><b>Status:</b><br/>Removed from bill in Senate committee</p> |

| #   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| 13. | <p><b>Background and Purpose: Create and fund a student loan repayment program for attorneys working in appointed criminal, juvenile delinquency, and family protection cases in underserved areas.</b></p> <p>The percent of indigent cases is rising and there are fewer attorneys to take them. As the demand for attorney grows, the number of attorneys taking indigent cases is decreasing. Rural communities are hit particularly hard. 27% fewer attorneys took at least 1 indigent criminal case in rural counties over the past 8 years. And attorneys taking indigent cases are overburdened. One in four rural attorneys taking indigent criminal cases is overburdened.</p> <p>Studies show that having a professional experience in a rural community during or just after graduating from school can encourage longer term commitment to work in the area. Texas has several programs that offer incentives to students and professionals working in underserved areas, including the Physician Education Loan Repayment Program, Mental Health Professionals Loan Repayment Program, etc.</p> |

**Proposal:** Chapter 61, Education Code, is amended by adding Subchapter Y-1 to read as follows:

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

Sec. 61.9611. APPLICABILITY. This subchapter applies only to a county:

- (1) with a population of 300,000 or less; or
- (2) designated by the Texas Indigent Defense Commission under Section 61.9620.

Sec. 61.9612. REPAYMENT ASSISTANCE AUTHORIZED. (a) The board shall provide, using funds appropriated for that purpose and in accordance with this subchapter and board rules, assistance in the repayment of student loans for attorneys who apply and qualify for the assistance.

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

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

- (1) apply to the board;
- (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:

(i) in one or more counties to which this subchapter applies; and

(ii) 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) The board may 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) The board may not provide repayment assistance for an education loan that is in default at the time of the attorney's application.

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

Sec. 61.9615. REPAYMENT. The board shall deliver any repayment made under this subchapter in a lump sum

payable:

(1) to both the attorney and the lender or other holder of the affected loan; or

(2) directly to the lender or other holder of the loan on the attorney's behalf.

Sec. 61.9616. ADVISORY COMMITTEES. The board may appoint advisory committees from outside the board's membership to assist the board in performing its duties under this subchapter.

Sec. 61.9617. ACCEPTANCE OF FUNDS. The board may accept gifts, grants, and donations for the purposes of this subchapter.

Sec. 61.9618. RULES. (a) The board shall adopt rules necessary for the administration of this subchapter, including a rule that sets the maximum amount of repayment assistance that an attorney may receive in one year.

(b) The board shall distribute a copy of the rules adopted under this section and pertinent information in this subchapter to:

(1) each school of law authorized by the board to award a degree that satisfies the law study requirements for licensure as an attorney in this state; and

(2) the Texas Indigent Defense Commission.

Sec. 61.9619. AMOUNT OF REPAYMENT ASSISTANCE. (a) An attorney may receive repayment assistance

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| <p><u>under this subchapter in the amount determined by board rule, not to exceed the following amounts for each year for which the attorney establishes eligibility for the assistance:</u></p> <p style="padding-left: 40px;"> <u>(1) for the first year, \$30,000;</u><br/> <u>(2) for the second year, \$40,000;</u><br/> <u>(3) for the third year, \$50,000; and</u><br/> <u>(4) for the fourth year, \$60,000.</u> </p> <p><u>(b) The total amount of repayment assistance distributed by the board may not exceed the total amount of money appropriated to the board and received by the board from gifts, grants, and donations for the purposes of this subchapter.</u></p> <p><u>(c) The total amount of repayment assistance made under this subchapter to an individual attorney may not exceed \$180,000.</u></p> <p><u>Sec. 61.9620. DESIGNATION OF HIGH NEED COUNTY. The Texas Indigent Defense Commission may designate a county in which the need for public defenders exceeds the statewide average as a county to which this subchapter applies.</u></p> |  |                                                                            |                                                         |
| <b>Person Proposing/<br/>Other Parties:</b><br>TIDC Staff                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | <b>89<sup>th</sup> Bill/ Sponsor:</b><br>SB 2111 §§9 & 22 / Sen. Zaffirini | <b>Status:</b><br>Removed from bill in Senate committee |

