

Texas Indigent Defense Commission: Recommended Legislative Proposals 2022

Proposal	Description
1	Provide Managed Assigned Counsel Programs with Access to DPS' Criminal History Information
2	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.
3	Allow counties to be reimbursed for representation provided by a public defender's office when it is appointed to represent an indigent inmate when the State Counsel for Offenders cannot do so
4	Repeal the requirement that public defender attorneys must inform the appointing judge of the results of any investigation into a defendant's financial circumstances
5	Specifically provide for a limited scope attorney appointment to represent an arrestee at the Article 15.17, Code of Criminal Procedure, hearing ("magistration")
6	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")
7	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.
8	Enumerate and clarify the duties of magistrates at 15.17 hearings; ensure that magistration records are properly preserved
9	Ensure payment of expenses for attorneys to meet with defendants held in out-of-county jails
10	Modify the membership of TIDC's board to add two members: 1) Director of a Managed Assigned Counsel Program; and 2) Justice of the peace, municipal court judge, or an appointed magistrate who regularly presides at Article 15.17 ("magistration") hearings

#	Description
1.	<p data-bbox="226 215 1780 285">Background and Purpose: Provide Managed Assigned Counsel Programs with Access to DPS' Criminal History Information</p> <p data-bbox="226 329 1885 440">In 2013, the Texas Legislature enacted, and Gov. Perry signed, S.B. 1044, which gave public defender offices and the Office of Capital and Forensic Writs free access to DPS's criminal history data. It did not give private assigned counsel or managed assigned counsel programs (MACs) access to the data.</p> <p data-bbox="226 483 1892 553">This proposal would give MACs access to this data to ensure that private assigned counsel working under a MAC has equal access to this critically important information about their clients and witnesses.</p> <p data-bbox="226 597 1892 667">Proposal: SECTION 1. Section 411.082, Government Code, is amended by adding Subdivision (7) to read as follows:</p> <p data-bbox="226 675 1892 745">(7) <u>"Managed assigned counsel program" has the meaning assigned by Article 26.047(a), Code of Criminal Procedure.</u></p> <p data-bbox="226 753 1892 823">SECTION 2. Section 411.088, Government Code, is amended by amending Subsection (a-1) to read as follows:</p> <p data-bbox="226 831 1892 901">(a-1) The department may not charge a fee under Subsection (a) for providing criminal history record information to:</p> <ul data-bbox="415 909 892 1052" style="list-style-type: none"> (1) a criminal justice agency; (2) the office of capital writs; or (3) a public defender's office; <u>or</u> (4) <u>a managed assigned counsel program.</u> <p data-bbox="226 1060 1892 1130">SECTION 3. Subchapter F, Chapter 411, Government Code, is amended by amending Section 411.1272 to read as follows:</p> <p data-bbox="226 1138 1892 1360"><u>Sec. 411.1272. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF CAPITAL AND FORENSIC WRITS, AND PUBLIC DEFENDER'S OFFICES, AND MANAGED ASSIGNED COUNSEL PROGRAMS.</u> The office of capital <u>and forensic</u> writs, and a public defender's office, <u>and a managed assigned counsel program</u> are entitled to obtain from the department criminal history record information maintained by the department that relates to a criminal case in which an attorney compensated by the office of capital writs, or <u>by the public defender's office, or by the managed assigned counsel program</u> has been appointed.</p> <p data-bbox="321 1369 1119 1398">SECTION 4. This Act takes effect September 1, 2023.</p>

	Person Proposing/Other Parties: Jim Bethke, Bexar County Managed Assigned Counsel Program	87th Bill/ Sponsor: SB 1044 (83 rd Legislature/2013), by Rodriguez, gave public defender offices and the Office of Capital and Forensic Writs free access to DPS's criminal history data.	Status:
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#	Description
2.	<p>Background and Purpose: Modify the Managed Assigned Counsel (MAC) statute to clarify that MACs can remove attorneys from representing a defendant; explain the full array of services provided by MACs; clearly establish that case information received by MACs is subject to the attorney-client privilege and the attorney work-product privilege; codify the ability of a managed assigned counsel program to have an oversight board; and allow managed assigned counsel programs to appoint counsel in capital cases.</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 operating in Lubbock, Travis, Collin, Harris, McLennan, and soon in Bexar and Potter 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, Lubbock, McLennan (and soon in Harris and Potter) 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 26.04(f-1) notes that MACs appoint counsel but doesn't mention removal of counsel from a case or appointment list. This proposal would add that. (New provision compared to last session).</p> <p>Article 26.05(e), Code of Criminal Procedure, refers to the MAC director approving voucher payments but does not refer to a designee being able to approve payments. Many MACs now operating have too many cases for a single person to be able to approve all vouchers. Also, 26.047 does not refer to MACs approving vouchers. (New provisions compared to last session.)</p> <p>Article 26.052, Code of Criminal Procedure, describes the process for the appointment of counsel in death penalty cases. Some MACs oversee appointment of counsel in felony cases, but they cannot appoint counsel in death penalty cases because MACs are not permitted to do so under Article 26.052. MACs would be allowed to appoint counsel in capital cases with these changes.</p> <p>Revised Proposal: SECTION 1. Article 26.04(f-1), Code of Criminal Procedure, is amended to read as follows:</p>

