

Texas Indigent Defense Commission: Recommended Legislative Proposals 2024

Proposal	Description
1	Provide indigent defendants access to counsel for limited-scope representation for 15.17 hearing
2	Definition Managed Assigned Counsel Program; Areas of MAC appointments; Confidentiality Client Information
3	Make staff in public defender's offices and managed assigned counsel programs home-address information confidential in tax-appraisal records
4	Authorize criminal defense lawyers and their investigators to access driver's license photos in the DPS database
5	Create and fund a student loan repayment program for attorneys working in appointed criminal, juvenile delinquency, and family protection cases in underserved areas
6	Ensure payment of expenses for attorneys to meet with defendants held in out-of-county jails
7	Provide Managed Assigned Counsel Programs with Access to DPS' Criminal History Information
8	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
9	Repeal the requirement that public defender attorneys must inform the appointing judge of the results of any investigation into a defendant's financial circumstances
10	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")
11	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.
12	Enumerate and clarify the duties of magistrates at 15.17 hearings; ensure that magistration records are properly preserved.

#	Description	
1	<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 if the commissioners court approves funding for such representation</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. The provision has raised concerns about limited scope appointments, although many jurisdictions have nonetheless implemented representation at Art. 15.17 hearings under court issued standing orders that defined them as limited in scope to these hearings only. This proposal would provide clear authority in statute for appointments in Art. 15.17 hearings.</p> <p>During the last legislative session, some counties raised concerns that the proposed language would allow judges to begin appointing attorneys to represent arrestees at magistration hearings without any input or approval by a commissioners court, while obligating a county to additional spending. The proposal below is revised to add a clause requiring the commissioner court to approve funding for such representation.</p> <p>Proposal: Amend Article 26.04 by adding subsection (i-1) to read as follows:</p> <p><u>(i-1) Notwithstanding Subsection (j)(2) or any other law, if a County Commissioner’s Court approves funding, 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: TIDC Staff</p>	<p>88th Bill/ Sponsor: A provision was in HB 1528 (TIDC omnibus bill; Introduced Version Section 3) by Rep. Reggie Smith that would have permitted the judges to make limited scope appointments for Art. 15.17 hearings</p>
	<p>Status: Passed the house</p>	

#	Description
2	<p data-bbox="172 196 1934 305">Background and Purpose: Clarify the definition of Managed Assigned Counsel Programs and areas in which MAC programs may appoint counsel, authority of MAC programs to remove counsel from appointed cases, and address confidentiality of client case information received by a MAC program.</p> <p data-bbox="172 347 1955 573">Managed Assigned Counsel programs (MACs) were added to the Code of Criminal Procedure to codify an alternative method for appointing counsel which may be adopted by the judges hearing criminal and/or juvenile cases in a County or Judicial District. The current definition does not specify that MACs authority is a delegation of judicial authority and does not fully reflect the areas in which a MAC program may be authorized to appoint counsel, or the circumstances in which a MAC may not only remote an attorney from consideration for future appointments, but also when removal from appointed cases may be necessary. The proposed language addresses these issues.</p> <p data-bbox="172 615 1955 760">Currently Article 26.05(c), 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 and so an amendment authorizing MAC director designees to approve vouchers is also added.</p> <p data-bbox="172 802 1944 915">The proposed language also recognizes that in performing the oversight and support of appointed counsel roles, MACs may be privy to attorney-client matters, or other information which is confidential by law. The proposal requires MACs, MAC staff, and agents to keep such information confidential and not subject to public disclosure.</p> <p data-bbox="172 958 1906 1029">Proposal: Amend Code of Criminal Procedure Article 26.047(A)(2), (b), (c), and (f), and adding subsection (j), Code of Criminal Procedure as follows:</p> <p data-bbox="285 1065 1482 1101">Art. 26.047. MANAGED ASSIGNED COUNSEL PROGRAM. (a) In this article:</p> <p data-bbox="380 1136 1430 1172">(1) "Governmental entity" has the meaning assigned by Article <u>26.044</u>.</p> <p data-bbox="172 1208 1976 1279">(2) "Managed assigned counsel program" or "program" means a program operated with public funds <u>to perform delegated judicial functions:</u></p> <p data-bbox="172 1315 1976 1386">(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</p>

(B) for the purpose of appointing counsel under Article 26.04 of this code or Section 51.10, Family Code.

