

House Bill 1754
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subtitle F, Title 2, Government Code, is amended by adding Chapter 79 to read as follows:

CHAPTER 79. TEXAS INDIGENT DEFENSE COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 79.001. DEFINITIONS. In this chapter:

(1) "Assigned counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense.

(2) "Board" means the governing board of the Texas Indigent Defense Commission.

(3) "Commission" means the **agency** known as the Texas Indigent Defense Commission.

(4) "Contract defender program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.

(5) "Council" means the Texas Judicial Council.

(6) "Crime" means:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(7) "Defendant" means a person accused of a crime or a juvenile offense.

(8) "Executive director" means the executive director of the Texas Indigent Defense Commission.

(9) "Indigent defense support services" means criminal defense services that:

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(1) "Assigned counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense.

(2) "Board" means the governing board of the Texas Indigent Defense Commission.

(3) "Commission" means the **permanent standing committee of the council** known as the Texas Indigent Defense Commission.

(4) "Contract defender program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.

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(9) "Indigent defense support services" means criminal defense services that:

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(A) are provided by licensed investigators, experts, or other similar specialists, including forensic experts and mental health experts; and

(B) are reasonable and necessary for appointed counsel to provide adequate representation to indigent defendants.

(10) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(11) "Managed assigned counsel program" has the meaning assigned by Article 26.047, Code of Criminal Procedure.

(12) "Office of capital writs" means the office of capital writs established under Subchapter B, Chapter 78.

(13) "Public defender's office" has the meaning assigned by Article 26.044(a), Code of Criminal Procedure.

Sec. 79.002. ESTABLISHMENT OF COMMISSION. (a) The Texas Indigent Defense Commission is established. **The commission is an agency in the judicial branch of this state.**

(b) The commission operates under the direction and supervision of a governing board.

Sec. 79.003. SUNSET PROVISION. **The commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2023.**

[Sections 79.004-79.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 79.011. ESTABLISHMENT OF BOARD; COMPOSITION. (a) The commission is governed by a board consisting of eight ex officio members and five appointive members.

(b) Except as provided by Section **79.038**, the board shall exercise the powers and perform the duties under this chapter

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Sec. 79.002. ESTABLISHMENT OF COMMISSION. (a) The Texas Indigent Defense Commission is established **as a permanent standing committee of the council.**

(b) The commission operates under the direction and supervision of a governing board.

[Sections 79.004-79.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 79.011. ESTABLISHMENT OF BOARD; COMPOSITION. (a) The commission is governed by a board consisting of eight ex officio members and five appointive members.

(b) Except as provided by Section **79.033(b)**, the board shall exercise the powers and perform the duties under this chapter

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independently of the council.

Sec. 79.012. EXECUTIVE DIRECTOR. (a) The executive director is appointed by the board.

(b) The executive director:

(1) must be a licensed attorney;

(2) must demonstrate an interest in the standards for and provision of criminal defense services to indigent individuals;

(3) may not engage in the private practice of law; and

(4) may not accept money, property, or any other thing of value not authorized by law for services rendered under this chapter.

Sec. 79.013. EX OFFICIO MEMBERS. The ex officio members of the board are:

(1) the following six members of the council:

(A) the chief justice of the supreme court;

(B) the presiding judge of the court of criminal appeals;

(C) one of the members of the senate serving on the council who is designated by the lieutenant governor;

(D) the member of the house of representatives appointed by the speaker of the house;

(E) one of the courts of appeals justices serving on the council who is designated by the governor; and

(F) one of the county court or statutory county court judges serving on the council who is designated by the governor or, if a county court or statutory county court judge is not serving on the council, one of the statutory probate court judges serving on the council who is designated by the governor;

(2) one other member of the senate appointed by the lieutenant governor; and

(3) the chair of the House Criminal Jurisprudence Committee.

Sec. 79.014. APPOINTMENTS. (a) The governor shall appoint with the advice and consent of the senate five

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members of the board as follows:

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

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

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

(4) one member who is a chief public defender in this state or the chief public defender's designee, who must be an attorney employed by the public defender's office; and

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

(b) The board members serve staggered terms of two years, with two members' terms expiring February 1 of each odd-numbered year and three members' terms expiring February 1 of each even-numbered year.

