



## Recommended Legislative Proposals 2020

Proposal #	Description
1	Require a court to appoint an attorney to represent an eligible indigent defendant to investigate a claim and file a writ of habeas corpus in limited instances when the state represents that the defendant may have a potentially meritorious claim of relief from a prior conviction.
2	Modify Art. 15.17 to ensure that magistration forms are properly preserved
3	Enumerate and clarify the duties of magistrates at 15.17 hearings
4	Ensure lawyer visitation to defendants held in out-of-county jails
5	Modify the Managed Assigned Counsel (MAC) statute to explain the full array of services provided by MACs and codify the ability of a MAC program to have an oversight board. Allow MAC programs to appoint counsel in capital cases.
6	Modify the membership of TIDC's board to add two members: <ol style="list-style-type: none"> <li>1) Director of a Managed Assigned Counsel Program; and</li> <li>2) Justice of the peace, municipal court judge, or an appointed magistrate who regularly presides at Article 15.17 ("magistration") hearings</li> </ol>
7	Repeal the requirement that public defender attorneys must inform the appointing judge of the results of any investigation into a defendant's financial circumstances
8	Specifically provide for a limited scope attorney appointment to represent an arrestee at the Article 15.17, Code of Criminal Procedure, hearing ("magistration")
9	Allow attorneys with a private criminal practice to work part-time for public defender offices to represent an arrestee at the Article 15.17, Code of Criminal Procedure, hearing ("magistration")
10	Cleanup bill to harmonize two versions of Section 79.037, Government Code, relating to TIDC's grants authority and authorize TIDC to fund nonprofit corporations to provide indigent defense services

	<b>Description</b>
1.	<p><b>Background and Purpose:</b> Require a court to appoint an attorney to represent an eligible indigent defendant to investigate a claim and file a writ of habeas corpus in limited instances when the state represents that the defendant may have a potentially meritorious claim of relief from a prior conviction.</p> <p>Convicted individuals typically do not have post-conviction legal representation, leaving them to file writs of habeas corpus without the assistance of counsel and potentially waiving otherwise meritorious claims for relief. Even though prosecutor offices might attempt to identify wrongly convicted individuals, prosecutors are barred from providing legal advice to a convicted defendant or from filing a proper application for writ of habeas corpus on the defendant's behalf. Thus, concerns have been raised that potentially meritorious claims of unlawful detention by indigent defendants are not being thoroughly addressed and that such defendants are not given legal representation with regard to such claims. The current statute does not address the limited instances where the State suspects that an indigent defendant may have a meritorious habeas claim, and further investigation by habeas counsel for the convicted person is necessary to fully evaluate the merits of the claim. This is particularly true in counties with Conviction Integrity Units. Since there is currently no codified requirement for appointment of attorneys in those very limited and relatively rare circumstances, this amendment is, therefore, needed to ensure that indigent defendants are not being unlawfully confined. By expanding the types of claims that necessitate the appointment of an attorney to investigate claims for habeas corpus relief and the representation of an indigent defendant, it serves the interest of justice to do so.</p> <p><b>Proposal:</b> Amend Article 11.074 of the Code of Criminal Procedure by amending Subsection (b) and adding Subsection (b-1) to read as follows:</p> <p>(b) If at any time the state represents to the convicting court that an eligible indigent defendant under Article 1.051 <u>has under a writ of habeas corpus a potentially meritorious claim for relief from a judgment described by Subsection (a)</u> <del>[who was sentenced or had a sentence suspended is not guilty, is guilty of only a lesser offense, or was convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court]</del>, the court shall appoint an attorney to <u>investigate the claim and</u> represent the indigent defendant for purposes of filing an application for a writ of habeas corpus, if an application has not been filed, or to otherwise represent the indigent defendant in a proceeding based on the application for the writ.</p> <p><u>(b-1) For purposes of Subsection (b), a potentially meritorious claim is any claim the court determines is likely to provide relief, including a claim that the defendant:</u></p> <ul style="list-style-type: none"> <li><u>(1) is or may be actually innocent of the offense;</u></li> <li><u>(2) is or may be guilty of only a lesser offense;</u></li> <li><u>(3) was or may have been convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court; or</u></li> <li><u>(4) was or may have been convicted or sentenced in violation of the constitution of this state or the United States.</u></li> </ul>

