

## Texas Indigent Defense Commission: Recommended Legislative Proposals 2024

Proposal	Description
1	Provide indigent defendants access to counsel for limited-scope representation for 15.17 hearing
2	Definition Managed Assigned Counsel Program; Areas of MAC appointments; Confidentiality Client Information
3	Make staff in public defender's offices and managed assigned counsel programs home-address information confidential in tax-appraisal records
4	Authorize criminal defense lawyers and their investigators to access driver's license photos in the DPS database
5	Create and fund a student loan repayment program for attorneys working in appointed criminal, juvenile delinquency, and family protection cases in underserved areas
6	Ensure payment of expenses for attorneys to meet with defendants held in out-of-county jails
7	Allocation of alcohol tax revenue to the Fair Defense Account
8	Managed Assigned Counsel Program Access to Juvenile Records
9	Create a pipeline program to support law students and attorneys work on appointed criminal, juvenile delinquency, and family protection cases in underserved areas, including the creation of: <ul style="list-style-type: none"> <li>• a student loan repayment program for attorneys; and</li> <li>• an internship and fellowship program at TIDC</li> </ul>
10	Establish statutory fee schedule requirements for Family Protection Representation cases
11	Expand the pool of attorneys qualified to represent indigent defendants in death penalty cases.

<b>12</b>	Provide Managed Assigned Counsel Programs with Access to DPS' Criminal History Information
<b>13</b>	Allow counties to be reimbursed for representation provided by a public defender's office when it is appointed to represent an indigent inmate when the State Counsel for Offenders cannot do so
<b>14</b>	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>15</b>	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>16</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.
<b>17</b>	Enumerate and clarify the duties of magistrates at 15.17 hearings; ensure that magistration records are properly preserved.

#	Description	
1	<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 if the commissioners court approves funding for such representation</b></p> <p>Several Texas counties are now providing representation 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 when there was no provision nor consideration of providing counsel at this early stage of the proceedings. The provision has raised concerns about limited scope appointments, although many jurisdictions have nonetheless implemented representation at Art. 15.17 hearings under court issued standing orders that defined them as limited in scope to these hearings only. This proposal would provide clear authority in statute for appointments in Art. 15.17 hearings.</p> <p>During the last legislative session, some counties raised concerns that the proposed language would allow judges to begin appointing attorneys to represent arrestees at magistration hearings without any input or approval by a commissioners court, while obligating a county to additional spending. The proposal below is revised to add a clause requiring the commissioner court to approve funding for such representation.</p> <p><b>Proposal:</b> Amend Article 26.04 by adding subsection (i-1) to read as follows:</p> <p><u>(i-1) Notwithstanding Subsection (j)(2) or any other law, if a County Commissioner’s Court approves funding, 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 represent the person in subsequent proceedings of that case, only if appointed for that purpose under the other provisions of this article.</u></p>	
<p><b>Person Proposing/ Other Parties:</b> TIDC Staff</p>	<p><b>88<sup>th</sup> Bill/ Sponsor:</b> A provision was in HB 1528 (TIDC omnibus bill; Introduced Version Section 3) by Rep. Reggie Smith that would have permitted the judges to make limited scope appointments for Art. 15.17 hearings</p>	<p><b>Status:</b> Passed the house</p>

#	Description
2	<p data-bbox="172 196 1934 305"><b>Background and Purpose: Clarify the definition of Managed Assigned Counsel Programs and areas in which MAC programs may appoint counsel, authority of MAC programs to remove counsel from appointed cases, and address confidentiality of client case information received by a MAC program.</b></p> <p data-bbox="172 347 1955 573">Managed Assigned Counsel programs (MACs) were added to the Code of Criminal Procedure to codify an alternative method for appointing counsel which may be adopted by the judges hearing criminal and/or juvenile cases in a County or Judicial District. The current definition does not specify that MACs authority is a delegation of judicial authority and does not fully reflect the areas in which a MAC program may be authorized to appoint counsel, or the circumstances in which a MAC may not only remove an attorney from consideration for future appointments, but also when removal from appointed cases may be necessary. The proposed language addresses these issues.</p> <p data-bbox="172 615 1955 760">Currently Article 26.05(c), Code of Criminal Procedure, refers to the MAC director approving voucher payments but does not refer to a designee being able to approve payments. Many MACs now operating have too many cases for a single person to be able to approve all vouchers and so an amendment authorizing MAC director designees to approve vouchers is also added.</p> <p data-bbox="172 802 1944 915">The proposed language also recognizes that in performing the oversight and support of appointed counsel roles, MACs may be privy to attorney-client matters, or other information which is confidential by law. The proposal requires MACs, MAC staff, and agents to keep such information confidential and not subject to public disclosure.</p> <p data-bbox="172 958 1906 1029"><b>Proposal:</b> Amend Code of Criminal Procedure Article 26.047(A)(2), (b), (c), and (f), and adding subsection (j), Code of Criminal Procedure as follows:</p> <p data-bbox="285 1065 1482 1101">Art. 26.047. MANAGED ASSIGNED COUNSEL PROGRAM. (a) In this article:</p> <p data-bbox="382 1136 1430 1172">(1) "Governmental entity" has the meaning assigned by Article <u>26.044</u>.</p> <p data-bbox="172 1208 1976 1279">(2) "Managed assigned counsel program" or "program" means a program operated with public funds <u>to perform delegated judicial functions:</u></p> <p data-bbox="172 1315 1976 1386">(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; and</p>

Code. (B) for the purpose of appointing counsel under Article 26.04 of this code or Section 51.10, Family

(C) for the purpose of appointing or providing an investigator, expert, or other support services for appointed counsel and their clients;

(D) for the purpose of approving a payment to an attorney, investigator, or expert, and for other reasonable and necessary expenses, including legal representation in collateral and ancillary matters to the extent required to effectuate the right to counsel in the primary matter, under Article 26.05; and

(E) for the purpose of overseeing and improving the quality of representation provided to clients by attorneys appointed under this article.

(c) The commissioners court or commissioners courts shall require a written plan of operation from an entity operating a program under this article. The plan of operation must include:

(1) a budget for the program, including salaries;

(2) a description of each personnel position, including the program's director;

(3) the maximum allowable caseload for each attorney appointed by the program;

(4) provisions for training personnel of the program and attorneys appointed under the program;

(5) a description of anticipated overhead costs for the program;

(6) a policy regarding licensed investigators and expert witnesses used by attorneys appointed under the program;

and (7) a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys;

(8) a policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for the attorney that has not been waived by all affected clients.

(9) a policy describing the circumstances under which the program may authorize appointed counsel to provide representation in ancillary and/or collateral matters to effectuate the constitutional right to effective assistance of counsel

(10) a policy describing the circumstances under which:

(A) an attorney may withdraw from a case; and

(B) good cause is established to remove an attorney from a case.

(11) procedures the program will use to maintain the confidentiality of juvenile client data, including which staff may access such data.

(f) The program's public appointment list from which an attorney is appointed must contain the names of qualified attorneys, each of whom:

(1) applies to be included on the list;

(2) meets any applicable requirements specified by the procedure for appointing counsel adopted under Article 26.04(a) and any other requirements specified by the Texas Indigent Defense Commission; and

(3) is approved by the program director or review committee, as applicable.

(g) A court may replace an attorney appointed by the program for the same reasons and in the same manner described by Article 26.04(k), the notice of replacement of counsel, and the reason therefor, must be documented in the same manner as a notice of the appointment of counsel.