(c) In making appointments to the board, the governor shall attempt to reflect the geographic and demographic diversity of the state.

(d) A person may not be appointed to the board if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission or the council.

Sec. 79.015. PRESIDING OFFICER. The board shall select a chair from among its members.

Sec. 79.016. DISCLOSURE REQUIRED. (a) A board member who is a chief public defender or who is an attorney employed by a public defender's office in a county that applies for funds under Section 79.037 shall disclose that fact before a vote by the board regarding an award of funds to that county

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

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and may not participate in such a vote.

(b) A board member's disclosure under Subsection (a) must be entered into the minutes of the board meeting at which the disclosure is made or reported, as applicable.

(c) The commission may not award funds under Section 79.037 to a county served by a chief public defender or other attorney who fails to make a disclosure to the board as required by Subsection (a).

Sec. 79.017. VACANCIES. A vacancy on the board must be filled for the unexpired term in the same manner as the original appointment. **An appointment to fill a vacancy shall be made not later than the 90th day after the date the vacancy occurs.**

Sec. 79.018. MEETINGS; QUORUM; VOTING. (a) The board shall meet at least four times each year and at such other times as it considers necessary or convenient to perform its duties.

(b) Six members of the board constitute a quorum for purposes of transacting the business of the board. The board may act only on the concurrence of five board members or a majority of the board members present, whichever number is greater. The board may adopt policies and standards under Section 79.034 only on the concurrence of seven board members.

(c) Except as provided by Section 79.016, a board member is entitled to vote on any matter before the board, except as otherwise provided by rules adopted by the board.

Sec. 79.019. COMPENSATION. A board member may not receive compensation for services on the board but is entitled to be reimbursed for actual and necessary expenses incurred in discharging board duties. The expenses are paid from funds appropriated to the board.

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Sec. 79.020. IMMUNITY FROM LIABILITY. A member of the board performing duties on behalf of the board is not liable for damages arising from an act or omission within the scope of those duties.

Sec. 79.021. RULES. The board shall adopt rules as necessary to implement this chapter.

[Sections 79.022-79.030 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF COMMISSION

Sec. 79.031. FAIR DEFENSE ACCOUNT. The fair defense account is an account in the general revenue fund that may be appropriated only to:

(1) the commission for the purpose of implementing this chapter; and

(2) the office of capital writs for the purpose of implementing Subchapter B, Chapter 78.

Sec. 79.032. ACCEPTANCE OF GIFTS, GRANTS, AND OTHER FUNDS; STATE GRANTS TEAM. (a) The commission may accept gifts, grants, and other funds from any public or private source to pay expenses incurred in performing its duties under this chapter.

(b) The State Grants Team of the Governor's Office of Budget, Planning, and Policy may assist the commission in identifying grants and other resources available for use by the commission in performing its duties under this chapter.

Sec. 79.033. LEGISLATIVE APPROPRIATIONS REQUEST.

(See Sec. 79.038 below)

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Sec. 79.033. ADMINISTRATIVE ATTACHMENT; SUPPORT; BUDGET. (a) The commission is administratively attached to the Office of Court Administration of the Texas Judicial System.

(b) The office of court administration shall provide administrative support services, including human resources, budgetary, accounting, purchasing, payroll, information

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The board, in accordance with the rules and procedures of the Legislative Budget Board, shall prepare, approve, and submit a legislative appropriations request.

Sec. 79.034. POLICIES AND STANDARDS. (a) The commission shall develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings. The policies and standards may include:

- (1) performance standards for counsel appointed to represent indigent defendants;
- (2) qualification standards under which attorneys may qualify for appointment to represent indigent defendants, including:
 - (A) qualifications commensurate with the seriousness of the nature of the proceeding;
 - (B) qualifications appropriate for representation of mentally ill defendants and noncitizen defendants;
 - (C) successful completion of relevant continuing legal education programs approved by the council; and
 - (D) testing and certification standards;
- (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

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technology, and legal support services, to the commission as necessary to carry out the purposes of this chapter.

(c) The commission, in accordance with the rules and procedures of the Legislative Budget Board, shall prepare, approve, and submit a legislative appropriations request that is separate from the legislative appropriations request for the Office of Court Administration of the Texas Judicial System and is used to develop the commission's budget structure. The commission shall maintain the legislative appropriations request and budget structure separately from those of the office of court administration.

