

By: Wentworth

S.B. No. 159

A BILL TO BE ENTITLED

AN ACT

relating to a local public defender's office that represents indigent defendants in criminal cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (f), Article 26.04, Code of Criminal Procedure, is amended to read as follows:

(f) In a county in which a public defender's office is created or designated [~~defender is appointed~~] under Article 26.044, the court or the courts' designee may appoint that office [~~the public defender~~] to represent the defendant in accordance with guidelines established for the office [~~public defender~~].

SECTION 2. Article 26.044, Code of Criminal Procedure, is amended to read as follows:

Art. 26.044. PUBLIC DEFENDER'S OFFICE [~~DEFENDER~~]. (a) In this chapter:

(1) "Governmental entity" includes a county, a group of counties, a department [~~branch or agency~~] of a county, an administrative judicial region created by Section 74.042, Government Code, and any entity created under the Interlocal Cooperation Act as permitted by Chapter 791, Government Code.

(2) "Public defender's office [~~defender~~]" means an entity that:

(A) is either:

(i) a governmental entity; or

1 (ii) a nonprofit corporation[+
2 [~~(A)~~] operating under a written agreement with a
3 governmental entity, other than an individual judge or court; and
4 (B) uses [~~using~~] public funds to provide[~~, and~~
5 [~~(C)~~ ~~providing~~] legal representation and
6 services to indigent defendants accused of a crime or juvenile
7 offense, as those terms are defined by Section 71.001, Government
8 Code.

9 (b) The commissioners court of any county, on written
10 approval of a judge of a county court, statutory county court, or
11 district court trying criminal cases or cases under Title 3, Family
12 Code, in the county, may create a department of the county or by
13 contract may designate a [~~appoint a governmental entity or~~]
14 nonprofit corporation to serve as a public defender's office
15 [~~defender~~]. The commissioners courts of two or more counties may
16 enter into a written agreement to jointly create or designate
17 [~~appoint~~] and fund a regional public defender's office [~~defender~~].
18 In creating or designating [~~appointing~~] a public defender's office
19 [~~defender~~] under this subsection, the commissioners court shall
20 specify or the commissioners courts shall jointly specify, if
21 creating or designating [~~appointing~~] a regional public defender's
22 office [~~defender~~]:

23 (1) the duties of the public defender's office
24 [~~defender~~];

25 (2) the types of cases to which the public defender's
26 office [~~defender~~] may be appointed under Article 26.04(f) and the
27 courts in which an attorney employed by the public defender's

1 office ~~[defender]~~ may be required to appear; and

2 (3) if the public defender's office is a nonprofit
3 corporation, the term during which the contract designating the
4 public defender's office is effective and how that contract may be
5 renewed on expiration of the term ~~[whether the public defender is~~
6 ~~appointed to serve a term or serve at the pleasure of the~~
7 ~~commissioners court or the commissioners courts; and~~

8 ~~[(4) if the public defender is appointed to serve a~~
9 ~~term, the term of appointment and the procedures for removing the~~
10 ~~public defender].~~

11 (b-1) The applicable commissioners court or commissioners
12 courts must require a written plan from the governmental entity
13 serving as a public defender's office.

14 (c) Before contracting with a nonprofit corporation to
15 serve as ~~[appointing]~~ a public defender's office ~~[defender]~~ under
16 Subsection (b), the commissioners court or commissioners courts
17 shall solicit proposals for the public defender's office
18 ~~[defender]~~.

19 (c-1) A written plan under Subsection (b-1) or a proposal
20 under Subsection (c) must include:

21 (1) a budget for the public defender's office
22 ~~[defender]~~, including salaries;

23 (2) a description of each personnel position,
24 including the chief public defender position;

25 (3) the maximum allowable caseloads for each attorney
26 employed by the public defender's office ~~[proponent]~~;

27 (4) provisions for personnel training;

1 (5) a description of anticipated overhead costs for
2 the public defender's office [~~defender~~]; [~~and~~]

3 (6) policies regarding the use of licensed
4 investigators and expert witnesses by the public defender's office;
5 and

6 (7) a policy to ensure that the chief public defender
7 and other attorneys employed by the public defender's office do not
8 provide representation to a defendant when doing so would create a
9 conflict of interest that has not been waived by the client
10 [~~proponent~~].

