

BILL ANALYSIS

Senate Research Center
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S.B. 625
By: Wentworth
Jurisprudence
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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.

As proposed, S.B. 625 clarifies and simplifies the process for counties to form a public defender's office. In addition, S.B. 625 changes the name of the Task Force on Indigent Defense, a standing committee of the Texas Judicial Council, to the Texas Indigent Defense Council.

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 Articles 26.04(d) and (f), Code of Criminal Procedure, as follows:

(d) Requires that a public appointment list from which an attorney is appointed as required by Subsection (a) contain the names of qualified attorneys, each of whom meets any applicable qualifications specified by the Texas Indigent Defense Council, rather than the Task Force on Indigent Defense.

(f) Authorizes the court or courts' designee, in a county in which a public defender's office is created or designated under Article 26.044 (Public Defender), to appoint that office to represent the defendant in accordance with guidelines established for the office. Deletes existing text authorizing the court or the courts' designee, in a county in which a public defender is appointed under Article 26.044, to appoint a public defender to represent the defendant in accordance with guidelines established for the public defender.

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

Art. 26.044. New heading: PUBLIC DEFENDER'S OFFICE. (a) Defines "oversight board" and redefines "governmental entity" and "public defender's office."

(b) Authorizes the commissioners court of any county, on written approval of a judge of a county court, statutory county court, or district court trying criminal cases under Title 3 (Juvenile Justice Code), Family Code, in the county to create a department of the county or by contract designate a nonprofit corporation to serve as a public defender's office, rather than appoint a governmental entity or nonprofit corporation to serve as a public defender. Authorizes the commissioners courts of two or more counties to enter into a written agreement to jointly create or designate, rather than appoint, and fund a regional public defender's office, rather than a regional public defender. Requires the commissioners court or courts to specify or jointly specify certain functions if creating or designating a regional public defender's office. Makes conforming changes.

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

(c) Requires the commissioners court or courts to solicit proposals for the public defender's office before contracting with a nonprofit corporation to serve as a public defender's office under Subsection (b).

(c-1) Creates this subsection from existing text. Requires that a written plan under Subsection (b-1) or a proposal under Subsection (c) include a budget for the public defender's office, a description of each personnel position, the maximum allowable caseloads for each attorney employed by the public defender's office, provisions for personal training, a description of anticipated overhead costs for the public defender's office, policies regarding the use of licensed investigators and expert witnesses by the public defender's office, and a policy to ensure that the chief public defender and other attorneys employed by the public defender's office do not provide representation to a defendant when doing so would create a conflict of interest that has not been waived by the client. Makes conforming and nonsubstantive changes.

(d) Requires the commissioners court or courts, after considering each proposal for the public defender's office submitted by a nonprofit corporation under Subsection (c), to select a proposal that reasonably demonstrates that the public defender's office will provide adequate quality representation for indigent defendants in the county or counties. Makes conforming changes.

(e) Prohibits the total cost of the proposal under Subsection (c) from being the sole consideration in selecting a proposal.

(f) Requires that a public defender's office be directed by a chief public defender who is a member of the State Bar of Texas, has practiced law for at least three years, and has substantial experience in the practice of criminal law. Deletes existing text requiring that the governmental entity or nonprofit corporation be directed by a chief public defender, who meets certain conditions, to be eligible for appointment.

(g) Makes conforming changes.

(h) Makes conforming changes.

(i) Makes conforming changes.

(j) Makes conforming and nonsubstantive changes.

(k) Authorizes the judge to remove from a case a person, rather than a public defender, who violates a provision of Subsection (i).

(l) Makes conforming changes.

(m) Provides that an attorney is entitled to the compensation provided by Article 26.05 (Compensation of Council Appointed to Defend) of this code if it is necessary that an attorney who is not employed by a public defender's office be appointed. Makes nonsubstantive changes.

SECTION 3. Amends Chapter 26, Code of Criminal Procedure, by adding Article 26.045, as follows:

Art. 26.045. PUBLIC DEFENDER OVERSIGHT BOARD. Authorizes the commissioners court of a county or commissioners courts of two or more counties to establish an oversight board to advise and set policy for a public defender's office created or designated in accordance with this chapter. Authorizes the commissioners court or

courts to delegate to the board any power or duty of the commissioners court to provide oversight of the office under Article 26.044.

SECTION 4. Amends Articles 26.05(a) and (d), Code of Criminal Procedure, to make conforming changes.

SECTION 5. Amends Section 11(a), Article 42.12, Code of Criminal Procedure, to make conforming changes.

SECTION 6. Amends Section 71.001, Government Code, by adding Subdivision (6-a) to define "defense council" and amending Subdivision (9) to make a conforming change.

SECTION 7. Amends Sections 71.0351(a), (e), and (f), Government Code, to make conforming changes.

SECTION 8. Amends Subchapter D, Chapter 71, Government Code, as follows:

SUBCHAPTER D. New heading: TEXAS INDIGENT DEFENSE COUNCIL

Sec. 71.051. New heading: ESTABLISHMENT OF DEFENSE COUNCIL; COMPOSITION. Makes conforming changes.

Sec. 71.052. EX OFFICIO MEMBERS. Makes conforming changes.

Sec. 71.053. APPOINTMENTS. Makes conforming changes.

Sec. 71.054. VACANCIES. Makes conforming changes.

Sec. 71.055. MEETINGS; QUORUM; VOTING. Makes conforming changes.

Sec. 71.056. COMPENSATION. Makes conforming changes.

Sec. 71.057. BUDGET. Makes conforming changes.

Sec. 71.058. FAIR DEFENSE ACCOUNT. Makes a conforming change.

Sec. 71.059. ACCEPTANCE OF GIFTS, GRANTS, AND OTHER FUNDS; STATE GRANTS TEAM. Makes conforming changes.

Sec. 71.060. POLICIES AND STANDARDS. Makes conforming changes.

Sec. 71.061. New heading: COUNTY REPORTING PLAN; DEFENSE COUNCIL REPORTS. Makes conforming changes.

Sec. 71.062. TECHNICAL SUPPORT; GRANTS. Makes conforming changes.

Sec. 71.063. IMMUNITY FROM LIABILITY. Makes conforming changes.

SECTION 9. Effective date: September 1, 2009.