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operation of an assigned counsel program;
(6) policies and standards governing the organization and operation of a public defender's office 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;
(12) policies and standards governing the organization and operation of a managed assigned counsel program consistent with nationally recognized policies and standards; and
(13) other policies and standards for providing indigent defense services as determined by the commission to be appropriate.
(b) The commission shall submit its proposed policies and standards developed under Subsection (a) to the board for adoption. The board shall adopt the proposed policies and standards as appropriate.
(c) Any qualification standards adopted by the board under Subsection (b) that relate to the appointment of counsel in a

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death penalty case must be consistent with the standards specified under Article 26.052(d), Code of Criminal Procedure. An attorney who is identified by the commission as not satisfying performance or qualification standards adopted by the board under Subsection (b) may not accept an appointment in a capital case.

Sec. 79.035. COUNTY REPORTING PLAN; COMMISSION REPORTS. (a) The commission shall develop a plan that establishes statewide requirements for counties relating to reporting indigent defense information. The plan must include provisions designed to reduce redundant reporting by counties and provisions that take into consideration the costs to counties of implementing the plan statewide. The commission shall use the information reported by a county to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The commission may revise the plan as necessary to improve monitoring of indigent defense policies, standards, and procedures in this state.

(b) The commission shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and council and shall publish in written and electronic form a report:

(1) containing any information submitted to the commission by a county under Section 79.036; and

(2) regarding:

(A) the quality of legal representation provided by counsel appointed to represent indigent defendants;

(B) current indigent defense practices in the state as compared to state and national standards;

(C) efforts made by the commission to improve indigent

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(2) regarding:

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(B) current indigent defense practices in the state as compared to state and national standards;

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defense practices in the state; and

(D) recommendations made by the commission for improving indigent defense practices in the state.

(c) The commission shall annually submit to the Legislative Budget Board and council and shall publish in written and electronic form a detailed report of all expenditures made under this subchapter, including distributions under Section 79.037.

(d) The commission may issue other reports relating to indigent defense as determined to be appropriate by the commission.

Sec. 79.036. INDIGENT DEFENSE INFORMATION. (a) In each county, not later than November 1 of each odd-numbered year and in the form and manner prescribed by the commission, the following information shall be prepared and provided to the commission:

(1) a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code;

(2) any revisions to rules or forms previously submitted under this section; or

(3) verification that rules and forms previously submitted under this section still remain in effect.

(b) Except as provided by Subsection (c):

(1) the local administrative district judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the district courts trying felony cases

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defense practices in the state;

(D) recommendations made by the commission for improving indigent defense practices in the state; and

(E) the findings of a report submitted to the commission under Section 79.039.

(c) The commission shall annually submit to the Legislative Budget Board and council and shall publish in written and electronic form a detailed report of all expenditures made under this subchapter, including distributions under Section 79.037.

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(2) any revisions to rules or forms previously submitted under this section; or

(3) verification that rules and forms previously submitted under this section still remain in effect.

(b) Except as provided by Subsection (c):

(1) the local administrative district judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the district courts trying felony cases

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in the county; and

(2) the local administrative statutory county court judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county.

(c) If the judges of two or more levels of courts described by Subsection (b) adopt the same formal and informal rules and forms, the local administrative judge serving the courts having jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, shall perform the action required by Subsection (a).

(d) The chair of the juvenile board in each county, or the person designated by the chair, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the juvenile board.

(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 commission in the form and manner prescribed by the commission 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 a public defender is appointed for an

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in the county; and

(2) the local administrative statutory county court judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county.

(c) If the judges of two or more levels of courts described by Subsection (b) adopt the same formal and informal rules and forms, the local administrative judge serving the courts having jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, shall perform the action required by Subsection (a).

(d) The chair of the juvenile board in each county, or the person designated by the chair, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the juvenile board.

(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 commission in the form and manner prescribed by the commission 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 a public defender is appointed for an

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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.

(f) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the commission under this section.