<p><b>Person Proposing/Other Parties:</b> Cynthia Garza, Chief, Conviction Integrity Unit, Dallas County District Attorney's Office</p>	<p><b>84<sup>th</sup> Bill/ Sponsor:</b> HB 3500 by Rep. Jessica Gonzalez</p>	<p><b>Status:</b> Bill passed House Criminal Jurisprudence Committee</p>
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**Description**

**2. Background and Purpose: Modify Art. 15.17 to ensure that magistration forms are properly preserved.**

*Note: This issue was identified through TIDC policy monitoring. This proposal was approved by TIDC’s Legislative Workgroup and the Board in 2019. SB 815 passed the Legislature but was vetoed by Gov. Abbott because the bill “delegated to an agency [Texas State Library and Archives Commission] the discretion to set—and change—the retention periods. Administrative flexibility is not a virtue in this instance. The Legislature should be the one to provide clear direction on this issue.” This proposal seeks to address the Governor’s concerns.*

HB 3165 was enacted in the 2017 session. One of the various revisions it made was to modify Art. 15.17(a), Code of Criminal Procedure (CCP), by changing the word “recording” to “record,” including in subsection (1) and (2), which specify how long records must be preserved. According to the law as revised, “a record of the communication between the arrested person and the magistrate” only has to be preserved until the earlier of (1) the date on which pretrial hearing ends; or (2) 91<sup>st</sup> day after date record created in misdemeanors or 120<sup>th</sup> day in felonies.

Art. 15.17(e) requires that a record be made of the magistrate informing the defendant of the right to request appointment of counsel; asking the defendant whether they want to request appointment of counsel; and whether the defendant requested counsel.

Art. 15.17(f) states that a “record required under Art. 15.17(a) or (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).”

Although there are no specific record preservation limits detailed in Art. 15.17(e), the combined changes in Art. 15.17(a) and (f) could be interpreted as allowing for records of requests for counsel to be destroyed according to the timelines in Art. 15.17(a). This is especially true since magistration forms typically serve as the record for communications that occur under both Art. 15.17(a) and (e).

This is a problem because magistration forms are a critically important document that TIDC policy monitors need to determine if magistrates are advising defendants of the right to counsel, whether defendants requested counsel, and when they requested counsel. TIDC uses the magistration forms to determine if counties are appointing counsel in a timely manner per the timelines in CCP 1.051(e).

Judges also need to know if a defendant has requested counsel and ruled on the request to ensure that waivers of counsel are valid. If a defendant has requested counsel, the court may not direct or encourage the defendant to communicate with the prosecutor unless the court has denied the request and the defendant is given an opportunity to retain counsel or waives counsel (see CCP 1.051(f-2)).

To address the Governor’s veto of SB 815 in 2019, this new proposal seeks to institute a specific record retention period of 3 years after judgment or termination of the case proceedings, which is based on the Texas State Library and Archives Commission’s retention schedule for bail records for County and District Clerks (Record Number CC1600-

04h and DC2125-05p, respectively). Bail amounts are typically recorded on magistration forms, so we thought it important for the records retention periods to be the same.

**Proposal:** (1) Amend CCP art. 15.17(a) to remove the referenced time frames for record preservation; and (2) amend CCP art. 15.17(f) to include the specific record retention periods for art. 15.17(a) and (e) records.

SECTION 1. Articles 15.17(a) and (f), Code of Criminal Procedure, are amended to read as follows:

(a) In each case enumerated in this Code ... A record of the communication between the arrested person and the magistrate shall be made. [~~The record shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91<sup>st</sup> day after the date on which the record is made if the person is charged with a misdemeanor or the 120<sup>th</sup> day after the date on which the record is made if the person is charged with a felony.~~] ....

(f) A record required under Subsection (a) or (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a). The record must be retained for 3 years after final judgment is rendered or the proceedings are otherwise terminated in the case. ....

