



**TEXAS INDIGENT DEFENSE COMMISSION  
MEETING NOTEBOOK  
AUGUST 19, 2020**

**POLICIES & STANDARDS – 3:00 P.M.**

Location Via **TEXAS INDIGENT DEFENSE COMMISSION**  
209 WEST 14TH STREET, ROOM 202 • PRICE DANIEL BUILDING •  
(512) 936-6994 • FAX (512) 463-5724  
Austin, Texas 78701

**PLACE:** via Zoom / Streaming on YouTube:  
[https://www.youtube.com/channel/UCQ0w\\_oVbvCpkJig6sQKR3tA](https://www.youtube.com/channel/UCQ0w_oVbvCpkJig6sQKR3tA)



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**DATE: Wednesday, August 19, 2020 – 3 p.m.**

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## **Policies and Standards Committee**

### **AGENDA**

The Texas Indigent Defense Commission Policies and Standards Committee may discuss or act on any of the following items:

1. Commencement
2. Attendance
3. Approval of minutes from August 15, 2018 and December 13, 2019
4. Opening remarks
5. Legislative proposals
6. Report on 2019 indigent defense plan submission and review status
7. Policy monitoring report
8. Complaints
9. Public comment
10. Adjournment

**TEXAS INDIGENT DEFENSE COMMISSION**  
**Policies and Standards Committee meeting**

ROLL CALL

	<b>Committee Members</b>	<b>Present or Absent</b>
	Mr. Alex Bunin	
	The Honorable Sharon Keller	
	Representative Nicole Collier	

Texas Indigent Defense Commission  
Minutes of Meeting  
Policies and Standards Committee

August 15, 2018 – Tom C. Clark Building, 1<sup>st</sup> floor conference room  
205 W. 14<sup>th</sup> Street, Austin, TX 78727

Mr. Hase called the meeting to order. Committee members present: Mr. Alex Bunin, Mr. Don Hase, and Judge Sharon Keller. TIDC staff present: Mr. Geoffrey Burkhart, Ms. Claire Buetow, Mr. Edwin Colfax, Mr. Scott Ehlers, Ms. Marissa Kubinski, Mr. Joel Lieurance, Mr. Wesley Shackelford, Ms. Morgan Shell, Ms. Debra Stewart, Ms. Doriana Torres, and Ms. Sharon Whitfield.

Mr. Bunin made a motion to approve the minutes from the March 8, 2018 Policies and Standards committee meeting. Judge Keller seconded; the motion passed unanimously.

*Policy Monitoring Report*

Mr. Lieurance discussed the recent policy monitoring activity in Milam, Midland, Hays, Navarro, and the ongoing review in Travis County. He provided an update of Dallas County misdemeanor appointments for the period between January 2018 and June 2018.

Mr. Burkhart discussed the proposed policy monitoring review process. All reports will be sent to the Executive Director, the Chair, the Policies and Standards Committee, and the full board, as needed, before being issued to the counties for response.

*Complaints*

Mr. Lieurance provided a summary of recent complaints from Jones, Galveston, and Chambers Counties. The Chambers County complaint was initiated by Drew Willey last quarter and has now supplemented his previous complaint with a standard form used to communicate between the prosecutor and unrepresented defendants. Staff proposes to conduct a limited scope monitoring review of Chambers County.

Judge Keller made a motion to recommend staff conduct a limited scope review of Chambers County's methods for accepting and ruling upon requests for and waivers of counsel in misdemeanor cases. Mr. Bunin seconded; the motion passed unanimously.

Mr. Ehlers discussed the new proposed online complaint intake process. The new form will create uniformity and will allow for more accurate collection of data and would allow for more efficient use of staff time. Andrea Marsh from the UT Richard & Ginni Mithoff Pro Bono Program spoke in support of the proposed online complaint intake forms.

*Legislative Proposals*

Mr. Shackelford reported on the legislative proposals for the upcoming 86<sup>th</sup> Texas Legislature developed by TIDC's Legislative Workgroup over the summer. Mr. Ehlers introduced Proposal #1 to ensure that magistrations forms are properly preserved.

Mr. Bunin made a motion to recommend approval of Proposal #1: Modify Article 15.17 to ensure magistrations forms are properly preserved. Judge Keller seconded; the motion passed unanimously.

Mr. Ehlers introduced Proposal #2 that was not approved by the Legislative Workgroup. The proposed change was to clarify that defendants who post bail prior to magistrations must be formally magistrated and a judicial inquiry made regarding ability to afford counsel. The Workgroup raised concerns on whether this was a widespread issue or a training issue.

Mr. Shackelford discussed Proposal #3: strike a provision in the public defender statute that requires attorneys to inform the appointing judge of the results of any investigation into a defendant's financial circumstances. Justin Wood from the Senate Committee on Criminal Justice spoke in support of the proposal. Mr. Bunin made a motion to recommend approval of Proposal #3: Repeal requirement that public defender attorneys must inform the appointing judge of the result of any investigation into a defendant's financial circumstances. Judge Keller seconded; the motion passed unanimously.

Mr. Shackelford introduced Proposal #4: a clean-up bill to clarify that defendants may request a reconsideration of a court's order to repay attorney costs due to changes in financial circumstances. Mr. Bunin made a motion to recommend approval of Proposal #4: Amend Article 26.05 of the Texas Code of Criminal Procedure to clarify that defendants may request a reconsideration of a court's order to repay attorney costs due to changes in financial circumstances. Judge Keller seconded; the motion passed unanimously.

Mr. Shackelford discussed Proposal #5: an amendment to clarify a provision that the public defender's office priority appointment statute applies in capital case appointments. Jim Allison from the County Judges and Commissioners Association of Texas spoke in support of the proposal. Lisa Teachey from the Harris County District Courts raised a concern over how this proposal would work in her county. Christi Dean from the Dallas County Public Defender's Office spoke in support of this proposal as well. Judge Keller made a motion to recommend approval of Proposal #5: Clarify the public defender's office priority appointment statute and clarify that the priority statute applies in capital case appointments. Mr. Bunin seconded; the motion passed unanimously.

Mr. Ehlers discussed Proposal #6: to establish an independent public defender's office to represent incarcerated inmates who are indicted for committing offenses while in custody. Mr. Bunin made a motion to recommend approval of Proposal #6: Establish an independent public defender's office to represent inmates incarcerated by the Texas Department of Criminal Justice and to the appointment and compensation of certain counsel for indigent inmates in certain areas of law. Judge Keller did not second due to the funding source, Mr. Hase did not second, but the committee agreed to present this proposal to the full board.

Mr. Shackelford presented Proposal #7: to allow the Office of Capital and Forensic Writs (OCFW) to decline referrals when it lacks sufficient resources. Ben Wolff from the Office of Capital and Forensic Writs spoke in support of this proposal. Mr. Bunin made a motion to recommend approval of Proposal #7: Provide mechanisms for the Office of Capital and Forensic Writs (OCFW) to decline forensic case referrals when it lacks resources or cannot provide representation ethically. There was not a second vote, but the committee agreed to present this proposal to the full board.

Mr. Shackelford discussed Proposal #8: creation of a statewide public defender office to represent the defense before the state. Mr. Bunin made a motion to recommend approval of Proposal #8: Establish public defender office to represent the defense interest in all cases before the Court of Criminal Appeals (corollary to the State Prosecuting Attorney) and also represent all death sentenced defendants on their direct appeals to the Court of Criminal Appeals. There was not a second vote, but the committee agreed to present this proposal to the full board.

Mr. Ehlers presented Proposal #9: providing a limited scope attorney appointment to represent an arrestee at Article 15.17 hearings. Judge Keller made a motion to recommend approval of Proposal #9: Specifically provide for a limited scope attorney appointment to represent an arrestee at the Article 15.17 Code of Criminal Procedure, hearing ("magistration"). Mr. Bunin seconded; the motion passed unanimously.

Mr. Shackelford discussed Proposal #10: a cleanup bill to harmonize the House and Senate versions of Section 79.037. Mr. Bunin made a motion to recommend approval of Proposal #10: Cleanup bill to harmonize two versions of Section 79.037, Government Code, relating to TIDC's grant authority. Judge Keller seconded; the motion passed unanimously.

*Specialty Court Monitoring*

Mr. Burkhart discussed an issue with Texas Specialty Courts on whether counties are required to report their specialty court expenses on their IDER. A few counties have asked for guidance on whether they should report their specialty court expenses. The Committee agreed to do additional research on this issue before presenting this to the full board at the upcoming meeting.

No further business was discussed.

Meeting adjourned at 3:07 p.m.

Texas Indigent Defense Commission  
Minutes of meeting

Friday, December 13<sup>th</sup>, 2019 —10:30 a.m.  
Daniel Price Sr. State Office Building, 2<sup>nd</sup> Floor Library  
209 West 14<sup>th</sup> St, Austin, TX 78701

Mr. Bunin called the meeting to order at 10:35 a.m. Roll was called. Members present: Judge Sharon Keller, Mr. Alex Bunin, Representative Nicole Collier. TIDC staff present: Mr. Geoff Burkhart, Ms. Megan Bradburry, Mr. Scott Ehlers, Ms. Debra Stewart, Ms. Claire Buetow, Ms. Kathleen Casey-Gamez, Mr. Joel Lieurance, and Mr. Wesley Shackelford.

Mr. Shackelford discussed the TIDC Indigent Defense Plan Submission Review Process. As of December 6<sup>th</sup> 198 Counties had fully completed the approval process, and 56 Counties had not fully completed the approval process. Staff will soon review indigent defense plans to assure compliance with the Fair Defense Laws and requirements established by the TIDC board

Mr. Lieurance reported on attorney caseload and practice time reports, as of November 22, 2019 a total of 5,635 attorneys were reported to have received payment for indigent defense services during FY2019. Seven attorneys had caseloads greater than 5 times recommended by Weighed Caseload Guidelines (WCG). 45 attorneys had caseloads greater than 3 times recommended by WCG.