Sec. 79.037. TECHNICAL SUPPORT; GRANTS. (a) The commission shall:

(1) provide technical support to:

(A) assist counties in improving their indigent defense systems; and

(B) promote compliance by counties with the requirements of state law relating to indigent defense;

(2) to assist counties in providing indigent defense services in the county, distribute in the form of grants any funds appropriated for the purposes of this section; and

(3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by:

(A) withdrawing grant funds; or

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

(b) The commission shall distribute funds as required by Subsection (a)(2) based on a county's compliance with standards adopted by the board and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(c) The board shall adopt policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a

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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.

(f) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the commission under this section.

Sec. 79.037. TECHNICAL SUPPORT; GRANTS. (a) The commission shall:

(1) provide technical support to:

(A) assist counties in improving their indigent defense systems; and

(B) promote compliance by counties with the requirements of state law relating to indigent defense;

(2) to assist counties in providing indigent defense services in the county, distribute in the form of grants any funds appropriated for the purposes of this section; and

(3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by:

(A) withdrawing grant funds; or

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

(b) The commission shall distribute funds as required by Subsection (a)(2) based on a county's compliance with standards adopted by the board and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(c) The board shall adopt policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a

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fair manner.

(d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the commission under this section.

Sec. 79.038. ADMINISTRATIVE SUPPORT. The Office of Court Administration of the Texas Judicial System shall provide administrative support, including information technology services support, to the commission as necessary to carry out this chapter.

No equivalent provision.

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fair manner.

(d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the commission under this section.

(See Sec. 79.033 above)

Sec. 79.039. EXONERATION REPORT. (a) Each legal clinic or program in this state that is operated by a law school and that receives financial support from the commission shall submit to the commission an annual report regarding criminal cases:

(1) in which the clinic or program has provided legal services to an indigent defendant during the preceding calendar year; and

(2) in which:

(A) based on a finding of actual innocence, the court of criminal appeals overturns a conviction; or

(B) the governor issues a pardon based on actual innocence.

(b) The report required under Subsection (a) must:

(1) identify each likely cause of a wrongful conviction listed in the report; and

(2) recommend to the judiciary and the legislature best practices, policies, and statutory changes to address or mitigate those likely causes with respect to future criminal cases. [FA1(1)-(3);FA2(1)-(6)]

SECTION __. Not later than December 1, 2012, each legal clinic or program in this state that is operated by a law school

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and that receives financial support from the Texas Indigent Defense Commission shall submit the initial report required by Section 79.039, Government Code, as added by this Act.
[FA1(4)]

SECTION 2. Section 71.001, Government Code, is amended to read as follows:

Sec. 71.001. DEFINITIONS. In this chapter:

(1) ~~["Assigned counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense.~~

~~[(2)] "Chair" means the chair of the council.~~

~~(2) [(3)] "Contract defender program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.~~

~~[(4)] "Council" means the Texas Judicial Council.~~

~~(3) [(5)] "Crime" means:~~

~~[(A)] a misdemeanor punishable by confinement; or~~

~~[(B)] a felony.~~

~~[(6)] "Defendant" means a person accused of a crime or [a] juvenile offense, as those terms are defined by Section 79.001.~~

~~(4) [(7)] "Indigent defense support services" means criminal defense services that:~~

~~[(A)] are provided by licensed investigators, experts, or other similar specialists, including forensic experts and mental health experts; and~~

SECTION 2. Same as House version.

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~~[(B) are reasonable and necessary for appointed counsel to provide adequate representation to indigent defendants.~~

~~[(8) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:~~

~~[(A) a misdemeanor punishable by confinement; or~~

~~[(B) a felony.~~

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

SECTION 3. Section 78.052(b), Government Code, is amended to read as follows:

(b) The office shall receive funds for personnel costs and expenses:

(1) as specified in the General Appropriations Act; and

(2) from the fair defense account under Section 79.031 [~~71.058~~], in an amount sufficient to cover personnel costs and expenses not covered by appropriations described by Subdivision (1).

SECTION 3. Same as House version.

SECTION 4. Section 78.056(b), Government Code, is amended to read as follows:

(b) The Office of Court Administration of the Texas Judicial System and the Texas [~~Task Force on~~] Indigent Defense Commission shall provide administrative support necessary under this section.

SECTION 4. Same as House version.