(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, or remove counsel from representing a defendant or from an appointment list, in accordance with the guidelines established for the program. The managed assigned counsel program must have good cause to remove counsel from representing a defendant.

SECTION 2. Article 26.047(a), Code of Criminal Procedure, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

(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 or 26.052 of this code or Section 51.10, Family Code; ~~and~~

(C) for the purpose of appointing or providing an investigator, expert, or other support services for appointed counsel or indigent defendants;

(D) for the purpose of approving a payment to an attorney, investigator, or expert, and for other reasonable and necessary expenses under Article 26.05;

(E) for the purpose of overseeing and improving the quality of representation provided to individuals by attorneys appointed under this Article; and

(F) that may receive information necessary to perform the functions of this Article, including that which is subject to the attorney-client privilege, the attorney work-product privilege, or the Constitutional or statutory rights of clients who are represented by those attorneys appointed under this Article. Such information shall be protected from disclosure, and the managed assigned counsel program must preserve and maintain the confidentiality of any materials it receives in furtherance of its duties.

(3) “Oversight board” means an oversight board established under Article 26.048.

SECTION 3. Articles 26.047(b), (c), and (f), Code of Criminal Procedure, are amended to read as follows:

(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 or 26.052 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.

(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; and

(9) a policy describing the circumstances when an attorney may withdraw from a case and under what circumstances good cause is established to remove an attorney from a case.

(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 procedures [~~procedure~~] for appointing counsel adopted under Article 26.04(a) or provided under Article 26.052 and any other requirements specified by the Texas Indigent Defense Commission; and

(3) is approved by the program director or review committee, as applicable.

SECTION 3. Chapter 26, Code of Criminal Procedure, is amended by adding Article 26.048 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 established 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. The following persons participating in the criminal justice system may not serve on the board:

- (1) a criminal trial judge;
- (2) a prosecutor;
- (3) an attorney who receives appointments through the managed assigned counsel program; or
- (4) a peace officer.

(c) The commissioners court or courts may delegate to the board any power or duty of the commissioners court to provide oversight of the program under Article 26.047, including:

- (1) recommending selection and removal of a director;
- (2) setting policy for the program; and
- (3) developing a budget proposal for the program.

(d) An oversight board established under this article may not gain access to privileged or confidential communication.

SECTION 4. Article 26.05(c), Code of Criminal Procedure, is amended to read as follows:

(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 counsel program under Article 26.047, to the director of the program or the director's designee, and until the judge or director or the director's designee, as applicable, approves the payment. If the judge or director or director's designee 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.

SECTION 5. Article 26.052, Code of Criminal Procedure, is amended by amending Subsections (b) and (e) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(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 program operates.

(b-2) If a county is served by a public defender's office and a managed assigned counsel program, subject to Articles 26.04(f)(1), (2), and (3), the presiding judge of the district court in which a capital felony is filed shall give priority in appointing counsel from the public defender's office.

(b-3) In a county not served by a public defender's office or a managed assigned counsel program, counsel shall be appointed as provided by this article in each case in which the death penalty is sought.

(c) The presiding judge of the district court in which a capital felony case is filed or the managed assigned counsel program, if authorized by this article, shall appoint two attorneys~~[, at least one of whom must be qualified under this chapter,]~~ to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty. At least one of the attorneys must be qualified under this chapter.

SECTION 6. This Act takes effect September 1, 2023.