(j) A program may receive information necessary to perform the program's functions under this article, including materials that are subject to attorney-client privilege, subject to attorney work-product privilege, or otherwise protected by constitutional or statutory rights of a client represented by an attorney under this article. Information and materials described by this subsection and information and materials related to the purpose described by Subsection (a)(2)(C) are confidential and not subject to disclosure, and the program, the attorneys appointed under this article, and other individuals, as applicable, shall maintain the confidentiality of any information or materials described by this section.

Article 26.05(c), Code of Criminal Procedure, is amended to read as follows:

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program or the director's designee, and until the judge or the director or director's designee, as applicable, approves the payment. If the judge or the director or director's designee disapproves the requested amount of payment, the judge or the director or director's designee shall make written findings stating the amount of payment that the judge or the director or director's designee approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

<p><b>Person Proposing/ Other Parties:</b> TIDC MAC Legislative Workgroup</p>	<p><b>88<sup>th</sup> Bill/ Sponsor:</b> HB 1528 (TIDC omnibus bill) Section 5 amended the definition of a MAC in Code of Criminal Procedure Article 26.047 (a); Section 6 contained amendments to Code of Criminal Procedure Article 26.047 subsections (b), (c), and (f), and added subsection (j); Introduced Version Section 3) by Rep. Reggie Smith Section</p>	<p><b>Status:</b> Passed the house</p>
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3	<p data-bbox="153 199 2003 264"><b>Background and Purpose: Make staff in public defender’s offices and managed assigned counsel programs home-address information confidential in tax-appraisal records.</b></p> <p data-bbox="153 313 2003 427">Appraisal districts hold information concerning real property. This information includes the address of real property within the district and the name of the owner of that property. Generally, this information is available to the public. Thus, a person is generally able to search for a property owner by name and determine that property-owner’s home address.</p> <p data-bbox="153 459 2003 686">Public defenders often feel threatened when handling cases involving a measure of publicity. In one case, a public defender received threatening letters and social media communications from strangers due to her perception that defending the accused person was a terrible thing. In another case, the public defender was approached in person by a man who knew about the public defender’s involvement in a case. The person said he knew where the public defender lived, and he knew she had three young daughters. Many of these somewhat frightening scenarios could be avoided if the public did not have access to the home addresses of public defenders.</p> <p data-bbox="153 719 2003 1027">The Texas Legislature has recognized that certain classes of persons have legitimate privacy concerns that are negatively affected by public access to appraisal-district information. Accordingly, the Legislature has enacted Section 25.025 of the Texas Tax Code. This statute allows certain persons to keep their information confidential insofar as appraisal-district records are concerned. These classes of persons include many individuals involved in the justice system such as judges, peace officers, sexual assault victims, and juvenile-probation officers. Current and former employees of a district attorney or county attorney are also on the list, as are federal public defenders. This proposal would add public defenders in Texas state courts to the list. After additional feedback at the first legislative workgroup meeting, managed assigned counsel program staff have been added to the proposal.</p> <p data-bbox="153 1060 2003 1206">Proposal: The language proposed in both HB 3327 and SB 1532 is perfectly acceptable. That language adds an additional category to the list of classes of persons whose home-address information in appraisal-district records has been made confidential. It should be noted that three additional classes of persons were added to the long list in Article 25.025(a) of the Tax Code in the 88th Legislative Session. See SB 617, SB 1525, and HB 1911.</p> <p data-bbox="153 1255 751 1287">The revised proposed language is below:</p> <p data-bbox="153 1336 1444 1369">Section 25.025(a), Tax Code, is amended by adding subsections (28) and (29) as follows:</p>



<p>(a) This section applies only to:</p> <p>...</p> <p><u>(28) an employee of a public defender's office as defined by Article 26.044(a), Code of Criminal Procedure; and</u></p> <p><u>(29) an employee of a managed assigned counsel program as defined by Article 27.047(a), Code of Criminal Procedure.</u></p>		
<p>Person Proposing/ Other Parties: Ted Wood, Harris County Public Defender's Office</p>	<p>88th Bill/ Sponsor: HB 3327 / Rep. Gene Wu SB 532 / Sen. Borris Miles – The bill</p>	<p>Status: HB 3327 passed the house SB 532 was referred to the Senate Business and Commerce Committee, but it was never set for a hearing.</p>

#	Description
4	<p data-bbox="142 191 1871 264"><b>Background and Purpose: Authorize criminal defense lawyers and their investigators to access driver's license photos in the DPS database.</b></p> <p data-bbox="142 310 1990 427">The definition of a “motor vehicle record” includes records that pertain to driver’s licenses.<sup>1</sup> As a general rule, the information contained in motor vehicle records is not open to the public.<sup>2</sup> However, there is a long list of exceptions to this general rule. These exceptions are listed in Sections 730.005, 730.006, and 730.007 of the Texas Transportation Code.</p> <p data-bbox="142 453 1990 610">Investigators for the Harris County Public Defender’s Office (PDO) would like to be able to obtain driver’s license photographs of persons they are investigating. With a person’s photograph in hand, the investigators are better able to locate that person. Often, investigators in search of a specific person may encounter that person and not even know it. If the investigators had a photograph of the person, they would better know when they encounter that person.<sup>3</sup></p> <p data-bbox="142 639 1990 756">The Department of Public Safety (DPS) will not provide the PDO with driver’s-license photos. The DPS believes there is no exception to the general rule making driver’s-license information private that would allow PDO investigators to obtain these photos. This belief appears to be correct.</p> <p data-bbox="142 786 1990 902">Section 730.007(a)(2)(A) permits the DPS to release “personal information” to “a government agency” if the information will be strictly limited to use by the agency. The PDO would seem to be a government agency and thus the release of personal information to PDO investigators appears to be statutorily authorized.<sup>4</sup></p> <p data-bbox="142 932 1654 967">However, the release of “personal information” is limited by Section 730.007(b) which reads as follows:</p> <p data-bbox="243 997 1892 1065">The only personal information an agency may release under this section is the individual’s: (1) name and address; (2) date of birth; and (3) driver’s license number.</p> <p data-bbox="142 1094 1833 1130">But there is an exception to the foregoing limitation. The exception is codified as Section 730.007(c)(1) which says:</p> <p data-bbox="243 1159 1892 1276">This section does not: (1) prohibit the disclosure of a person’s photographic image to: (A) a law enforcement agency, the Texas Department of Motor Vehicles, a county tax assessor-collector, or a criminal justice agency for an official purpose;</p> <p data-bbox="142 1305 1990 1382">So, the upshot of the foregoing statutes is that PDO investigators cannot obtain driver’s license photos. This is because the PDO is not a law-enforcement agency. Nor is the PDO clearly a criminal-justice agency.<sup>5</sup></p> <p data-bbox="142 1411 306 1446"><b>Proposal:</b></p>

Amend Section 730.007(c)(1) by adding a new subsection (D) to read as follows: <u>(D) a private investigator licensed under Chapter 1702, Occupations Code, who is employed by a public defender’s office for an official purpose; or</u>		
<b>Person Proposing/ Other Parties:</b> Ted Wood, Harris County Public Defender’s Office	<b>88<sup>th</sup> Bill/ Sponsor:</b> HB 3875 / Rep. Hubert Vo	<b>Status:</b> The bill was referred to the House Transportation Committee, but it was never set for a hearing.