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

(D) for the purpose of approving a payment to an attorney, investigator, or expert, and for other reasonable and necessary expenses, including legal representation in collateral and ancillary matters to the extent required to effectuate the right to counsel in the primary matter, under Article 26.05; and

(E) for the purpose of overseeing and improving the quality of representation provided to clients by attorneys appointed under this article.

(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.

(9) a policy describing the circumstances under which the program may authorize appointed counsel to provide representation in ancillary and/or collateral matters to effectuate the constitutional right to effective assistance of counsel

(10) a policy describing the circumstances under which:

(A) an attorney may withdraw from a case; and

(B) good cause is established to remove an attorney from a case.

(11) procedures the program will use to maintain the confidentiality of juvenile client data, including which staff may access such data.

(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 procedure for appointing counsel adopted under Article 26.04(a) and any other requirements specified by the Texas Indigent Defense Commission; and

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

(g) A court may replace an attorney appointed by the program for the same reasons and in the same manner described by Article 26.04(k), the notice of replacement of counsel, and the reason therefor, must be documented in the same manner as a notice of the appointment of counsel.

(j) A program may receive information necessary to perform the program's functions under this article, including materials that are subject to attorney-client privilege, subject to attorney work-product privilege, or otherwise protected by constitutional or statutory rights of a client represented by an attorney under this article. Information and materials described by this subsection and information and materials related to the purpose described by Subsection (a)(2)(C) are confidential and not subject to disclosure, and the program, the attorneys appointed under this article, and other individuals, as applicable, shall maintain the confidentiality of any information or materials described by this section.

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 the director or director's designee, as applicable, approves the payment. If the judge or the director or director's designee disapproves the requested amount of payment, the judge or the director or director's designee shall make written findings stating the amount of payment that the judge or the director or director's designee approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

<p>Person Proposing/ Other Parties: TIDC MAC Legislative Workgroup</p>	<p>88th Bill/ Sponsor: HB 1528 (TIDC omnibus bill) Section 5 amended the definition of a MAC in Code of Criminal Procedure Article 26.047 (a); Section 6 contained amendments to Code of Criminal Procedure Article 26.047 subsections (b), (c), and (f), and added subsection (j); Introduced Version Section 3) by Rep. Reggie Smith Section</p>	<p>Status: Passed the house</p>
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3	<p data-bbox="153 199 2003 264">Background and Purpose: Make staff in public defender’s offices and managed assigned counsel programs home-address information confidential in tax-appraisal records.</p> <p data-bbox="153 313 2003 427">Appraisal districts hold information concerning real property. This information includes the address of real property within the district and the name of the owner of that property. Generally, this information is available to the public. Thus, a person is generally able to search for a property owner by name and determine that property-owner’s home address.</p> <p data-bbox="153 459 2003 686">Public defenders often feel threatened when handling cases involving a measure of publicity. In one case, a public defender received threatening letters and social media communications from strangers due to her perception that defending the accused person was a terrible thing. In another case, the public defender was approached in person by a man who knew about the public defender’s involvement in a case. The person said he knew where the public defender lived, and he knew she had three young daughters. Many of these somewhat frightening scenarios could be avoided if the public did not have access to the home addresses of public defenders.</p> <p data-bbox="153 719 2003 1027">The Texas Legislature has recognized that certain classes of persons have legitimate privacy concerns that are negatively affected by public access to appraisal-district information. Accordingly, the Legislature has enacted Section 25.025 of the Texas Tax Code. This statute allows certain persons to keep their information confidential insofar as appraisal-district records are concerned. These classes of persons include many individuals involved in the justice system such as judges, peace officers, sexual assault victims, and juvenile-probation officers. Current and former employees of a district attorney or county attorney are also on the list, as are federal public defenders. This proposal would add public defenders in Texas state courts to the list. After additional feedback at the first legislative workgroup meeting, managed assigned counsel program staff have been added to the proposal.</p> <p data-bbox="153 1060 2003 1206">Proposal: The language proposed in both HB 3327 and SB 1532 is perfectly acceptable. That language adds an additional category to the list of classes of persons whose home-address information in appraisal-district records has been made confidential. It should be noted that three additional classes of persons were added to the long list in Article 25.025(a) of the Tax Code in the 88th Legislative Session. See SB 617, SB 1525, and HB 1911.</p> <p data-bbox="153 1255 751 1287">The revised proposed language is below:</p> <p data-bbox="153 1336 1444 1369">Section 25.025(a), Tax Code, is amended by adding subsections (28) and (29) as follows:</p>