Person Proposing/Other Parties: TIDC Staff	87th Bill/ Sponsor:	Status:
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3.	<p data-bbox="275 198 1892 305">Background and Purpose: Allow counties to reimbursed for representation provided by a public defender’s office when it is appointed to represent an indigent inmate when the State Counsel for Offenders cannot do so</p> <p data-bbox="275 360 1906 915">Currently Article 26.051 of the Texas Code of Criminal Procedure allows for private bar attorneys to be appointed to indigent prison inmates in instances where board employed attorneys at the State Counsel for Offenders may have a conflict. The statute further provides that the State must reimburse the county for the appointment of these conflict attorneys, however the statute does not allow for the reimbursement of costs and fees when a court chooses to appoint the local Public Defenders Office in the representation of these indigent inmates who are conflicted out with the attorneys provided by the board. As a result, the local county Public Defender Office in Beeville, Texas, which is contracted by Texas Rio Grande Legal Aid, are providing representation for approximately 30-40 indigent prison inmates per year. Additionally, many of these clients, as of late have been exhibiting symptoms of incompetency, and therefore there are additional costs being incurred to evaluate these clients for competency. The proposal would allow a public defender’s office to certify to the court the amount of expenses incurred. The court would then submit this to the comptroller for reimbursement to the county.</p> <p data-bbox="275 980 1430 1013">Proposal: Amend Art. 26.051, Code of Criminal Procedure to read as follows:</p> <p data-bbox="386 1029 1352 1062">Art. 26.051. INDIGENT INMATE DEFENSE. (a) In this article:</p> <p data-bbox="386 1078 1205 1110">(1) “Board” means the Texas Board of Criminal Justice.</p> <p data-bbox="386 1127 1793 1159">(2) “Correctional institutions division” means the correctional institutions division of the Texas</p> <p data-bbox="275 1175 743 1208">Department of Criminal Justice.</p> <p data-bbox="275 1224 533 1256">(d) A court shall:</p> <p data-bbox="275 1273 1927 1403">(1) notify the board if it determines that a defendant before the court is indigent and is an inmate charged with an offense committed while in the custody of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code; and</p> <p data-bbox="485 1419 1520 1451">(2) request that the board provide legal representation for the inmate.</p>

(e) The board shall provide legal representation for inmates described by Subsection (d) of this section. The board may employ attorneys, support staff, and any other personnel required to provide legal representation for those inmates. All personnel employed under this article are directly responsible to the board in the performance of their duties. The board shall pay all fees and costs associated with providing legal representation for those inmates.

(f) Repealed by Acts 1993, 73rd Leg., ch. 988, Sec. 7.02, eff. Sept. 1, 1993.

(g) The court shall appoint an attorney or the local public defender's office, other than an attorney provided by the board, if the court determines for any of the following reasons that a conflict of interest could arise from the use of an attorney provided by the board under Subsection I of this article:

(1) the case involves more than one inmate and the representation of more than one inmate could impair the attorney's effectiveness;

(2) the case is appealed and the court is satisfied that conflict of interest would prevent the presentation of a good faith allegation of ineffective assistance of counsel by a trial attorney provided by the board; or

(3) any conflict of interest exists under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas that precludes representation by an attorney appointed by the board.

(h) When the court appoints an attorney or the local public defender's office, other than an attorney provided by the board:

(1) except as otherwise provided by this article, the inmate's legal defense is subject to Articles 1.051, 26.04, 26.044, 26.05, and 26.052, as applicable; and

(2) the county in which a facility of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code, is located shall pay from its general fund the total costs of the aggregate amount allowed and awarded by the court for attorney compensation and expenses under Article 26.05 or 26.052, as applicable. If the court appoints a local public defender's office, the public defender's office shall certify to the court the amount of expenses incurred in the representation.

(i) The state shall reimburse a county for public defender's office expenses and attorney compensation and expenses awarded under Subsection (h). A court seeking reimbursement for a county shall certify to the

	<p>comptroller of public accounts the amount of compensation and expenses for which the county is entitled to be reimbursed under this article. Not later than the 60th day after the date the comptroller receives from the court the request for reimbursement, the comptroller shall issue a warrant to the county in the amount certified by the court.</p>		
	<p>Person Proposing/Other Parties: Nicole Rivera Maesse, Director-Public Defender Division, Texas RioGrande Legal Aid</p>	<p>87th Bill/ Sponsor: N/A</p>	<p>Status: First time this is being proposed</p>

#	Description
4.	<p>Background and Purpose: Repeal the requirement that public defender attorneys must inform the court of the results of any investigation into a defendant’s financial circumstances.</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 and requires the office to report the results of any investigation to the presiding judge in a case. This requirement appears to violate the attorney-client privilege, particularly since Texas has a stronger version of the privilege than most states. That privilege is found in Texas Rule of Evidence 503(b)(2) which provides:</p> <p style="padding-left: 40px;"><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>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>Proposal: Amend Article 26.044(l), Code of Criminal Procedure, as follows:</p>