Mr. Burkhart reported on Policy Monitoring Rules Review and Proposed Amendments. Judge Keller moved to recommend publication of proposed policy monitoring rule amendments in the Texas Register as determined by the board. Representative Collier seconded; motion passes.

Mr. Lieurance reported on the policy monitoring report. Discussed misdemeanor case data reported to TIDC from Gregg County, court expenses and cases paid.

Ms. Buetow reported on the review of Policy Monitoring Processes and potential piloting of new measures.

Ms. Casey-Gamez reported on complaints. Since August 29<sup>th</sup>, 2019 TIDC has received 22 new complaints. 3 complaints remain open, pending further investigation, and 18 were resolved via letter, phone call, e-mail, and or no further response.

No new business was discussed.

The next meeting will take place August 19<sup>th</sup>, 2020  
Meeting adjourned at 12:30 p.m.



## Development of Legislative Proposals: 87<sup>th</sup> Texas Legislature

**Meetings:** TIDC’s workgroup met remotely via Zoom on June 25<sup>th</sup> and July 23<sup>rd</sup> to review and consider proposals submitted for consideration. Several sub-workgroups were also formed to work on individual proposals that needed further development.

**Process:** Under TIDC’s Legislative Policy, the proposals that had significant support at the workgroup are to be presented to the Policies and Standards Committee at their meeting on August 19<sup>th</sup>. All proposals recommended for approval by the committee would then be considered by the full TIDC Board at its August 27<sup>th</sup> meeting.

### **Workgroup Members:**

#### District and Statutory County Judges

Judge Alma Trejo, El Paso County Criminal Court No. 1

Judge Alfonso Charles, 124<sup>th</sup> District Court (Gregg County) and Legislative Committee Chair, Judicial Section of the State Bar of Texas

#### County / Court Representatives

Jim Allison, County Judges and Commissioners Association of Texas

John Dahill, Texas Conference of Urban Counties

Kelsey Bernstein, Legislative Consultant, Texas Association of Counties

Laura Angelini, Juvenile Court Manager, Bexar County

Michael Cuccaro, Executive Director, El Paso County Council of Judges

Barbara Murphy, Criminal Court Support Manager, Tarrant County

Rachel Zummo, Attorney, Texas Justice Court Training Center

Lisa Teachey, Staff Attorney, Harris County District Courts

#### Defense Attorneys / Prosecutor

Alex Bunin / Ted Wood, Harris County Public Defender’s Office

Bill Cox, El Paso Public Defender’s Office

Alyse Ferguson, Collin County Managed Assigned Counsel Program

Rocky Glass, Ft. Bend County Public Defender’s Office

Bradley Hargis, Capital Area Private Defender Service

Ray Keith, Regional Public Defender Office for Capital Cases

James McDermott, Far West Texas Public Defender’s Office

Adeola Ogunkeyede, Travis County Public Defender’s Office

Shea Place / Allen Place, Texas Criminal Defense Lawyers Association  
Lynn Richardson and Christina Dean, Dallas County Public Defender's Office  
Melissa Shearer, Travis County Mental Health Public Defender  
Abner Burnett / Joe Stephens / Nate Walker, Texas RioGrande Legal Aid  
Benjamin Wolff, Director, Office of Capital and Forensic Writs  
Michael Young, Bexar County Public Defender  
Shannon Edmonds, Texas District and County Attorneys Association

Public Interest

Anna Harris, JUST-US Participatory Defense  
Krishnaveni Gundu, Texas Jail Project  
Marc Levin, Texas Public Policy Foundation  
Chris Harris, Texas Appleseed  
Doug Smith / Lindsey Linder / Jay Jenkins, Texas Criminal Justice Coalition  
Amanda Woog / Nathan Fennell, Texas Fair Defense Project

Legislative/Governor/Executive Branch Staff Members

Dan Buda, Office of Senator Royce West  
Paige Bufkin, Office of Representative Nicole Collier  
Allegra Hill / Stephanie Greger / Catarina Gonzales, Office of the Governor  
Dariel Ramirez / Ryan Alter, Office of Senator Juan "Chuy" Hinojosa  
Logan Harrison, Office of Representative Andrew Murr  
Kelly Lowe / Jessica Connaughton / Mark Wimmer / Allison Zaby, Attorneys,  
Texas Legislative Council  
Shakira Pumphrey, Policy Advisor, Office of Speaker Bonnen  
Ellic Sahualla, Office of Representative Joe Moody  
Mike Ward and Molly Madsen, Senate Committee on Criminal Justice

Office of Court Administration

Margie Johnson, Assistant General Counsel  
Megan LaVoie, Director of Public Affairs

# Texas Indigent Defense Commission Legislative Policy

General. Legislative actions to be undertaken by the Texas Indigent Defense Commission (Commission) shall be limited to those that conform to the Commission legislative policy and applicable law. The Commission provides recommendations for legislative and other changes to the indigent defense system under authority of Section 79.035, Government Code, which provides in part:

## § 79.035. COUNTY REPORTING PLAN; COMMISSION REPORTS.

...

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

(1) containing the information submitted under Section 79.036; and

(2) regarding:

(A) the quality of legal representation provided by counsel appointed to represent indigent defendants;

(B) current indigent defense practices in the state as compared to state and national standards;

(C) efforts made by the commission to improve indigent defense practices in the state; and

(D) recommendations made by the commission for improving indigent defense practices in the state; and

(E) the findings of a report submitted to the commission under Section 79.039.

The terms "legislation" or "legislative proposal," when used in this policy, shall be construed to mean any existing or proposed statute, rule, or regulation of the State of Texas or the United States or of any department or agency of the United States or the State of Texas. The terms "legislative position" or "legislative action" shall mean the legislative action taken or proposed to be taken by the Commission with respect to legislative proposals.

Criteria. The Commission, when acting within the scope of its authority under this policy in deciding whether to recommend, support, remain neutral, or oppose proposed legislation or to initiate any legislative action in either house of the Texas Legislature, in the United States Congress, or before any department or agency of the United States or the State of Texas shall, in addition to the policy considerations set forth in this Section, determine that the proposed legislation or legislative action conforms in all material respects to the following criteria:

- A. The proposed legislation or legislative action falls within the purposes, expressed or implied, of the Commission as provided in the Fair Defense Act.
- B. Adequate notice and opportunity has been afforded for the presentation of opposing opinions and views.
- C. The proposed legislation or legislative action is in the public interest.
- D. The proposed legislation or legislative action is not designed to promote or impede the political candidacy of any person or party or to promote a partisan political purpose.

Policies and Standards Committee.

- A. The Policies and Standards Committee of the Commission will meet as often as necessary to develop recommendations to the Commission for the Commission to initiate legislative action in accordance with this policy.
- B. The Policies and Standards Committee may create a workgroup to assist it in developing legislative proposals.
- C. The Policies and Standards Committee shall include in its recommendations to the Commission legislative positions approved by a majority vote of the Policies and Standards Committee members present and voting.
- D. The Policies and Standards Committee shall also have the authority to draft and submit to the Commission proposed legislation that it recommends to the Commission.

Approval of Legislative Proposals by Commission.

- A. The Commission shall consider all legislative proposals recommended by the Policies and Standards Committee. The Commission shall also consider any legislative proposals submitted by any member of the Commission.
- B. The Commission may not propose legislation unless it has been approved by a two-thirds vote of the Commission members present and voting at the meeting at which it is considered.
- C. The Commission may also by two-thirds vote of the Commission members present and voting take positions supporting, opposing, or remaining neutral on pending legislation. Failure to receive the necessary majority vote to support or remain neutral on the proposed legislation shall not be construed as adoption of a position to oppose that legislation. Legislative positions may be altered, amended, or withdrawn by a majority vote of the Commission present at a meeting.

Legislative Action by Commission.

- A. Legislative proposals and legislative action approved by the Commission shall be published in the Commission's *Annual Report*.
- B. The Director shall, in cooperation with the Commission, seek legislative sponsors for all approved legislative proposals. The Director or designee

shall also appear or find an appropriate representative to appear before the Texas Legislature to explain each legislative proposal approved by the Commission and to conduct such related activities and provide such additional information as may be required; however, no representative of the Commission or any section thereof shall appear before the Legislature or any committee or member of the Legislature in the pursuit of any legislative action authorized by the Commission without complying with all applicable laws of the State of Texas.

Director to Administer Legislative Program.

- A. The Director shall coordinate and administer the legislative programs and activities of the Commission and shall, together with the Special Counsel, monitor the Commission's legislative program as well as pending legislation that may have an impact on the Commission.
- B. The Director shall monitor the time frame in which the Commission's legislative program is to be developed and shall make recommendations concerning the legislative timetable to the Commission.
- C. The Director shall assist and advise the Commission in the development of the Commission's legislative program.
- D. The Director shall have a copy of each item of proposed legislation prepared and forwarded to each member of the Policies and Standards Committee in the meeting packet prior to its next meeting.
- E. The Director or designee shall assist the Policies and Standards Committee in the submission of its written report or recommendations to the Commission. A copy of the Policies and Standards Committee's report shall be forwarded to each member of the Commission in the meeting packet prior to the meeting at which the Commission is to consider the Policies and Standards Committee recommendations. The report shall contain a copy of each legislative proposal and the rationale for the Policies and Standards Committee's recommendation, as well as the rationale of any known objections.
- F. The Director shall provide copies of all legislative proposals approved by the Commission to the Executive Director of the Texas Judicial Council and the Texas Judicial Council at its next regularly scheduled meeting.