<p>(a) This section applies only to:</p> <p>...</p> <p><u>(28) an employee of a public defender's office as defined by Article 26.044(a), Code of Criminal Procedure; and</u></p> <p><u>(29) an employee of a managed assigned counsel program as defined by Article 27.047(a), Code of Criminal Procedure.</u></p>		
<p>Person Proposing/ Other Parties: Ted Wood, Harris County Public Defender's Office</p>	<p>88th Bill/ Sponsor: HB 3327 / Rep. Gene Wu SB 532 / Sen. Borris Miles – The bill</p>	<p>Status: HB 3327 passed the house SB 532 was referred to the Senate Business and Commerce Committee, but it was never set for a hearing.</p>

#	Description
4	<p data-bbox="142 191 1997 267">Background and Purpose: Authorize criminal defense lawyers and their investigators to access driver's license photos in the DPS database.</p> <p data-bbox="142 305 1997 430">The definition of a “motor vehicle record” includes records that pertain to driver’s licenses.¹ As a general rule, the information contained in motor vehicle records is not open to the public.² However, there is a long list of exceptions to this general rule. These exceptions are listed in Sections 730.005, 730.006, and 730.007 of the Texas Transportation Code.</p> <p data-bbox="142 451 1997 609">Investigators for the Harris County Public Defender’s Office (PDO) would like to be able to obtain driver’s license photographs of persons they are investigating. With a person’s photograph in hand, the investigators are better able to locate that person. Often, investigators in search of a specific person may encounter that person and not even know it. If the investigators had a photograph of the person, they would better know when they encounter that person.³</p> <p data-bbox="142 638 1997 755">The Department of Public Safety (DPS) will not provide the PDO with driver’s-license photos. The DPS believes there is no exception to the general rule making driver’s-license information private that would allow PDO investigators to obtain these photos. This belief appears to be correct.</p> <p data-bbox="142 784 1997 901">Section 730.007(a)(2)(A) permits the DPS to release “personal information” to “a government agency” if the information will be strictly limited to use by the agency. The PDO would seem to be a government agency and thus the release of personal information to PDO investigators appears to be statutorily authorized.⁴</p> <p data-bbox="142 930 1997 966">However, the release of “personal information” is limited by Section 730.007(b) which reads as follows:</p> <p data-bbox="241 995 1900 1063">The only personal information an agency may release under this section is the individual’s: (1) name and address; (2) date of birth; and (3) driver’s license number.</p> <p data-bbox="142 1092 1997 1128">But there is an exception to the foregoing limitation. The exception is codified as Section 730.007(c)(1) which says:</p> <p data-bbox="241 1157 1900 1274">This section does not: (1) prohibit the disclosure of a person’s photographic image to: (A) a law enforcement agency, the Texas Department of Motor Vehicles, a county tax assessor-collector, or a criminal justice agency for an official purpose;</p> <p data-bbox="142 1304 1997 1380">So, the upshot of the foregoing statutes is that PDO investigators cannot obtain driver’s license photos. This is because the PDO is not a law-enforcement agency. Nor is the PDO clearly a criminal-justice agency.⁵</p> <p data-bbox="142 1409 304 1438">Proposal:</p>