#	Description
5	<p><b>Background and Purpose: Create and fund a student loan repayment program for attorneys working in appointed criminal, juvenile delinquency, and family protection cases in underserved areas.</b></p> <p>The percent of indigent cases is rising and there are fewer attorneys to take them. As the demand for attorney grows, the number of attorneys taking indigent cases is decreasing. Rural communities are hit particularly hard. 27% fewer attorneys took at least 1 indigent criminal case in rural counties over the past 8 years. And attorneys taking indigent cases are overburdened. One in four rural attorneys taking indigent criminal cases is overburdened.</p> <p>Studies show that having a professional experience in a rural community during or just after graduating from school can encourage longer term commitment to work in the area. Texas has several programs that offer incentives to students and professionals working in underserved areas, including the Physician Education Loan Repayment Program, Mental Health Professionals Loan Repayment Program, etc.</p> <p><b>Proposal:</b> TIDC included \$8.936 million in its FY26/27 legislative appropriation request to create and fund a pipeline to bring lawyers working on appointed criminal, juvenile delinquency, and family protection representation cases; \$5 million</p>

<sup>1</sup> Tex. Transp. Code § 730.003(4).

<sup>2</sup> Tex. Transp. Code § 730.004.

<sup>3</sup> Access to photographs of potential witnesses would enhance investigator safety. By knowing what potential witnesses look like, investigators would be less likely to be “set up.” Additionally, access to photographs would significantly decrease the time necessary in the investigation process.

<sup>4</sup> Additionally, Section 730.007(a)(2)(D) possibly authorizes DPS to release personal information to PDO investigators. The statute permits the information to be used in conjunction with a criminal proceeding.

<sup>5</sup> This is not to say the PDO is definitely not a criminal-justice agency. This is a debatable legal point.

of that was for a loan repayment assistance program. Supporting that extraordinary item in TIDC's LAR, enabling legislation will be required for the loan repayment portion of the program. Staff will draft a legislative proposal for loan repayments to be administered by the Texas Higher Education Coordinating Board.		
<b>Person Proposing/ Other Parties:</b> TIDC Staff	<b>88<sup>th</sup> Bill/ Sponsor:</b> New Proposal	<b>Status:</b> N/A

#	Description
6	<p data-bbox="170 86 1839 159"><b>Background and Purpose: Ensure payment of expenses and attorney time for attorneys to meet with defendants held in out-of-county jails</b></p> <p data-bbox="170 203 1944 349">Counties throughout Texas house pretrial detainees in jails out-of-county, especially counties whose detained population exceeds their local jail capacity. As of May 1, 2022, the Texas Commission on Jail Standards reported 1,871 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 data-bbox="170 393 1934 613">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 data-bbox="170 657 1944 768">This bill would require any county housing pretrial defendants in another county to amend their Indigent Defense Plan 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 data-bbox="170 812 1881 885">The proposal also provides for the payment of attorneys for the time they are traveling outside the county where the case is pending to perform work on appointed cases.</p> <p data-bbox="170 928 1955 1002"><b>Proposal:</b> Article 26.05, Code of Criminal Procedure, is amended by amending Subsections (a) and (d) and adding Subsection (d-1) to read as follows:</p> <p data-bbox="170 1015 1955 1201">Art. 26.05. COMPENSATION OF COUNSEL APPOINTED TO DEFEND. (a) A counsel, other than an attorney with a public defender's office or an attorney employed by the office of capital and forensic writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:</p> <ol data-bbox="268 1209 1955 1390" style="list-style-type: none"><li data-bbox="268 1209 1955 1279">(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;</li><li data-bbox="268 1287 1955 1390">(2) reasonable and necessary time spent out of court on the case, <u>including time spent traveling to perform legal services outside of the county where the case is pending</u>, supported by any documentation that the court requires;</li></ol>

<p>(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and</p> <p>(4) preparation of a motion for rehearing.</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:</p> <p>(1) investigation;</p> <p>(2) <del>and for</del> mental health and other experts; and</p> <p>(3) <u>if the defendant is confined in a correctional facility located more than 50 miles from the court in which the defendant's proceeding is pending:</u></p> <p>(A) <u>travel to the defendant's location for a confidential communication and food and lodging related to that travel; and</u></p> <p>(B) <u>any costs specifically associated with remotely entering into a confidential communication with the defendant.</u></p> <p><u>(d-1) Expenses under Subsection (d) 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 under Subsection (d) incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).</u></p> <p>SECTION 2. Article 26.05, Code of Criminal Procedure, as amended by this Act, applies only to expenses incurred on or after the effective date of this Act.</p>		
<p><b>Person Proposing/Other Parties:</b> Nate Fennell, Texas Fair Defense Project</p>	<p><b>88<sup>th</sup> Bill/ Sponsor:</b> HB 2523 by Rep. Canales, passed the House, was sponsored by Sen. Perry; &amp; HB 1528 (Engrossed Version Section 7) by Rep. Reggie Smith</p>	<p><b>Status:</b> HB 2523 was placed on Senate Intent Calendar. HB 1528 passed house</p>

#	Description
7	<p><b>Background and Purpose: Allocate of alcohol tax revenue to the Fair Defense Account</b></p> <p>The Fair Defense Account (FDA) is the primary source of funding for TIDC and the exclusive funding mechanism for the Office of Capital and Forensic Writs (OCFW). The FDA has experienced significant funding reductions due to the loss of approximately \$6 million/year in revenue from juror pay and an ongoing reduction in court costs collected.</p>

**Proposal:** The proposal would allocate one percent of the mixed beverage gross receipts tax and mixed beverage sales tax to the Fair Defense Account, which by statute may only be used to fund TIDC and OCFW.

SECTION 1. Subchapter C, Chapter 183, Tax Code, is amended by adding Section 183.055 to read as follows:

Sec. 183.053. ALLOCATION OF CERTAIN REVENUE TO THE FAIR DEFENSE ACCOUNT. The comptroller shall deposit one percent of the taxes received under Subchapters B and B-1 to the credit of the Fair Defense Account established under Section 79.031, Government Code. Money deposited to the account under this section may be used only for the purposes described by Section 79.031, Government Code.

SECTION 4. This Act takes effect September 1, 2025.

<b>Person Proposing/Other Parties:</b> TIDC Staff	<b>88<sup>th</sup> Bill/ Sponsor:</b> n/a	<b>Status:</b>
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8	<p data-bbox="151 214 1965 285"><b>Background and Purpose: Add Managed Assigned Counsel programs to those authorized to access juvenile information.</b></p> <p data-bbox="151 331 1965 516">Almost all information in juvenile cases is confidential as a matter of law. The Family Code, provides narrowly targeted lists of those who may access information in juvenile cases, including prosecutors, the child’s parents, and the child’s attorney. In order to review when a child’s parents qualify for appointed counsel, screen potential counsel for conflicts, and related matters Managed Assigned Counsel programs (MACs) need authorization to access juvenile case information to fulfill their duties in appointing and overseeing appointed counsel.</p> <p data-bbox="151 561 1965 630">The proposed language adds MAC programs appointing counsel for a youth, to the narrowly drawn list of those authorized to access juvenile case information in the Family Code.</p> <p data-bbox="268 675 1688 711"><b>Proposal:</b> Amend Sections 58.004(b), 58.005, and 58.007 of the Family Code to read as follows:</p> <p data-bbox="151 734 1965 938">Sec. 598.004. REDACTION OF VICTIM'S PERSONALLY IDENTIFIABLE INFORMATION. (a) Notwithstanding any other law, before disclosing any juvenile court record of a child as authorized by this chapter or other law, the custodian of the record must redact any personally identifiable information about a victim of the child's delinquent conduct or conduct indicating a need for supervision who was under 18 years of age on the date the conduct occurred.</p> <p data-bbox="277 971 1335 1003">(b) This section does not apply to information that is:</p> <ol data-bbox="369 1026 1965 1425" style="list-style-type: none"> <li data-bbox="369 1026 1562 1058">(1) necessary for an agency to provide services to the victim;</li> <li data-bbox="369 1081 1201 1114">(2) necessary for law enforcement purposes;</li> <li data-bbox="151 1136 1965 1205">(3) shared within the statewide juvenile information and case management system established under Subchapter E;</li> <li data-bbox="151 1227 1965 1334">(4) <u>shared with an attorney representing the child, or a Managed Assigned Counsel Program responsible for appointing an attorney to represent the child, in a proceeding under this title; or</u></li> <li data-bbox="151 1357 1965 1425">(5) <u>shared with a managed assigned counsel program responsible for appointing an attorney to represent the child in a proceeding under this title, once a request for appointed</u></li> </ol>



counsel is made, either to determine indigence, or fulfill its duties in appointing and overseeing appointed counsel; or

~~(5)~~ (6) shared with an attorney representing any other person in a juvenile or criminal court proceeding arising from the same act or conduct for which the child was referred to juvenile court.