## Legislative Workgroup Proposals

Proposal #	Description	Person Proposing	Consensus
1	Commissioning a study on the state of indigent defense in Texas 20 years after the passage of the Fair Defense Act	Nate Fennell, Texas Fair Defense Project	Approved
2	Require a court to appoint an attorney to represent an eligible indigent defendant to investigate a claim and file a writ of habeas corpus in limited instances when the state represents that the defendant may have a potentially meritorious claim of relief from a prior conviction.	Cynthia Garza, Chief, Conviction Integrity Unit, Dallas County District Attorney's Office	Approved
3	Modify Art. 15.17 to ensure that magistrations forms are properly preserved	TIDC Staff	Approved
4	Enumerate and clarify the duties of magistrates at 15.17 hearings	TIDC Staff	Approved
5	Codify <i>Rothgery v. Gillespie County</i>	TIDC Staff	No consensus
6	Ensure lawyer visitation to defendants held in out-of-county jails	Nate Fennell, Texas Fair Defense Project	Approved
7	Hearing on Replacement Counsel Bill: Amend the Fair Defense Act to allow defendants to request replacement counsel upon a showing of good cause before the court	Nate Fennell, Texas Fair Defense Project	No consensus
8	Modify the Managed Assigned Counsel (MAC) statute to explain the full array of services provided by MACs and codify the ability of a managed assigned counsel program to have an oversight board. Allow managed assigned counsel programs to appoint counsel in capital cases	TIDC Staff	Approved
9	Direct TIDC to establish caseload standards and require counties to comply with those standards	Alex Bunin, Harris County Public Defender / TIDC Board member	Approved in concept with concerns
10	Modify the membership of TIDC's board to include a representative from a Managed Assigned Counsel Program	Alyse Ferguson, Collin Co. Mental Health Managed Assigned Counsel Program	Approved in concept

## Legislative Proposals approved by TIDC Board in 2018 (not passed by legislature)

11	Repeal the requirement that public defender attorneys must inform the appointing judge of the results of any investigation into a defendant's financial circumstances	Ted Wood, Harris County Public Defender's Office
12	Specifically provide for a limited scope attorney appointment to represent an arrestee at the Article 15.17, Code of Criminal Procedure, hearing ("magistration")	Alex Bunin, Harris County Public Defender
13	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")	Roderick "Rocky" Glass, Fort Bend County Public Defender Office
14	Cleanup bill to harmonize two versions of Section 79.037, Government Code, relating to TIDC's grants authority and authorize TIDC to fund nonprofit corporations to provide indigent defense services	TIDC Staff

	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
1.	<p><b>Background and Purpose: Fair Defense Act: 20 Years Later Commissioning a study on the state of indigent defense in Texas 20 years after the passage of the Fair Defense Act</b></p> <p>In 2000, Texas Appleseed released an in-depth study on indigent defense in Texas, <i>The Fair Defense Report</i>. National experts in indigent defense and systems evaluation contributed, most notably the significant involvement of the Spangenberg Group. That report helped usher the passage of the Fair Defense Act the following year and with it the first statewide framework for consistency and accountability in indigent defense practices throughout the state. The study created the baseline from which future reforms were measured, including current TIDC practices evaluating county spending on indigent defense. While progress has been made over the past 20 years, this anniversary provides an opportunity to reexamine the state's indigent defense system and chart a path forward for the next 20 years of public defense in Texas.</p> <p><b>Proposal:</b> This bill would commission a statewide study on public defense in Texas. The study would evaluate the improvements that have been made in the areas identified by the original <i>Fair Defense Report</i> and develop recommendations to consider for the next 20 years of indigent defense in Texas. The study would be conducted by a national expert or organization, vetted and hired by the TIDC.</p>	Approved	<ul style="list-style-type: none"> <li>• Jim Allison supports idea of statewide study but noted funding for it could be an issue; notes that interim legislative studies may happen at same time</li> <li>• Melissa Shearer asked if there were grant funds to support it [Yes, potentially from a foundation or the Bureau of Justice Assistance]</li> <li>• Abner Burnett asked if TIDC could do the study without legislation [Yes]</li> </ul>	
	<p><b>Person Proposing/Other Parties:</b> Nate Fennell, Texas Fair Defense Project</p>	<p><b>85<sup>th</sup> Bill/ Sponsor:</b></p>	<p><b>Status:</b></p>	

	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
2.	<p><b>Background and Purpose:</b> Require a court to appoint an attorney to represent an eligible indigent defendant to investigate a claim and file a writ of habeas corpus in limited instances when the state represents that the defendant may have a potentially meritorious claim of relief from a prior conviction.</p> <p>Convicted individuals typically do not have post-conviction legal representation, leaving them to file writs of habeas corpus without the assistance of counsel and potentially waiving otherwise meritorious claims for relief. Even though prosecutor offices might attempt to identify wrongly convicted individuals, prosecutors are barred from providing legal advice to a convicted defendant or from filing a proper application for writ of habeas corpus on the defendant’s behalf. Thus, concerns have been raised that potentially meritorious claims of unlawful detention by indigent defendants are not being thoroughly addressed and that such defendants are not given legal representation with regard to such claims. The current statute does not address the limited instances where the State suspects that an indigent defendant may have a meritorious habeas claim, and further investigation by habeas counsel for the convicted person is necessary to fully evaluate the merits of the claim. This is particularly true in counties with Conviction Integrity Units. Since there is currently no codified requirement for appointment of attorneys in those very limited and relatively rare circumstances, this amendment is, therefore, needed to ensure that indigent defendants are not being unlawfully confined. By expanding the types of claims that necessitate the appointment of an attorney to investigate claims for habeas corpus relief and the representation of an indigent defendant, it serves the interest of justice to do so.</p> <p><b>Proposal:</b> Amend Article 11.074 of the Code of Criminal Procedure by amending Subsection (b) and adding Subsection (b-1) to read as follows:</p>	Approved	<p>Cynthia Garza notes this was introduced late last session. Only one opponent last session. Long list of supporters.</p> <p>Michael Young thinks judge should have power to appoint, as in DNA review cases.</p> <p>Michael Cuccaro raises similar concern about prosecutors (not judges) raising meritorious claims.</p> <p>Scott Ehlers worked on this at Harris PD, said it was a political decision to create a narrow opening for habeas case appointments, which this bill would widen.</p> <p>Ben Wolff supports the bill. Could provide for judges to find good cause in other instances too (such as lab failure).</p>	<p>Cynthia Garza</p> <p>Paige Williams (also with Dallas DA’s office)</p> <p>Abner Burnett</p> <p>Lisa Teachey</p> <p>Christi Dean</p> <p>James McDermott</p> <p>Laura Angelini</p> <p>Ben Wolff</p> <p>TIDC staff: Wesley Shackelford</p>

<p>(b) If at any time the state represents to the convicting court that an eligible indigent defendant under Article 1.051 <u>has under a writ of habeas corpus a potentially meritorious claim for relief from a judgment described by Subsection (a) [who was sentenced or had a sentence suspended is not guilty, is guilty of only a lesser offense, or was convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court]</u>, the court shall appoint an attorney to <u>investigate the claim and</u> represent the indigent defendant for purposes of filing an application for a writ of habeas corpus, if an application has not been filed, or to otherwise represent the indigent defendant in a proceeding based on the application for the writ.</p> <p><u>(b-1) For purposes of Subsection (b), a potentially meritorious claim is any claim the court determines is likely to provide relief, including a claim that the defendant:</u></p> <ul style="list-style-type: none"> <li><u>(1) is or may be actually innocent of the offense;</u></li> <li><u>(2) is or may be guilty of only a lesser offense;</u></li> <li><u>(3) was or may have been convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court; or</u></li> <li><u>(4) was or may have been convicted or sentenced in violation of the constitution of this state or the United States.</u></li> </ul>				<p>Christi Dean asks when current statute has limited Cynthia Garza [in instances when investigation or legal advice is needed, especially in other counties]</p> <p>Laura Angelini sees this as another avenue for appointing counsel, with judge retaining discretion to appoint in other instances.</p> <p>Christi Dean and James McDermott would like to add language to require appointed counsel to have some minimum amount of experience.</p>	
<p><b>Person Proposing/Other Parties:</b> Cynthia Garza, Chief, Conviction Integrity Unit, Dallas County District Attorney's Office</p>	<p><b>84<sup>th</sup> Bill/ Sponsor:</b> HB 3500 by Rep. Jessica Gonzalez</p>	<p><b>Status:</b> Bill passed House Criminal Jurisprudence Committee</p>			

	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
3.	<p><b>Background and Purpose: Modify Art. 15.17 to ensure that magistration forms are properly preserved.</b></p> <p><i>Note: This issue was identified through TIDC policy monitoring. This proposal was approved by TIDC’s Legislative Workgroup and the Board in 2019. SB 815 passed the Legislature 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.” This proposal seeks to address the Governor’s concerns.</i></p> <p>HB 3165 was enacted in the 2017 session. One of the various revisions it made was to modify Art. 15.17(a), Code of Criminal Procedure (CCP), by changing the word “recording” to “record,” including in subsection (1) and (2), which specify how long records must be preserved. According to the law as revised, “a record of the communication between the arrested person and the magistrate” only has to be preserved until the earlier of (1) the date on which pretrial hearing ends; or (2) 91<sup>st</sup> day after date record created in misdemeanors or 120<sup>th</sup> day in felonies.</p> <p>Art. 15.17(e) requires that a record be made of the magistrate informing the defendant of the right to request appointment of counsel; asking the defendant whether they want to request appointment of counsel; and whether the defendant requested counsel.</p> <p>Art. 15.17(f) states that a “record required under Art. 15.17(a) or (e) may consist of written forms, electronic recordings, or other</p>	Approved	<p>None raised</p> <p>Michael Cuccaro indicate that the El Paso County Chief Magistrate saw no problems with the bill.</p>	