<b>Person Proposing/Other Parties:</b> TIDC Staff	<b>86<sup>th</sup> Bill/ Sponsor:</b> SB 815 by Sen. Rodriguez; HB 4474 by Rep. Moody	<b>Status:</b> SB 815 passed but vetoed by governor because prior version delegated the time frame for maintaining magistrate warning records to the Texas State Library and Archives Commission
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	Description
3.	<p><b>Background and Purpose: Enumerate and clarify the duties of magistrates at 15.17 hearings.</b></p> <p>Article 15.17(a) currently lists the duties of magistrates in one undivided subsection of over 500 words. In that block of text are six distinct rights of criminal defendants and detailed procedures for advising defendants of the right to counsel and processing requests for counsel. Breaking out and numbering the duties would improve the legibility of these requirements.</p> <p>TIDC and workgroup members have observed that defendants may not understand 15.17 proceedings, and are therefore unable to request counsel, because of barriers including language comprehension, faulty technology, and mental illness and intellectual disabilities. This proposal would require magistrates to remove these barriers or have counsel appointed for people unable to request.</p> <p>TIDC also regularly observes that requests for counsel at magistration are not transferred to the appointing authority or are transferred and never ruled on due to incomplete financial forms. This proposal would clarify that magistrates must ensure that defendants are provided reasonable assistance with completing forms at the same time as magistration, and that those forms are transferred within 24 hours. These requirements are currently implied by 15.17(a) but not explicitly stated.</p> <p><b>Proposal:</b> The revised proposal would amend Article 15.17(a) of the Code of Criminal Procedure as follows:</p> <p>(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state. The arrested person may be taken before the magistrate in person or the image <u>and sound</u> of the arrested person may be presented to the magistrate by means of a videoconference. <u>For purposes of this subsection, "videoconference" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing. The magistrate shall perform the following duties:</u></p> <p>(1) The magistrate shall inform in clear language the person arrested, either in person or through a videoconference, of the:</p> <p>(A) accusation against him <u>or her</u> and of any affidavit filed therewith,</p> <p>(B) <del>of his</del> right to retain counsel,</p> <p>(C) <del>of his</del> right to remain silent, <u>and that the person arrested is not required to make a statement, and that any statement by the person arrested may be used against him or her,</u></p>

~~(D) of his right to have an attorney present during any interview with peace officers or attorneys representing the state,~~

~~(E) of his right to terminate the interview at any time,~~

~~(F) and of his right to have an examining trial,~~

~~(G) The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel, and~~

~~(H) The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel.~~

(2) The magistrate shall ensure the defendant can understand and participate in the proceeding as follows:

(A) If the person arrested does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate.

(B) If the proceeding is conducted through a videoconference, the magistrate shall ensure the defendant can connect to and understand the image and sound of the videoconference.

(C) If the magistrate cannot ensure that the defendant can understand and participate in the proceeding, and if the magistrate has appointing authority, the magistrate shall appoint counsel. If the magistrate does not have authority to appoint counsel, the magistrate shall notify the appointing authority of the defendant's inability to understand and participate in the proceeding.

(3) The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time as the person is informed of his or her rights.

(4) If the person arrested is indigent and requests appointment of counsel and:

(A) if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051.

(B) if the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the necessary forms for requesting

and ruling on the appointment of counsel.

~~The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him.~~

(5) The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law.

(6) A record of the communication between the arrested person and the magistrate shall be made. The record shall be preserved until the earlier of the following dates:

(A) the date on which the pretrial hearing ends; or

(B) the 91st day after the date on which the record is made if the person is charged with a misdemeanor or the 120th day after the date on which the record is made if the person is charged with a felony.

~~For purposes of this subsection, "videoconference" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.~~