SECTION 5. Section 81.054(c), Government Code, is amended to read as follows:

(c) Fees shall be paid to the clerk of the supreme court. The

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clerk shall retain the fees, other than fees collected under Subsection (j), until distributed to the state bar for expenditure under the direction of the supreme court to administer this chapter. The clerk shall retain the fees collected under Subsection (j) until distribution is approved by an order of the supreme court. In ordering that distribution, the supreme court shall order that the fees collected under Subsection (j) be remitted to the comptroller at least as frequently as quarterly. The comptroller shall credit 50 percent of the remitted fees to the credit of the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent and shall credit the remaining 50 percent of the remitted fees to the fair defense account in the general revenue fund which is established under Section 79.031 [~~71.058~~], to be used, subject to all requirements of Section 79.037 [~~71.062~~], for demonstration or pilot projects that develop and promote best practices for the efficient delivery of quality representation to indigent defendants in criminal cases at trial, on appeal, and in postconviction proceedings.

SECTION 6. Section 402.035(c), Government Code, is amended to read as follows:

(c) The task force is composed of the following:

- (1) the governor or the governor's designee;
- (2) the attorney general or the attorney general's designee;
- (3) the executive commissioner of the Health and Human Services Commission or the executive commissioner's designee;
- (4) the commissioner of the Department of Family and Protective Services or the commissioner's designee;
- (5) the public safety director of the Department of Public

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Safety or the director's designee;

(6) one representative from each of the following state agencies, appointed by the chief administrative officer of the respective agency:

(A) the Texas Workforce Commission;

(B) the Texas Department of Criminal Justice;

(C) the Texas Youth Commission;

(D) the Texas Juvenile Probation Commission; and

(E) the Texas Alcoholic Beverage Commission; and

(7) as appointed by the attorney general:

(A) a chief public defender employed by a public defender's office, as defined by Article 26.044(a) [26.044], Code of Criminal Procedure, or an attorney designated by the chief public defender;

(B) an attorney representing the state;

(C) a representative of:

(i) a hotel and motel association;

(ii) a district and county attorneys association; and

(iii) a state police association;

(D) representatives of sheriff's departments;

(E) representatives of local law enforcement agencies affected by human trafficking; and

(F) representatives of nongovernmental entities making comprehensive efforts to combat human trafficking by:

(i) identifying human trafficking victims;

(ii) providing legal or other services to human trafficking victims;

(iii) participating in community outreach or public awareness efforts regarding human trafficking;

(iv) providing or developing training regarding the prevention of human trafficking; or

(v) engaging in other activities designed to prevent human

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trafficking.

SECTION 7. Article 26.04, Code of Criminal Procedure, is amended by amending Subsections (a), (d), and (f) and adding Subsection (f-1) to read as follows:

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), ~~(f-1)~~, (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:

- (1) applies to be included on the list;
- (2) meets the objective qualifications specified by the judges under Subsection (e);
- (3) meets any applicable qualifications specified by the Texas Task Force on Indigent Defense Commission; and
- (4) is approved by a majority of the judges who established

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the appointment list under Subsection (e).

(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~~].

(f-1) In a county in which a managed assigned counsel program is operated in accordance with Article 26.047, the managed assigned counsel program may appoint counsel to represent the defendant in accordance with the guidelines established for the program.

SECTION 8. The heading to Article 26.044, Code of Criminal Procedure, is amended to read as follows:

Art. 26.044. PUBLIC DEFENDER'S OFFICE [~~DEFENDER~~].

SECTION 9. Article 26.044, Code of Criminal Procedure, is amended by amending Subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) and adding Subsections (b-1) and (c-1) to read as follows:

(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) "Office of capital writs" means the office of capital writs established under Subchapter B, Chapter 78, Government

SECTION 8. Same as House version.

SECTION 9. Same as House version.

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Code.

(3) "Oversight board" means an oversight board established in accordance with Article 26.045.

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

(A) is either:

(i) a governmental entity; or

(ii) a nonprofit corporation[=

[~~(A)~~] operating under a written agreement with a governmental entity, other than an individual judge or court; and

(B) uses [~~using~~] public funds to provide[=and

[~~(C)~~ providing] legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 79.001 [~~71.001~~], Government Code.

[~~(3)~~ "Office of capital writs" means the office of capital writs established under Subchapter B, Chapter 78, Government Code.]