SECTION 2. Section 58.005, Family Code, is amended by amending Subsection (a-1) to read as follows:

Sec. 58.005. CONFIDENTIALITY OF FACILITY RECORDS. (a) This section applies only to the inspection, copying, and maintenance of a record concerning a child and to the storage of information from which a record could be generated, including personally identifiable information, information obtained for the purpose of diagnosis, examination, evaluation, or treatment of the child or for making a referral for treatment of the child, and other records or information, created by or in the possession of:

(1) the Texas Juvenile Justice Department;

(2) an entity having custody of the child under a contract with the Texas Juvenile Justice Department; or

(3) another public or private agency or institution having custody of the child under order of the juvenile court, including a facility operated by or under contract with a juvenile board or juvenile probation department.

(a-1) Except as provided by Article 15.27, Code of Criminal Procedure, the records and information to which this section applies may be disclosed only to:

(1) the professional staff or consultants of the agency or institution;

(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child;

(4) a Managed Assigned Counsel Program responsible for appointing an attorney to represent the child in a juvenile delinquency matter once a request for appointed counsel is made, either to determine indigence, or fulfill its duties in appointing and overseeing appointed counsel;

(5) a governmental agency if the disclosure is required or authorized by law;

~~(5)~~(6) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;

~~(6)~~(7) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification;

~~(7)~~(8) a prosecuting attorney;

~~(8)~~(9) a parent, guardian, or custodian with whom a child will reside after the child's release or discharge from a juvenile facility;

~~(9)~~(10) a governmental agency or court if the record is necessary for an administrative or legal proceeding and the personally identifiable information about the child is redacted before the record is disclosed; or

~~(10)~~(11) with permission from the juvenile court, any other individual, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b) This section does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B or D-1.

(c) An individual or entity that receives confidential information under this section may not disclose the information unless otherwise authorized by law.

SECTION 3. Section 58.007, Family Code, is amended by amending Subsection (b) to read as follows:

Sec. 58.007. CONFIDENTIALITY OF PROBATION DEPARTMENT, PROSECUTOR, AND COURT RECORDS.

(a) This section applies only to the inspection, copying, and maintenance of a record concerning a child and the storage of information, by electronic means or otherwise, concerning the child from which a record could be generated and does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B or D-1. This section does not apply to a record relating to a child that is:

(1) required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state;

(2) maintained by a municipal or justice court;

(3) subject to disclosure under Chapter 62, Code of Criminal Procedure;

(4) required to be provided to the Federal Bureau of Investigation under Section 411.052, Government Code, for use with the National Instant Criminal Background Check System; or

(5) required to be forwarded to the Department of Public Safety under Section 411.0521, Government Code.

(b) Except as provided by Section 54.051(d-1) and by Article 15.27, Code of Criminal Procedure, the records, whether physical or electronic, of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title may be inspected or copied only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney representing the child's parent in a proceeding under this title;

(4) an attorney representing the child;

(5) a Managed Assigned Counsel Program responsible for appointing an attorney to represent the child in a juvenile delinquency matter either a request for appointed counsel is made, either to determine indigence, or fulfill its duties in appointing and overseeing appointed counsel;

~~(5)~~ (6) a prosecuting attorney;

~~(6)~~ (7) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;

~~(7)~~(8) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

~~(8)~~(9) with permission from the juvenile court, any other individual, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b-1) A person who is the subject of the records is entitled to access the records for the purpose of preparing and presenting a motion or application to seal the records.

(c) An individual or entity that receives confidential information under this section may not disclose the information unless otherwise authorized by law.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 746 (S.B. 1304), Sec. 21(4), eff. September 1, 2017.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 746 (S.B. 1304), Sec. 21(4), eff. September 1, 2017.

(f) Repealed by Acts 2017, 85th Leg., R.S., Ch. 746 (S.B. 1304), Sec. 21(4), eff. September 1, 2017.

(g) For the purpose of offering a record as evidence in the punishment phase of a criminal proceeding, a prosecuting attorney may obtain the record of a defendant's adjudication that is admissible under Section 3(a), Article 37.07, Code of Criminal Procedure, by submitting a request for the record to the juvenile court that made the adjudication. If a court receives a request from a prosecuting attorney under this subsection, the court shall, if the court possesses the requested record of adjudication, certify and provide the prosecuting attorney with a copy of the record. If a record has been sealed under this chapter, the juvenile court may not provide a copy of the record to a prosecuting attorney under this subsection.

(h) The juvenile court may disseminate to the public the following information relating to a child who is the subject of a directive to apprehend or a warrant of arrest and who cannot be located for the purpose of apprehension:

- (1) the child's name, including other names by which the child is known;

<p>(2) the child's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;</p> <p>(3) a photograph of the child; and</p> <p>(4) a description of the conduct the child is alleged to have committed, including the level and degree of the alleged offense.</p> <p>(i) In addition to the authority to release information under Subsection (b)(6), a juvenile probation department may release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.</p> <p>(j) Repealed by Acts 2019, 86th Leg., R.S., Ch. 131 (H.B. 1760), Sec. 12(3), eff. September 1, 2019.</p>		
<p><b>Person Proposing/Other Parties:</b> TIDC MAC Legislative Workgroup</p>	<p><b>88<sup>th</sup> Bill/ Sponsor:</b> n/a</p>	<p><b>Status:</b></p>

#	Description
9	<p><b>Background and Purpose: Create a pipeline program to support law students and attorneys work on appointed criminal, juvenile delinquency, and family protection cases in underserved areas, including the creation of:</b></p> <ul style="list-style-type: none"> <li>• a student loan repayment program for attorneys; and</li> <li>• an internship and fellowship program at TIDC</li> </ul> <p>The percent of indigent cases is rising and there are fewer attorneys to take them. As the demand for attorney grows, the number of attorneys taking indigent cases is decreasing. Rural communities are hit particularly hard. 27% fewer attorneys took at least 1 indigent criminal case in rural counties over the past 8 years. And attorneys taking indigent cases are overburdened. One in four rural attorneys taking indigent criminal cases is overburdened.</p> <p>Studies show that having a professional experience in a rural community during or just after graduating from school can encourage longer term commitment to work in the area. Texas has several programs that offer incentives to students and professionals working in underserved areas, including the Physician Education Loan Repayment Program, Mental Health Professionals Loan Repayment Program, etc.</p>

**Proposal:** TIDC included \$8.9 million in its FY26/27 legislative appropriation request to create and fund a pipeline to bring lawyers working on appointed criminal, juvenile delinquency, and family protection representation cases. This includes \$5 million for a loan repayment assistance program. Supporting that extraordinary item in TIDC's LAR, enabling legislation will be required for the loan repayment portion of the program. The remaining funds are for TIDC to create and operate an internship and fellowship program to bring more law students and recent graduates into public defense and family protection representation work.