<p>documentation as authorized by procedures adopted in the county under Article 26.04(a).”</p> <p>Although there are no specific record preservation limits detailed in Art. 15.17(e), the combined changes in Art. 15.17(a) and (f) could be interpreted as allowing for records of requests for counsel to be destroyed according to the timelines in Art. 15.17(a). This is especially true since magistration forms typically serve as the record for communications that occur under both Art. 15.17(a) and (e).</p> <p>This is a problem because magistration forms are a critically important document that TIDC policy monitors need to determine if magistrates are advising defendants of the right to counsel, whether defendants requested counsel, and when they requested counsel. TIDC uses the magistration forms to determine if counties are appointing counsel in a timely manner per the timelines in CCP 1.051(e).</p> <p>Judges also need to know if a defendant has requested counsel and ruled on the request to ensure that waivers of counsel are valid. If a defendant has requested counsel, the court may not direct or encourage the defendant to communicate with the prosecutor unless the court has denied the request and the defendant is given an opportunity to retain counsel or waives counsel (see CCP 1.051(f-2)).</p> <p>To address the Governor’s veto of SB 815 in 2019, this new proposal seeks to institute a specific record retention period of 3 years after judgment or termination of the case proceedings, which is based on the Texas State Library and Archives Commission’s retention schedule for bail records for County and District Clerks (Record Number CC1600-04h and DC2125-05p, respectively). Bail amounts are typically recorded on magistration forms, so we thought it important for the records retention periods to be the same.</p>			
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<p><b>Proposal:</b> (1) Amend CCP art. 15.17(a) to remove the referenced time frames for record preservation; and (2) amend CCP art. 15.17(f) to include the specific record retention periods for art. 15.17(a) and (e) records.</p> <p>SECTION 1. Articles 15.17(a) and (f), Code of Criminal Procedure, are amended to read as follows:</p> <p>(a) In each case enumerated in this Code ... A record of the communication between the arrested person and the magistrate shall be made. [<del>The record shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91<sup>st</sup> day after the date on which the record is made if the person is charged with a misdemeanor or the 120<sup>th</sup> day after the date on which the record is made if the person is charged with a felony.</del>] ....</p> <p>(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). <u>The record must be retained for 3 years after final judgment is rendered or the proceedings are otherwise terminated in the case.</u> ....</p>					
<p><b>Person Proposing/Other Parties:</b> TIDC Staff</p>	<p><b>86<sup>th</sup> Bill/ Sponsor:</b> SB 815 by Sen. Rodriguez; HB 4474 by Rep. Moody</p>	<p><b>Status:</b> SB 815 passed but vetoed by governor because prior version delegated the time frame for maintaining magistrate warning records to the Texas State Library and Archives Commission</p>			

	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
4.	<p><b>Background and Purpose: Enumerate and clarify the duties of magistrates at 15.17 hearings.</b></p> <p>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>TIDC and 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.</p> <p>TIDC also regularly observes that requests for counsel at magistrations 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 magistrations, and that those forms are transferred within 24 hours. These requirements are currently implied by 15.17(a) but not explicitly stated.</p> <p><b>Proposal:</b> The revised proposal would amend Article 15.17(a) of the Code of Criminal Procedure as follows:</p> <p>(a) In each case enumerated in this Code, the person making the</p>	Approved	<p>Jim Allison and other workgroup members clarified that the proposal does not require magistrates to submit completed forms when defendants refuse to complete them.</p> <p>Anna Harris Tate and Krish Gundu raised concerns about defendants' comprehension of the hearing. Judge Trejo offered that, in El Paso, counsel is appointed in the interests of justice for people who, especially because of mental health or disability barriers, cannot request or waive counsel for themselves (which is the practice in many jurisdictions).</p>	<p>Judge Alfonso Charles</p> <p>Adeola Ogunkeyede</p> <p>Alyse Ferguson</p> <p>Krish Gundu</p> <p>Logan Harrison</p> <p>Anna Harris Tate</p> <p>Lisa Teachey</p> <p>Kelsey Bernstein</p> <p>Abner Burnett</p> <p>Judge Alma Trejo</p> <p>Paige Bufkin</p> <p>Jim Allison</p>

<p>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 him taken before some magistrate of the county where the 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 <u>and sound</u> of the arrested person may be presented to the magistrate by means of a videoconference. <u>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. The magistrate shall perform the following duties:</u></p> <p>(1) The magistrate shall inform in clear language the person arrested, either in person or through a videoconference, of the:</p> <p>(A) accusation against him <u>or her</u> and of any affidavit filed therewith,</p> <p>(B) <del>of his</del> right to retain counsel,</p> <p>(C) <del>of his</del> right to remain silent, <u>and that the person arrested is not required to make a statement, and that any statement by the person arrested may be used against him or her,</u></p> <p>(D) <del>of his</del> right to have an attorney present during any interview with peace officers or attorneys representing the state,</p> <p>(E) <del>of his</del> right to terminate the interview at any time,</p> <p>(F) <del>and of his</del> right to have an examining trial.</p>		<p>Kelsey Bernstein of TAC asked for feedback from the Justices of the Peace and Constables Association and Texas Justice Courts Training Center. Those groups did not have concerns with the proposal and would like to be involved in later updates.</p>	<p>Kathleen Casey-Gamez</p> <p>TIDC staff: Claire Buetow</p>
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~~(G) 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~~

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

(2) The magistrate shall ensure the defendant can understand and participate in the proceeding as follows:

(A) If the person arrested 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.

(B) If the proceeding is conducted through a videoconference, the magistrate shall ensure the defendant can connect to and understand the image and sound of the videoconference.

(C) If the magistrate cannot ensure that the defendant can understand and participate in the proceeding, and if the magistrate has appointing authority, the magistrate shall appoint counsel. If the magistrate does not have authority to appoint counsel, the magistrate shall notify the appointing authority of the defendant's inability to understand and participate in the proceeding.

(3) The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time as the person is informed of his or her rights.

(4) If the person arrested is indigent and requests appointment of counsel and:

(A) 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.

(B) ~~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 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.~~

(5) The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law.

(6) 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:

(A) the date on which the pretrial hearing ends; or

<p>(B) 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.</p> <p><del>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.</del></p>					
<b>Person Proposing/Other Parties:</b> TIDC Staff	<b>85<sup>th</sup> Bill/ Sponsor:</b>	<b>Status:</b>			

	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
5.	<p><b>Background and Purpose: Codify <i>Rothgery v. Gillespie County</i>.</b></p> <p>In 2008, in <i>Rothgery v. Gillespie Cty.</i>, 554 U.S. 191, the Supreme Court of the United States stated: “We merely reaffirm what we have held before and what an overwhelming majority of American jurisdictions understand in practice: a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.” <i>Rothgery</i> at 213. It held that “Texas's article 15.17 hearing is an initial appearance.” <i>Rothgery</i> at 199. “Counsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial.” <i>Rothgery</i> at 212.</p>	No consensus	<p>Defense lawyers and advocates in rural areas (James McDermott, Nate Fennell, Anna Harris Tate) attested to TIDC’s observation that defendants are often told they do not have a right to a lawyer until they appear in court or their case is indicted, and agreed that a statutory change is important for changing this practice.</p>	[Same as 4]

<p>Under Article 1.051 of the Code of Criminal Procedure, counsel must be appointed within 1 or 3 working days after a request is received and adversarial judicial proceedings begin. Currently, Article 1.051 does not state when adversarial judicial proceedings begin. Subsection (j) suggests that it may not be until or after the first court appearance, and thus that counsel need not be appointed until then. The ambiguity in the statute contributes to one of TIDC’s most common findings in its county monitoring: people are not appointed counsel timely. Codifying <i>Rothgery</i> would clarify the legal standard.</p> <p><b>Proposal:</b> The revised proposal would amend Art. 1.051 of the Code of Criminal Procedure to comply with <i>Rothgery</i>:</p> <p>(c) An indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. <u>A proceeding under Article 15.17 of this Code is an initial appearance that marks the start of adversary judicial proceedings requiring the appointment of counsel for indigent defendants or in the interests of justice in accordance with the timelines set forth in this Subsection.</u> Subject to Subsection (c-1), <del>if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant</del> <u>if adversarial judicial proceedings have been initiated against an indigent defendant who has requested the appointment of counsel, or if the interests of justice require the appointment of counsel,</u> a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county in which the defendant is arrested shall appoint counsel as soon as possible, but not later than:</p>		<p>Judge Charles and other workgroup members wanted the statute clarified so that it does not appear to require appointment before or at magistration, but thereafter. Lisa Teachey revised the language to clarify the subsection (c) timelines apply.</p> <p>Regarding subsection (j), Jim Allison argued that <i>Rothgery</i>’s “reasonable time” standard for appointments does not require the same appointment timeline for in- and out-of-custody defendants, and that TIDC should not recommend a timeline for out-of-custody to the legislature, as it’s a matter within their discretion. He and Logan Harrison said they opposed the proposal since moving</p>	
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	<p>(1) the end of the third working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel, if the defendant is arrested in a county with a population less than 250,000; or</p> <p>(2) the end of the first working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel, if the defendant is arrested in a county with a population of 250,000 or more.</p> <p>(j) Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is <del>not</del> required <u>in accordance with the timelines set forth in Subsection (c) and until before</u> the defendant's first court appearance <del>or when adversarial judicial proceedings are initiated, whichever comes first.</del></p>		<p>up appointment timelines would have a fiscal impact on counties.</p> <p>Scott Ehlers argued that there is no distinction in <i>Rothgery</i> between in- and out-of-custody defendants and that the legislature has decided on an appointment timeline, in subsection (c). He offered a revision to align (c) and (j) and codify <i>Rothgery's</i> holding that counsel must be appointed before the initial court appearance, a "critical stage."</p>	
<p><b>Person Proposing/Other Parties:</b> TIDC Staff</p>	<p><b>85<sup>th</sup> Bill/ Sponsor:</b></p>	<p><b>Status:</b></p>		