**Person  
Proposing/Other  
Parties:**  
TIDC Staff

**86th Bill/ Sponsor:**  
N/A



	<b>Description</b>	
4.	<p><b>Background and Purpose: Ensure lawyer visitation to defendants held in out-of-county jails</b></p> <p>Counties throughout Texas utilize interlocal agreements to house pretrial detainees in jails out-of-county, especially counties whose detained population exceeds their local jail capacity. As of June 1, 2020, the Texas Commission on Jail Standards reported 1,166 inmates being housed out-of-county. Often these defendants are pretrial detainees, who are sometimes held over 100 miles away from the courthouse where their case will be tried.</p> <p>Court-appointed attorneys assigned to represent defendants who are housed an hour or more away from their normal place of business experience significant hardship in visiting their clients in jail. A number of these court-appointed attorneys are paid a flat-fee to represent the defendant, making it an extreme financial burden to devote the significant time and expense required to perform a jail visit for these clients. As a result, defendants housed far away in out-of-county jails report that they do not receive any attorney visits in jail, despite having an attorney assigned to represent them.</p> <p>This bill would amend the Code of Criminal Procedure to require any county housing pretrial defendants in another county to amend their attorney fee schedule(s) to provide compensation for reasonable and necessary expenses incurred in having confidential communications with their clients who are held in an out-of-county facility more than 50 miles away from the court in which they will be tried.</p> <p>Amend Article 26.05(d), Code of Criminal Procedure, as follows:</p> <p>(d) A counsel in a noncapital case, other than an attorney with a public defender's office, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation, <u>travel or remote secure communication to conduct confidential interviews with the clients housed more than 50 miles from the court</u>, 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).</p>	
	<p><b>Person Proposing/Other Parties:</b> Nate Fennell, Texas Fair Defense Project</p>	<p><b>86<sup>th</sup> Bill/ Sponsor:</b> N/A</p> <p><b>Status:</b></p>

	<b>Description</b>
5.	<p><b>Background and Purpose: Modify the Managed Assigned Counsel (MAC) statute to explain the full array of services provided by MACs and codify the ability of a managed assigned counsel program to have an oversight board. Allow managed assigned counsel programs to appoint counsel in capital cases.</b></p> <p>Article 26.047, Code of Criminal Procedure, outlines how Managed Assigned Counsel Programs (MACs) are established and operated. MACs appoint private assigned counsel in criminal cases, as well as appoint investigators, experts, and provide support services to private assigned counsel and indigent defendants. MACs are being used in Lubbock, Travis, Collin, and Harris Counties. The statute does not list the full array of services provided by MACs, and does not specifically mention oversight boards for MACs, even though MACs in Travis County and Lubbock have them. Public defender offices (PDOs) are authorized to establish public defender oversight boards under Art. 26.045, Code of Criminal Procedure. TIDC considers oversight boards for MACs and PDOs to be a best practice.</p> <p>Article 26.052, Code of Criminal Procedure, describes the process for the appointment of counsel in death penalty cases. MACs oversee appointment of counsel in felony cases in Travis and Lubbock Counties, but they cannot appoint counsel in death penalty cases because MACs are not permitted to do so under Article 26.052.</p> <p><b>Proposal:</b> Amend Article 26.047, Code of Criminal Procedure, to describe the full array of services provided by MACs. Add Art. 26.048, Code of Criminal Procedure, to authorize establishment of MAC oversight boards. Amend Art. 26.052 to authorize MACs to appoint counsel in death penalty cases.</p> <p>SECTION 1. Articles 26.047(a) and (b), Code of Criminal Procedure, are amended to read as follows:</p> <p>(a) In this article:</p> <p>(1) "Governmental entity" has the meaning assigned by Article 26.044.</p> <p>(2) "Managed assigned counsel program" or "program" means a program operated with public funds:</p> <p>(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; <del>and</del></p> <p>(B) for the purpose of appointing counsel under Article 26.04 <u>or 26.052</u> of this code or Section 51.10, Family Code; <del>and</del></p> <p><u>(C) for the purpose of appointing or providing an investigator, expert, or other support services for appointed counsel or indigent defendants.</u></p> <p><u>(3) "Oversight board" means an oversight board established in accordance with Article 26.048.</u></p>

(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:

(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; and

(3) if an oversight board is established under Article 26.048 for the managed assigned counsel program, the powers and duties that have been delegated to the oversight board.

SECTION 2. Article 26.048, Code of Criminal Procedure, is added to read as follows:

Art. 26.048. MANAGED ASSIGNED COUNSEL 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 managed assigned counsel program 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. No active criminal trial judge, prosecutor, or attorney who receives appointments through the managed assigned counsel program may serve on the board.