Amend Section 730.007(c)(1) by adding a new subsection (D) to read as follows: <u>(D) a private investigator licensed under Chapter 1702, Occupations Code, who is employed by a public defender’s office for an official purpose; or</u>		
Person Proposing/ Other Parties: Ted Wood, Harris County Public Defender’s Office	88th Bill/ Sponsor: HB 3875 / Rep. Hubert Vo	Status: The bill was referred to the House Transportation Committee, but it was never set for a hearing.

#	Description
5	<p>Background and Purpose: Create and fund a student loan repayment program for attorneys working in appointed criminal, juvenile delinquency, and family protection cases in underserved areas.</p> <p>The percent of indigent cases is rising and there are fewer attorneys to take them. As the demand for attorney grows, the number of attorneys taking indigent cases is decreasing. Rural communities are hit particularly hard. 27% fewer attorneys took at least 1 indigent criminal case in rural counties over the past 8 years. And attorneys taking indigent cases are overburdened. One in four rural attorneys taking indigent criminal cases is overburdened.</p> <p>Studies show that having a professional experience in a rural community during or just after graduating from school can encourage longer term commitment to work in the area. Texas has several programs that offer incentives to students and professionals working in underserved areas, including the Physician Education Loan Repayment Program, Mental Health Professionals Loan Repayment Program, etc.</p> <p>Proposal: TIDC included \$8.936 million in its FY26/27 legislative appropriation request to create and fund a pipeline to bring lawyers working on appointed criminal, juvenile delinquency, and family protection representation cases; \$5 million</p>

¹ Tex. Transp. Code § 730.003(4).

² Tex. Transp. Code § 730.004.

³ Access to photographs of potential witnesses would enhance investigator safety. By knowing what potential witnesses look like, investigators would be less likely to be “set up.” Additionally, access to photographs would significantly decrease the time necessary in the investigation process.

⁴ Additionally, Section 730.007(a)(2)(D) possibly authorizes DPS to release personal information to PDO investigators. The statute permits the information to be used in conjunction with a criminal proceeding.

⁵ This is not to say the PDO is definitely not a criminal-justice agency. This is a debatable legal point.

	of that was for a loan repayment assistance program. Supporting that extraordinary item in TIDC's LAR, enabling legislation will be required for the loan repayment portion of the program. Staff will draft a legislative proposal for loan repayments to be administered by the Texas Higher Education Coordinating Board.	
	Person Proposing/ Other Parties: TIDC Staff	88th Bill/ Sponsor: New Proposal

Status:
N/A

#	Description
6	<p data-bbox="170 86 1843 159">Background and Purpose: Ensure payment of expenses and attorney time for attorneys to meet with defendants held in out-of-county jails</p> <p data-bbox="170 203 1948 349">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="170 393 1934 613">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="170 657 1948 768">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="170 812 1881 885">The proposal also provides for the payment of attorneys for the time they are traveling outside the county where the case is pending to perform work on appointed cases.</p> <p data-bbox="170 928 1955 1002">Proposal: Article 26.05, Code of Criminal Procedure, is amended by amending Subsections (a) and (d) and adding Subsection (d-1) to read as follows:</p> <p data-bbox="170 1015 1955 1201">Art. 26.05. COMPENSATION OF COUNSEL APPOINTED TO DEFEND. (a) A counsel, other than an attorney with a public defender's office or an attorney employed by the office of capital and forensic writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:</p> <ol data-bbox="268 1209 1955 1390" style="list-style-type: none"><li data-bbox="268 1209 1955 1279">(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;<li data-bbox="268 1282 1955 1390">(2) reasonable and necessary time spent out of court on the case, <u>including time spent traveling to perform legal services outside of the county where the case is pending</u>, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(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:

(1) investigation;

(2) ~~and for~~ mental health and other experts; and

(3) if the defendant is confined in a correctional facility located more than 50 miles from the court in which the defendant's proceeding is pending:

(A) travel to the defendant's location for a confidential communication and food and lodging related to that travel; and

(B) any costs specifically associated with remotely entering into a confidential communication with the defendant.

