

CHAPTER 912

H.B. No. 1318

1 AN ACT

2 relating to the appointment of counsel to represent certain youths  
3 and indigent defendants.

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

5 SECTION 1. (a) Effective September 1, 2014, Article  
6 26.04(j), Code of Criminal Procedure, is amended to read as  
7 follows:

8 (j) An attorney appointed under this article shall:

9 (1) make every reasonable effort to contact the  
10 defendant not later than the end of the first working day after the  
11 date on which the attorney is appointed and to interview the  
12 defendant as soon as practicable after the attorney is appointed;

13 (2) represent the defendant until charges are  
14 dismissed, the defendant is acquitted, appeals are exhausted, or  
15 the attorney is permitted or ordered by the court to withdraw as  
16 counsel for the defendant after a finding of good cause is entered  
17 on the record; ~~and~~

18 (3) with respect to a defendant not represented by  
19 other counsel, before withdrawing as counsel for the defendant  
20 after a trial or the entry of a plea of guilty:

21 (A) advise the defendant of the defendant's right  
22 to file a motion for new trial and a notice of appeal;

23 (B) if the defendant wishes to pursue either or  
24 both remedies described by Paragraph (A), assist the defendant in

1 requesting the prompt appointment of replacement counsel; and

2 (C) if replacement counsel is not appointed  
3 promptly and the defendant wishes to pursue an appeal, file a timely  
4 notice of appeal; and

5 (4) not later than October 15 of each year and on a  
6 form prescribed by the Texas Indigent Defense Commission, submit to  
7 the county information, for the preceding fiscal year, that  
8 describes the percentage of the attorney's practice time that was  
9 dedicated to work based on appointments accepted in the county  
10 under this article and Title 3, Family Code.

11 (b) The change in law made by this section to Article  
12 26.04(j), Code of Criminal Procedure, applies only to a criminal  
13 proceeding that commences on or after September 1, 2014. A criminal  
14 proceeding that commences before September 1, 2014, is governed by  
15 the law in effect when the proceeding commenced, and the former law  
16 is continued in effect for that purpose.

17 SECTION 2. Article 26.044, Code of Criminal Procedure, is  
18 amended by amending Subsection (j) and adding Subsections (j-1) and  
19 (j-2) to read as follows:

20 (j) A public defender's office may not accept an appointment  
21 under Article 26.04(f) if:

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

24 (2) the public defender's office has insufficient  
25 resources to provide adequate representation for the defendant;

26 (3) the public defender's office is incapable of  
27 providing representation for the defendant in accordance with the

1 rules of professional conduct;

2 (4) the acceptance of the appointment would violate  
3 the maximum allowable caseloads established at the public  
4 defender's office; or

5 (5) [~~4~~] the public defender's office shows other  
6 good cause for not accepting the appointment.

7 (j-1) On refusing an appointment under Subsection (j), a  
8 chief public defender shall file with the court a written statement  
9 that identifies any reason for refusing the appointment. The court  
10 shall determine whether the chief public defender has demonstrated  
11 adequate good cause for refusing the appointment and shall include  
12 the statement with the papers in the case.

13 (j-2) A chief public defender may not be terminated,  
14 removed, or sanctioned for refusing in good faith to accept an  
15 appointment under Subsection (j).

16 SECTION 3. Section 51.101(a), Family Code, is amended to  
17 read as follows:

18 (a) If an attorney is appointed under Section 54.01(b-1) or  
19 (d) to represent a child at the initial detention hearing and the  
20 child is detained, the attorney shall continue to represent the  
21 child until the case is terminated, the family retains an attorney,  
22 or a new attorney is appointed by the juvenile court. Release of  
23 the child from detention does not terminate the attorney's  
24 representation.

25 SECTION 4. Section 54.01, Family Code, is amended by adding  
26 Subsection (b-1) and amending Subsection (d) to read as follows:

27 (b-1) Unless the court finds that the appointment of counsel

1 is not feasible due to exigent circumstances, the court shall  
2 appoint counsel within a reasonable time before the first detention  
3 hearing is held to represent the child at that hearing.

