

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1649
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Criminal Justice
4/17/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

One of the leading financial burdens facing counties is the cost of court-appointed attorneys in criminal cases. According to the Texas Indigent Defense Commission (TIDC), since the passage of the Fair Defense Act in 2001 which established standards for the appointment of counsel for indigent defendants, statewide total spending on indigent defense has increased by \$182 million, or by an estimated \$10 million per year. In fiscal year 2018, expenditures for indigent defense totaled approximately \$273 million of which \$30 million was offset by state grants from TIDC.

Under current state law, local officials have three options in how best to appoint counsel who represent indigent defendants in criminal cases. Those options include assigned counsel, where the judge assigns counsel on a rotating basis from a list; contract counsel, where the judge assigns cases to specific counsel on a contract basis; or public defenders, where a judge assigns cases to either a non profit or a government-funded office that represents indigent defendants.

A 2008 study by the TIDC provided strong evidence that public defender offices, when compared to the systems of assigned counsel or contract counsel, offer the most cost effective and simplest method to deliver representation to criminal indigent defendants. The study also noted that public defender offices offer quality while simultaneously offering the benefit of a predictable budget with the ability to control costs. Given the escalating statewide costs for criminal indigent defense, the option to create more public defender offices within the state is increasingly appealing.

Currently, Texas counties operate 20 public defender offices serving 38 counties, plus the Lubbock-based capital regional public defender which serves approximately 180 small counties. TIDC has been instrumental in helping create all 14 of the offices formed since TIDC's own creation in 2002.

Many of the counties that could most benefit from public defender offices are in rural areas of the state. However, there is nothing in current law that lays out a specific directive for TIDC to establish more public defender offices in rural areas.

S.B. 1649 provides a directive to TIDC to offer assistance to counties in the creation and funding of public defender offices in counties with populations of less than 50,000. The legislation requires TIDC to submit a biennial report to the governor and legislature to include a plan and timeline for establishing public defender offices and the number of public defender offices established. S.B. 1649 also requires TIDC to annually review criminal defense counsel fees to ensure the fees are equitable and fair. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1649 amends current law relating to assistance with the establishment, operation, and oversight of public defenders' offices and a review of certain criminal defense attorney's fees by the Texas Indigent Defense Commission.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 79, Government Code, by adding Sections 79.043 and 79.044, as follows:

Sec. 79.043. ESTABLISHMENT OF PUBLIC DEFENDERS' OFFICES. (a) Defines "public defender's office."

(b) Requires the Texas Indigent Defense Commission (TIDC) to offer financial and technical assistance to counties in the establishment, operation, and oversight of public defenders' offices. Requires TIDC to provide ongoing financial assistance, as necessary, to ensure the continued existence of the public defenders' offices in those counties. Requires TIDC to prioritize offering the assistance described by this subsection to counties with populations of less than 100,000, including assistance to regional public defenders' offices that serve more than one county.

(c) Requires TIDC to establish policies and standards for the operation and administration of a public defender's office.

(d) Requires TIDC, not later than November 1 of each even-numbered year, to submit to the governor and the legislature a report that includes a plan and a timeline for establishing public defenders' offices in counties with populations of less than 100,000 and a report on the number of public defenders' offices established with TIDC's assistance under this section.

Sec. 79.044. REVIEW OF ATTORNEY'S FEES. Requires TIDC to conduct a biennial review of the schedule of fees adopted under Article 26.05 (Compensation of Counsel Appointed to Defend), Code of Criminal Procedure, for the payment of attorneys appointed to represent an indigent defendant in criminal proceedings and the total amount of fees paid by counties to those attorneys to ensure that the attorney's fees are consistent and fair.

SECTION 2. Effective date: September 1, 2019.