

BILL ANALYSIS

Senate Research Center
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S.B. 159
By: Wentworth
Jurisprudence
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2001, the Texas Legislature enacted the Texas Fair Defense Act, making significant changes in the way indigent defense is administered, including codifying a process to create a public defender's office that does not require special legislation and permitting the creation of regional public defender programs among counties. Under current law, the process for establishing a public defender's office has been confusing and cumbersome for counties.

As proposed, S.B. 159 clarifies and simplifies the process by which counties establish a public defender's office.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 26.04(f), Code of Criminal Procedure, as follows:

(f) Permits a court or its designee to appoint an attorney employed by a public defender's office to represent the defendant under guidelines of that office in a county in which a public defender's office is created or designated. Replaces references to the public defender with reference to the public defender's office.

SECTION 2. Amends Article 26.044, Code of Criminal Procedure, as follows:

Art. 26.044. New heading: PUBLIC DEFENDER'S OFFICE. (a) Redefines "governmental entity" and defines "public defender's office," rather than "public defender."

(b) Authorizes the commissioners court (court) of any county on a written approval of a judge of certain courts to create a department of the county or by contract to designate a nonprofit corporation to serve as a public defender's office. Deletes text authorizing the commissioners court to appoint a governmental entity to serve as a public defender. Permits the commissioners courts of multiple counties to jointly create or designate and fund a regional public defender's office. Makes conforming changes.

(b)(3) Requires the commissioners court or courts to specify the term of the contract and the renewal process of an expired contract if the public defender's office is a nonprofit corporation. Deletes existing text requiring the court(s) to specify whether the public defender is appointed to serve a term or serve at the pleasure of the commissioners court or courts.

(b)(4) Deletes existing text requiring the commissioners court or courts to specify, if the public defender is appointed to serve a term, the term of the appointment, and the procedure for removal of the public defender.

(b-1) Requires the commissioners court or courts to require a written plan from the governmental entity serving as a public defender's office.

(c) Requires the commissioner court or courts to solicit proposals for the public defender's office before contracting with a nonprofit corporation under Subsection (b). Makes conforming changes.

(c-1) Sets forth specific policies and provisions for a plan under Subsection (b-1) or a proposal under Subsection (c) is required to include.

(d) and (e) Makes conforming changes.

(f) Requires a public defender's office to be directed by a chief public defender who meets certain criteria.

(g)-(i) Makes conforming changes.

(j) Prohibits an attorney employed by a public defender's office from accepting an appointment under Article 26.04(f) if a conflict of interest exists that has not been waived by the client. Makes conforming changes.

(k) Permits the judge to remove from a case a person who violates a provision of Subsection (i). Makes a conforming change.

(l) Makes conforming changes.

(m) Specifies that an attorney not employed by the public defender's office who is appointed is entitled to compensation provided by Article 26.05.

SECTION 3. Amends Articles 26.05(a) and (d), Code of Criminal Procedure, to make conforming changes.

SECTION 4. Reenacts Section 11(a), Article 42.12, Code of Criminal Procedure, as amended by Chapters 956 and 1224, Acts of the 79th Legislature, Regular Session, 2005, and amends it to make conforming changes.

SECTION 5. Amends Section 71.001(9), Government Code, to make a conforming change.

SECTION 6. Amends Section 71.0351(e), Government Code, to make a conforming change.

SECTION 7. Amends Section 71.053(a), Government Code, to make a conforming change.

SECTION 8. Amends Section 71.060(a), Government Code, to make a conforming change.

SECTION 9. Effective date: September 1, 2007.