11 (d) After considering each proposal for the public
12 defender's office [~~defender~~] submitted by a [~~governmental entity~~
13 ~~or~~] nonprofit corporation under Subsection (c), the commissioners
14 court or commissioners courts shall select a proposal that
15 reasonably demonstrates that the public defender's office
16 [~~proponent~~] will provide adequate quality representation for
17 indigent defendants in the county or counties.

18 (e) The total cost of the proposal under Subsection (c) may
19 not be the sole consideration in selecting a proposal.

20 (f) A [~~To be eligible for appointment as a~~] public
21 defender's office [~~defender, the governmental entity or nonprofit~~
22 ~~corporation~~] must be directed by a chief public defender who:

- 23 (1) is a member of the State Bar of Texas;
- 24 (2) has practiced law for at least three years; and
- 25 (3) has substantial experience in the practice of
- 26 criminal law.

27 (g) A public defender's office [~~defender~~] is entitled to

1 receive funds for personnel costs and expenses incurred in
 2 operating as a public defender's office [~~defender~~] in amounts fixed
 3 by the commissioners court and paid out of the appropriate county
 4 fund, or jointly fixed by the commissioners courts and
 5 proportionately paid out of each appropriate county fund if the
 6 public defender's office [~~defender~~] serves more than one county.

7 (h) A public defender's office [~~defender~~] may employ
 8 attorneys, licensed investigators, and other personnel necessary
 9 to perform the duties of the public defender's office [~~defender~~] as
 10 specified by the commissioners court or commissioners courts under
 11 Subsection (b)(1).

12 (i) Except as authorized by this article, the chief public
 13 defender and other attorneys [~~or an attorney~~] employed by a public
 14 defender's office [~~defender~~] may not:

15 (1) engage in the private practice of criminal law; or

16 (2) accept anything of value not authorized by this
 17 article for services rendered under this article.

18 (j) A public defender's office [~~defender~~] may not accept
 19 [~~refuse~~] an appointment under Article 26.04(f) if:

20 (1) a conflict of interest exists that has not been
 21 waived by the client;

22 (2) the public defender's office [~~defender~~] has
 23 insufficient resources to provide adequate representation for the
 24 defendant;

25 (3) the public defender's office [~~defender~~] is
 26 incapable of providing representation for the defendant in
 27 accordance with the rules of professional conduct; or

1 (4) the public defender's office [~~defender~~] shows
2 other good cause for not accepting [~~refusing~~] the appointment.

3 (k) The judge may remove from a case a person [~~public~~
4 ~~defender~~] who violates a provision of Subsection (i).

5 (1) A public defender's office [~~defender~~] may investigate
6 the financial condition of any person the public defender's office
7 [~~defender~~] is appointed to represent. The public defender's office
8 [~~defender~~] shall report the results of the investigation to the
9 appointing judge. The judge may hold a hearing to determine if the
10 person is indigent and entitled to representation under this
11 article.

12 (m) If it is necessary that an attorney who is not employed
13 by [~~other than~~] a public defender's office [~~defender~~] be appointed,
14 the attorney is entitled to the compensation provided by Article
15 26.05 of this code.

16 SECTION 3. Subsections (a) and (d), Article 26.05, Code of
17 Criminal Procedure, are amended to read as follows:

18 (a) A counsel, other than an attorney with a public
19 defender's office [~~defender~~], appointed to represent a defendant in
20 a criminal proceeding, including a habeas corpus hearing, shall be
21 paid a reasonable attorney's fee for performing the following
22 services, based on the time and labor required, the complexity of
23 the case, and the experience and ability of the appointed counsel:

24 (1) time spent in court making an appearance on behalf
25 of the defendant as evidenced by a docket entry, time spent in
26 trial, and time spent in a proceeding in which sworn oral testimony
27 is elicited;

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

4 (3) preparation of an appellate brief and preparation
5 and presentation of oral argument to a court of appeals or the Court
6 of Criminal Appeals; and

7 (4) preparation of a motion for rehearing.