#	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
6.	<p><b>Background and Purpose: Ensure lawyer visitation to defendants held in out-of-county jails</b></p> <p>Counties throughout Texas utilize interlocal agreements to house pretrial detainees in jails out-of-county, especially counties whose detained population exceeds their local jail capacity. As of June 1, 2020, the Texas Commission on Jail Standards reported 1,166 inmates being housed out-of-county. 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>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>This bill would amend the Code of Criminal Procedure to require any county housing pretrial defendants in another county to amend their attorney fee schedule(s) 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>Amend Article 26.05(d), Code of Criminal Procedure, as follows:</p> <p>(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 investigation, travel or remote secure</p>	Approved	No concerns raised with final version of proposal.	<p>Nate Fennell</p> <p>Jim Allison</p> <p>Michael Cuccaro</p> <p>TIDC Staff: Wesley Shackelford</p>

<p><u>communication to conduct confidential interviews with the clients housed more than 50 miles from the court</u>, and for mental health and other experts. Expenses 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 incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).</p>					
<p><b>Person Proposing/Other Parties:</b> Nate Fennell, Texas Fair Defense Project</p>	<p><b>85<sup>th</sup> Bill/ Sponsor:</b></p>	<p><b>Status:</b></p>			

#	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
7.	<p><b>Background and Purpose: Hearing on Replacement Counsel Bill: Amend the Fair Defense Act to allow defendants to request replacement counsel upon a showing of good cause before the court</b></p> <p>This bill would address two issues: (1) presentation of defendant complaints about counsel and (2) standards for replacing counsel.</p> <p><i>First</i>, under current law indigent defendants with complaints about their court-appointed counsel may not have any opportunity to challenge the effectiveness of their court-appointed counsel until after they have been convicted. Only the court before which a defendant’s case is tried can replace a defendant’s court-appointed lawyer. However, a represented defendant must rely on his attorney to file motions with the court, and the court is permitted to disregard any motions the defendant files <i>pro se</i>. See <i>Robinson v. State</i>, 240 S.W.3d 919, 923 (Tex. Crim. App. 2007) (“Because the motion for new trial was presented <i>pro se</i> while the appellant was represented by counsel, the trial court was free to rule on it, or disregard it.”). Thus, if a defendant has been truly neglected by his court-appointed attorney, he may have no opportunity to raise this issue. This bill would require a hearing if the defendant requests replacement counsel.</p> <p><i>Second</i>, this bill gives courts and appointed defense attorneys guidance on what would constitute good cause for replacing counsel, without taking away a judge’s discretion to determine when an attorney should be replaced. Importantly, this guidance is not tied to the <i>Strickland</i> standard, which is applied in the post-conviction context but is not a workable standard for evaluating pre-trial representation. See <i>Strickland v. Washington</i>, 466 U.S. 668, 686 (1984). Instead, this bill provides a non-exhaustive list of factors that</p>	No consensus	<p>Concerns raised that haven’t been addressed:</p> <ul style="list-style-type: none"> <li>• Does attorney have right to representation?</li> <li>• Does complaining client have right to ad litem?</li> </ul>	<p>Nate Fennell</p> <p>Judge Charles</p> <p>Michael Cuccaro</p> <p>Jim Allison</p> <p>Christi Dean</p> <p>Ben Wolff</p> <p>Alyse Ferguson</p> <p>Bill Cox</p> <p>Anna Harris Tate</p> <p>TIDC staff: Scott Ehlers</p>

a judge should consider in making this determination. This bill also provides a rebuttable presumption that if an attorney failed to communicate with the client that would necessitate good cause to replace counsel.

Other specific provisions include:

- Sets a limit on hearings to once every 6 months unless a new, material issue is raised.
- Allows the hearing to be made ex parte, and the request sealed, at the request of the defendant, the defense attorney, or the judge
- Notes that judges retain powers to address these problems outside of these hearings
- Requires the court to notify a MAC director, PD chief, or IDC if the county has one; they will have authority to replace court-appointed counsel if requested by defendant
- Adds to 26.04(k) that an attorney can be removed from the wheel for repeated removals from cases under new (k-1).

Proposed language:

Texas Code Crim. Proc. art. 26.04 is amended by amending Subsection (k) and adding Subsection (k-1) to read as follows:

(k) A court may replace an attorney who violates Subsection (j)(1) or upon a showing of good cause under Subsection (k-1) with other counsel. A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove from consideration for appointment an attorney who; intentionally or repeatedly violates Subsection (j)(1) or has repeatedly been replaced under Subsection (k-1).

<p><u>(k-1)(1) The court shall replace an attorney appointed under this Chapter on request of the defendant if good cause is shown. Subject to subsection (6), on request of a defendant represented by court-appointed counsel, the court shall hold a hearing to determine whether good cause exists to replace court-appointed counsel.</u></p> <p><u>(2) A hearing under this subsection shall be held no later than the next court date already scheduled in the case or, if no settings have been scheduled, within 30 days from the court’s receipt of the request.</u></p> <p><u>(3) The hearing under this subsection may be held ex parte on request of the defendant, the appointed attorney, or on the court’s own motion. The court can order that any transcript of the hearing be sealed to protect information that relates to preparation of the defense or is confidential or privileged.</u></p> <p><u>(4) There is a rebuttable presumption of good cause to replace counsel if court-appointed counsel violates Subsection (j)(1).</u></p> <p><u>(5) In determining whether good cause exists to replace court-appointed counsel, factors to be considered shall include:</u></p> <p><u>(A) The number, frequency, and duration of communications between the defendant and court-appointed counsel;</u></p> <p><u>(B) Counsel’s knowledge and understanding of the case;</u></p> <p><u>(C) Any specific complaints made by the defendant about actions or omissions by counsel;</u></p> <p><u>(D) Any findings that counsel’s behavior towards their client has violated the Professional Rules of Disciplinary Conduct;</u></p> <p><u>(E) Prevailing professional standards around competent representation of criminal defendants;</u></p> <p><u>(F) Whether court-appointed counsel’s caseload exceeds TIDC caseload guidelines established according to HB 1318 of the 83rd Legislative Session;</u></p> <p><u>(G) Any standards established pursuant to Texas Government Code 79.034; and</u></p>			
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<p><u>(H) Any other factors the court finds appropriate in assessing the quality of counsel’s representation of the client or the attorney-client relationship.</u></p> <p><u>(6) If the court finds that there is not good cause to replace appointed counsel after a hearing under this subsection, a defendant is not entitled to subsequent hearings for replacement counsel for the next six months unless the court finds that the defendant raises a new material issue that could not have been raised at the previous hearing under this subsection.</u></p> <p><u>(7) The court shall notify the chief public defender in a county with a public defender office of requests to replace a public defender attorney; the director of a managed assigned counsel program operated in accordance with section 26.047 of requests to replace an attorney in the managed assigned counsel program; and/or the county’s indigent defense coordinator of any request to replace court-appointed counsel.</u></p> <p><u>(8) On a request by the defendant, the chief public defender in a county with a public defender office has authority to replace a public defender. On a request by the defendant, the director of a managed assigned counsel program operated in accordance with section 26.047 has authority to replace court-appointed counsel in the managed assigned counsel program.</u></p> <p><u>(9) Nothing in this Subsection shall be construed to prevent a judge from utilizing existing powers to improve the quality of representation by an attorney if the Court finds that the issues raised in a hearing under this Subsection do not rise to the level of good cause to replace counsel.</u></p>					
<p><b>Person Proposing/Other Parties:</b> Nate Fennell, Texas Fair Defense Project</p>	<p><b>85<sup>th</sup> Bill/ Sponsor:</b></p>	<p><b>Status:</b></p>			

	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
8.	<p><b>Background and Purpose: Modify the Managed Assigned Counsel (MAC) statute to explain the full array of services provided by MACs and codify the ability of a managed assigned counsel program to have an oversight board. Allow managed assigned counsel programs to appoint counsel in capital cases.</b></p> <p>Article 26.047, Code of Criminal Procedure, outlines how Managed Assigned Counsel Programs (MACs) are established and operated. MACs appoint private assigned counsel in criminal cases, as well as appoint investigators, experts, and provide support services to private assigned counsel and indigent defendants. MACs are being used in Lubbock, Travis, Collin, and Harris Counties. The statute does not list the full array of services provided by MACs, and does not specifically mention oversight boards for MACs, even though MACs in Travis County and Lubbock have them. Public defender offices (PDOs) are authorized to establish public defender oversight boards under Art. 26.045, Code of Criminal Procedure. TIDC considers oversight boards for MACs and PDOs to be a best practice.</p> <p>Article 26.052, Code of Criminal Procedure, describes the process for the appointment of counsel in death penalty cases. MACs oversee appointment of counsel in felony cases in Travis and Lubbock Counties, but they cannot appoint counsel in death penalty cases because MACs are not permitted to do so under Article 26.052.</p> <p><b>Proposal:</b> Amend Article 26.047, Code of Criminal Procedure, to describe the full array of services provided by MACs. Add Art. 26.048, Code of Criminal Procedure, to authorize establishment of MAC oversight boards. Amend Art. 26.052 to authorize MACs to appoint counsel in death penalty cases.</p>	Approved		