(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 26.047, including:

(1) recommending selection and removal of a director;

(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 3. Article 26.052, Code of Criminal Procedure, is amended by amending Subsection (b), adding Subsection (b-1) to read as follows:

Art. 26.052. APPOINTMENT OF COUNSEL IN DEATH PENALTY CASE;  
REIMBURSEMENT OF INVESTIGATIVE EXPENSES. (a) Notwithstanding any other provision of this chapter, this article establishes procedures in death penalty cases for appointment and payment of counsel to represent indigent defendants at trial and on direct appeal and to apply for writ of certiorari in the United States Supreme Court.

(b) If a county is served by a public defender's office, trial counsel and counsel for direct appeal or to apply for a writ of certiorari may be appointed as provided by the guidelines established by the public defender's office. ~~In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article.~~

(b-1) If a county is served by a managed assigned counsel program, trial counsel and counsel for direct appeal or to apply for a writ of certiorari may be appointed as provided by the written plan of operation for the managed assigned counsel program. An attorney appointed by a managed assigned counsel program in a death penalty case must be on the list of attorneys qualified for appointment in death penalty cases in the administrative judicial region in which the managed assigned counsel operates. In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article.

**Person Proposing/Other Parties:**  
TIDC Staff

**86<sup>th</sup> Bill/  
Sponsor:**  
N/A

**Status:**

**Description**

6. **Background and Purpose: Modify the membership of TIDC’s board to add two members:**
- 1) **a director of a Managed Assigned Counsel Program; and**
  - 2) **a justice of the peace, municipal court judge, or an appointed magistrate who regularly presides at Article 15.17 (“magistration”) hearings**

Section 79.014, Government Code, describes the members who the Governor may appoint to TIDC’s board. While that membership includes judges, county commissioners, a defense lawyer, and chief public defender, a representative from a managed assigned counsel program is not included. To maintain an odd number of board members and the current proportion of judicial representation, the board proposes adding another judge to TIDC’s Board.

**Proposal:**

Add two new members to the TIDC Board:

- 1) A director of a Managed Assigned Counsel (MAC) program and
- 2) A justice of the peace, municipal court judge, or an appointed magistrate who regularly presides at Article 15.17 (“magistration”) hearings.

The proposal would also (a) remove problematic language in the existing statute regarding the chief public defender being able to pick a designee; and b) require a MAC director member to recuse themselves for votes regarding an award of funds to a county that the MAC serves, as is the case for a chief public defender serving on the board.

SECTION 1. Section 79.014, Government Code, is amended to read as follows:

Sec. 79.014. APPOINTMENTS. (a) The governor shall appoint with the advice and consent of the senate ~~five~~ seven 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;~~
- (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;;
- (6) one member who is a director of a managed assigned counsel program in this state; and,

(7) one member who is a justice of the peace, municipal court judge, or an appointed magistrate under Article 2.09, Code of Criminal Procedure, whose regular duties include presiding over hearings under Article 15.17, Code of Criminal Procedure.

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

SECTION 2. Section 79.016, Government Code, is amended to read as follows:

Sec. 79.016. DISCLOSURE REQUIRED. (a) A board member who is a chief public defender or a managed assigned counsel director ~~for or an attorney employed by~~ an entity 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 entity and may not participate in that 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 an entity served by a chief public defender or director of a managed assigned counsel program ~~other attorney~~ who fails to make a disclosure to the board as required by Subsection (a).

