

1-1 By: Zaffirini, Sparks S.B. No. 2120
 1-2 (In the Senate - Filed March 9, 2023; March 21, 2023, read
 1-3 first time and referred to Committee on State Affairs;
 1-4 April 19, 2023, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 10, Nays 0; April 19, 2023,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17			X	
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 2120 By: Zaffirini

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the establishment of a family protection representation
 1-24 program within the Texas Indigent Defense Commission.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 79.001, Government Code, is amended by
 1-27 amending Subdivisions (1) and (4) and adding Subdivisions (1-a),
 1-28 (7-a), (8-a), (12-a), and (12-b) to read as follows:

1-29 (1) "Assigned counsel program" means a system under
 1-30 which private attorneys, acting as independent contractors and
 1-31 compensated with public funds, are individually appointed to:

1-32 (A) provide legal representation and services to
 1-33 a particular indigent defendant accused of a crime or juvenile
 1-34 offense; or

1-35 (B) serve as an attorney ad litem.

1-36 (1-a) "Attorney ad litem" means an attorney appointed
 1-37 by a court to represent and advocate on behalf of an indigent parent
 1-38 or child in a suit filed by the department against a parent.

1-39 (4) "Contract defender program" means a system under
 1-40 which private attorneys, acting as independent contractors and
 1-41 compensated with public funds, are engaged to provide legal
 1-42 representation and services to:

1-43 (A) a group of unspecified indigent defendants
 1-44 who appear before a particular court or group of courts; or

1-45 (B) indigent parents or children named in a suit
 1-46 filed by the department against a parent.

1-47 (7-a) "Department" means the Department of Family and
 1-48 Protective Services.

1-49 (8-a) "Family protection services" means services
 1-50 provided under this chapter by an attorney, attorney ad litem,
 1-51 licensed investigator, social worker, forensic expert, mental
 1-52 health expert, or other similar expert or specialist to an indigent
 1-53 parent or child in:

1-54 (A) a suit filed by the department against the
 1-55 parent; or

1-56 (B) a department investigation of the parent.

1-57 (12-a) "Office of child representation" has the
 1-58 meaning assigned by Section 107.254, Family Code.

1-59 (12-b) "Office of parent representation" has the
 1-60 meaning assigned by Section 107.255, Family Code.

2-1 SECTION 2. Section 79.012(b), Government Code, is amended
2-2 to read as follows:

2-3 (b) The executive director:
2-4 (1) must be a licensed attorney;
2-5 (2) must demonstrate an interest in the standards for
2-6 and provision of criminal defense services and family protection
2-7 services to indigent individuals;
2-8 (3) may not engage in the private practice of law; and
2-9 (4) may not accept money, property, or any other thing
2-10 of value not authorized by law for services rendered under this
2-11 chapter.

2-12 SECTION 3. Section 79.034, Government Code, is amended by
2-13 amending Subsection (a) and adding Subsection (a-1) to read as
2-14 follows:

2-15 (a) The commission shall develop policies and standards for
2-16 providing:

2-17 (1) legal representation and other defense services to
2-18 indigent defendants at trial, on appeal, and in postconviction
2-19 proceedings; and

2-20 (2) family protection services to indigent parents and
2-21 children.

2-22 (a-1) The policies and standards may include:

2-23 (1) performance standards for counsel appointed to
2-24 represent indigent individuals ~~[defendants]~~;

2-25 (2) qualification standards under which attorneys may
2-26 qualify for appointment to represent:

2-27 (A) indigent defendants, including:

2-28 (i) ~~[(A)]~~ qualifications commensurate with
2-29 the seriousness of the nature of the proceeding;

2-30 (ii) ~~[(B)]~~ qualifications appropriate for
2-31 representation of mentally ill defendants and noncitizen
2-32 defendants;

2-33 (iii) ~~[(C)]~~ successful completion of
2-34 relevant continuing legal education programs approved by the
2-35 council; and

2-36 (iv) ~~[(D)]~~ testing and certification
2-37 standards; or

2-38 (B) indigent parents and children in suits filed
2-39 by the department, including:

