

# **Texas Indigent Defense Commission Legislative Proposals Approved**

(Pursuant to Section 79.035, Government Code)

## **1. Statutory framework for the operation of the Regional Public Defender Office for Capital Cases (RPDO).**

The Regional Public Defender Office for Capital Cases (RPDO) is based in Lubbock County and is administratively organized as a department of the county. Originally developed as a cooperative endeavor to provide capital defense services in counties in the 7<sup>th</sup> and 9<sup>th</sup> Administrative Judicial Regions, the program has expanded through inter-local agreements to serve 178 participating counties in all nine administrative judicial regions across the state. Lubbock County recognizes the broad impact this program has for participating counties and the importance of upholding Constitutional requirements in the most serious criminal cases. In recognition of its statewide impact, legislation should be passed to provide a statutory basis for the program. This statute would also provide a process for succession to assure appropriate administrative support for the RPDO.

The Special Prosecution Unit (SPU) is somewhat analogous to the RPDO and forms the basis of this proposal for a statutory and funding framework for the RPDO. The SPU prosecutes offenses committed in state prisons and offenses committed by or against state prisoners (regardless of the location). Since Texas Department of Criminal Justice prison facilities are headquartered in Huntsville, the county seat of Walker County, the SPU is a division of the Walker County Criminal District Attorney's Office. Walker County also receives state funds to operate the program via an appropriation to the Judiciary Section, Comptroller's Department. If adopted, the Texas Legislature could provide designated funding for the RPDO program via an appropriation to the Texas Indigent Defense Commission (TIDC) with a rider directing the manner in which the funds are to be spent.

**Proposal:** Amend Texas Indigent Defense Commission's enabling statute (Chapter 79, Government Code) to:

- Authorize TIDC to contract with a governmental entity or entity organized under the Interlocal Cooperation Act (Chapter 791, Government Code) for the administration of the RPDO, or the TIDC Board may choose to administer the program directly for up to two years.
- Provide TIDC rulemaking authority to provide a succession plan, designate the administering entity, establish an oversight board, and other rules as needed for the successful administration of the program.

- Direct TIDC to work with the administrative entity for the RPDO to establish and maintain an appropriate oversight board.

**2. Change the terms of Texas Indigent Defense Commission board members to six years from two years.**

The proposal was suggested by the Office of the Governor as a means to provide greater stability and to alleviate the need to make appointments so frequently.

**Proposal:** Amend Sec. 79.014(b), Government Code, to extend the terms of members of the Texas Indigent Defense Commission from two to six years and maintain staggering of the terms with two members' terms expiring in three years and three members expiring in six years.

**3. Repeal the requirement that public defender attorneys must inform the court of the results of any investigation into a defendant's financial circumstances.**

There is a requirement that attorneys in public defender offices must report to the presiding judge in a case the results of any investigation of the client's financial circumstances. This requirement appears to violate the attorney-client privilege, particularly since Texas has a stronger version than most, located in Texas Rules of Evidence 503 (b)(2), which provides:

Special Rule in a Criminal Case. 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.

This might also subject the client to a prosecution for perjury. Additionally, there is no similar provision under Art. 26.04 for private assigned counsel, nor in Art. 26.047 for managed assigned counsel.

**Proposal:** Amend Sec. 26.044, Code of Criminal Procedure, to delete Subsection (l) containing the reporting requirement.

**4. Create an innocence project grant program at the Texas Indigent Defense Commission.**

TIDC has a rider on its appropriation directing it provide \$100,000 each year to the six public law schools in Texas (The University of Texas, The University of Houston, Texas Southern University, Texas A&M University, Texas Tech University, and The University of North Texas). This proposal would provide a framework to manage the funds allocated for innocence projects through a formal grant program to promote coordinated strategies for screening requests

for assistance and effective investigation and litigation activities. If a revised rider is also adopted, the bill would permit both public and private law schools based in Texas to apply for grant funds, as well as nonprofit organizations based in Texas that operate innocence projects. It would also permit TIDC to adopt rules to implement the program.