

GOVERNMENT CODE
TITLE 2. JUDICIAL BRANCH
SUBTITLE F. COURT ADMINISTRATION
CHAPTER 79. TEXAS INDIGENT DEFENSE COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 79.001. DEFINITIONS. In this chapter:

(1) "Assigned counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense.

(2) "Board" means the governing board of the Texas Indigent Defense Commission.

(3) "Commission" means the permanent standing committee of the council known as the Texas Indigent Defense Commission.

(4) "Contract defender program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.

(5) "Council" means the Texas Judicial Council.

(6) "Crime" means:

- (A) a misdemeanor punishable by confinement; or
- (B) a felony.

(7) "Defendant" means a person accused of a crime or a juvenile offense.

(8) "Executive director" means the executive director of the Texas Indigent Defense Commission.

(9) "Indigent defense support services" means criminal defense services that:

- (A) are provided by licensed investigators, experts, or other similar specialists, including forensic experts and mental health experts; and

- (B) are reasonable and necessary for appointed

counsel to provide adequate representation to indigent defendants.

(10) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(11) "Managed assigned counsel program" has the meaning assigned by Article 26.047, Code of Criminal Procedure.

(12) "Office of capital and forensic writs" means the office of capital and forensic writs established under Subchapter B, Chapter 78.

(13) "Public defender's office" has the meaning assigned by Article 26.044(a), Code of Criminal Procedure.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 21, eff. September 1, 2015.

Sec. 79.002. ESTABLISHMENT OF COMMISSION. (a) The Texas Indigent Defense Commission is established as a permanent standing committee of the council.

(b) The commission operates under the direction and supervision of a governing board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 79.011. ESTABLISHMENT OF BOARD; COMPOSITION. (a) The commission is governed by a board consisting of eight ex officio members and five appointive members.

(b) Except as provided by Section 79.033(b), the board shall exercise the powers and perform the duties under this chapter independently of the council.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.012. EXECUTIVE DIRECTOR. (a) The executive director is appointed by the board.

(b) The executive director:

- (1) must be a licensed attorney;
- (2) must demonstrate an interest in the standards for and provision of criminal defense services to indigent individuals;
- (3) may not engage in the private practice of law; and
- (4) may not accept money, property, or any other thing of value not authorized by law for services rendered under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.013. EX OFFICIO MEMBERS. The ex officio members of the board are:

- (1) the following six members of the council:
 - (A) the chief justice of the supreme court;
 - (B) the presiding judge of the court of criminal appeals;
 - (C) one of the members of the senate serving on the council who is designated by the lieutenant governor;
 - (D) the member of the house of representatives appointed by the speaker of the house;
 - (E) one of the courts of appeals justices serving on the council who is designated by the governor; and
 - (F) one of the county court or statutory county court judges serving on the council who is designated by the governor or, if a county court or statutory county court judge is not serving on the council, one of the statutory probate court judges serving on the council who is designated by the governor;
- (2) one other member of the senate appointed by the lieutenant governor; and
- (3) the chair of the House Criminal Jurisprudence Committee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.014. APPOINTMENTS. (a) The governor shall appoint with the advice and consent of the senate five members of the board as follows:

(1) one member who is a district judge serving as a presiding judge of an administrative judicial region;

(2) one member who is a judge of a constitutional county court or who is a county commissioner;

(3) one member who is a practicing criminal defense attorney;

(4) one member who is a chief public defender in this state or the chief public defender's designee, who must be an attorney employed by the public defender's office; and

(5) one member who is a judge of a constitutional county court or who is a county commissioner of a county with a population of 250,000 or more.

(b) The board members serve staggered terms of two years, with two members' terms expiring February 1 of each odd-numbered year and three members' terms expiring February 1 of each even-numbered year.

(c) In making appointments to the board, the governor shall attempt to reflect the geographic and demographic diversity of the state.

(d) A person may not be appointed to the board if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission or the council.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.015. PRESIDING OFFICER. The board shall select a chair from among its members.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.016. DISCLOSURE REQUIRED. (a) A board member who is a chief public defender for or an attorney employed by an entity that applies for funds under Section 79.037 shall disclose that

fact before a vote by the board regarding an award of funds to that entity and may not participate in that vote.