2-40 (i) qualifications appropriate for
2-41 representing an indigent parent;

2-42 (ii) qualifications appropriate for
2-43 representing a child;

2-44 (iii) successful completion of relevant
2-45 continuing legal education programs required by law or the State
2-46 Bar of Texas and approved by the council; and

2-47 (iv) testing and certification standards;
2-48 (3) standards for ensuring appropriate appointed

2-49 caseloads for counsel appointed to represent indigent individuals
2-50 [defendants];

2-51 (4) standards for determining whether a person accused
2-52 of a crime or juvenile offense or named in a suit filed by the
2-53 department is indigent;

2-54 (5) policies and standards governing the organization
2-55 and operation of an assigned counsel program;

2-56 (6) policies and standards governing the organization
2-57 and operation of a public defender's office consistent with
2-58 recognized national policies and standards;

2-59 (7) policies and standards governing the organization
2-60 and operation of an office of child representation or office of
2-61 parent representation consistent with recognized national policies
2-62 and standards;

2-63 (8) standards for providing indigent defense services
2-64 or family protection services under a contract defender program
2-65 consistent with recognized national policies and standards;

2-66 (9) ~~[(8)]~~ standards governing the reasonable
2-67 compensation of counsel appointed to represent indigent
2-68 individuals [defendants];

2-69 (10) ~~[(9)]~~ standards governing the availability and

3-1 reasonable compensation of providers of indigent defense support
3-2 services or family protection services for counsel appointed to
3-3 represent indigent individuals ~~[defendants]~~;

3-4 (11) ~~[(10)]~~ standards governing the operation of a
3-5 legal clinic or program that provides legal services to indigent
3-6 individuals ~~[defendants]~~ and is sponsored by a law school approved
3-7 by the supreme court;

3-8 (12) ~~[(11)]~~ policies and standards governing the
3-9 appointment of attorneys to represent children in proceedings under
3-10 Title 3, Family Code;

3-11 (13) policies and standards governing the appointment
3-12 of attorneys to represent indigent parents and children in
3-13 proceedings with the department under Title 5, Family Code;

3-14 (14) ~~[(12)]~~ policies and standards governing the
3-15 organization and operation of a managed assigned counsel program
3-16 consistent with nationally recognized policies and standards; and

3-17 (15) ~~[(13)]~~ other policies and standards for
3-18 providing indigent defense services and family protection services
3-19 as determined by the commission to be appropriate.

3-20 SECTION 4. Sections 79.035(a), (b), and (d), Government
3-21 Code, are amended to read as follows:

3-22 (a) The commission shall develop a plan that establishes
3-23 statewide requirements for counties relating to reporting indigent
3-24 defense information and family protection services
3-25 information. The plan must include provisions designed to reduce
3-26 redundant reporting by counties and provisions that take into
3-27 consideration the costs to counties of implementing the plan
3-28 statewide. The commission shall use the information reported by a
3-29 county to monitor the effectiveness of the county's indigent
3-30 defense and family protection services policies, standards, and
3-31 procedures and to ensure compliance by the county with the
3-32 requirements of state law relating to indigent defense and family
3-33 protection services. The commission may revise the plan as
3-34 necessary to improve monitoring of indigent defense and family
3-35 protection services policies, standards, and procedures in this
3-36 state.

3-37 (b) The commission shall annually submit to the governor,
3-38 lieutenant governor, speaker of the house of representatives, and
3-39 council and shall publish in written and electronic form a report:

3-40 (1) containing any information submitted to the
3-41 commission by a county under Section 79.036; and

3-42 (2) regarding:

3-43 (A) the quality of legal representation provided
3-44 by counsel appointed to represent indigent individuals
3-45 ~~[defendants]~~;

3-46 (B) current indigent defense practices and
3-47 family protection services practices in the state as compared to
3-48 state and national standards;

3-49 (C) efforts made by the commission to improve
3-50 indigent defense practices and family protection services
3-51 practices in the state;

3-52 (D) recommendations made by the commission for
3-53 improving indigent defense practices and family protection
3-54 services practices in the state; and

3-55 (E) the findings of a report submitted to the
3-56 commission under Section 79.039.

