

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. Article 26.04(f), 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 an attorney employed by 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:

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

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

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

26            (2) the types of cases to which an attorney employed by  
 27 the public defender's office [~~defender~~] may be appointed under

Article 26.04(f) and the courts in which an attorney employed by the public defender's office [~~defender~~] may be required to appear; and

(3) if the public defender's office is a nonprofit corporation, 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 [~~whether the public defender is appointed to serve a term or serve at the pleasure of the commissioners court or the commissioners courts; and~~

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

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

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

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

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

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

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

(4) provisions for personnel training;

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

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

(7) 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 [proponent].

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

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

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

(1) is a member of the State Bar of Texas;

(2) has practiced law for at least three years; and

(3) has substantial experience in the practice of criminal law.

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

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

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

- 16 (1) engage in the private practice of criminal law; or  
17 (2) accept anything of value not authorized by this  
18 article for services rendered under this article.

19 (j) An attorney employed by a [A] public defender's office  
20 [~~defender~~] may not accept [~~refuse~~] an appointment under Article  
21 26.04(f) if:

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

24 (2) the public defender's office by which the attorney  
25 is employed [~~defender~~] has insufficient resources to provide  
26 adequate representation for the defendant;

27 (3) the attorney with the public defender's office

1 ~~[defender]~~ is incapable of providing representation for the  
2 defendant in accordance with the rules of professional conduct; or

3 (4) the attorney with the public defender's office  
4 ~~[defender]~~ shows other good cause for not accepting ~~[refusing]~~ the  
5 appointment.

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

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

15 (m) If it is necessary that an attorney who is not employed  
16 by ~~[other than]~~ a public defender's office ~~[defender]~~ be appointed,  
17 the attorney is entitled to the compensation provided by Article  
18 26.05 of this code.

19 SECTION 3. Articles 26.05(a) and (d), Code of Criminal  
20 Procedure, are amended to read as follows:

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

27 (1) time spent in court making an appearance on behalf

1 of the defendant as evidenced by a docket entry, time spent in  
2 trial, and time spent in a proceeding in which sworn oral testimony  
3 is elicited;

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

7 (3) preparation of an appellate brief and preparation  
8 and presentation of oral argument to a court of appeals or the Court  
9 of Criminal Appeals; and

10 (4) preparation of a motion for rehearing.

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

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

24 (a) The judge of the court having jurisdiction of the case  
25 shall determine the conditions of community supervision and may, at  
26 any time, during the period of community supervision alter or  
27 modify the conditions. The judge may impose any reasonable

1 condition that is designed to protect or restore the community,  
2 protect or restore the victim, or punish, rehabilitate, or reform  
3 the defendant. Conditions of community supervision may include,  
4 but shall not be limited to, the conditions that the defendant  
5 shall:

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

8 (2) Avoid injurious or vicious habits;

9 (3) Avoid persons or places of disreputable or harmful  
10 character;

11 (4) Report to the supervision officer as directed by  
12 the judge or supervision officer and obey all rules and regulations  
13 of the community supervision and corrections department;

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

16 (6) Work faithfully at suitable employment as far as  
17 possible;

18 (7) Remain within a specified place;

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

21 (9) Support his dependents;

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

25 (11) Reimburse the county in which the prosecution was  
26 instituted for compensation paid to appointed counsel for defending  
27 him in the case, if counsel was appointed, or if he was represented



1 by a county-paid attorney with a public defender's office  
2 [~~defender~~], in an amount that would have been paid to an appointed  
3 attorney had the county not had a public defender's office  
4 [~~defender~~];

5 (12) Remain under custodial supervision in a community  
6 corrections facility, obey all rules and regulations of such  
7 facility, and pay a percentage of his income to the facility for  
8 room and board;

9 (13) Pay a percentage of his income to his dependents  
10 for their support while under custodial supervision in a community  
11 corrections facility;

12 (14) Submit to testing for alcohol or controlled  
13 substances;

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

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

21 (17) Submit to electronic monitoring;

22 (18) Reimburse the general revenue fund for any  
23 amounts paid from that fund to a victim, as defined by Article 56.01  
24 of this code, of the defendant's offense or if no reimbursement is  
25 required, make one payment to the fund in an amount not to exceed  
26 \$50 if the offense is a misdemeanor or not to exceed \$100 if the  
27 offense is a felony;

1           (19) Reimburse a law enforcement agency for the  
2 analysis, storage, or disposal of raw materials, controlled  
3 substances, chemical precursors, drug paraphernalia, or other  
4 materials seized in connection with the offense;

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

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

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

17          (23) In any manner required by the judge, provide  
18 public notice of the offense for which the defendant was placed on  
19 community supervision in the county in which the offense was  
20 committed; and

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

23          SECTION 5. Section 71.001(9), Government Code, is amended  
24 to read as follows:

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

27          SECTION 6. Section 71.0351(e), Government Code, is amended

to read as follows:

(e) In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the Office of Court Administration of the Texas Judicial System in the form and manner prescribed by the Task Force on Indigent Defense and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county:

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

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

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

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

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

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

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

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

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

5           (3) one member who is a practicing criminal defense  
6 attorney;

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

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

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

14           (a) The Task Force on Indigent Defense shall develop  
15 policies and standards for providing legal representation and other  
16 defense services to indigent defendants at trial, on appeal, and in  
17 postconviction proceedings. The policies and standards may  
18 include:

19           (1) performance standards for counsel appointed to  
20 represent indigent defendants;

21           (2) qualification standards under which attorneys may  
22 qualify for appointment to represent indigent defendants,  
23 including:

24           (A) qualifications commensurate with the  
25 seriousness of the nature of the proceeding;

26           (B) qualifications appropriate for  
27 representation of mentally ill defendants and noncitizen

1 defendants;

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

4 (D) testing and certification standards;

5 (3) standards for ensuring appropriate appointed  
6 caseloads for counsel appointed to represent indigent defendants;

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

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

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

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

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

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

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

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

1 Family Code; and

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

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