(b) A board member's disclosure under Subsection (a) must be entered into the minutes of the board meeting at which the disclosure is made or reported, as applicable.

(c) The commission may not award funds under Section 79.037 to an entity served by a chief public defender or other attorney who fails to make a disclosure to the board as required by Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 476 (S.B. 1057), Sec. 1, eff. September 1, 2015.

Sec. 79.017. VACANCIES. A vacancy on the board must be filled for the unexpired term in the same manner as the original appointment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.018. MEETINGS; QUORUM; VOTING. (a) The board shall meet at least four times each year and at such other times as it considers necessary or convenient to perform its duties.

(b) Six members of the board constitute a quorum for purposes of transacting the business of the board. The board may act only on the concurrence of five board members or a majority of the board members present, whichever number is greater. The board may adopt policies and standards under Section 79.034 only on the concurrence of seven board members.

(c) Except as provided by Section 79.016, a board member is entitled to vote on any matter before the board, except as otherwise provided by rules adopted by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.019. COMPENSATION. A board member may not receive

compensation for services on the board but is entitled to be reimbursed for actual and necessary expenses incurred in discharging board duties. The expenses are paid from funds appropriated to the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.020. IMMUNITY FROM LIABILITY. A member of the board performing duties on behalf of the board is not liable for damages arising from an act or omission within the scope of those duties.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.021. RULES. The board shall adopt rules as necessary to implement this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF COMMISSION

Sec. 79.031. FAIR DEFENSE ACCOUNT. The fair defense account is an account in the general revenue fund that may be appropriated only to:

(1) the commission for the purpose of implementing this chapter; and

(2) the office of capital and forensic writs for the purpose of implementing Subchapter B, Chapter 78.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 22, eff. September 1, 2015.

Sec. 79.032. ACCEPTANCE OF GIFTS, GRANTS, AND OTHER FUNDS; STATE GRANTS TEAM. (a) The commission may accept gifts, grants, and other funds from any public or private source to pay expenses

incurred in performing its duties under this chapter.

(b) The State Grants Team of the Governor's Office of Budget, Planning, and Policy may assist the commission in identifying grants and other resources available for use by the commission in performing its duties under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.033. ADMINISTRATIVE ATTACHMENT; SUPPORT; BUDGET.

(a) The commission is administratively attached to the Office of Court Administration of the Texas Judicial System.

(b) The office of court administration shall provide administrative support services, including human resources, budgetary, accounting, purchasing, payroll, information technology, and legal support services, to the commission as necessary to carry out the purposes of this chapter.

(c) The commission, in accordance with the rules and procedures of the Legislative Budget Board, shall prepare, approve, and submit a legislative appropriations request that is separate from the legislative appropriations request for the Office of Court Administration of the Texas Judicial System and is used to develop the commission's budget structure. The commission shall maintain the legislative appropriations request and budget structure separately from those of the office of court administration.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.034. POLICIES AND STANDARDS. (a) The commission shall develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings. The policies and standards may include:

(1) performance standards for counsel appointed to represent indigent defendants;

(2) qualification standards under which attorneys may qualify for appointment to represent indigent defendants, including:

(A) qualifications commensurate with the seriousness of the nature of the proceeding;

(B) qualifications appropriate for representation of mentally ill defendants and noncitizen defendants;

(C) successful completion of relevant continuing legal education programs approved by the council; and

(D) testing and certification standards;

(3) standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent defendants;

(4) standards for determining whether a person accused of a crime or juvenile offense is indigent;

(5) policies and standards governing the organization and operation of an assigned counsel program;

(6) policies and standards governing the organization and operation of a public defender's office consistent with recognized national policies and standards;

(7) standards for providing indigent defense services under a contract defender program consistent with recognized national policies and standards;

(8) standards governing the reasonable compensation of counsel appointed to represent indigent defendants;

(9) standards governing the availability and reasonable compensation of providers of indigent defense support services for counsel appointed to represent indigent defendants;

(10) standards governing the operation of a legal clinic or program that provides legal services to indigent defendants and is sponsored by a law school approved by the supreme court;

(11) policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code;

(12) policies and standards governing the organization and operation of a managed assigned counsel program consistent with nationally recognized policies and standards; and

(13) other policies and standards for providing indigent defense services as determined by the commission to be

appropriate.