| #   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| 14. | <p data-bbox="226 256 1911 337"><b>Background and Purpose: Expand the pool of attorneys qualified to represent indigent defendants in death penalty cases.</b></p> <p data-bbox="226 386 373 418"><b>Proposal:</b></p> <p data-bbox="226 435 1516 467">SECTION 1. Article 26.052, Code of Criminal Procedure, is amended to read as follows:</p> <p data-bbox="226 532 1663 565">Art. 26.052. Appointment of counsel in death penalty case; reimbursement of investigative expenses</p> <p data-bbox="226 621 1997 735">(a) Notwithstanding any other provision of this chapter, this article establishes procedures in death penalty cases for appointment and payment of counsel to represent indigent defendants at trial and on direct appeal and to apply for writ of certiorari in the United States Supreme Court.</p> <p data-bbox="226 784 1997 1027">(b) If a county is served by a public defender's office, trial counsel and counsel for direct appeal or to apply for a writ of certiorari may be appointed as provided by the guidelines established by the public defender's office. In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article. <u>If the death penalty cannot be sought in a capital felony case due to a ruling by the U.S. Supreme Court, Court of Criminal Appeals, or Texas Supreme Court, counsel shall be appointed pursuant to the procedures used in the county to provide indigent defendants or juveniles with counsel in a first degree felony case.</u></p> <p data-bbox="226 1076 1997 1198">(c) A local selection committee is created in each administrative judicial region created under Section 74.042, Government Code. The administrative judge of the judicial region shall appoint the members of the committee. A committee shall have not less than <del>four</del> <u>five</u> members, including:</p> <ul style="list-style-type: none"> <li data-bbox="321 1247 1031 1279">(1) the administrative judge of the judicial region;</li> <li data-bbox="321 1328 814 1360">(2) at least <del>one</del> <u>two</u> district judges;</li> <li data-bbox="321 1409 1100 1442">(3) a representative from the local bar association; and</li> </ul> |

(4) at least one practitioner who is board certified by the State Bar of Texas in criminal law.

(d)

(1) The committee shall adopt standards for the qualification of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought.

(2) The standards must require that a trial attorney appointed as lead counsel to a capital case:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty or capital murder cases;

(C) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

(D) have at least five years of criminal law experience;

(E) have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials ~~and~~ or other trials for offenses punishable as ~~second- or first degree~~ felonies or capital felonies;

(F) have trial experience in:

(i) the use of and challenges to mental health or forensic expert witnesses; and

(ii) ~~[investigating and presenting mitigating evidence at the penalty phase of a death penalty trial]~~ investigating or presenting mitigating evidence in a death penalty or capital murder case; and

(G) have participated in continuing legal education courses or other training relating to criminal defense in death penalty or capital murder cases.

(3) The standards must require that an attorney appointed as lead appellate counsel in the direct appeal of a capital case:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty or capital murder cases;

(C) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

(D) have at least five years of criminal law experience;

(E) have authored a significant number of appellate briefs, including appellate briefs for homicide cases ~~and~~ or other cases involving an offense punishable as a capital felony or a felony of the first degree or an offense described by Article 42A.054(a);

(F) have trial or appellate experience in:

(i) the use of and challenges to mental health or forensic expert witnesses; and

(ii) the use of investigating or presenting mitigating evidence at the penalty phase of a death penalty trial or in a capital murder case; and

(G) have participated in continuing legal education courses or other training relating to criminal defense in appealing death penalty cases.

(4) The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(5) Not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof

to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to criminal defense in death penalty cases or in appealing death penalty cases, as applicable. ~~[The committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements.]~~

(e) The presiding judge of the district court in which a capital felony case is filed shall appoint two attorneys, at least one of whom must be qualified under this chapter, 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.

(f) Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses. The request for expenses must state:

- (1) the type of investigation to be conducted;
- (2) specific facts that suggest the investigation will result in admissible evidence; and
- (3) an itemized list of anticipated expenses for each investigation.

(g) The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- (1) state the reasons for the denial in writing;
- (2) attach the denial to the confidential request; and
- (3) submit the request and denial as a sealed exhibit to the record.

(h) Counsel may incur expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred.

- (i) If the indigent defendant is convicted of a capital felony and sentenced to death, the defendant is entitled to be represented by competent counsel on appeal and to apply for a writ of certiorari to the United States Supreme Court.
- (j) As soon as practicable after a death sentence is imposed in a capital felony case, the presiding judge of the convicting court shall appoint counsel to represent an indigent defendant on appeal and to apply for a writ of certiorari, if appropriate.
- (k) The court may not appoint an attorney as counsel on appeal if the attorney represented the defendant at trial, unless:
  - (1) the defendant and the attorney request the appointment on the record; and
  - (2) the court finds good cause to make the appointment.
- (l) An attorney appointed under this article to represent a defendant at trial or on direct appeal is compensated as provided by Article 26.05 from county funds. Advance payment of expenses anticipated or reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.
- (m) The local selection committee shall annually review the list of attorneys posted under Subsection (d) to ensure that each listed attorney satisfies the requirements under this chapter.
- (n) At the request of an attorney, the local selection committee shall make a determination under Subsection (d)(2)(C) or (3)(C), as applicable, regarding an attorney's current ability to provide effective representation following a judicial finding that the attorney previously rendered ineffective assistance of counsel in a capital case.

SECTION 2. The change in law made by this Act applies only to a capital felony case that is filed on or after the effective date of this Act. A capital felony case that is filed before the effective date of this Act is governed by the law in effect on the date the case was filed, and the former law is continued in effect for that purpose.