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

SECTION 2. Article 26.05, Code of Criminal Procedure, as amended by this Act, applies only to expenses incurred on or after the effective date of this Act.

<p>Person Proposing/Other Parties: Nate Fennell, Texas Fair Defense Project</p>	<p>88th Bill/ Sponsor: HB 2523 by Rep. Canales, passed the House, was sponsored by Sen. Perry; & HB 1528 (Engrossed Version Section 7) by Rep. Reggie Smith</p>	<p>Status: HB 2523 was placed on Senate Intent Calendar. HB 1528 passed house</p>
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#	Description		
7	<p>Background and Purpose: Provide Managed Assigned Counsel Programs with Access to DPS' Criminal History Information</p> <p>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>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>Proposal: SECTION 1. Section 411.082, Government Code, is amended by adding Subdivision (4-a) to read as follows:</p> <p style="padding-left: 40px;"><u>(4-a) "Managed assigned counsel program" has the meaning assigned by Article 26.047, Code of Criminal Procedure.</u></p> <p>SECTION 2. Section 411.088(a-1), Government Code, is amended to read as follows:</p> <p>(a-1) The department may not charge a fee under Subsection (a) for providing criminal history record information to:</p> <ol style="list-style-type: none"> (1) a criminal justice agency; (2) the office of capital and forensic writs; or (3) a public defender's office; <u>or</u> (4) a managed assigned counsel program. <p>SECTION 3. Section 411.1272, Government Code, is amended to read as follows:</p> <p>Sec. 411.1272. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF CAPITAL AND FORENSIC WRITS, [AND] PUBLIC DEFENDER'S OFFICES, <u>AND MANAGED ASSIGNED COUNSEL PROGRAMS.</u> The office of capital and forensic 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 and forensic writs or by the public defender's office <u>has been appointed by the court or in which an attorney has been appointed by the managed assigned counsel program, as applicable</u> [has been appointed].</p>		
	<p>Person Proposing/Other Parties: Jim Bethke, Bexar County Managed Assigned Counsel Program</p>	<p>88th Bill/ Sponsor: HB 1528 (Engrossed Version Sections 12-14) by Rep. Reggie Smith</p>	<p>Status: Passed the house</p>

#	Description
8	<p data-bbox="163 110 1955 217">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="163 272 1990 781">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="163 846 1944 922">Proposal: Article 26.051, Code of Criminal Procedure, is amended by amending Subsections (g), (h), and (i) and adding Subsection (h-1) to read as follows:</p> <p data-bbox="163 938 1976 1068">(g) The court shall appoint <u>the public defender's office or</u> an attorney 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 (e) [of this article]:</p> <ol data-bbox="163 1084 1976 1360" style="list-style-type: none"> <li data-bbox="163 1084 1927 1166">(1) the case involves more than one inmate and the representation of more than one inmate could impair the attorney's effectiveness; <li data-bbox="163 1182 1927 1263">(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 <li data-bbox="163 1279 1976 1360">(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. <p data-bbox="163 1377 1892 1401">(h) When the court appoints <u>the public defender's office or</u> an attorney other than an attorney provided by the board:</p>

(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.

(h-1) If the court appoints a public defender's office under Subsection (g), the public defender's office shall certify to the court the amount of expenses incurred in the representation. The court shall submit the certified amount to the comptroller for reimbursement of the county by the state as described by Subsection (i).