(b) The commission shall submit its proposed policies and standards developed under Subsection (a) to the board for adoption. The board shall adopt the proposed policies and standards as appropriate.

(c) Any qualification standards adopted by the board under Subsection (b) that relate to the appointment of counsel in a death penalty case must be consistent with the standards specified under Article 26.052(d), Code of Criminal Procedure. An attorney who is identified by the commission as not satisfying performance or qualification standards adopted by the board under Subsection (b) may not accept an appointment in a capital case.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.035. COUNTY REPORTING PLAN; COMMISSION REPORTS.

(a) The commission shall develop a plan that establishes statewide requirements for counties relating to reporting indigent defense information. The plan must include provisions designed to reduce redundant reporting by counties and provisions that take into consideration the costs to counties of implementing the plan statewide. The commission shall use the information reported by a county to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The commission may revise the plan as necessary to improve monitoring of indigent defense policies, standards, and procedures in this state.

(b) The commission shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and council and shall publish in written and electronic form a report:

(1) containing any information submitted to the commission by a county under Section 79.036; and

(2) regarding:

(A) the quality of legal representation provided by counsel appointed to represent indigent defendants;

(B) current indigent defense practices in the

state as compared to state and national standards;

(C) efforts made by the commission to improve indigent defense practices in the state;

(D) recommendations made by the commission for improving indigent defense practices in the state; and

(E) the findings of a report submitted to the commission under Section 79.039.

(c) The commission shall annually submit to the Legislative Budget Board and council and shall publish in written and electronic form a detailed report of all expenditures made under this subchapter, including distributions under Section 79.037.

(d) The commission may issue other reports relating to indigent defense as determined to be appropriate by the commission. Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.036. INDIGENT DEFENSE INFORMATION. (a) Not later than November 1 of each odd-numbered year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission:

(1) a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code;

(2) any plan or proposal submitted to the commissioners court under Article 26.044, Code of Criminal Procedure;

(3) any plan of operation submitted to the commissioners court under Article 26.047, Code of Criminal Procedure;

(4) any contract for indigent defense services required under rules adopted by the commission relating to a contract defender program;

(5) any revisions to rules, forms, plans, proposals, or contracts previously submitted under this section; or

(6) verification that rules, forms, plans, proposals,

or contracts previously submitted under this section still remain in effect.

(a-1) Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j)(4), Code of Criminal Procedure.

(b) Except as provided by Subsection (c):

(1) the local administrative district judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the district courts trying felony cases in the county; and

(2) the local administrative statutory county court judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county.

(c) If the judges of two or more levels of courts described by Subsection (b) adopt the same formal and informal rules and forms, the local administrative judge serving the courts having jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, shall perform the action required by Subsection (a).

(d) The chair of the juvenile board in each county, or the person designated by the chair, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the juvenile board.

(e) In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the commission in the form and manner prescribed by the commission and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year,

information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county:

(1) in each district, county, statutory county, and appellate court;

(2) in cases for which a private attorney is appointed for an indigent defendant;

(3) in cases for which a public defender is appointed for an indigent defendant;

(4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and

(5) for investigation expenses, expert witness expenses, or other litigation expenses.

(f) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the commission under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 912 (H.B. 1318), Sec. 5, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 912 (H.B. 1318), Sec. 6, eff. September 1, 2014.

Sec. 79.037. TECHNICAL SUPPORT; GRANTS. (a) The commission shall:

(1) provide technical support to:

(A) assist counties in improving their systems for providing indigent defense services, including indigent defense support services; and

(B) promote compliance by counties with the requirements of state law relating to indigent defense;

(2) to assist a county in providing or improving the provision of indigent defense services in the county, distribute in the form of grants any funds appropriated for the purposes of this

section to one or more of the following entities:

(A) the county;

(B) a law school's legal clinic or program that provides indigent defense services in the county;

(C) a regional public defender that meets the requirements of Subsection (e) and provides indigent defense services in the county;

(D) an entity described by Section 791.013 that provides to a county administrative services under an interlocal contract entered into for the purpose of providing or improving the provision of indigent defense services in the county; and

(E) a nonprofit corporation that provides indigent defense services or indigent defense support services in the county; and

(3) monitor each entity that receives a grant under Subdivision (2) and enforce compliance with the conditions of the grant, including enforcement by:

(A) withdrawing grant funds; or

(B) requiring reimbursement of grant funds by the entity.