4 (d) A detention hearing may be held without the presence of  
5 the child's parents if the court has been unable to locate them. If  
6 no parent or guardian is present, the court shall appoint counsel or  
7 a guardian ad litem for the child, subject to the requirements of  
8 Subsection (b-1).

9 SECTION 5. Effective September 1, 2013, Section 79.036(a),  
10 Government Code, is amended to read as follows:

11 (a) Not [~~In each county, not~~] later than November 1 of each  
12 odd-numbered year and in the form and manner prescribed by the  
13 commission, each county [~~the following information~~] shall prepare  
14 [~~be prepared~~] and provide [~~provided~~] to the commission:

15 (1) a copy of all formal and informal rules and forms  
16 that describe the procedures used in the county to provide indigent  
17 defendants with counsel in accordance with the Code of Criminal  
18 Procedure, including the schedule of fees required under Article  
19 26.05 of that code;

20 (2) any plan or proposal submitted to the  
21 commissioners court under Article 26.044, Code of Criminal  
22 Procedure;

23 (3) any plan of operation submitted to the  
24 commissioners court under Article 26.047, Code of Criminal  
25 Procedure;

26 (4) any contract for indigent defense services  
27 required under rules adopted by the commission relating to a

1 contract defender program;

2           (5) [~~2~~] any revisions to rules, [~~or~~] forms, plans,  
3 proposals, or contracts previously submitted under this section; or

4           (6) [~~3~~] verification that rules, [~~and~~] forms,  
5 plans, proposals, or contracts previously submitted under this  
6 section still remain in effect.

7           SECTION 6. Effective September 1, 2014, Section 79.036,  
8 Government Code, is amended by adding Subsection (a-1) to read as  
9 follows:

10           (a-1) Not later than November 1 of each year and in the form  
11 and manner prescribed by the commission, each county shall prepare  
12 and provide to the commission information that describes for the  
13 preceding fiscal year the number of appointments under Article  
14 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to  
15 each attorney accepting appointments in the county, and information  
16 provided to the county by those attorneys under Article  
17 26.04(j)(4), Code of Criminal Procedure.

18           SECTION 7. Sections 51.101(a) and 54.01, Family Code, as  
19 amended by this Act, apply only to a detention hearing that is held  
20 for a child taken into custody on or after the effective date of  
21 this Act.

22           SECTION 8. (a) This section takes effect September 1, 2013.

23           (b) Not later than January 1, 2015, the Texas Indigent  
24 Defense Commission shall conduct and publish a study for the  
25 purpose of determining guidelines for establishing a maximum  
26 allowable caseload for a criminal defense attorney that, when the  
27 attorney's total caseload, including appointments made under

1 Article 26.04, Code of Criminal Procedure, appointments made under  
2 Title 3, Family Code, and other work, is considered, allows the  
3 attorney to give each indigent defendant the time and effort  
4 necessary to ensure effective representation. The study must be  
5 based on relevant policies, performance guidelines, and best  
6 practices.

7 (c) In conducting the study under Subsection (b) of this  
8 section, the commission shall consult with criminal defense  
9 attorneys, criminal defense attorney associations, the judiciary,  
10 and any other organization engaged in the development of criminal  
11 indigent defense policy that the commission considers appropriate.

12 SECTION 9. This Act takes effect September 1, 2013.

David Newkum  
President of the Senate

Joe Straus  
Speaker of the House

I certify that H.B. No. 1318 was passed by the House on May 9, 2013, by the following vote: Yeas 134, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1318 on May 21, 2013, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Robert Nancy  
Chief Clerk of the House

I certify that H.B. No. 1318 was passed by the Senate, with amendments, on May 17, 2013, by the following vote: Yeas 29, Nays 0.

Datsy Spaw  
Secretary of the Senate

APPROVED: 14 JUNE '13

Date

Rick Perry  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
10PM O'CLOCK

JUN 14 2013

[Signature]  
Secretary of State