3-57 (d) The commission may issue other reports relating to
3-58 indigent defense and family protection services as determined to be
3-59 appropriate by the commission.

3-60 SECTION 5. Subchapter C, Chapter 79, Government Code, is
3-61 amended by adding Section 79.0365 to read as follows:

3-62 Sec. 79.0365. FAMILY PROTECTION SERVICES INFORMATION.

3-63 (a) Not later than November 1 of each odd-numbered year and in the
3-64 form and manner prescribed by the commission, each county shall
3-65 prepare and provide to the commission:

3-66 (1) a copy of all formal and informal rules and forms
3-67 governing the procedures the county uses to provide indigent
3-68 parents and children with counsel in accordance with Title 5,
3-69 Family Code;

4-1 (2) any fee schedule the court uses for family
 4-2 protection services representation; and

4-3 (3) information on the court's compliance with Chapter
 4-4 37, including the lists and rotation system required under that
 4-5 chapter.

4-6 (b) Not later than November 1 of each year and in the form
 4-7 and manner prescribed by the commission, each county shall prepare
 4-8 and provide to the commission for the preceding state fiscal year:

4-9 (1) information on the number of appointments made to
 4-10 each attorney accepting appointments in the county for proceedings
 4-11 filed by the department under Title 5, Family Code; and

4-12 (2) information provided to the county by those
 4-13 attorneys under Section 107.0042, Family Code, if the attorneys do
 4-14 not report the information directly to the commission.

4-15 (c) The local administrative district judge in each county,
 4-16 or the person designated by the judge, shall perform the action
 4-17 required by Subsection (a) with respect to all rules and forms
 4-18 adopted by the judges of the county.

4-19 (d) In each county, the county auditor, or the person
 4-20 designated by the commissioners court if the county does not have a
 4-21 county auditor, shall prepare and send to the commission in the form
 4-22 and manner prescribed by the commission and on a monthly,
 4-23 quarterly, or annual basis, with respect to legal services provided
 4-24 in the county to indigent parents and children during each state
 4-25 fiscal year, information showing the total amount expended by the
 4-26 county to provide family protection services and an analysis of the
 4-27 amount expended by the county:

4-28 (1) in each district, county, statutory county, and
 4-29 appellate court;

4-30 (2) in cases for which a private attorney is appointed
 4-31 for an indigent parent or child; and

4-32 (3) for investigation expenses, expert witness
 4-33 expenses, or other litigation expenses.

4-34 (e) As a duty of office, each district and county clerk
 4-35 shall cooperate with the county auditor or the person designated by
 4-36 the commissioners court and the commissioners court in retrieving
 4-37 information required to be sent to the commission under this
 4-38 section.

4-39 SECTION 6. Sections 79.037(a), (b), and (d), Government
 4-40 Code, are amended to read as follows:

4-41 (a) The commission shall:

4-42 (1) provide technical support to:

4-43 (A) assist counties in improving their systems
 4-44 for providing indigent defense services, including indigent
 4-45 defense support services; ~~and~~

4-46 (B) assist counties in improving their systems
 4-47 for providing family protection services; and

4-48 (C) promote compliance by counties with the
 4-49 requirements of state law relating to indigent defense and family
 4-50 protection services;

4-51 (2) to assist a county in providing or improving the
 4-52 provision of indigent defense services and family protection
 4-53 services in the county, distribute in the form of grants any funds
 4-54 appropriated for the purposes of this section to one or more of the
 4-55 following entities:

4-56 (A) the county;

4-57 (B) a law school's legal clinic or program that
 4-58 provides indigent defense services in the county;

4-59 (C) a regional public defender that meets the
 4-60 requirements of Subsection (e) and provides indigent defense
 4-61 services in the county;

4-62 (D) an entity described by Section 791.013 that
 4-63 provides to a county administrative services under an interlocal
 4-64 contract entered into for the purpose of providing or improving the
 4-65 provision of indigent defense services or family protection
 4-66 services in the county; ~~and~~

4-67 (E) a nonprofit corporation that provides
 4-68 indigent defense services, ~~or~~ indigent defense support services,
 4-69 or family protection services in the county; and

5-1 (F) an office of child representation or office
5-2 of parent representation created under Subchapter G, Chapter 107,
5-3 Family Code; and

5-4 (3) monitor each entity that receives a grant under
5-5 Subdivision (2) and enforce compliance with the conditions of the
5-6 grant, including enforcement by:

- 5-7 (A) withdrawing grant funds; or
- 5-8 (B) requiring reimbursement of grant funds by the
5-9 entity.