(b) The commission shall determine for each county the entity or entities that are eligible to receive funds for the provision of or improvement in the provision of indigent defense services under Subsection (a)(2). The determination must be made based on the entity's:

(1) compliance with standards adopted by the board; and

(2) demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(c) The board shall adopt policies to ensure that funds under Subsection (a)(2) are allocated and distributed in a fair manner.

(d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the commission under this section.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 477 (H.B. 295), Sec. 5, eff. September 1, 2021.

(f) The commission shall select, by rule or under a contract with a regional public defender's office, a method for the payment of costs under Subsection (e)(4), which may include any combination of the following:

(1) allowing an office to establish and maintain a reserve of funds sufficient to cover anticipated costs, in an amount determined appropriate by the commission;

(2) guaranteeing all or part of the costs to be paid;
or

(3) establishing a schedule of fees for the payment of costs in the manner provided by Article 26.05, Code of Criminal Procedure.

(g) Any change to a schedule of fees established under Subsection (f)(3) must first be approved by the commission.

(h) A regional public defender's office shall collect each participating county's portion of the operational costs as that portion is provided by the county to the office.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 56 (S.B. 1353), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 476 (S.B. 1057), Sec. 2, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 477 (H.B. 295), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 477 (H.B. 295), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 477 (H.B. 295), Sec. 3, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 477 (H.B. 295), Sec. 5, eff. September 1, 2021.

Sec. 79.039. EXONERATION REPORT. (a) Each legal clinic or program in this state that is operated by a law school and that receives financial support from the commission shall submit to the commission an annual report regarding criminal cases:

(1) in which the clinic or program has provided legal services to an indigent defendant during the preceding calendar year; and

(2) in which:

(A) based on a finding of actual innocence, the court of criminal appeals overturns a conviction; or

(B) the governor issues a pardon based on actual innocence.

(b) The report required under Subsection (a) must:

(1) identify each likely cause of a wrongful conviction listed in the report; and

(2) recommend to the judiciary and the legislature best practices, policies, and statutory changes to address or mitigate those likely causes with respect to future criminal cases.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 1, eff. September 1, 2011.

Sec. 79.040. INDIGENT DEFENSE INFORMATION SYSTEM. (a) By entering into an interlocal contract with one or more counties under Chapter 791, the commission may participate and assist counties in the creation, implementation, operation, and maintenance of a computerized system to be used to assist those counties in the provision and administration of indigent defense services and to be used to collect data from those counties regarding representation of indigent defendants in this state.

(b) The commission may use appropriated funds to pay costs incurred under an interlocal contract described by Subsection (a), including license fees, implementation costs, maintenance and operations costs, administrative costs, and any other costs specified in the interlocal contract.

(c) The commission may provide training services to counties on the use and operation of a system created, implemented, operated, or maintained by one or more counties under Subsection (a).

(d) Subchapter L, Chapter 2054, does not apply to an indigent defense information system created under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 56 (S.B. 1353), Sec. 2,

eff. September 1, 2015.

Sec. 79.042. SUCCESSION PLAN FOR CERTAIN PUBLIC DEFENDERS' OFFICES. (a) In this section, "governmental entity" has the meaning assigned by Article 26.044, Code of Criminal Procedure.

(b) As a condition of a grant awarded by the commission to a regional public defender's office that primarily handles capital cases, the commission may establish for the public defender's office a succession plan to take effect only if the commissioners court of the county in which the central administrative office of the public defender's office is located ceases for any reason to be a party to the agreement creating or designating the public defender's office.

(c) A succession plan established under Subsection (b) may:

(1) authorize the commission to designate a governmental entity to administer the regional public defender's office;

(2) require the governmental entity designated under Subdivision (1) to establish an oversight board for the regional public defender's office under Article 26.045, Code of Criminal Procedure; and

(3) require the regional public defender's office to comply with any rules adopted by the commission for the administration of the public defender's office.

Added by Acts 2017, 85th Leg., R.S., Ch. 738 (S.B. 1214), Sec. 1, eff. June 12, 2017.