Below is the draft legislative proposal for loan repayments to be administered by the Texas Higher Education Coordinating Board (THECB). TIDC has sought feedback from the THECB on the draft.

SECTION 1. Title 3, Subtitle B, Chapter 61, is amended by adding Subchapter YY to read as follows:

SUBCHAPTER YY. REPAYMENT OF CERTAIN EDUCATION LOANS: PUBLIC DEFENSE ATTORNEY

Sec. 61.9610. DEFINITION. In this subchapter, "public defense attorney high need area" means a county:

- (a) with a population of 300,000 or less, or
- (b) designated by the Texas Indigent Defense Commission.

Sec. 61.9611. REPAYMENT ASSISTANCE AUTHORIZED. (a) The coordinating board shall provide, using funds appropriated for that purpose and in accordance with this subchapter and coordinating board rules, assistance in the repayment of student loans for attorneys who apply and qualify for the assistance.

Sec. 61.9612. ELIGIBILITY. (a) To be eligible to receive repayment assistance, an attorney licensed in Texas must:

(1) apply to the coordinating board;

(2) at the time of application be:

(a) currently employed as an attorney by a public defender's office, office of child representation, office of parent representation, or managed assigned counsel program that serves a public defense attorney high need area; or

(b) an attorney providing appointed representation to indigent defendants, juvenile respondents, or indigent parents or children in proceedings brought by the Department of Family and Protective Services:

(i) in one or more public defense attorney high need areas; and

(ii) where such representation is, on average, at least 30 hours a week of the attorney's practice time in the most recent fiscal year; and

(3) have completed one, two, three, or four consecutive years of practice as described by Subdivision (2).

Sec. 61.9613. ELIGIBLE LOANS. (a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher

education, including loans for undergraduate education, received by an attorney through any lender.

(b) The coordinating board may not provide repayment assistance for a student loan that is in default at the time of the attorney's application.

(c) Each fiscal biennium, the coordinating board shall attempt to allocate all funds appropriated to it for the purpose of providing repayment assistance under this subchapter.

Sec. 61.9614. REPAYMENT. (a) The coordinating board shall deliver any repayment made under this subchapter in a lump sum payable:

(1) to both the attorney and the lender or other holder of the affected loan; or

(2) directly to the lender or other holder of the loan on the attorney's behalf.

Sec. 61.9615. ADVISORY COMMITTEES. The coordinating board may appoint advisory committees from outside the board's membership to assist the board in performing its duties under this subchapter.

Sec. 61.9616. ACCEPTANCE OF FUNDS. The coordinating board may accept gifts, grants, and donations for the purposes of this subchapter.

Sec. 61.9617. RULES. (a) The coordinating board shall adopt rules necessary for the administration of this subchapter, including a rule that sets the maximum amount of loan



repayment assistance that an attorney may receive in one year.

(b) The coordinating board shall distribute a copy of the rules adopted under this section and pertinent information in this subchapter to:

(1) each school of law authorized by the board to award a degree that satisfies the law study requirements for licensure as an attorney in this state; and

(2) the Texas Indigent Defense Commission.

Sec. 61.9618. AMOUNT OF REPAYMENT ASSISTANCE. (a) An attorney may receive repayment assistance under this subchapter in the amount determined by board rule, not to exceed the following amounts for each year for which the attorney establishes eligibility for the assistance:

(1) for the first year, \$30,000;

(2) for the second year, \$40,000;

(3) for the third year, \$50,000; and

(4) for the fourth year, \$60,000.

(b) The total amount of repayment assistance distributed by the board may not exceed the total amount of money appropriated and received from gifts, grants, and donations for the purposes of this Subchapter.

(c) The total amount of repayment assistance made under this subchapter to an individual attorney may not exceed \$180,000.

**Below is the draft legislative proposal to authorize the creation of an internship and fellowship program at TIDC:**

SECTION 1. Amend Section 79.001, Government Code, is amended by adding Subdivisions (8-b) and (9-a) to read as follows:

(8-b) "Fellow" means a person who has graduated from an accredited institution of higher education within the past year who provides or assists in the provision of legal services described in Section 79.038.

(9-a) "Intern" means a student who assists in the provision of legal services described in Section 79.038.

SECTION 2. Amend Section 79.037(a), Government Code, 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, ~~and~~ family protection legal services, and internship and fellowship programs as described in Section 79.038; and

(B) promote compliance by counties with the requirements of state law relating to indigent defense and family protection legal services;

(2) to assist a county in providing or improving the provision of indigent defense services or family protection legal 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;

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

(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 or family protection legal services in the county; ~~and~~

(E) a nonprofit corporation that provides indigent defense services, ~~or~~ indigent defense support services, or family protection legal services in the county; and

(F) an office of child representation or office of parent representation created under Family Code, Chapter 107, Subchapter G;

(3) be authorized to provide direct awards of funds to individuals who receive an internship or fellowship under the Texas public defense internship and fellowship program, as described in Section 79.038; and

~~(34)~~ monitor each entity that receives a grant under Subdivision (2) and enforce compliance with the conditions of the grant, including enforcement by:

(A) withdrawing grant funds; or

(B) requiring reimbursement of grant funds by the entity.

SECTION 3. Amend Chapter 79, Government Code, by adding Section 79.038 as follows:

Sec. 79.038. INTERNSHIP AND FELLOWSHIP PROGRAM.

(a) The Texas public defense internship and fellowship program is established.

(b) Under the program, the commission shall make:

(1) direct awards to fellows and interns, or

(2) grants to entities described in Section 79.037

to support fellows and interns who provide or assist in the provision of appointed legal

<u>representation under:</u>  (i) <u>Article 26.04, Code of Criminal Procedure, to criminal defendants;</u> (ii) <u>Title 3, Family Code, to juvenile respondents; and</u> (iii) <u>Title 5, Family Code, to indigent parents and children.</u>		
<b>Person Proposing/Other Parties:</b> TIDC Staff	<b>88<sup>th</sup> Bill/ Sponsor:</b> n/a	<b>Status:</b>

#	Description
10	<p><b>Background and Purpose: Clean up existing law to clarify rules governing fee schedules for court-appointed legal representation of children and indigent parents in cases filed by the Texas Department of Family and Protective Services (DFPS).</b></p> <p>The current law governing fee schedules for attorneys who accept court-appointments to represent children and parents in child protection cases is unclear. Pursuant to Section 79.0365 of the Texas Government Code, all counties are required to biennially submit any fee schedule used for family protection services representation to the Texas Indigent Defense Commission. Section 107.015(c) of the Texas Family Code requires that an attorney appointed to represent a parent or child in a suit filed by DFPS shall be paid according to a fee schedule found in Chapter 51 of the Family Code, which in turn references Article 26.05 of the Texas Code of Criminal Procedure. Article 26.05 of the Code of Criminal Procedure discusses compensation for attorneys appointed as a defense counsel in criminal cases. There is no clear direction for fee schedules that describe payment for attorneys that are appointed to represent children and indigent parents in DFPS cases. Without statutory guidance, counties have broad differentiation in fee schedules including having no fee schedule at all. Providing statutory guidance is necessary to promote fairness and clarity in pay for all attorneys who accept court appointments in suits filed by DFPS.</p> <p>This proposal was presented to the board at the August meeting. Concern regarding rights to appointed counsel on appeal to the Texas Supreme Court were expressed. A memo regarding the right to counsel on appeal to the Texas Supreme Court follows the proposed bill language. The proposed language below has been edited to remove language from the original proposal.</p>

**Proposal:** Amend Section 107.015(c) of the Texas Family Code to remove the reference to Title 3, Chapter 51 and add a reference to a new section in Title 5, Chapter 107 that tracks language from Article 26.05 of the Texas Code of Criminal Procedure, is tailored to court-appointed counsel in suits filed by DFPS, and describes requirements for fee schedules specifically related to payment for attorneys that are appointed to represent children and indigent parents in DFPS cases as follows:

Family Code Sec. 107.015. ATTORNEY FEES.