(l) A public defender's office may investigate the financial condition of any person the public defender's office is appointed to represent. 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.		
Person Proposing/Other Parties: Ted Wood, Harris County Public Defender's Office	87th Bill/ Sponsor: SB 1322 (omnibus bill) by Sen. Hinojosa left pending in Senate Criminal Justice.	Status:

#	Description
5.	<p>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).</p> <p>Several Texas counties are now providing representation 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>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>Proposal: Article 26.04, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:</p> <p><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 represent the person in subsequent proceedings of that case, only if appointed for that purpose under the other provisions of this article.</u></p>		
<p>Person Proposing/ Other Parties: Alex Bunin, Harris County Public Defender</p>	<p>87th Bill/ Sponsor: SB 1322 (omnibus bill) by Sen. Hinojosa left pending in Senate Criminal Justice.</p>	<p>Status:</p>

#	Description
6.	<p>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”)</p> <p>Public defender offices in several counties have criminal defense attorneys representing defendants at hearings held under Article 15.17, Code of Criminal Procedure (commonly referred to as “magistration”). The public defender offices in Bexar and Ft. Bend County 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 has hired part-time public defenders who have a <i>civil</i> practice on the side. These attorneys have to learn basic criminal law in order to provide magistration representation. Bexar County continues to struggle with how best to hire attorneys to provide representation at magistration hearings.</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</p>

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.

Proposal:

Article 26.04, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:

(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 represent the person in subsequent proceedings of that case only if appointed for that purpose under the other provisions of this article.

SECTION 2. Article 26.044, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:

(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).

**Person Proposing/
Other Parties:** Roderick "Rocky"
Glass, Fort Bend County Public
Defender Office

87th Bill/ Sponsor:
SB 1322 (omnibus bill) by Sen. Hinojosa
left pending in Senate Criminal Justice.

Status:

	Description
7.	<p>Background and Purpose: 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>Proposal: 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) [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]</u>, 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> <p>(1) is or may be actually innocent of the offense;</p> <p>(2) is or may be guilty of only a lesser offense;</p>

	<p><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> <u>(4) was or may have been convicted or sentenced in violation of the constitution of this state or the United States.</u></p>	
<p>Person Proposing/Other Parties: Cynthia Garza, Chief, Conviction Integrity Unit, Dallas County District Attorney's Office</p>	<p>87th Bill/ Sponsor: HB 327 by Rep. Jessica Gonzalez passed the House. SB 1322 (omnibus bill) by Sen. Hinojosa left pending in Senate Criminal Justice.</p>	<p>Status:</p>

#	Description
8.	<p data-bbox="275 198 1816 269">Background and Purpose: Enumerate and clarify the duties of magistrates at 15.17 hearings; ensure that magistrations records are properly preserved</p> <p data-bbox="275 318 1934 464">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 data-bbox="275 508 1934 654">TIDC and its Legislative 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 counsel.</p> <p data-bbox="275 698 1934 881">TIDC also regularly observes that requests for counsel at magistrations 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 magistrations, and that those forms are transferred within 24 hours. These requirements are currently implied by 15.17(a) but not explicitly stated.</p> <p data-bbox="275 925 1934 1071">The proposal also amends art. 15.17(a) by removing inadequate records retention time periods and adds art. 15.17(f), Code of Criminal Procedure, to require records related to magistrations and requests for counsel be retained for “at least 3 years after final judgment is entered in the case or the proceedings are otherwise terminated.”</p> <p data-bbox="275 1115 1934 1261">The 86th Legislature (2019) passed SB 815 to improve retention of these records 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.”</p> <p data-bbox="275 1305 1934 1408">To address the Governor’s veto of SB 815, this new proposal would set a specific record retention period of three 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</p>

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:

Amend Article 15.17(a) of the Code of Criminal Procedure as follows:

(a)(1) 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 the person him taken before some magistrate of the county where the person 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 and sound of the arrested person may be presented to the magistrate by means of a videoconference. 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.

(2) The magistrate shall inform in clear language the person arrested, either in person or through a videoconference, of:

(A) the accusation against the person him and of any affidavit filed with the accusation;

(B) the person's therewith, of his right to retain counsel;

(C) the person's, of his right to remain silent and to not make a statement;

(D) the fact that any statement the person makes may be used against the person;

(E) the person's, of his right to have an attorney present during any interview with peace officers or attorneys representing the state;

(F) the person's, of his right to terminate the interview at any time;

(G) the person's, and of his right to have an examining trial,;

~~(H) 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~~

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

(3) If applicable, the magistrate shall inform the person that the person may file the affidavit described by Article 17.028(f).

(4) 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.

(5) If the proceeding is conducted through a videoconference, the magistrate shall ensure that the arrested person is able to connect to and understand the image and sound of the videoconference.

