



## **A Short Guide to Texas Public Defender Oversight Boards Including Sample Language**

TIDC requires an oversight board for any public defender office established with TIDC funds. The county or counties involved should determine the board's composition and responsibilities, which will differ based on whether the office is county- or nonprofit-run. An oversight board for a county department helps ensure independence from undue interference—a prerequisite for creating a public defender office according to national standards. An oversight board also prevents the concentration of power in the hands of a single individual and may incorporate diverse perspectives that help guide the office. Every public defender office created since passage of the Fair Defense Act has included an oversight board.

### **Board Composition**

Consider the following when creating a public defender board:

- Public defender boards should comprise an odd number of board members—often 5, 7, 9, 11, or 13.
- Board members should be selected by a variety of sources, such as by the commissioners court, local judges, community groups, law school faculty, or TIDC. This is true, even if a commissioners court ultimately confirms board member appointments.
- Membership should be diverse, knowledgeable about public defense, and representative of a variety of public defense stakeholders, including the following:
  - County Commissioners
  - Judiciary
  - Community Groups
  - Defense Bar
  - Formerly incarcerated persons or their family members
  - Academia
  - Texas public defense community, including other public defense leaders
- Members should be free from interests that would pose a conflict with the public defender office. Membership should not include prosecutors, law enforcement, probation officers, private attorneys taking assigned cases in the same jurisdiction, or judges before whom the public defender office will practice law.
- While it's helpful to consider which individuals will populate the initial board, to ensure the office's longevity, it's important to also consider each position as a category or slot (*e.g.*, County Commissioner position, Defense Bar position) that will be filled by multiple individuals over the years. Consider how each position will contribute to the public defender office's success.

- Consider how to stagger terms of office, so that institutional memory is not lost in one fell swoop.
  - Consider the length of each term—often, 2, 3, or 4 years per position.
  - See Texas Code of Criminal Procedure, art. 26.045.
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## SAMPLE BOARD COMPOSITION LANGUAGE

The oversight board shall comprise seven members:

- (1) A county commissioner, selected by the commissioners court;
- (2) A private criminal defense attorney who does not receive assigned counsel cases in \_\_\_\_\_ County(s), selected by the local defense bar association;
- (3) A law professor focused on criminal law, selected by the dean of X law school;
- (4) A chief public defender or other public defense leader (not employed by this public defender office), selected by the Executive Director of the Texas Indigent Defense Commission;
- (5) A judge before whom the public defender does not practice law, selected by the administrative judge;
- (6) A formerly incarcerated person or family member, selected by the commissioners court;
- (7) A community leader, selected by the commissioners court.

All members shall be confirmed by the commissioners court. All members should be knowledgeable about criminal justice. Membership shall not include prosecutors, law enforcement, probation officers, private attorneys taking assigned cases in this jurisdiction, or judges before whom the public defender office will practice law. Members shall serve staggered two-year terms.

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## Board Duties

Board responsibilities vary, but most include (1) selecting and recommending a chief public defender; (2) setting high-level policy; and (3) ensuring the public defender office's success. Public defender offices should be overseen by an experienced chief public defender. Boards are ideally suited to select that chief defender. The chief defender usually leads and manages the office's daily operations, while boards are well suited to setting high-level policy for the office (such as the scope of the office, office expansions, or other big picture decisions), as well as helping to set and support budget requests.

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## SAMPLE BOARD DUTY LANGUAGE

The Public Defender Oversight Board (hereinafter referred to as Oversight Board or Board) was created by X County Commissioners Court on [date]. The Board's duties include the following:

- Screening, interviewing, and recommending a chief public defender. Helping to guide the chief public defender as necessary. Removing the chief public defender as necessary.
  - Providing strategic guidance, review, and approve the program's policies and procedures and organizational structure, including the Plan of Operation required under Texas statute (Tex. Code of Crim. Proc. art. 26.045(b-1), (c-1)).
  - Developing and monitoring the program budget and operations and providing strategic guidance on challenges faced by the program and long-term sustainability.
  - Advising the chief public defender on hiring, as requested.
  - Generally supporting the public defender office's success.
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### Board Meetings

Consider the following when setting the rules for board meetings:

- Boards should meet at least quarterly.
- A majority of the members should be able to call a special meeting, as necessary.
- Determine what will constitute a quorum. It's common to require a majority or supermajority of members.
- Consider appointing the following officers:
  - Chair
  - Vice-chair
  - Secretary
- Determine who will take minutes. This is often the secretary.
- Determine how to fill vacancies. Often, a vacancy is filled by the appointing authority described in the board composition section. Sometimes it is filled by the board by a majority vote.
- Determine whether you will accept alternates or proxies. Often, if a member is unable to attend a meeting, an alternate can be allowed to represent the member's

interests and provide information or input from the member's perspective, but is not allowed to vote or count toward establishing a quorum.

- Determine when agenda items should be submitted and an agenda distributed.
- Determine whether the meeting should be open to the public. Generally, meetings should be open to the public.
- Determine whether the Open Meetings Act will apply. If the Open Meetings Act does not apply, determine whether the board wishes to follow the Open Meetings Act nonetheless.
- Consider the chief public defender's role at each meeting.

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### SAMPLE BOARD MEETING LANGUAGE

- The Board shall meet quarterly.
- A majority of board members may call a special meeting, as necessary.
- Five of seven members shall constitute a quorum.
- Board positions—chair, vice-chair, and secretary—shall be voted on by the board every 2 years. Board members shall serve a maximum of two 2-year terms.
- The secretary shall take attendance at each meeting. Although in-person attendance is encouraged, remote attendance shall also suffice.
- Should a board member be unable to attend, they may send an alternate to represent the member's views and interests. However, the alternate shall not vote. Alternates do not count toward establishing a quorum.
- Board vacancies shall be filled by the appointing authorities described above.
- The board chair shall set board agendas and preside over each meeting.
- Board members should submit agenda items at least 1 week prior to each meeting.
- The vice-chair shall function as chair in the chair's absence.
- Although the Open Meetings Act does not apply to this Board, the Board shall attempt to follow the Act as closely as is possible.
- The chief public defender shall provide a verbal or written update to the Board at each quarterly meeting.