- (a) An attorney appointed under this chapter or chapter 264 to serve as an attorney ad litem for a child, an attorney in the dual role, or an attorney ad litem for a parent is entitled to reasonable fees and expenses in the amount set by the court to be paid by the parents of the child unless the parents are indigent.
- (b) If the court determines that one or more of the parties are able to defray the fees and expenses of an attorney ad litem or guardian ad litem for the child as determined by the reasonable and customary fees for similar services in the county of jurisdiction, the fees and expenses may be ordered paid by one or more of those parties, or the court may order one or more of those parties, prior to final hearing, to pay the sums into the registry of the court or into an account authorized by the court for the use and benefit of the payee on order of the court. The sums may be taxed as costs to be assessed against one or more of the parties.
- (c) If indigency of the parents is shown, an attorney ad litem appointed to represent a child or parent in a suit filed by a governmental entity shall be paid from the general funds of the county according to the fee schedule that applies to an attorney appointed to represent a child or parent in a suit under Title ~~3~~ 5 as provided by Chapter ~~51~~ 107. The court may not award attorney ad litem fees under this chapter against the state, a state agency, or a political subdivision of the state except as provided by this subsection.
- (d) A person appointed as a guardian ad litem or attorney ad litem shall complete and submit to the court a voucher or claim for payment that lists the fees charged and hours worked by the guardian ad litem or attorney ad litem. Information submitted under this section is subject to disclosure under Chapter 552, Government Code.

New Family Code Sec. 107.0155. COMPENSATION OF COUNSEL APPOINTED AS ATTORNEY AD LITEM IN SUITS FILED BY A GOVERNMENTAL ENTITY.

(a) A counsel, other than an attorney with a public defender's office or an attorney employed by an office of parent or child representation appointed as an attorney ad litem for a parent or a child in a suit filed under Title 5 of the Family Code by a governmental entity be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court to make an appearance on behalf of the indigent parent or child as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited,

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires,

(3) preparation of an appellate brief, preparation and presentation of oral argument to a court of appeals, or the Supreme Court of Texas, and

(4) preparation of a motion for rehearing.

(b) All payments made under this section shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts hearing suits brought under Title 5 of the Family Code by a governmental entity against a parent. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county.

(c) Each fee schedule adopted shall:

(1) state specific information describing the payment of counsel appointed as an attorney ad litem for a parent or child in a suit filed under Title 5 of the Family Code by a governmental entity against a parent;

(2) state reasonable rates including hourly or fixed, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates; and

(4) shall provide a form for the appointed counsel to itemize times of services performed.

(d) No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Chapter 107 to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of

<p><u>payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.</u></p> <p><u>(e) A counsel appointed as an attorney ad litem for a parent or a child in a suit filed under Title 5 of the Family Code by a governmental entity other than an attorney with a public defender’s office or office of parent or child representation shall be reimbursed for reasonable and necessary expenses.</u></p> <p><u>(f) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying suits filed under Title 5 of the Family Code by a governmental entity in the county may remove an attorney from consideration for appointment if, after notice and a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.</u></p>		
<p><b>Person Proposing/Other Parties:</b> TIDC Staff</p>	<p><b>88th Bill/ Sponsor:</b> n/a</p>	<p><b>Status:</b></p>

#	Description
11	<p><b>Background and Purpose: Expand the pool of attorneys qualified to represent indigent defendants in death penalty cases.</b></p> <p><b>Proposal:</b> SECTION 1. Article 26.052, Code of Criminal Procedure, is amended to read as follows:</p> <p><b>Art. 26.052. Appointment of counsel in death penalty case; reimbursement of investigative expenses</b></p> <p>(a) Notwithstanding any other provision of this chapter, this article establishes procedures in death penalty cases for appointment and payment</p>



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.

(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. In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article. If the death penalty cannot be sought in a capital felony case due to a ruling by the U.S. Supreme Court, Court of Criminal Appeals, or Texas Supreme Court, counsel shall be appointed pursuant to the procedures used in the county to provide indigent defendants or juveniles with counsel in a first degree felony case.

(c) A local selection committee is created in each administrative judicial region created under Section 74.042, Government Code. The administrative judge of the judicial region shall appoint the members of the committee. A committee shall have not less than ~~four~~ five members, including:

- (1) the administrative judge of the judicial region;
- (2) at least ~~one~~ two district judges;
- (3) a representative from the local bar association; and
- (4) at least one practitioner who is board certified by the State Bar of Texas in criminal law.

(d) (1) The committee shall adopt standards for the qualification of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought.

(2) The standards must require that a trial attorney appointed as lead counsel to a capital case:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty or capital murder cases;

(C) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

(D) have at least five years of criminal law experience;

(E) have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials ~~and~~ or other trials for offenses punishable as ~~second- or~~ first degree felonies or capital felonies;

(F) have trial experience in:

(i) the use of and challenges to mental health or forensic expert witnesses; and

(ii) ~~investigating and presenting mitigating evidence at the penalty phase of a death penalty trial~~ investigating or presenting mitigating evidence in a death penalty or capital murder case; and

(G) have participated in continuing legal education courses or other training relating to criminal defense in death penalty or capital murder cases.

(3) The standards must require that an attorney appointed as lead appellate counsel in the direct appeal of a capital case:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty or capital murder cases;

(C) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

(D) have at least five years of criminal law experience;

(E) have authored a significant number of appellate briefs, including appellate briefs for homicide cases ~~and~~ or other cases involving an offense punishable as a capital felony or a felony of the first degree or an offense described by Article 42A.054(a);

(F) have trial or appellate experience in:

(i) the use of and challenges to mental health or forensic expert witnesses; and

and

(ii) the use of investigating or presenting mitigating evidence at the penalty phase of a death penalty trial or in a capital murder case; and

(G) have participated in continuing legal education courses or other training relating to criminal defense in appealing death penalty cases.

(4) The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(5) Not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to criminal defense in death penalty cases or in appealing death penalty cases, as applicable. ~~The committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements.~~

(e) The presiding judge of the district court in which a capital felony case is filed shall appoint two attorneys, at least one of whom must be qualified under this chapter, to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty.

(f) Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses. The request for expenses must state:

- (1) the type of investigation to be conducted;
- (2) specific facts that suggest the investigation will result in admissible evidence; and
- (3) an itemized list of anticipated expenses for each investigation.

(g) The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- (1) state the reasons for the denial in writing;
- (2) attach the denial to the confidential request; and
- (3) submit the request and denial as a sealed exhibit to the record.

(h) Counsel may incur expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred.

(i) If the indigent defendant is convicted of a capital felony and sentenced to death, the defendant is entitled to be represented by competent counsel on appeal and to apply for a writ of certiorari to the United States Supreme Court.