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

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[defender]:

- (1) the duties of the public defender's office [~~defender~~];
 - (2) the types of cases to which 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;
 - (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 an oversight board is established under Article 26.045 for the public defender's office, the powers and duties that have been delegated to the oversight board [~~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 shall require a written plan from a 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

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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 if 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.

(g) A public defender's office [~~defender~~] is entitled to receive funds for personnel costs and expenses incurred in operating as a public defender's office [~~defender~~] in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the

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public defender's office [~~defender~~] serves more than one county.

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

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

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

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

- (1) a conflict of interest exists that has not been waived by the client;
- (2) the public defender's office [~~defender~~] has insufficient resources to provide adequate representation for the defendant;
- (3) the public defender's office [~~defender~~] is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or
- (4) the public defender's office [~~defender~~] shows other good cause for not accepting [~~refusing~~] the appointment.

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

(l) A public defender's office [~~defender~~] may investigate the financial condition of any person the public defender's office [~~defender~~] is appointed to represent. The public defender's office [~~defender~~] shall report the results of the investigation to the appointing judge. The judge may hold a hearing to

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determine if the person is indigent and entitled to representation under this article.

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

SECTION 10. Chapter 26, Code of Criminal Procedure, is amended by adding Article 26.045 to read as follows:

Art. 26.045. PUBLIC DEFENDER OVERSIGHT BOARD.

(a) The commissioners court of a county or the commissioners courts of two or more counties may establish an oversight board for a public defender's office created or designated in accordance with this chapter.

(b) The commissioners court or courts that establish an oversight board under this article shall appoint members of the board. Members may include one or more of the following:

(1) an attorney;

(2) the judge of a trial court in this state;

(3) a county commissioner;

(4) a county judge;

(5) a community representative; and

(6) a former client or a family member of a former client of the public defender's office for which the oversight board was established under this article.

(c) The commissioners court or courts may delegate to the board any power or duty of the commissioners court to provide oversight of the office under Article 26.044, including:

(1) recommending selection and removal of a chief public defender;

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- (2) setting policy for the office; and
- (3) developing a budget proposal for the office.
- (d) An oversight board established under this article may not gain access to privileged or confidential information.

SECTION 11. Chapter 26, Code of Criminal Procedure, is amended by adding Article 26.047 to read as follows:

Art. 26.047. MANAGED ASSIGNED COUNSEL PROGRAM. (a) In this article:

(1) "Governmental entity" has the meaning assigned by Article 26.044.

(2) "Managed assigned counsel program" or "program" means a program operated with public funds:

(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

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

(b) The commissioners court of any county, on written approval of a judge of the juvenile court of a county or a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. In appointing an entity to operate a managed assigned counsel program under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify:

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(1) the types of cases in which the program may appoint counsel under Article 26.04 of this code or Section 51.10, Family Code, and the courts in which the counsel appointed by the program may be required to appear; and

(2) the term of any agreement establishing a program and how the agreement may be terminated or renewed.

(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;

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

(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.

(d) A program under this article must have a director. Unless the program uses a review committee appointed under Subsection (e), a program under this article must be directed by a person who:

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

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(2) has practiced law for at least three years; and
(3) has substantial experience in the practice of criminal law.
(e) The governmental entity, nonprofit corporation, or bar association operating the program may appoint a review committee of three or more individuals to approve attorneys for inclusion on the program's public appointment list described by Subsection (f). Each member of the committee:
(1) must meet the requirements described by Subsection (d);
(2) may not be employed as a prosecutor; and
(3) may not be included on or apply for inclusion on the public appointment list described by Subsection (f).
(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 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).
(h) A managed assigned counsel program is entitled to receive funds for personnel costs and expenses incurred in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the program serves more than one county.
(i) A managed assigned counsel program may employ personnel and enter into contracts necessary to perform the program's duties as specified by the commissioners court or

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commissioners courts under this article.

SECTION 12. Articles 26.05(a), (c), and (d), Code of Criminal Procedure, are amended to read as follows:

(a) A counsel, other than an attorney with a public defender's office [~~defender~~] or an attorney employed by the office of capital 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:

(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;

(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 and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(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

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counsel program under Article 26.047, 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 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 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.

