

BILL ANALYSIS

S.B. 159
By: Wentworth
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2001, the Texas Legislature enacted the Texas Fair Defense Act, making significant changes in the way indigent defense is administered, including codifying a process to create a public defender's office that does not require special legislation and permitting the creation of regional public defender programs among counties. Under current law, the process for establishing a public defender's office has been confusing and cumbersome for counties. S.B. 159 clarifies and simplifies the process by which counties establish a public defender's office.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Senate Bill 159 amends the Code of Criminal Procedure (CCP) and the Government Code to clarify language. The current statute states "public defender," and this bill clarifies it by changing it to "public defender's office." Also changes the terms "appointing" to "creating or designating." Makes conforming clarifying language changes throughout the bill. The bill also changes the definition of "governmental entity" and "public defender's office" for clarification purposes.

The bill authorizes the commissioners court (court) of any county, on a written approval of a judge of certain courts, to create a department of the county or by contract to designate a nonprofit corporation to serve as a public defender's office. The bill deletes text authorizing the commissioners court to appoint a governmental entity to serve as a public defender. It requires the commissioners court or courts to specify the term during which the contract designating the public defender's office is effective and how that contract may be renewed on expiration of the term if public defender's office is a nonprofit corporation. The bill strikes existing text requiring the court(s) to specify whether the public defender is appointed to serve a term or serve at the pleasure of the commissioners court or courts, and if the public defender is appointed to serve a term, the term of the appointment, and the procedures for removing the public defender. The applicable commissioners court or courts must require a written plan from the governmental entity serving as a public defender's office. Before contracting with a nonprofit corporation to serve as a public defender's office, the court(s) must solicit proposals for the public defender's office. The written plan or a proposal must include a policy to ensure that the chief public defender and other attorneys employed by the public defender's office do not provide representation to a defendant when doing so would create a conflict of interest that has not been waived by the client. A public defender's office may not accept an appointment under Article 26.04(f), CCP, if a conflict of interest exists that has not been waived by the client.

The bill provides that the governor must appoint with the advice and consent of the senate five members of the Task Force on Indigent Defense with one member who is a chief public defender or who is an attorney employed by a public defender's office.

EFFECTIVE DATE

September 1, 2007.