(j) As soon as practicable after a death sentence is imposed in a capital felony case, the presiding judge of the convicting court shall appoint counsel to represent an indigent defendant on appeal and to apply for a writ of certiorari, if appropriate.

(k) The court may not appoint an attorney as counsel on appeal if the attorney represented the defendant at trial, unless:

- (1) the defendant and the attorney request the appointment on the record; and
- (2) the court finds good cause to make the appointment.

(l) An attorney appointed under this article to represent a defendant at trial or on direct appeal is compensated as provided by Article 26.05 from county funds. Advance payment of expenses anticipated or reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

(m) The local selection committee shall annually review the list of attorneys posted under Subsection (d) to ensure that each listed attorney satisfies the requirements under this chapter.

(n) At the request of an attorney, the local selection committee shall make a determination under Subsection (d)(2)(C) or (3)(C), as applicable, regarding an attorney's current ability to provide effective representation following a judicial finding that the attorney previously rendered ineffective assistance of counsel in a capital case.

SECTION 2. The change in law made by this Act applies only to a capital felony case that is filed on or after the effective date of this Act. A capital felony case that is filed before the effective date of this Act is governed by the law in effect on the date the case was filed, and the former law is continued in effect for that purpose.

**Person Proposing/Other Parties:**  
Judge Keller and Judge Medary

**88th Bill/ Sponsor:** n/a

**Status:**

#	Description
12	<p data-bbox="195 326 1913 396"><b>Background and Purpose: Provide Managed Assigned Counsel Programs with Access to DPS' Criminal History Information</b></p> <p data-bbox="195 443 1982 548">In 2013, the Texas Legislature enacted, and Gov. Perry signed, S.B. 1044, which gave public defender offices and the Office of Capital and Forensic Writs free access to DPS's criminal history data. It did not give private assigned counsel or managed assigned counsel programs (MACs) access to the data.</p> <p data-bbox="195 596 1923 664">This proposal would give MACs access to this data to ensure that private assigned counsel working under a MAC has equal access to this critically important information about their clients and witnesses.</p> <p data-bbox="195 711 1990 777"><b>Proposal:</b> SECTION 1. Section 411.082, Government Code, is amended by adding Subdivision (4-a) to read as follows:</p> <p data-bbox="195 786 1990 852"><u>(4-a) "Managed assigned counsel program" has the meaning assigned by Article 26.047, Code of Criminal Procedure.</u></p> <p data-bbox="291 862 1535 894">SECTION 2. Section 411.088(a-1), Government Code, is amended to read as follows:</p> <p data-bbox="195 902 1990 969">(a-1) The department may not charge a fee under Subsection (a) for providing criminal history record information to:</p> <ul data-bbox="386 979 1062 1122" style="list-style-type: none"> <li>(1) a criminal justice agency;</li> <li>(2) the office of capital and forensic writs; <del>or</del></li> <li>(3) a public defender's office; <u>or</u></li> <li>(4) a managed assigned counsel program.</li> </ul> <p data-bbox="291 1131 1486 1164">SECTION 3. Section 411.1272, Government Code, is amended to read as follows:</p> <p data-bbox="195 1172 1990 1424">Sec. 411.1272. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF CAPITAL AND FORENSIC WRITS, <del>[AND]</del> PUBLIC DEFENDER'S OFFICES, <u>AND MANAGED ASSIGNED COUNSEL PROGRAMS.</u> The office of capital and forensic writs, <del>and</del> a public defender's office, <u>and a managed assigned counsel program</u> are entitled to obtain from the department criminal history record information maintained by the department that relates to a criminal case in which an attorney compensated by the office of capital and forensic writs or by the public defender's office <u>has been appointed by the court or in which an attorney has been appointed by the managed assigned counsel program, as applicable</u> <del>[has been appointed]</del>.</p>

	<b>Person Proposing/Other Parties:</b> Jim Bethke, Bexar County Managed Assigned Counsel Program	<b>88<sup>th</sup> Bill/ Sponsor:</b> HB 1528 (Engrossed Version Sections 12-14) by Rep. Reggie Smith	<b>Status:</b> Passed the house

#	Description
13	<p data-bbox="170 103 1990 219"><b>Background and Purpose:</b> Allow counties to reimbursed for representation provided by a public defender's office when it is appointed to represent an indigent inmate when the State Counsel for Offenders cannot do so.</p> <p data-bbox="170 267 1990 779">Currently Article 26.051 of the Texas Code of Criminal Procedure allows for private bar attorneys to be appointed to indigent prison inmates in instances where board employed attorneys at the State Counsel for Offenders may have a conflict. The statute further provides that the State must reimburse the county for the appointment of these conflict attorneys, however the statute does not allow for the reimbursement of costs and fees when a court chooses to appoint the local Public Defenders Office in the representation of these indigent inmates who are conflicted out with the attorneys provided by the board. As a result, the local county Public Defender Office in Beeville, Texas, which is contracted by Texas Rio Grande Legal Aid, are providing representation for approximately 30-40 indigent prison inmates per year. Additionally, many of these clients, as of late have been exhibiting symptoms of incompetency, and therefore there are additional costs being incurred to evaluate these clients for competency. The proposal would allow a public defender's office to certify to the court the amount of expenses incurred. The court would then submit this to the comptroller for reimbursement to the county.</p> <p data-bbox="170 836 1990 917"><b>Proposal:</b> Article 26.051, Code of Criminal Procedure, is amended by amending Subsections (g), (h), and (i) and adding Subsection (h-1) to read as follows:</p> <p data-bbox="170 933 1990 1063">(g) The court shall appoint <u>the public defender's office or</u> an attorney other than an attorney provided by the board if the court determines for any of the following reasons that a conflict of interest could arise from the use of an attorney provided by the board under Subsection (e) [<del>of this article</del>]:</p> <ol data-bbox="170 1079 1990 1356" style="list-style-type: none"> <li data-bbox="170 1079 1990 1161">(1) the case involves more than one inmate and the representation of more than one inmate could impair the attorney's effectiveness;</li> <li data-bbox="170 1177 1990 1258">(2) the case is appealed and the court is satisfied that conflict of interest would prevent the presentation of a good faith allegation of ineffective assistance of counsel by a trial attorney provided by the board; or</li> <li data-bbox="170 1274 1990 1356">(3) any conflict of interest exists under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas that precludes representation by an attorney appointed by the board.</li> </ol> <p data-bbox="170 1372 1990 1399">(h) When the court appoints <u>the public defender's office or</u> an attorney other than an attorney provided by the board:</p>

<p>(1) except as otherwise provided by this article, the inmate's legal defense is subject to Articles 1.051, 26.04, <u>26.044</u>, 26.05, and 26.052, as applicable; and</p> <p>(2) the county in which a facility of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code, is located shall pay from its general fund the total costs of the aggregate amount allowed and awarded by the court for attorney compensation and expenses under Article 26.05 or 26.052, as applicable.</p> <p><u>(h-1) If the court appoints a public defender's office under Subsection (g), the public defender's office shall certify to the court the amount of expenses incurred in the representation. The court shall submit the certified amount to the comptroller for reimbursement of the county by the state as described by Subsection (i).</u></p> <p>(i) The state shall reimburse a county for attorney compensation and expenses awarded under Subsection (h) <u>and for any expenses of a public defender's office that are certified under Subsection (h-1)</u>. A court seeking reimbursement for a county shall certify to the comptroller of public accounts the amount of compensation and expenses for which the county is entitled to be reimbursed under this article. Not later than the 60th day after the date the comptroller receives from the court the request for reimbursement, the comptroller shall issue a warrant to the county in the <u>certified</u> amount [<del>certified by the court</del>].</p>		
<p><b>Person Proposing/Other Parties:</b> Kimberly Simmons, Texas RioGrande Public Defender</p>	<p><b>88<sup>th</sup> Bill/ Sponsor:</b> HB 1528 (Engrossed Version Section 8) by Rep. Reggie Smith</p>	<p><b>Status:</b> Passed the house</p>