(i) The state shall reimburse a county for attorney compensation and expenses awarded under Subsection (h) and for any expenses of a public defender's office that are certified under Subsection (h-1). A court seeking reimbursement for a county shall certify to the 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 certified amount [~~certified by the court~~].

Person Proposing/Other Parties:
 Kimberly Simmons, Texas RioGrande Public Defender

88th Bill/ Sponsor:
 HB 1528 (Engrossed
 Version Section 8) by Rep.
 Reggie Smith

Status:
 Passed the house

#	Description		
9	<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> <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.</p>		
	<p>Person Proposing/Other Parties: Ted Wood, Harris County Public Defender’s Office</p>	<p>88th Bill/ Sponsor: HB 1528 (Engrossed Version Section 4) by Rep. Reggie Smith</p>	<p>Status: Passed the house</p>

#	Description			
10	<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 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>Proposal: Article 26.044, Code of Criminal Procedure, is amended by adding Subsection (i-1) to read as follows:</p> <p><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>			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; padding: 5px;"> Person Proposing/ Other Parties: Roderick “Rocky” Glass, Fort Bend County Public Defender Office </td> <td style="width: 33%; padding: 5px;"> 88th Bill/ Sponsor: HB 1528 (Engrossed Version Section 4) by Rep. Reggie Smith </td> <td style="width: 33%; padding: 5px;"> Status: Passed the house </td> </tr> </table>	Person Proposing/ Other Parties: Roderick “Rocky” Glass, Fort Bend County Public Defender Office	88th Bill/ Sponsor: HB 1528 (Engrossed Version Section 4) by Rep. Reggie Smith	Status: Passed the house
Person Proposing/ Other Parties: Roderick “Rocky” Glass, Fort Bend County Public Defender Office	88th Bill/ Sponsor: HB 1528 (Engrossed Version Section 4) by Rep. Reggie Smith	Status: Passed the house		

#	Description
11	<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> <ol style="list-style-type: none"> <u>(1) is or may be actually innocent of the offense;</u> <u>(2) is or may be guilty of only a lesser offense;</u> <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>

	Person Proposing/Other Parties: Cynthia Garza, Chief, Conviction Integrity Unit, Dallas County District Attorney's Office	88th Bill/ Sponsor: HB 352 / Rep. Jessica Gonzalez & HB 1528 (Engrossed Version Section 1) / Rep. Reggie Smith	Status: Passed the House & Passed the House

#	Description
12	<p data-bbox="220 154 1990 224">Background and Purpose: Enumerate and clarify the duties of magistrates at 15.17 hearings; ensure that magistration records are properly preserved</p> <p data-bbox="220 267 1995 418">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="220 462 1995 613">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="220 657 1995 841">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 data-bbox="220 885 1995 993">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 magistration and requests for counsel be retained for “at least 2 years after final judgment is entered in the case or the proceedings are otherwise terminated.”</p> <p data-bbox="220 1037 1995 1182">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="220 1226 1995 1295">To address the Governor’s veto of SB 815, this new proposal would set a specific record retention period of two years after judgment or termination of the case proceedings.</p> <p data-bbox="220 1339 388 1372">Proposal:</p> <p data-bbox="315 1377 1575 1409">Articles 15.17(a) and (f), Code of Criminal Procedure, are amended to read as follows:</p> <p data-bbox="315 1414 1995 1445">(a) (1) In each case enumerated in this Code, the person making the arrest or the person having custody of the</p>

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

(I) [~~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 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 ~~[person]~~ arrested person 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 ~~[person]~~ arrested person 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 ~~[person]~~ arrested person 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 two 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	88th Bill/ Sponsor: HB 405 by Rep. Collier; HB 1528 (Engrossed Version Section 2) by Rep. Reggie Smith	Status: HB 405 referred to House Criminal Jurisprudence Committee; HB 1528 passed the house
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