

SUBJECT: Local public defender's offices to represents indigent criminal defendants

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Peña, Riddle, Escobar, Hodge, Mallory Caraway, Pierson,
Talton

0 nays

2 absent — Vaught, Moreno

SENATE VOTE: On final passage, March 14 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — Dominic Gonzales, Texas Criminal Justice Coalition; Andrea
Marsh, Texas Fair Defense Project

Against — None

On — James Bethke, Task Force on Indigent Defense

BACKGROUND: There are 10 public defender's officers in Texas, located in Bexar, Colorado, Dallas, El Paso, Hidalgo, Kaufman, Travis, Val Verde, Webb, Wichita, and Willacy counties. Courts may appoint a member of a public defender's office to represent an indigent defendant in a criminal case. If the public defender's office cannot provide representation, either because of a conflict of interest or lack of resources, then a contract is offered to a member of the criminal defense bar under the promulgated rules and rates established by the county.

DIGEST: SB 159 would regulate, and allow counties to establish, local public defender's offices. The bill also would allow two or more counties to establish regional public defender's offices.

SB 159 would amend Code of Criminal Procedure, art. 26.04 to allow a court or a court's designee in a county in which a public defender's office was created or designated to appoint a public defender's office to represent a defendant in accordance with the guidelines established for that office.

A “public defender” would be defined as a entity that was either a governmental entity or a non-profit corporation operating under a written agreement with a governmental entity, other than an individual judge or court, and that used public funds to provide legal representation and services to indigent defendants accused of crimes or juvenile offenses.

The commissioners court of any county — on written approval of a judge of a county court, statutory county court, or district court in the county trying criminal cases or juvenile justice cases (Title 3, Family Code) — could create a department of the county or by contract to designate a nonprofit corporation to serve as a public defender’s office. The commissioners courts of two or more counties could enter into a written agreement to jointly create or designate and fund a regional public defender’s office. In creating or designating a public defender’s office, the commissioners court or courts would specify, if creating or designating a regional public defender’s office:

- the duties of the public defender’s office;
- the types of cases to which the public defender’s office could be appointed and the courts in which an attorney employed by the public defender’s office could be required to appear; and
- if the public defender’s office was a non-profit corporation, the term during which the contract designating the public defender’s office would be effective and how that contract could be renewed on expiration of the term.

The commissioners court or courts would require a written plan from the public defender’s office. Before contracting with a nonprofit corporation to serve as a public defender’s office, the commissioners court or courts would have to solicit proposals for the public defender’s office. The total cost of the solicited proposals could not be the sole consideration in selecting a proposal.

A written plan or proposal would include:

- a budget for the public defender’s office, including salaries;
- a description of each personnel position, including the chief public defender position;
- the maximum allowable caseloads for each attorney employed by the public defender’s office;
- provisions for personnel training;

- a description of anticipated overhead costs for the public defender's office;
- policies regarding the use of a 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 would not provide representation to a defendant when doing so would create a conflict of interest that had not been waived by the client.

SB 159 would amend Government Code, sec. 71.053 by changing the composition of the five-member Task Force on Indigent Defense to require that the seat held by a public defender instead be held by a chief public defender.

SB 159 would make conforming changes to several sections of the Code of Criminal Procedure and the Government Code by changing the term "public defender" to "public defender's office."

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

SB 159 would streamline the process of creating public defender's offices, which can offer substantial savings to counties that employ them. Under current law, a county considering the creation or appointment of a public defender's office must solicit bids from non-profit corporations, even if the commissioners court already has decided that it wants to establish its own office within the county. Under SB 159, the commissioners court simply could create an in-house public defender's office without the requirement of soliciting bids. If the county wanted to contract out for a public defender's office, however, the normal bid process would be used.

The bill also would address some of the barriers that counties face in establishing a public defender's office, including concerns about start-up costs and absence of case loads large enough to make a public defender's office cost effective. Both of these concerns could be addressed by establishing a public defender's office in conjunction with a neighboring county, and contracting with a nonprofit corporation also could ease the burden posed by start-up costs.

**OPPONENTS
SAY:**

No apparent opposition.