8 (d) A counsel in a noncapital case, other than an attorney
9 with a public defender's office [~~defender~~], appointed to represent
10 a defendant under this code shall be reimbursed for reasonable and
11 necessary expenses, including expenses for investigation and for
12 mental health and other experts. Expenses incurred with prior
13 court approval shall be reimbursed in the same manner provided for
14 capital cases by Articles 26.052(f) and (g), and expenses incurred
15 without prior court approval shall be reimbursed in the manner
16 provided for capital cases by Article 26.052(h).

17 SECTION 4. Subsection (a), Section 11, Article 42.12, Code
18 of Criminal Procedure, as amended by Chapters 956 and 1224, Acts of
19 the 79th Legislature, Regular Session, 2005, is reenacted and
20 amended to read as follows:

21 (a) The judge of the court having jurisdiction of the case
22 shall determine the conditions of community supervision and may, at
23 any time, during the period of community supervision alter or
24 modify the conditions. The judge may impose any reasonable
25 condition that is designed to protect or restore the community,
26 protect or restore the victim, or punish, rehabilitate, or reform
27 the defendant. Conditions of community supervision may include,

1 but shall not be limited to, the conditions that the defendant
2 shall:

3 (1) Commit no offense against the laws of this State or
4 of any other State or of the United States;

5 (2) Avoid injurious or vicious habits;

6 (3) Avoid persons or places of disreputable or harmful
7 character;

8 (4) Report to the supervision officer as directed by
9 the judge or supervision officer and obey all rules and regulations
10 of the community supervision and corrections department;

11 (5) Permit the supervision officer to visit him at his
12 home or elsewhere;

13 (6) Work faithfully at suitable employment as far as
14 possible;

15 (7) Remain within a specified place;

16 (8) Pay his fine, if one be assessed, and all court
17 costs whether a fine be assessed or not, in one or several sums;

18 (9) Support his dependents;

19 (10) Participate, for a time specified by the judge in
20 any community-based program, including a community-service work
21 program under Section 16 of this article;

22 (11) Reimburse the county in which the prosecution was
23 instituted for compensation paid to appointed counsel for defending
24 him in the case, if counsel was appointed, or if he was represented
25 by a ~~[county-paid]~~ public defender's office ~~[defender]~~, in an
26 amount that would have been paid to an appointed attorney had the
27 county not had a public defender's office ~~[defender]~~;

1 (12) Remain under custodial supervision in a community
2 corrections facility, obey all rules and regulations of such
3 facility, and pay a percentage of his income to the facility for
4 room and board;

5 (13) Pay a percentage of his income to his dependents
6 for their support while under custodial supervision in a community
7 corrections facility;

8 (14) Submit to testing for alcohol or controlled
9 substances;

10 (15) Attend counseling sessions for substance abusers
11 or participate in substance abuse treatment services in a program
12 or facility approved or licensed by the Texas Commission on Alcohol
13 and Drug Abuse;

14 (16) With the consent of the victim of a misdemeanor
15 offense or of any offense under Title 7, Penal Code, participate in
16 victim-defendant mediation;

17 (17) Submit to electronic monitoring;

18 (18) Reimburse the general revenue fund for any
19 amounts paid from that fund to a victim, as defined by Article 56.01
20 of this code, of the defendant's offense or if no reimbursement is
21 required, make one payment to the fund in an amount not to exceed
22 \$50 if the offense is a misdemeanor or not to exceed \$100 if the
23 offense is a felony;

24 (19) Reimburse a law enforcement agency for the
25 analysis, storage, or disposal of raw materials, controlled
26 substances, chemical precursors, drug paraphernalia, or other
27 materials seized in connection with the offense;

1 (20) Pay all or part of the reasonable and necessary
2 costs incurred by the victim for psychological counseling made
3 necessary by the offense or for counseling and education relating
4 to acquired immune deficiency syndrome or human immunodeficiency
5 virus made necessary by the offense;

6 (21) Make one payment in an amount not to exceed \$50 to
7 a crime stoppers organization as defined by Section 414.001,
8 Government Code, and as certified by the Crime Stoppers Advisory
9 Council;

10 (22) Submit a DNA sample to the Department of Public
11 Safety under Subchapter G, Chapter 411, Government Code, for the
12 purpose of creating a DNA record of the defendant; ~~and~~

13 (23) In any manner required by the judge, provide
14 public notice of the offense for which the defendant was placed on
15 community supervision in the county in which the offense was
16 committed; and

17 (24) Reimburse the county in which the prosecution was
18 instituted for compensation paid to any interpreter in the case.