(6) If the magistrate has reasonable cause to believe that the arrested person has a mental illness or is a person with an intellectual disability, the magistrate shall follow the procedures under Article 16.22.

(7) If the magistrate is unable to ensure that the arrested person is able to understand and participate in the proceeding, the magistrate shall:

(A) if the magistrate has appointing authority, appoint counsel for the person; or

(B) if the magistrate does not have appointing authority, notify the appointing authority of the person's inability to understand and participate in the proceeding.

(8) The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the arrested person at the same time the person is informed of the person's rights under this subsection.

(9) If the arrested person ~~arrested~~ is indigent and requests appointment of counsel and 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. If the magistrate is not authorized to appoint counsel, the

magistrate shall without unnecessary delay, but not later than 24 hours after the arrested 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.~~

(10) The magistrate shall allow the arrested 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, and whether the bail decision is subject to Article 17.027, admit the person ~~arrested~~ to bail if allowed by law.

(11) 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 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.~~

(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 at least three years after final judgment is entered in the case or the proceedings are otherwise terminated. The counsel for the defendant may obtain a copy of the record on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

Person Proposing/Other Parties:
TIDC Staff

87th Bill/ Sponsor:
HB 689 by Rep. Collier passed by House Criminal Jurisprudence Committee.
SB 1322 (omnibus bill) by Sen. Hinojosa left pending in Senate Criminal Justice.

Status:

#	Description
9.	<p data-bbox="270 180 1913 250">Background and Purpose: Ensure payment of expenses for attorneys to meet with defendants held in out-of-county jails</p> <p data-bbox="270 293 1881 440">Counties throughout Texas house pretrial detainees in jails out-of-county, especially counties whose detained population exceeds their local jail capacity. As of May 1, 2022, the Texas Commission on Jail Standards reported 1,871 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 data-bbox="270 483 1927 711">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 data-bbox="270 755 1885 901">This bill would require any county housing pretrial defendants in another county to amend their Indigent Defense Plan 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 data-bbox="270 945 1927 1019">Proposal: Article 26.05, Code of Criminal Procedure, is amended by amending Subsection (d) and adding Subsection (d-1) to read as follows:</p> <p data-bbox="270 1031 1927 1105">(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:</p> <ul style="list-style-type: none"> <li data-bbox="464 1117 695 1149">(1) investigation; <li data-bbox="464 1157 1100 1190">(2) and for mental health and other experts; <u>and</u> <li data-bbox="464 1198 1927 1273">(3) <u>if the defendant is imprisoned in a correctional facility located more than 50 miles from the court in which the defendant's proceeding is pending:</u> <ul style="list-style-type: none"> <li data-bbox="558 1284 1436 1317">(A) <u>travel to the defendant's location for a confidential interview; or</u> <li data-bbox="558 1325 1772 1357">(B) <u>any costs associated with remotely conducting a confidential interview with the defendant.</u>

(d-1) Expenses under Subsection (d) 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 under that subsection incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).

SECTION 2. The change in law made by this Act applies only to expenses incurred on or after the effective date of this Act.

**Person
Proposing/Other
Parties:**
Nate Fennell, Texas
Fair Defense Project

87th Bill/ Sponsor:
HB2446 by Rep. Canales, passed the House, was sponsored by Sen. Perry, was unanimously voted out of the Senate Criminal Justice Committee. Also, in SB 1322 (omnibus bill) by Sen. Hinojosa left pending in Senate Criminal Justice.

Status:

#	Description
10.	<p>Background and Purpose: Modify the membership of TIDC’s board to add two members:</p> <ol style="list-style-type: none"> 1) Director of a Managed Assigned Counsel Program; and 2) Justice of the peace, municipal court judge, or an appointed magistrate who regularly presides at Article 15.17 (“magistration”) hearings <p>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.</p> <p>Proposal:</p> <p>Add two new members to the TIDC Board:</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>SECTION 1. Section 79.014, Government Code, is amended to read as follows:</p> <p>Sec. 79.014. APPOINTMENTS. (a) The governor shall appoint with the advice and consent of the senate five <u>seven</u> members of the board as follows:</p> <ol style="list-style-type: none"> (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 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. Sections 79.016(a) and (c), Government Code, are amended to read as follows:

(a) A board member who is a chief public defender or a director of a managed assigned counsel 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.

(c) The commission may not award funds under Section 79.037 to an entity served by a chief public defender or a 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	87th Bill/ Sponsor: HB 2864 by Rep. Collier passed the house. SB 1322 (omnibus bill) by Sen. Hinojosa left pending in Senate Criminal Justice.	Status:
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