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

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SECTION 13. Section 11(a), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) The judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may, at any time during the period of community supervision, alter or modify the conditions. The judge may impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. Conditions of community supervision may include, but shall not be limited to, the conditions that the defendant shall:

- (1) Commit no offense against the laws of this State or of any other State or of the United States;
- (2) Avoid injurious or vicious habits;
- (3) Avoid persons or places of disreputable or harmful character, including any person, other than a family member of the defendant, who is an active member of a criminal street gang;
- (4) Report to the supervision officer as directed by the judge or supervision officer and obey all rules and regulations of the community supervision and corrections department;
- (5) Permit the supervision officer to visit the defendant at the defendant's home or elsewhere;
- (6) Work faithfully at suitable employment as far as possible;
- (7) Remain within a specified place;
- (8) Pay the defendant's fine, if one is assessed, and all court costs whether a fine is assessed or not, in one or several sums;
- (9) Support the defendant's dependents;
- (10) Participate, for a time specified by the judge, in any community-based program, including a community-service

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work program under Section 16 of this article;

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

(12) Remain under custodial supervision in a community corrections facility, obey all rules and regulations of the facility, and pay a percentage of the defendant's income to the facility for room and board;

(13) Pay a percentage of the defendant's income to the defendant's dependents for their support while under custodial supervision in a community corrections facility;

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

(15) Attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Department of State Health Services ~~[Texas Commission on Alcohol and Drug Abuse]~~;

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

(17) Submit to electronic monitoring;

(18) Reimburse the compensation to victims of crime fund for any amounts paid from that fund to or on behalf of a victim, as defined by Article 56.32, of the defendant's offense or if no reimbursement is required, make one payment to the compensation to victims of crime fund in an amount not to exceed \$50 if the offense is a misdemeanor or not to exceed \$100 if the offense is a felony;

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

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

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

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

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

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

SECTION 14. Section 133.107, Local Government Code, is amended to read as follows:

Sec. 133.107. FEE FOR SUPPORT OF INDIGENT DEFENSE REPRESENTATION. (a) A person convicted of any offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay as a court cost, in addition to other costs, a fee of \$2 to be used to fund indigent defense representation through the fair defense account

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SECTION 14. Same as House version.

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established under Section 79.031 [~~71.058~~], Government Code.
(b) The treasurer shall remit a fee collected under this section to the comptroller in the manner provided by Subchapter B. The comptroller shall credit the remitted fees to the credit of the fair defense account established under Section 79.031 [~~71.058~~], Government Code.

SECTION 15. The following are repealed:

- (1) Article 26.05(i), Code of Criminal Procedure;
- (2) Section 71.0351, Government Code; and
- (3) Subchapter D, Chapter 71, Government Code.

SECTION 16. As soon as possible after the effective date of this Act, the governor shall appoint the initial governing board of the Texas Indigent Defense Commission in accordance with Subchapter B, Chapter 79, Government Code, as added by this Act. To enable the staggering of terms as required by Section 79.014(b) of that subchapter, the governor shall appoint two members whose terms expire on February 1 of the next odd-numbered year and three members whose terms expire on February 1 of the next even-numbered year.

SECTION 17. (a) On the date the last appointee to the initial governing board of the Texas Indigent Defense Commission takes office, the Task Force on Indigent Defense established under Subchapter D, Chapter 71, Government Code, is abolished. On that date, the powers, duties, obligations, rights, contracts, records, personnel, property, and unspent appropriations of the task force are transferred to the

SENATE VERSION (IE)

SECTION 15. Same as House version.

SECTION 16. Same as House version.

SECTION 17. Same as House version.

CONFERENCE

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commission.

(b) All rules of the Task Force on Indigent Defense are continued in effect as rules of the Texas Indigent Defense Commission until superseded by a rule of the commission.

(c) Notwithstanding the changes in law made by this Act, until the date the Task Force on Indigent Defense is abolished as provided by this section, the members and the director of the task force on the effective date of this Act may continue in office and exercise their powers and duties under the law that governed the task force before the effective date of this Act, and the prior law is continued in effect for that purpose.

SECTION 18. Not later than December 1, 2011, the Texas Indigent Defense Commission and the Texas Judicial Council shall adopt a memorandum of understanding to facilitate the timely implementation of this Act.

SECTION 18. Same as House version.

SECTION 19. This Act takes effect September 1, 2011.

SECTION 19. Same as House version.