#	Description		
14	<p><b>Background and Purpose: Repeal the requirement that public defender attorneys must inform the court 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 and requires the office to report the results of any investigation to the presiding judge in a case. This requirement appears to violate the attorney-client privilege, particularly since Texas has a stronger version of the privilege than most states. That privilege is found in Texas Rule of Evidence 503(b)(2) which provides:</p> <p style="padding-left: 40px;"><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>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>88<sup>th</sup> Bill/ Sponsor:</b> HB 1528 (Engrossed Version Section 4) by Rep. Reggie Smith</p>	<p><b>Status:</b> Passed the house</p>

#	Description			
15	<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 several counties have criminal defense attorneys representing defendants at hearings held under Article 15.17, Code of Criminal Procedure (commonly referred to as “magistration”). The public defender offices in Bexar and Ft. Bend County 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 has hired part-time public defenders who have a <i>civil</i> practice on the side. These attorneys have to learn basic criminal law in order to provide magistration representation. Bexar County continues to struggle with how best to hire attorneys to provide representation at magistration hearings.</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 26.044, 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>			
	<table border="1"> <tr> <td data-bbox="218 1154 793 1300"> <b>Person Proposing/ Other Parties:</b> Roderick “Rocky” Glass, Fort Bend County Public Defender Office </td> <td data-bbox="793 1154 1482 1300"> <b>88<sup>th</sup> Bill/ Sponsor:</b> HB 1528 (Engrossed Version Section 4) by Rep. Reggie Smith </td> <td data-bbox="1482 1154 2001 1300"> <b>Status:</b> Passed the house </td> </tr> </table>	<b>Person Proposing/ Other Parties:</b> Roderick “Rocky” Glass, Fort Bend County Public Defender Office	<b>88<sup>th</sup> Bill/ Sponsor:</b> HB 1528 (Engrossed Version Section 4) by Rep. Reggie Smith	<b>Status:</b> Passed the house
<b>Person Proposing/ Other Parties:</b> Roderick “Rocky” Glass, Fort Bend County Public Defender Office	<b>88<sup>th</sup> Bill/ Sponsor:</b> HB 1528 (Engrossed Version Section 4) by Rep. Reggie Smith	<b>Status:</b> Passed the house		

#	Description
16	<p data-bbox="220 86 1953 191"><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 data-bbox="220 240 1984 727">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 data-bbox="220 776 1984 841"><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> <p data-bbox="220 889 1984 1149">(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 data-bbox="220 1157 1890 1222"><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> <ol data-bbox="220 1230 1890 1412" 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> </ol>

	<b>Person Proposing/Other Parties:</b> Cynthia Garza, Chief, Conviction Integrity Unit, Dallas County District Attorney's Office	<b>88<sup>th</sup> Bill/ Sponsor:</b> HB 352 / Rep. Jessica Gonzalez & HB 1528 (Engrossed Version Section 1) / Rep. Reggie Smith	<b>Status:</b> Passed the House & Passed the House

#	Description
17	<p data-bbox="220 154 1990 224"><b>Background and Purpose: Enumerate and clarify the duties of magistrates at 15.17 hearings; ensure that magistration records are properly preserved</b></p> <p data-bbox="220 267 1995 418">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 data-bbox="220 462 1995 613">TIDC and its Legislative 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 counsel.</p> <p data-bbox="220 657 1995 841">TIDC also regularly observes that requests for counsel at magistration 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 magistration, and that those forms are transferred within 24 hours. These requirements are currently implied by 15.17(a) but not explicitly stated.</p> <p data-bbox="220 885 1995 993">The proposal also amends art. 15.17(a) by removing inadequate records retention time periods and adds art. 15.17(f), Code of Criminal Procedure, to require records related to magistration and requests for counsel be retained for “at least 2 years after final judgment is entered in the case or the proceedings are otherwise terminated.”</p> <p data-bbox="220 1037 1995 1182">The 86<sup>th</sup> Legislature (2019) passed SB 815 to improve retention of these records 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.”</p> <p data-bbox="220 1226 1995 1295">To address the Governor’s veto of SB 815, this new proposal would set a specific record retention period of two years after judgment or termination of the case proceedings.</p> <p data-bbox="220 1339 388 1372"><b>Proposal:</b></p> <p data-bbox="315 1377 1575 1409">Articles 15.17(a) and (f), Code of Criminal Procedure, are amended to read as follows:</p> <p data-bbox="315 1414 1995 1445">(a) (1) In each case enumerated in this Code, the person making the arrest or the person having custody of the</p>

person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have the person [~~him~~] taken before some magistrate of the county where the person [~~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 and sound of the arrested person may be presented to the magistrate by means of a videoconference. 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.

(2) The magistrate shall inform in clear language the person arrested, either in person or through a videoconference, of:

(A) the accusation against the person [~~him~~] and of any affidavit filed with the accusation;

(B) the person's [~~therewith, of his~~] right to retain counsel;

(C) the person's [~~of his~~] right to remain silent and to not make a statement;

(D) the fact that any statement the person makes may be used against the person;

(E) the person's [~~of his~~] right to have an attorney present during any interview with peace officers or attorneys representing the state;

(F) the person's [~~of his~~] right to terminate the interview at any time;

(G) the person's [~~and of his~~] right to have an examining trial;

(H) [~~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

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

(3) If applicable, the magistrate shall inform the person that the person may file the affidavit described by Article 17.028(f).

(4) If the person 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.

(5) If the proceeding is conducted through a videoconference, the magistrate shall ensure that the arrested person is able to connect to and understand the image and sound of the videoconference.

(6) If the magistrate has reasonable cause to believe that the arrested person has a mental illness or is a person with an intellectual disability, the magistrate shall follow the procedures under Article 16.22.

(7) If the magistrate is unable to ensure that the arrested person is able to understand and participate in the proceeding, the magistrate shall:

(A) if the magistrate has appointing authority, appoint counsel for the person; or

(B) if the magistrate does not have appointing authority, notify the appointing authority of the

person's inability to understand and participate in the proceeding.

(8) The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the arrested person at the same time the person is informed of the person's rights under this subsection.

(9) If the ~~[person]~~ arrested person is indigent and requests appointment of counsel and 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. 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 person 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.]~~

(10) The magistrate shall allow the ~~[person]~~ arrested person reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense and whether the bail decision is subject to Article 17.027, admit the person ~~[arrested]~~ to bail if allowed by law.

(11) 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:~~

~~[(1) the date on which the pretrial hearing ends; or~~

~~[(2) 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. 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.]~~

(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). The record must be retained for at least two years after final judgment is entered in the case or the proceedings are otherwise terminated. The counsel for the defendant may obtain a copy of the record on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

**Person Proposing/Other Parties:**  
TIDC Staff

**88<sup>th</sup> Bill/ Sponsor:**  
HB 405 by Rep. Collier;  
HB 1528 (Engrossed Version Section 2) by  
Rep. Reggie Smith

**Status:**  
HB 405 referred to House Criminal Jurisprudence Committee;  
HB 1528 passed the house