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|  | <b>Person Proposing/Other Parties:</b><br>Judge Keller and Judge Medary | <b>89th Bill/ Sponsor:</b><br>HB 5072 / Rep. Ann Johnson<br>SB 2741 / Sen. Hinojosa | <b>Status:</b><br>Both bills were referred to committee in the first chamber |
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| #   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| 15. | <p><b>Background and Purpose: Add Managed Assigned Counsel programs to those authorized to access juvenile information.</b></p> <p>Almost all information in juvenile cases is confidential as a matter of law. The Family Code, provides narrowly targeted lists of those who may access information in juvenile cases, including prosecutors, the child's parents, and the child's attorney. In order to review when a child's parents qualify for appointed counsel, screen potential counsel for conflicts, and related matters Managed Assigned Counsel programs (MACs) need authorization to access juvenile case information to fulfill their duties in appointing and overseeing appointed counsel.</p> <p>The proposed language adds MAC programs appointing counsel for a youth, to the narrowly drawn list of those authorized to access juvenile case information in the Family Code.</p> <p><b>Proposal:</b></p> <p>SECTION 1. Section 51.02, Family Code, is amended by adding Subdivision (7-a) to read as follows:</p> <p style="padding-left: 40px;">(7-a) "Managed assigned counsel program" has the meaning assigned by Article 26.047, Code of Criminal Procedure.</p> <p>SECTION 2. Section 58.004(b), Family Code, is amended to read as follows:</p> <p>(b) This section does not apply to information that is:</p> <p style="padding-left: 40px;">(1) necessary for an agency to provide services to the victim;</p> |

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|  | <p>(2) necessary for law enforcement purposes;</p> <p>(3) shared within the statewide juvenile information and case management system established under Subchapter E;</p> <p>(4) shared with an attorney representing the child in a proceeding under this title; <del>or</del></p> <p>(5) shared with an attorney representing any other person in a juvenile or criminal court proceeding arising from the same act or conduct for which the child was referred to juvenile court; <u>or</u></p> <p><u>(6) shared with a managed assigned counsel program responsible for appointing an attorney to represent the child in a proceeding under this title to determine indigence or fulfill the program's duties in appointing and overseeing appointed counsel once a request for appointed counsel is made.</u></p> <p>SECTION 3. Section 58.005(a-1), Family Code, is amended to read as follows:</p> <p>(a-1) Except as provided by Article 15.27, Code of Criminal Procedure, the records and information to which this section applies may be disclosed only to:</p> <p>(1) the professional staff or consultants of the agency or institution;</p> <p>(2) the judge, probation officers, and professional staff or consultants of the juvenile court;</p> <p>(3) an attorney for the child;</p> |
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| <p>(4) a governmental agency if the disclosure is required or authorized by law;</p> <p>(5) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;</p> <p>(6) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification;</p> <p>(7) a prosecuting attorney;</p> <p>(8) a parent, guardian, or custodian with whom a child will reside after the child's release or discharge from a juvenile facility;</p> <p>(9) a governmental agency or court if the record is necessary for an administrative or legal proceeding and the personally identifiable information about the child is redacted before the record is disclosed; <del>or</del></p> <p>(10) with permission from the juvenile court, any other individual, agency, or institution having a legitimate interest in the proceeding or in the work of the court; <u>or</u></p> <p>(11) <u>a managed assigned counsel program responsible for appointing an attorney to represent the child in a juvenile delinquency proceeding to determine indigence or fulfill the program's duties in appointing and overseeing appointed counsel once a request for appointed counsel is made.</u></p> |
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SECTION 4. Section 58.007(b), Family Code, is amended to read as follows:

(b) Except as provided by Section 54.051(d-1) and by Article 15.27, Code of Criminal Procedure, the records, whether physical or electronic, of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title may be inspected or copied only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney representing the child's parent in a proceeding under this title;
- (4) an attorney representing the child;
- (5) a prosecuting attorney;
- (6) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;
- (7) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; ~~or~~
- (8) with permission from the juvenile court, any other individual, agency, or institution having a legitimate interest in the proceeding or in the work of the court; or

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|  | <p><u>(9) a managed assigned counsel program responsible for appointing an attorney to represent the child in a juvenile delinquency proceeding to determine indigence or fulfill the program's duties in appointing and overseeing appointed counsel once a request for appointed counsel is made.</u></p> <p>SECTION 5. Sections 58.004, 58.005, and 58.007, Family Code, as amended by this Act, apply to records created before, on, or after the effective date of this Act.</p> |                                                                  |                                  |
|  | <p><b>Person Proposing/Other Parties:</b><br/>TIDC MAC Legislative Workgroup</p>                                                                                                                                                                                                                                                                                                                                                                                                      | <p><b>89<sup>th</sup> Bill/ Sponsor:</b><br/>HB 4885 / Moody</p> | <p><b>Status:</b><br/>Vetoed</p> |