<p>SECTION 1. Articles 26.047(a) and (b), Code of Criminal Procedure, are amended to read as follows:</p> <p>(a) In this article:</p> <p>(1) "Governmental entity" has the meaning assigned by Article 26.044.</p> <p>(2) "Managed assigned counsel program" or "program" means a program operated with public funds:</p> <p>(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; <del>and</del></p> <p>(B) for the purpose of appointing counsel under Article 26.04 <u>or 26.052</u> of this code or Section 51.10, Family Code; <u>and</u></p> <p><u>(C) for the purpose of appointing or providing an investigator, expert, or other support services for appointed counsel or indigent defendants.</u></p> <p><u>(3) "Oversight board" means an oversight board established in accordance with Article 26.048.</u></p> <p>(b) The commissioners court of any county, on written approval of a judge of the juvenile court of a county or a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a managed</p>			
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<p>assigned counsel program. In appointing an entity to operate a managed assigned counsel program under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify:</p> <p>(1) the types of cases in which the program may appoint counsel under Article 26.04 of this code or Section 51.10, Family Code, and the courts in which the counsel appointed by the program may be required to appear; <del>and</del></p> <p>(2) the term of any agreement establishing a program and how the agreement may be terminated or renewed.; <u>and</u></p> <p><u>(3) if an oversight board is established under Article 26.048 for the managed assigned counsel program, the powers and duties that have been delegated to the oversight board.</u></p> <p>SECTION 2. Article 26.048, Code of Criminal Procedure, is added to read as follows:</p> <p><u>Art. 26.048. MANAGED ASSIGNED COUNSEL OVERSIGHT BOARD. (a) The commissioners court of a county or the commissioners courts of two or more counties may establish an oversight board for a managed assigned counsel program created or designated in accordance with this chapter.</u></p> <p><u>(b) The commissioners court or courts that establish an oversight board under this article shall appoint members of the board. No active criminal trial judge, prosecutor, or attorney who receives appointments through the managed assigned counsel program may serve on the board.</u></p>			
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<p><u>(c) The commissioners court or courts may delegate to the board any power or duty of the commissioners court to provide oversight of the office under Article 26.047, including:</u></p> <p><u>(1) recommending selection and removal of a director;</u></p> <p><u>(2) setting policy for the office; and</u></p> <p><u>(3) developing a budget proposal for the office.</u></p> <p><u>(d) An oversight board established under this article may not gain access to privileged or confidential information.</u></p> <p>SECTION 3. Article 26.052, Code of Criminal Procedure, is amended by amending Subsection (b), adding Subsection (b-1) to read as follows:</p> <p>Art. 26.052. APPOINTMENT OF COUNSEL IN DEATH PENALTY CASE; REIMBURSEMENT OF INVESTIGATIVE EXPENSES. (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>(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. <del>In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article.</del></p> <p><u>(b-1) If a county is served by a managed assigned counsel program, trial counsel and counsel for direct appeal or to apply for a writ of certiorari may be appointed as provided by the written plan of</u></p>			
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	<p><u>operation for the managed assigned counsel program. An attorney appointed by a managed assigned counsel program in a death penalty case must be on the list of attorneys qualified for appointment in death penalty cases in the administrative judicial region in which the managed assigned counsel operates. In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article.</u></p>			
<p><b>Person Proposing/Other Parties:</b> TIDC Staff</p>	<p><b>85<sup>th</sup> Bill/ Sponsor:</b></p>	<p><b>Status:</b></p>		

	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
9.	<p><b>Background and Purpose: Direct TIDC to establish caseload standards and require counties to comply with those standards.</b></p> <p>Attorneys appointed to represent criminal defendants should “give each indigent defendant the time and effort necessary to ensure effective representation.”<sup>1</sup> At some point, an attorney can be appointed in so many cases that effective representation becomes nearly impossible. Our Legislature has authorized TIDC to identify the number of cases that constitute this breaking point. Specifically, TIDC is statutorily authorized to develop “standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent defendants.”<sup>2</sup></p> <p>The TIDC has not yet developed caseload standards. However, the TIDC did commission a study that suggested certain caseload guidelines.<sup>3</sup> The suggested guidelines say that for adult criminal cases, an attorney should carry an annual fulltime equivalent caseload of no more than:</p> <ul style="list-style-type: none"> <li>236 Class B Misdemeanors</li> <li>216 Class A Misdemeanors</li> <li>174 State Jail Felonies</li> <li>144 Third Degree Felonies</li> <li>105 Second Degree Felonies</li> <li>77 First Degree Felonies</li> </ul> <p>Counties are required to submit an annual report to the TIDC describing the number of appointments made to each attorney accepting appointments in the county.<sup>4</sup> This report is to be made by November 1 for the previous fiscal year. The reports show that</p>	Approved in concept with concerns	Jim Allison notes that TIDC has authority to adopt and enforce caseload standards as part of its grant requirements and has declined to implement this authority except for certain public defender grants.	<p>Alex Bunin</p> <p>Paige Bufkin</p> <p>Lisa Teachey</p> <p>Abner Burnett</p> <p>Michael Cuccaro</p> <p>Ted Wood</p> <p>Anna Harris Tate</p> <p>Shannon Edmonds</p> <p>Judge Charles</p> <p>Jim Allison</p> <p>TIDC staff: Scott Ehlers</p>

<p>numerous attorneys are appointed to cases in excess of suggested caseload guidelines.<sup>5</sup></p> <p>There currently is no law requiring counties to ensure that attorneys are not appointed to cases in excess of the suggested caseload guidelines. Such a law is needed, however, if the suggested guidelines are to be anything more than aspirational.</p> <p>Enforcement of the caseload standards would rely on TIDC's existing rulemaking authority to develop remedies for non-compliance,<sup>6</sup> but would only apply to counties in which TIDC provided more than 50% of the county's funding in the previous fiscal year.</p>			
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<sup>1</sup> Guidelines for Indigent Defense Caseloads – A Report to the Texas Indigent Defense Commission (January 2015) at xiii.

<sup>2</sup> Tex. Gov't Code § 79.034(a)(3).

<sup>3</sup> The guidelines were published in January 2015 in a report prepared by the Public Policy Research Institute of Texas A & M University. *See* Guidelines for Indigent Defense Caseloads – A Report to the Texas Indigent Defense Commission (January 2015). The TIDC did not adopt any of the suggested caseload guidelines.

<sup>4</sup> Tex. Gov't Code § 79.036(a-1).

<sup>5</sup> For example, Harris County's report for Fiscal Year 2019 shows that 88 of the 516 attorneys receiving appointments were appointed in more than 236 cases. This means just over 17 percent of the attorneys received appointments in excess of suggested caseload guidelines. And this is a conservative estimate because 236 is the maximum number of Class B Misdemeanors to which an attorney should be appointed. The suggested guidelines call for attorneys to be appointed in fewer cases as the seriousness of the cases increases. Dallas County's numbers showed just over 10 percent of the attorneys received appointments in excess of suggested caseload guidelines (57 of 554).

<sup>6</sup> Tex. Admin. Code § 173.307. Remedies for Noncompliance:

(a) If a grantee fails to comply with any term or condition of a grant or rule, the Commission may take one or more of the following actions:

- (1) disallow all or part of the cost of the activity or action that is not in compliance and seek a return of the funds;
- (2) impose administrative sanctions, other than fines, on the grantee;
- (3) temporarily withhold all payments pending correction of the deficiency by the grantee;
- (4) withhold future grant payments from the program or grantee; or
- (5) terminate the grant in whole or in part.

(b) The Commission shall provide reasonable notice prior to imposing a remedy under subsection (a) of this section. If a grantee disputes the finding, the authorized official may request that one or more representatives of the grantee appear before the Commission. If the Commission receives such a request, it will consider the grantee's presentation at the Commission's next scheduled meeting. The administrative determination rendered by the Commission is final.

	<p><b>Proposal:</b> Pass a bill: (1) directing the TIDC to adopt caseload standards; and (2) requiring counties to comply with those standards based on TIDC’s existing rulemaking authority.</p> <p>SECTION 1.</p> <p>(a) Not later than January 1, 2022, the Texas Indigent Defense Commission shall develop standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent defendants, as authorized by Section 79.034(a)(3), Government Code.</p> <p>(b) TIDC shall impose a remedy for noncompliance pursuant to Section 173.307, Texas Administrative Code, if TIDC reimbursed more than 50 percent of a county’s indigent defense expenditures in the previous fiscal year.</p>			
	<p><b>Person Proposing/Other Parties:</b> Alex Bunin, Harris County Public Defender</p>	<p><b>85<sup>th</sup> Bill/Sponsor:</b></p>	<p><b>Status:</b></p>	

	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
10.	<p><b>Background and Purpose: Modify the membership of TIDC’s board to include a representative from a Managed Assigned Counsel Program and a former client or family member of a client with an appointed attorney.</b></p> <p>Section 79.014, Government Code, describes the members who the Governor may appoint to TIDC’s board. While that membership includes judges, county commissioners, a defense lawyer, and chief public defender, a representative from a managed assigned counsel program is not included. Additionally, there are no representatives of former clients or family members of clients.</p> <p><b>Proposal:</b> Amend Section 79.014, Government Code, to include a representative from a Managed Assigned Counsel Program (MAC) as a possible member of the TIDC board, as well as a former client or family member of a former client. Require a MAC member to recuse themselves for votes regarding an award of funds to a county that the MAC serves, as is the case for Chief Public Defenders.</p> <p>Potentially problematic language in existing statute regarding the chief defender being able to pick a designee is also removed.</p> <p>SECTION 1. Section 79.014, Government Code, is amended to read as follows:</p> <p>Sec. 79.014. APPOINTMENTS. (a) The governor shall appoint with the advice and consent of the senate <del>five</del><u>seven</u> members of the board as follows:</p> <p>(1) one member who is a district judge serving as a presiding judge of an administrative judicial region;</p>	Approved in concept		

