

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 19, 2021

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB1322 by Hinojosa (Relating to indigent defense.), **As Introduced**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend the Code of Criminal Procedure to require a court to appoint an attorney to represent an eligible indigent defendant to investigate a claim and file a writ of habeas corpus any time the prosecuting authority represents that the defendant has a potentially meritorious claim of relief from a felony or misdemeanor conviction.

The bill would require that if an Article 15.17 proceeding is conducted through a videoconference, the magistrate must ensure that the arrestee can connect to and understand the image and sound of the videoconference; that the magistrate follow the requirements of Article 16.22 related to assessments for mental illness or intellectual or developmental disability if the magistrate has reasonable belief that the person has a mental illness or intellectual or developmental disability; that the magistrate appoint counsel or notify the appointing authority if the arrestee cannot understand and participate in the proceeding; and the bill would require records mandated under Article 15.17(a) or (e) to be retained for at least three years after final judgment is entered or the proceedings are otherwise terminated.

The bill would require an attorney appointed to represent a defendant to be paid for travel or any costs to remotely conduct a confidential interview with the attorney's client if the defendant is being held in a correctional facility more than 50 miles from the court in which the case is pending.

The bill would describe additional services that may be provided by a Managed Assigned Counsel (MAC), including investigators and experts; codify the ability of a MAC program to have an oversight board; and allow MAC programs to appoint counsel in capital cases provided a judge must give priority to appointing a public defender's office if the county is served by one.

The bill would amend the Government Code to add two new members to the governing board of the Texas Indigent Defense Commission (TIDC). Under the bill's provision, the governor would appoint a director of a managed assigned counsel program and a justice of the peace, municipal court judge, or an appointed magistrate who regularly presides at hearings held under Article 15.17, Code of Criminal Procedure, also known as magistration. The bill would also remove the code provision that allows the chief public defender member of TIDC to select a designee to serve on the board.

The bill would amend the Code of Criminal Procedure to repeal the requirement that public defender attorneys must inform the appointing judge of the results of any investigation into a defendant's financial circumstances. The bill would permit an attorney be appointed to represent an indigent person for the sole purpose of providing representation at the person's appearance before a magistrate in a hearing required to be held under Article 14.06, 15.17, or 15.18, Code of Criminal Procedure. Under current law, Art. 26.04(j)(2), Code of Criminal Procedure, provides that once an attorney is appointed on a case, the attorney must stay on the case until its conclusion unless the judge makes a good cause finding on the record.

The bill would allow public defender offices to hire privately-employed criminal defense attorneys on a part-

time basis for the sole purpose of representing indigent persons in their appearance before a magistrate at hearings held under Article 14.06, 15.17, or 15.18, Code of Criminal Procedure. Under current law, Art. 26.044(i), Code of Criminal Procedure, prohibits the use of part-time public defenders who engage in the private practice of criminal law.

The bill would permit TIDC to award grants to a nonprofit corporation to provide indigent defense or indigent defense support services.

Based on information provided by the Office of Court Administration, no significant fiscal impact to the state court system is anticipated as a result from implementing the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Admin

LBB Staff: JMc, DKN, BH, AF