

SUBJECT: Task Force on Indigent Defense, revising public defenders offices

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 10 ayes — Gallego, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Riddle, Vaught, Vo

0 nays

1 absent — Christian

SENATE VOTE: On final passage, March 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Andrea Marsh, Texas Fair Defense Project; (*Registered, but did not testify*: Edwin Colfax, The Justice Project; Katherlene Levels, Texas Criminal Justice Coalition; Cindy Segovia, Bexar County Commissioners Court)

Against — None

On — (*Registered, but did not testify*: Jim Bethke, Task Force on Indigent Defense)

BACKGROUND: Under Code of Criminal Procedure, art. 26.04, judges in each county are required to adopt countywide procedures for appointing attorneys for indigent defendants arrested for or charged with felonies or with misdemeanors punishable by confinement. Courts are required to appoint attorneys from a public appointment list. Art. 26.04 also allows counties to use public defenders offices and other alternative programs to provide indigent defense if they meet specific criteria. Counties may appoint a governmental entity or nonprofit corporation to serve as a public defender.

The Task Force on Indigent Defense is established by Government Code, sec. 71.051 as a standing committee of the Texas Judicial Council. The duties of the TFID include distributing grants to counties for their indigent defense services, developing uniform policies and model forms and procedures for the delivery of indigent defense services, and monitoring a county's delivery of the services. The TFID has eight ex-

officio members and five members appointed by the governor and includes the presiding judge of the Court of Criminal Appeals, the chief justice of the Supreme Court, judges, and members of the House of Representatives and the Senate, judges, and attorneys.

Government Code, sec. 71.058 creates the fair defense account, which may be appropriated only to the Task Force on Indigent Defense to implement the laws on indigent defense services. Code of Criminal Procedure, art. 26.05(i) creates the indigent defense representation fund as a separate account in the General Revenue Fund. This fund can be used only for the same purposes as the fair defense account, including compensating appointed counsel.

DIGEST:

CSSB 625 would change the name of the Task Force on Indigent Defense to the Texas Indigent Defense Council and would make several changes to the laws governing the structure of public defender's offices.

CSSB 625 would allow counties to create a county department to be a public defender's office in addition to current authority to appoint an entity to serve as that office. Counties would have to continue, as under current law, to solicit proposals for the office if they appointed an entity to be the public defender, but CSSB 625 would not require them to solicit proposals if they created an office as a county department. Commissioners courts would have to require a written plan for a public defender's office if it was a governmental entity.

CSSB 625 would add to the current requirements for public defender's offices that there be a policy to ensure that attorneys in the offices do not represent a client when doing so would create a conflict of interest that had not been waived by a client

The bill would require members of the Texas Indigent Defense Council who were chief public defenders or attorneys employed by public defender's offices to disclose that fact before a vote of the council regarding awarding funds to the county in which the defender worked. The public defender would not be able to participate in such a vote, and if the relationship with the county was not disclosed, that county could not be awarded funds.

The bill would authorize commissioners courts to establish oversight boards to advise and set policy for public defender's offices. The

commissioners court could delegate to the oversight board any powers or duties to oversee the office.

CSSB 625 would repeal the indigent defense representation fund.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS
SAY:

CSSB 625 would change the name of the Task Force on Indigent Defense to reflect better its permanent status. Having “task force” in its name can make it sound as if the TFID is temporary, when, in fact, it is a permanent, standing committee of the Texas Judicial Council. Renaming it the Texas Indigent Defense Council would give it a name more suited to its role in state government.

CSSB 625 would streamline the process that counties must use when creating a public defender’s office as a part of county government. Currently, counties must solicit proposals any time they are creating a public defender’s office, including when doing it themselves. CSSB 625 would eliminate this unnecessary requirement by allowing counties to create an entity directly, without soliciting proposals, but would continue to require proposal solicitations when counties were contracting with another entity for that office.

The bill would apply conflict-of-interest requirements to public defender’s offices and would clarify when public defenders on the TFID would have to recuse themselves from voting. This would ensure that in both appearance and practice the office and the council operated fairly.

The bill specifically would authorize counties to use oversight boards with public defender’s offices, something many already do. It would be best to place this authority in statute so all counties knew they could use one.

CSSB 625 also would revise language throughout the statutes dealing with public defenders, so that laws referred clearly to public defender’s offices, to avoid confusion with a person who was a public defender.

CSSB 625 would repeal the indigent defense representation fund. This fund does not have any money in it and is not used by the TFID or anyone else. All indigent defense funds go into the fair defense account.

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OPPONENTS SAY:
No apparent opposition.

NOTES: The committee substitute added the provision that would require a public defender on the Texas Indigent Defense Council to disclose the relationship with a county when votes were being taken to distribute funds to counties. It also added the repeal of the indigent defense representation fund.