**Person Proposing/Other Parties:**  
Alyse Ferguson, Collin Co. Mental Health  
Managed Assigned Counsel Program

**86th Bill/ Sponsor:**  
N/A

**Status:**

	<b>Description</b>		
7.	<p><b>Background and Purpose: Repeal the requirement that public defender attorneys must inform the appointing judge of the results of any investigation into a defendant’s financial circumstances.</b></p> <p>Article 26.044(l), Code of Criminal Procedure, authorizes a public defender’s office to investigate the financial condition of a defendant the office is appointed to represent. The statute requires the office to report the results of any investigation to the appointing judge. This requirement appears to intrude upon the attorney-client privilege. Specifically, the statute contravenes Texas Rule of Evidence 503(b)(2) which provides:</p> <p><i>Special Rule in a Criminal Case:</i> In a criminal case, a client has a privilege to prevent a lawyer or lawyer’s representative from disclosing any other fact that came to the knowledge of the lawyer or the lawyer’s representative by reason of the attorney-client relationship.</p> <p>The requirement could also possibly subject the client to a prosecution for perjury.</p> <p>Significantly, there is no similar reporting obligation under Article 26.04 for private assigned counsel. Nor is there any comparable reporting requirement for managed assigned counsel under Article 26.047.</p> <p><b>Proposal:</b> Amend Article 26.044(l), Code of Criminal Procedure, as follows:</p> <p>(l) A public defender's office may investigate the financial condition of any person the public defender's office is appointed to represent. <del>The public defender's office shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this article.</del></p>		
	<p><b>Person Proposing/Other Parties:</b> Ted Wood, Harris County Public Defender’s Office</p>	<p><b>86<sup>th</sup> Bill/ Sponsor:</b> HB 2131 by Rep. Armando Walle</p>	<p><b>Status:</b> Passed House</p>

	<b>Description</b>		
8.	<p><b>Background and Purpose: Specifically provide for a limited scope attorney appointment to represent an arrestee at the Article 15.17, Code of Criminal Procedure, hearing (“magistration”)</b></p> <p>Harris and Bexar Counties are now providing representation via their public defender offices to arrestees at the Art. 15.17 or magistration hearing where a person is warned of their rights, bail is set, and they are provided their first opportunity to request the appointment of counsel. Under current law, Art. 26.04(j)(2) 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. That provision was in the original SB 7 in 2001 when there was no provision nor consideration of providing counsel at this early stage of the proceedings. Concerns about the impact were initially raised in both Harris and Bexar Counties, although ultimately appointments to the public defender offices for Art. 15.17 hearings went forward under court issued standing orders that defined them as limited in scope to these hearings only.</p> <p>The issue has arisen again in Galveston where the county is considering providing representation at such hearings, potentially via a new public defender office. Although many think the provision was intended to protect defendants from having their attorneys removed from their cases unnecessarily, a plain reading of the statute could be read to challenge such limited scope appointments. Providing clear authority in statute for appointments in Art. 15.17 hearings would assure such appointments were on solid ground and encourage earlier appointment of counsel to represent arrestees at such hearings.</p> <p><b>Proposal:</b> Article 26.04, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:  <u>(i-1) Notwithstanding Subsection (j)(2) or any other law, an attorney may be appointed under this article to represent an indigent person for the sole purpose of providing counsel in relation to that person's appearance before a magistrate as required by Article 14.06(a), 15.17(a), or 15.18(a). The attorney may continue to represent the person following the proceeding if appointed for that purpose under the other provisions of this article.</u></p>		
	<p><b>Person Proposing/ Other Parties:</b>  Alex Bunin, Harris County Public Defender</p>	<p><b>86<sup>th</sup> Bill/ Sponsor:</b>  HB 1456 by Rep. Dominguez</p>	<p><b>Status:</b>  Passed House Criminal Jurisprudence Committee</p>



	Description		
9.	<p><b>Background and Purpose: Allow attorneys with a private criminal practice to work part-time for public defender offices to represent an arrestee at the Article 15.17, Code of Criminal Procedure, hearing (“magistration”)</b></p> <p>Public defender offices in three counties, Bexar, Ft. Bend, and Harris Counties, have defense attorneys representing defendants at hearings held under Article 15.17, Code of Criminal Procedure (commonly referred to as “magistration”). Cameron County uses private assigned counsel for these hearings. The public defender offices Ft. Bend and Bexar Counties would like to use part-time public defenders for representation at these hearings. Despite their desire to use part-time staff, 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. Due to this statutory prohibition, Ft. Bend hired part-time public defenders who have a <i>civil</i> practice on the side. These attorneys will have to learn basic criminal law in order to provide magistration representation.</p> <p>The bill would allow public defender offices to hire 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. This will remove a potential barrier to providing such representation and encourage more jurisdictions to do so in a cost-effective manner.</p> <p><b>Proposal:</b></p> <p>Article 26.04, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:  <u>(i-1) Notwithstanding Subsection (j)(2) or any other law, an attorney may be appointed under this article to represent an indigent person for the sole purpose of providing counsel in relation to that person's appearance before a magistrate as required by Article 14.06(a), 15.17(a), or 15.18(a). The attorney may continue to represent the person following the proceeding if appointed for that purpose under the other provisions of this article.</u></p> <p>SECTION 2. Article 26.044, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:  <u>(i-1) Notwithstanding Subsection (i)(1), an attorney engaged in the private practice of criminal law may be employed by a public defender's office on a part-time basis for the sole purpose of providing counsel in relation to an indigent person's appearance before a magistrate as required by Article 14.06(a), 15.17(a), or 15.18(a).</u></p>		
	<p><b>Person Proposing/ Other Parties:</b> Roderick “Rocky” Glass, Fort Bend County Public Defender Office</p>	<p><b>86<sup>th</sup> Bill/ Sponsor:</b> HB 1457 by Rep. Dominguez</p>	<p><b>Status:</b> Passed House</p>