19 SECTION 5. Subdivision (9), Section 71.001, Government
20 Code, is amended to read as follows:

21 (9) "Public defender's office ~~[defender]~~" has the
22 meaning assigned by Article 26.044(a), Code of Criminal Procedure.

23 SECTION 6. Subsection (e), Section 71.0351, Government
24 Code, is amended to read as follows:

25 (e) In each county, the county auditor, or the person
26 designated by the commissioners court if the county does not have a
27 county auditor, shall prepare and send to the Office of Court

1 Administration of the Texas Judicial System in the form and manner
2 prescribed by the Task Force on Indigent Defense and on a monthly,
3 quarterly, or annual basis, with respect to legal services provided
4 in the county to indigent defendants during each fiscal year,
5 information showing the total amount expended by the county to
6 provide indigent defense services and an analysis of the amount
7 expended by the county:

8 (1) in each district, county, statutory county, and
9 appellate court;

10 (2) in cases for which a private attorney is appointed
11 for an indigent defendant;

12 (3) in cases for which a public defender's office
13 [~~defender~~] is appointed for an indigent defendant;

14 (4) in cases for which counsel is appointed for an
15 indigent juvenile under Section 51.10(f), Family Code; and

16 (5) for investigation expenses, expert witness
17 expenses, or other litigation expenses.

18 SECTION 7. Subsection (a), Section 71.053, Government Code,
19 is amended to read as follows:

20 (a) The governor shall appoint with the advice and consent
21 of the senate five members of the Task Force on Indigent Defense as
22 follows:

23 (1) one member who is a district judge serving as a
24 presiding judge of an administrative judicial region;

25 (2) one member who is a judge of a constitutional
26 county court or who is a county commissioner;

27 (3) one member who is a practicing criminal defense

1 attorney;

2 (4) one member who is a chief public defender or who is
3 an attorney employed by a public defender's office [~~defender~~]; and

4 (5) one member who is a judge of a constitutional
5 county court or who is a county commissioner of a county with a
6 population of 250,000 or more.

7 SECTION 8. Subsection (a), Section 71.060, Government Code,
8 is amended to read as follows:

9 (a) The Task Force on Indigent Defense shall develop
10 policies and standards for providing legal representation and other
11 defense services to indigent defendants at trial, on appeal, and in
12 postconviction proceedings. The policies and standards may
13 include:

14 (1) performance standards for counsel appointed to
15 represent indigent defendants;

16 (2) qualification standards under which attorneys may
17 qualify for appointment to represent indigent defendants,
18 including:

19 (A) qualifications commensurate with the
20 seriousness of the nature of the proceeding;

21 (B) qualifications appropriate for
22 representation of mentally ill defendants and noncitizen
23 defendants;

24 (C) successful completion of relevant continuing
25 legal education programs approved by the council; and

26 (D) testing and certification standards;

27 (3) standards for ensuring appropriate appointed

caseloads for counsel appointed to represent indigent defendants;

(4) standards for determining whether a person accused of a crime or juvenile offense is indigent;

(5) policies and standards governing the organization and operation of an ad hoc assigned counsel program;

(6) policies and standards governing the organization and operation of a public defender's office [~~defender~~] consistent with recognized national policies and standards;

(7) standards for providing indigent defense services under a contract defender program consistent with recognized national policies and standards;

(8) standards governing the reasonable compensation of counsel appointed to represent indigent defendants;

(9) standards governing the availability and reasonable compensation of providers of indigent defense support services for counsel appointed to represent indigent defendants;

(10) standards governing the operation of a legal clinic or program that provides legal services to indigent defendants and is sponsored by a law school approved by the supreme court;

(11) policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code; and

(12) other policies and standards for providing indigent defense services as determined by the task force to be appropriate.

SECTION 9. This Act takes effect September 1, 2007.