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**WRITTEN TESTIMONY, 2011**  
**S.B. 1682**

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of S.B. 1682, an effective policy that will relieve judges of burdensome administrative duties while providing greater oversight of indigent defense delivery.

### **BACKGROUND**

As per Article 26.04, Code of Criminal Procedure, judges in Texas who try criminal cases are required to screen attorneys for court-appointment eligibility, assign appointments in individual cases, make compensation decisions for appointed attorneys, and control access to investigators and experts. However, the judiciary is intended to be an objective arbiter in the courtroom, influencing neither the prosecution nor the defense.

Also under Article 26.04, counties are authorized to establish indigent defense systems that (1) are based on the default rotation model, (2) include a public defender office, or (3) fit into the definition of an “alternative program.” A managed assigned counsel program does not qualify either as a default rotation system or an alternative program because, under such systems, Texas statutes require judges to screen defense attorneys seeking to receive appointments. A managed assigned counsel program also does not qualify as a public defender because it does not itself provide legal representation to defendants.

Where they so choose, counties should be explicitly authorized to create and operate managed assigned counsel programs, through which the judicial obligations above would be handled instead by a government office or nonprofit agency independent of the judiciary.

### **FACTS**

- Lubbock County has established a pilot managed assigned counsel program to represent mentally ill offenders. According to Texas’ Task Force on Indigent Defense, the program has been successful and the county wants to expand the program to handle *all* indigent criminal cases.
- Montgomery County’s Managed Assigned Council Program, which was approved for funding in 2010 by Texas’ Task Force on Indigent Defense,<sup>1</sup> will soon begin providing specially trained defense attorneys, case management services, and investigators to support eligible, mentally ill defendants. The program’s overarching intent is to address, in a cost-efficient and humane manner, the 30-35% of jail inmates in Montgomery County with documented mental health issues, a large percentage of whom are indigent.<sup>2</sup>
- The concept for these assigned counsel programs came from San Mateo County, California, which has successfully implemented this type of service. The initiative has proven to be an exemplary model by which to provide indigent defense services.
- Independent assigned counsel programs come closer to meeting national standards for public defense services than do the judicially managed assigned counsel systems now common in Texas.<sup>3</sup>
- The programs in Lubbock and Montgomery Counties cannot be implemented as true managed assigned counsel programs without this legislation, which will also assist other counties seeking to implement such programs.

## SOLUTION: SUPPORT S.B. 1682 BY SENATOR ELLIS

- **S.B. 1682 explicitly allows counties to create assigned counsel programs**, which will establish greater independence among attorneys and the judiciary, and thereby reduce bias. This alternative to the traditional court appointed system is strictly a local option that would require both the judges and county commissioners court to assent to the implementation, thus preserving county control and honoring analyses of local resources.

Thank you again for allowing me the opportunity to present testimony in favor of S.B. 1682, which will help Texas support a quality defense bar, as well as assist counties in providing appropriate, timely appointment of counsel to defendants in need.

## NOTES

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<sup>1</sup> On August 25, 2010, the Task Force awarded Montgomery County \$547,400 for the program's first year. The county will provide more funding as the program continues, resulting in an estimated 50/50 funding split over four years. From the Task Force on Indigent Defense, "Staff Grant Recommendation: Montgomery County Managed Assigned Counsel Program," *Meeting Book: August 25, 2010*, pg. 35.

<sup>2</sup> *Ibid.*, pgs. 35-50.

<sup>3</sup> American Bar Association, "Ten Principles Of A Public Defense Delivery System," February 2002. *Principle 1*: "The public defense function, including the selection, funding, and payment of defense counsel, is independent."