	<b>Description</b>
10.	<p><b>Background and Purpose: Cleanup bill to harmonize two versions of Section 79.037, Government Code, relating to TIDC’s grants authority and authorize TIDC to fund nonprofit corporations to provide indigent defense services.</b></p> <p>SB 1353 and SB 1057 were both passed by the 84<sup>th</sup> Legislature and now there are two subsections (b) and (e). In addition to harmonizing these provisions, the proposal would provide TIDC authority to provide grants to nonprofit corporations to provide indigent defense services to a county, such as immigration advice related to criminal cases required under <i>Padilla v Kentucky</i>. It could also be used to directly fund non-profit public defender offices, such as Texas Rio Grande Legal Aid (TRLA), and potentially ease the reporting burden on small counties serviced by TRLA’s public defender services.</p> <p><b>Proposal:</b></p> <p>SECTION 1. Section 79.037(a), Government Code, is amended to read as follows:</p> <p>(a) The commission shall:</p> <p>(1) provide technical support to:</p> <p>(A) assist counties in improving their <u>systems for providing indigent defense services, including indigent defense support services</u> <del>systems</del>; and</p> <p>(B) promote compliance by counties with the requirements of state law relating to indigent defense;</p> <p>(2) to assist a county in providing <u>or improving the provision of</u> indigent defense services in the county, distribute in the form of grants any funds appropriated for the purposes of this section to one or more of the following entities:</p> <p>(A) the county;</p> <p>(B) a law school's legal clinic or program that provides indigent defense services in the county; <del>and</del></p> <p>(C) a regional public defender that meets the requirements of Subsection (e) and provides indigent defense services in the county; <del>and</del></p> <p>(D) <u>an entity described by Section 791.013 that provides to a county administrative services under an interlocal contract entered into for the purpose of providing or improving the provision of indigent defense services in the county; and</u></p> <p>(E) <u>a nonprofit corporation that provides indigent defense services or indigent defense support services in the county; and</u></p> <p>(3) monitor each entity that receives a grant under Subdivision (2) and enforce compliance with the conditions of the grant, including enforcement by:</p> <p>(A) withdrawing grant funds; or</p> <p>(B) requiring reimbursement of grant funds by the entity.</p> <p>SECTION 2. Section 79.037(b), Government Code, as amended by Chapters 56 (S.B. 1353) and 476 (S.B. 1057), Acts of the 84th</p>

Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(b) The commission shall determine for each county the entity or entities [~~within the county~~] that are eligible to receive funds for the provision of or improvement in the provision of indigent defense services under Subsection (a)(2). The determination must be made based on the entity's:

(1) compliance with standards adopted by the board;  
and

(2) demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

SECTION 3. Section 79.037(c), Government Code, as amended by Chapters 56 (S.B. 1353) and 476 (S.B. 1057), Acts of the 84th Legislature, Regular Session, 2015, is reenacted to read as follows:

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

SECTION 4. Section 79.037(e), Government Code, as added by Chapter 56 (S.B. 1353), Acts of the 84th Legislature, Regular Session, 2015, is repealed.

**Person Proposing/Other Parties:**  
TIDC Staff

**86<sup>th</sup> Bill/ Sponsor:**  
HB 1812 by Rep. Murr

**Status:** Passed House  
Criminal Jurisprudence  
Committee