<p>(2) one member who is a judge of a constitutional county court or who is a county commissioner;</p> <p>(3) one member who is a practicing criminal defense attorney;</p> <p>(4) one member who is a chief public defender in this state or <del>the chief public defender's designee, who must be</del> an attorney employed by the public defender's office;</p> <p>(5) one member who is a judge of a constitutional county court or who is a county commissioner of a county with a population of 250,000 or more;</p> <p>(6) <u>one member who is a director of a managed assigned counsel program in this state or an attorney employed by the managed assigned counsel program; and,</u></p> <p><u>(7) one member who is a former client or family member of a client who was represented by an appointed attorney in a criminal matter.</u></p> <p>(b) The board members serve staggered terms of two years, with two members' terms expiring February 1 of each odd-numbered year and three members' terms expiring February 1 of each even-numbered year.</p> <p>(c) In making appointments to the board, the governor shall attempt to reflect the geographic and demographic diversity of the state.</p> <p>(d) A person may not be appointed to the board if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission or the council.</p>			
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<p>SECTION 2. Section 79.016, Government Code, is amended to read as follows:</p> <p>Sec. 79.016. DISCLOSURE REQUIRED. (a) A board member who is a chief public defender <u>or a managed assigned counsel director for</u>, or an attorney employed by an entity that applies for funds under Section 79.037 shall disclose that fact before a vote by the board regarding an award of funds to that entity and may not participate in that vote.</p> <p>(b) A board member's disclosure under Subsection (a) must be entered into the minutes of the board meeting at which the disclosure is made or reported, as applicable.</p> <p>(c) The commission may not award funds under Section 79.037 to an entity served by a chief public defender, <u>director of a managed assigned counsel program</u>, or other attorney who fails to make a disclosure to the board as required by Subsection (a).</p>					
<p><b>Person Proposing/Other Parties:</b> Alyse Ferguson, Collin Co. Mental Health Managed Assigned Counsel Program</p>	<p><b>85<sup>th</sup> Bill/Sponsor:</b></p>	<p><b>Status:</b></p>			

## Legislative Proposals Previously Adopted by TIDC Board in 2018

#	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
11.	<p><b>Background and Purpose: Repeal the requirement that public defender attorneys must inform the appointing judge 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. The statute requires the office to report the results of any investigation to the appointing judge. This requirement appears to intrude upon the attorney-client privilege. Specifically, the statute contravenes 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>The requirement could also possibly subject the client to a prosecution for perjury.</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> <p>(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></p>					
<p><b>Person Proposing/Other Parties:</b> Ted Wood, Harris County Public Defender's Office</p>	<p><b>85<sup>th</sup> Bill/ Sponsor:</b> HB 2131 by Rep. Armando Walle</p>	<p><b>Status:</b> Passed House</p>			

#	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
12.	<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 (“magistration”)</b></p> <p>Harris and Bexar Counties are now providing representation via their public defender offices 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</p>			

	<p>when there was no provision nor consideration of providing counsel at this early stage of the proceedings. Concerns about the impact were initially raised in both Harris and Bexar Counties, although ultimately appointments to the public defender offices for Art. 15.17 hearings went forward under court issued standing orders that defined them as limited in scope to these hearings only.</p> <p>The issue has arisen again in Galveston where the county is considering providing representation at such hearings, potentially via a new public defender office. Although many think the provision was intended to protect defendants from having their attorneys removed from their cases unnecessarily, a plain reading of the statute could be read to challenge such limited scope appointments. Providing clear authority in statute for appointments in Art. 15.17 hearings would assure such appointments were on solid ground and encourage earlier appointment of counsel to represent arrestees at such hearings.</p> <p><b>Proposal:</b> Article 26.04, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:  <u>(i-1) Notwithstanding Subsection (j)(2) or any other law, 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 continue to represent the person following the proceeding if appointed for that purpose under the other provisions of this article.</u></p>			
	<p><b>Person Proposing/ Other Parties:</b> Alex Bunin, Harris County Public Defender</p>	<p><b>85<sup>th</sup> Bill/ Sponsor:</b> HB 1456 by Rep. Dominguez</p>	<p><b>Status:</b> Passed House Criminal Jurisprudence Committee</p>	

#	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
13.	<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 three counties, Bexar, Ft. Bend, and Harris Counties, have defense attorneys representing defendants at hearings held under Article 15.17, Code of Criminal Procedure (commonly referred to as “magistration”). Cameron County uses private assigned counsel for these hearings. The public defender offices Ft. Bend and Bexar Counties 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 hired part-time public defenders who have a <i>civil</i> practice on the side. These attorneys will have to learn basic criminal law in order to provide magistration representation.</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>  Article 26.04, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:  (i-1) Notwithstanding Subsection (j)(2) or any other law, <u>an attorney may be appointed under this article to represent an</u></p>			

	<p><u>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 continue to represent the person following the proceeding if appointed for that purpose under the other provisions of this article.</u></p> <p>SECTION 2. 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/ Other Parties:</b> Roderick "Rocky" Glass, Fort Bend County Public Defender Office</p>	<p><b>85<sup>th</sup> Bill/ Sponsor:</b> HB 1457 by Rep. Dominguez</p>	<p><b>Status:</b> Passed House</p>	

#	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
14.	<p><b>Background and Purpose: Cleanup bill to harmonize two versions of Section 79.037, Government Code, relating to TIDC's grants authority and authorize TIDC to fund nonprofit corporations to provide indigent defense services.</b></p> <p>SB 1353 and SB 1057 were both passed by the 84<sup>th</sup> Legislature and now there are two subsections (b) and (e). In addition to harmonizing these provisions, the proposal would provide TIDC authority to provide grants to nonprofit corporations to provide indigent defense services to a county, such as immigration advice related to criminal</p>			

cases required under *Padilla v Kentucky*. It could also be used to directly fund non-profit public defender offices, such as Texas Rio Grande Legal Aid (TRLA), and potentially ease the reporting burden on small counties serviced by TRLA's public defender services.

**Proposal:**

SECTION 1. Section 79.037(a), Government Code, is amended to read as follows:

(a) The commission shall:

(1) provide technical support to:

(A) assist counties in improving their systems for providing indigent defense services, including indigent defense support services ~~[systems]~~; and

(B) promote compliance by counties with the requirements of state law relating to indigent defense;

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

(A) the county;

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

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

(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 in the county; and

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

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

	<p>(A) withdrawing grant funds; or  (B) requiring reimbursement of grant funds by the entity.</p> <p>SECTION 2. Section 79.037(b), Government Code, as amended by Chapters 56 (S.B. 1353) and 476 (S.B. 1057), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:</p> <p>(b) The commission shall determine for each county the entity or entities [<del>within the county</del>] that are eligible to receive funds for the provision of <u>or improvement in the provision of</u> indigent defense services under Subsection (a)(2). The determination must be made based on the entity's:</p> <p>(1) compliance with standards adopted by the board;  and  (2) demonstrated commitment to compliance with the requirements of state law relating to indigent defense.</p> <p>SECTION 3. Section 79.037(c), Government Code, as amended by Chapters 56 (S.B. 1353) and 476 (S.B. 1057), Acts of the 84th Legislature, Regular Session, 2015, is reenacted to read as follows:</p> <p>(c) The board shall adopt policies to ensure that funds under Subsection (a)(2) are allocated and distributed in a fair manner.</p> <p>SECTION 4. Section 79.037(e), Government Code, as added by Chapter 56 (S.B. 1353), Acts of the 84th Legislature, Regular Session, 2015, is repealed.</p>			
	<b>Person Proposing/Other Parties:</b> TIDC Staff	<b>85<sup>th</sup> Bill/ Sponsor:</b> <b>None</b> HB 1812 by Rep. Murr	<b>Status:</b> Passed House Criminal Jurisprudence Committee	

## Indigent Defense Plan Submission & Review Process

- On November 1, 2019, all indigent defense plans were required to be submitted to the Commission.
  - **All 254 counties have fully completed the approval process** (condition for FY2020 formula grant)
- Staff is reviewing indigent defense plans.
- Reviews examine whether plans meet the Fair Defense Laws and requirements established by the TIDC Board. Plans must meet these requirements for counties to be eligible for FY2021 formula grants.
- Key areas for review:
  - New statute requiring indigent defense plans specifically provide for the priority appointment of an available public defender's office.
    - Many district court plans in the ~185 counties that participate in the Regional Public Defender Office for Capital Cases (RPDO) do not currently mention the RPDO and will need to be amended.
  - Contracts for defense services are current and meet the requirements of TIDC's contract defender program rules.
  - As of August 14, 2020:
    - 110 counties – all plans marked as complete
    - 120 counties – district court plans marked as complete
    - 135 counties – county court plans marked as complete
    - 208 counties – juvenile plans marked as complete