5-10 (b) The commission shall determine for each county the
5-11 entity or entities that are eligible to receive funds for the
5-12 provision of or improvement in the provision of indigent defense
5-13 services or family protection services under Subsection (a)(2).
5-14 The determination must be made based on the entity's:

5-15 (1) compliance with standards adopted by the board;
5-16 and

5-17 (2) demonstrated commitment to compliance with the
5-18 requirements of state law relating to indigent defense or family
5-19 protection services.

5-20 (d) A county may not reduce the amount of funds provided for
5-21 indigent defense services or family protection services in the
5-22 county because of funds provided by the commission under this
5-23 section.

5-24 SECTION 7. Subchapter C, Chapter 79, Government Code, is
5-25 amended by adding Section 79.041 to read as follows:

5-26 Sec. 79.041. FAMILY PROTECTION SERVICES INFORMATION
5-27 SYSTEM. (a) By entering into an interlocal contract with one or
5-28 more counties under Chapter 791, the commission may participate and
5-29 assist counties in the creation, implementation, operation, and
5-30 maintenance of a computerized system to be used to assist those
5-31 counties in the provision and administration of family protection
5-32 services and to be used to collect data from those counties
5-33 regarding representation of indigent individuals in this state.

5-34 (b) The commission may use appropriated funds to pay costs
5-35 incurred under an interlocal contract described by Subsection (a),
5-36 including license fees, implementation costs, maintenance and
5-37 operations costs, administrative costs, and any other costs
5-38 specified in the interlocal contract.

5-39 (c) The commission may provide training services to
5-40 counties on the use and operation of a system created, implemented,
5-41 operated, or maintained by one or more counties under Subsection
5-42 (a).

5-43 (d) Subchapter L, Chapter 2054, does not apply to an
5-44 indigent defense information system created under this section.

5-45 SECTION 8. Subchapter A, Chapter 107, Family Code, is
5-46 amended by adding Section 107.0042 to read as follows:

5-47 Sec. 107.0042. REPORT ON PERCENTAGE OF PROFESSIONAL
5-48 PRACTICE TIME AS ATTORNEY AD LITEM. Not later than October 15 of
5-49 each year and on a form prescribed by the Texas Indigent Defense
5-50 Commission, an attorney appointed as an attorney ad litem in a
5-51 proceeding filed by the Department of Family and Protective
5-52 Services under Title 5 shall submit to the county or the Texas
5-53 Indigent Defense Commission a report for the preceding state fiscal
5-54 year that describes the percentage of the attorney's professional
5-55 practice time that was dedicated to the attorney's appointment as
5-56 an attorney ad litem in the county under Title 5.

5-57 SECTION 9. Sections 107.259(a) and (d), Family Code, are
5-58 amended to read as follows:

5-59 (a) An office of child representation or office of parent
5-60 representation must be directed by a chief counsel who:

- 5-61 (1) is a member of the State Bar of Texas;
- 5-62 (2) has practiced law for at least five [~~three~~] years;

5-63 and
5-64 (3) has substantial experience in the practice of
5-65 child protection [~~welfare~~] law.

5-66 (d) Except as authorized by this chapter, the chief counsel
5-67 and other attorneys employed by an office of child representation
5-68 or office of parent representation may not:

- 5-69 (1) engage in the private practice of child protection

6-1 [~~welfare~~] law; or
6-2 (2) accept anything of value not authorized by this
6-3 chapter for services rendered under this chapter.
6-4 SECTION 10. Section [71.0355](#), Government Code, is repealed.
6-5 SECTION 11. This Act takes effect September 1, 2023.

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