## Summary of Recent Policy Monitoring Activity

County	Dates Visited	Status	Issues / Recent Activity
<b>Reports not yet issued</b>			
Harris	Online review	Draft Pending	Wesley Shackelford, Lindsay Bellinger, Claire Buetow, and Joel Lieurance are conducting a follow-up review to address issues raised in the 2016 report.
Montgomery	Online review	Draft Pending	Lindsay Bellinger, Claire Buetow, and Joel Lieurance are conducting an initial review.
Parker	Online review	Draft Pending	Lindsay Bellinger, Claire Buetow, and Joel Lieurance are conducting an initial review.
<b>We issued a report, but have not yet received a county response.</b>			
Deaf Smith	2 <sup>nd</sup> Follow-up Review: 8/21/19	Report issued: 7/8/20 Response due: 9/10/20	Kathleen Casey-Gamez and Scott Ehlers conducted a second follow-up review to the 2017 report. The report found issues with reasonable assistance in completing affidavits of indigence.
Gaines	2 <sup>nd</sup> Follow-up Review: 2/18 - 2/20/20	Report issued: 6/16/20 Response due: 8/17/20	Claire Buetow and Joel Lieurance conducted a second follow-up review to the 2017 report. The report found issues with timely appointment of counsel in felony and misdemeanor cases.
<b>We issued a report, and the county has responded to our report. We will conduct a follow-up visit within two years.</b>			
Childress	2 <sup>nd</sup> Follow-up Review: 8/20/19	Report issued: 1/6/20 Response rec'd: 3/10/20	Kathleen Casey-Gamez and Scott Ehlers conducted a second follow-up review to the 2017 report. The report found issues with waivers of counsel in misdemeanor cases and with timely appointment of counsel in misdemeanor cases. The County is correcting how requests were transmitted to the court from the jail.
Collin	2 <sup>nd</sup> Follow-up Review: 7/30 – 7/31/19	Report issued: 2/4/20 Response rec'd: 4/10/20	Kathleen Casey-Gamez and Scott Ehlers conducted a second follow-up review to the 2016 report. The report found that in-person Article 15.17 hearings were not always conducted for persons who do not speak English. The County created a full-time magistrate position to address this issue.
Dawson	2 <sup>nd</sup> Follow-up Review: 2/19/20	Report issued: 6/16/20 Response rec'd: 8/13/20	Claire Buetow and Joel Lieurance conducted a second follow-up review to the 2017 report. The report found issues with timely appointment of counsel in misdemeanor cases. The County is

			correcting how requests were transmitted to the court from the jail.
Jefferson	Follow-up Review: 4/1 – 4/3/19	Report issued: 6/15/20 Response rec'd: 8/13/20	Scott Ehlers, Kathleen Casey-Gamez, and Joel Lieurance conducted a follow-up review to the 2014 report. The report found issues with waivers of counsel in misdemeanor cases and with timely appointment of counsel in misdemeanor cases. The report also found that felony contract attorneys exceeded contract caseloads. To address these problems, magistrates will now rule on counsel requests. The court coordinator will notify the court if contract caseload maximums are reached.
Jim Wells	Initial Review: 5/13 – 5/16/19	Report issued: 11/8/19 Response rec'd: 3/30/20	Kathleen Casey-Gamez and Joel Lieurance conducted an initial review. The report made findings regarding the regarding the timeliness of counsel appointments. The County is correcting how requests were transmitted to the court from the jail.
Kleberg	Follow-up Review: 7/22 – 7/23/19	Report issued: 1/6/20 Response rec'd: 5/12/20	Claire Buetow and Joel Lieurance conducted a follow-up review to address issues raised in the 2016 report. The report found issues with the timeliness of appointments for persons posting bail immediately after arrest. Appointments will now be promptly made for all defendants.
Scurry	Limited Scope Review: 7/15/19	Report issued: 11/8/19 Response rec'd: 3/7/20; 6/29/20	Claire Buetow and Joel Lieurance conducted a limited scope review to examine procedures for appointing counsel in misdemeanor cases. The report made findings regarding the transmittal of misdemeanor counsel requests to the court of dispositive jurisdiction and regarding the timeliness of counsel appointments. The County is correcting how requests were transmitted to the court from the jail.
Tarrant	Initial Review: 11/18 – 11/20/19; 2/5 – 2/6/2020	Report issued: 6/1/20 Response rec'd: 7/29/20	Wesley Shackelford, Claire Buetow, Kathleen Casey-Gamez, and Joel Lieurance conducted an initial review. The report made a finding regarding methods for determining indigence. The County adopted a standard of indigence that does not look to incomes beyond the defendant / defendant's spouse.
Waller	Follow-up Review: 2/28 – 3/1/2019; 5/6 – 5/7/19	Report issued: 9/9/19 Response	Claire Buetow and Joel Lieurance conducted a follow-up review to the 2016 report. The report found issues regarding the transmittal of counsel requests to the court of dispositive jurisdiction and

		rec'd: 11/6/19; 2/27/20	regarding the timeliness of counsel appointments. The County stated that it will make a point to make timely determinations of indigence regardless as to whether a defendant makes bail.
<b>Report closed – None</b>			

## Online Monitoring Reviews

- Since March 2020, TIDC has been conducting online monitoring reviews (no onsite visit).
- Challenges to conducting virtual reviews
  - TIDC must be able to examine felony and misdemeanor cases online
  - If magistrate warning forms are not in the case file, the county must be able to examine these files or to send them to TIDC
  - The county must be able to examine its own juvenile case files.
  - TIDC must be able to observe dockets / magistrate warning hearings online
- TIDC has adjusted its proposed monitoring schedule to cover counties eligible for a visit under the risk assessment but who also can meet the challenges of a virtual review.
  - Ongoing virtual reviews:
    - Harris (follow-up review),
    - Montgomery (initial review)
    - Parker (initial review).
  - Upcoming virtual reviews
    - Brazoria (initial review)
    - Galveston (follow-up review)
    - Tom Green (initial review)
    - Williamson (initial review)
  - Proposed reviews that will be conducted onsite at a later time
    - Bosque (follow-up)
    - Comanche (follow-up)
    - Maverick (follow-up)
    - Midland (follow-up)
    - Milam (follow-up)
    - Wharton (follow-up)
    - Willacy (follow-up)
    - Zavala (follow-up)

## Summary of Recent Complaints

### Complaint Statistics

Since the March 12, 2020 Board Meeting:

- TIDC has received 42 new complaints from 39 individuals.
- 6 complaints remain open, pending further investigation.
- 36 complaints require no further action and will be sent a letter, phone call, e-mail, or no further response for resolution.\*
  - 1 forwarded to local officials.
  - 9 referrals to Innocence Projects.
  - 0 referral to the Texas Fair Defense Project.
  - 2 referrals to the Texas Jail Project.
  - 2 referrals to self-serve legal resources.
  - 16 referrals to the State Bar-Grievance System and Client-Attorney Assistance Program
  - 0 referrals to the State Commission on Judicial Conduct.\*\*

*\*Note: One response may have contained referrals to more than one entity, or no referrals at all.*

### Relevant Complaints

#### **Complaint #1: Defense attorney caseload across multiple counties greater than TIDC guidelines and attorneys receiving disproportionate cases on the wheel**

**Date: July 13, 2020**

**Contact Title: JUST-US Participatory Defense**

**County: Bastrop**

According to the complainant's statement, "Mr. Dunne is an attorney who is on the appointment list in Bastrop, Fayette, Lee, and is one of the two contract 'Public Defenders' in Caldwell county. He also has cases in Travis County" and "has made approximately \$200,000 in indigent defense funds alone the last three years according to TIDC dashboard that is approximately 500 cases of criminal appointments in multiple counties.... He is not adhering to TIDC case load 'guidelines' and the counties/judges aren't going to limit him as proven in the multiple years he has been able to get away with this. Additionally, this is a perfect example how these counties aren't using the 'wheel' for appointments it is obviously clear that two appointed attorneys Laurence Dunne and Justin Fohn whom are both on the same appointment list are being favored by the courts getting appointed to majority of the cases."

#### **RESOLUTION:**

This complaint is not yet resolved.

#### **Complaint #2: Defendants unable to request counsel until arraignment which can occur 3 to 5 months later**

**Date: July 14, 2020**

**Contact Title: Anna Harris**

**County: Bastrop**

According to complainant's statement, "defendants aren't even offered the opportunity to request Indigent defense unless they seek it out on their own (if not in jail) until the arraignment hearing which is an average of 3-5 months normally if they already have an indictment (now potential even longer due to the right to a speedy trial thrown out the window) after magistrate hearing. We have defendants in jail right now who [were] arrested and magistrate[d] in February due to COVID-19 their arraignment hearings keep getting bumped every month currently most not until August. Not to mention especially if they aren't indicted prior to COVID-19 we have multiple defendants sitting there 90 days with no appointed lawyer awaiting an indictment. Nonprofits like Texas Fair Defense have to get involved when they haven't been indicted in 90 days because they don't have a lawyer."

**RESOLUTION:**

This complaint is not yet resolved.

**Complaint #3: Flat fee payment for a plea and amount of work and time required of the attorney**

**Date: July 16, 2020**

**Contact Title: Roxy Rodriguez**

**County: Bastrop**

The complainant attached an email that she reported she received from her attorney, Adam Muery, in response to a request to speak with him, which stated in part: "Bastrop County has not updated it[s] system for representation of indigent defendants in quite some time. Other Counties have offices of public defender or contract attorneys. Bastrop county still has an appointment list with a wheel and a flat fee payment for plea-bargains of \$400. Based on their set hourly rate that means they budgeted 2.67 hours of pre-trial time to your case. Clearly I exceeded this allotment the first day I appeared for you in court and reviewed the evidence in the district attorney's file with you. As it has been explained to me previously, their theory for budgeting such a small amount for plea-bargains is that they believe if a defendant is going to take the benefit of a plea bargain for a reduced sentence that they should admit responsibility for their actions and not require a great deal of time to consider the State's evidence. They believe a defendant already knows whether they are guilty of a crime and should throw itself on the mercy of the prosecutor and the court. I don't agree with this perspective obviously. In fact I hate it. But it does not change the fact that the county is not going to pay me or any other attorney to spend a great deal of time or resources evaluating your case or explaining things to you if you are going to except a plea bargain. I have tried on previous cases to have the court pay me for the time that I spent above their flat fee and frankly they will not do it. No attorney that the court will appoint is going to be able to spend the amount of time you desire on your case for a plea bargain."

After a discussion of a previous conversation and the case, the email also contains the following: "What many clients don't understand is that even though my advice to you is in your best interest it is not in my best interest. Part of the flaw In Bastrop County's system for indigent defense is that if you go to trial I can bill by the hour for my preparation and courtroom time for both the pre-trial and jury trial. If you decide you don't want to take a plea bargain I will earn a lot more money. And I love going to trial. It is the part of my job as an attorney that I enjoy the most." ... "Hopefully you'll take all that in consideration the next time that we meet which will be at your next court setting. Please let me know before then if you want me to file a motion to substitute counsel to ask the court to appoint a different attorney."

**RESOLUTION:**

This complaint is not yet resolved.