

77(R) SB 7 Enrolled version - Bill Text 1-1

1-2 relating to the period during which a person arrested is required
1-3 to be taken before a magistrate or released on bond and to the
1-4 appointment and compensation of counsel to represent indigent
1-5 persons accused of crime.

1-6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-7 SECTION 1. This Act may be known as the Texas Fair Defense
1-8 Act.

1-9 SECTION 2. Article 1.051, Code of Criminal Procedure, is
1-10 amended by amending Subsection (c) and adding Subsections (i), (j),
1-11 and (k) to read as follows:

1-12 (c) An indigent defendant is entitled to have an attorney
1-13 appointed to represent him in any adversary judicial proceeding
1-14 that may result in punishment by confinement and in any other
1-15 criminal proceeding if the court concludes that the interests of
1-16 justice require representation. Except as otherwise provided by
1-17 this subsection, if [If] an indigent defendant is entitled to and
1-18 requests appointed counsel and if adversarial judicial proceedings
1-19 have been initiated against the defendant, a [the] court or the
1-20 courts' designee authorized under Article 26.04 to appoint counsel
1-21 for indigent defendants in the county shall appoint counsel [to
1-22 represent the defendant] as soon as possible, but not later than
1-23 the end of the third working day after the date on which the court
1-24 or the courts' designee receives the defendant's request for
1-25 appointment of counsel. In a county with a population of 250,000
2-1 or more, the court or the courts' designee shall appoint counsel as
2-2 required by this subsection as soon as possible, but not later than
2-3 the end of the first working day after the date on which the court
2-4 or the courts' designee receives the defendant's request for
2-5 appointment of counsel.

2-6 (i) Except as otherwise provided by this subsection, if an
2-7 indigent defendant is entitled to and requests appointed counsel
2-8 and if adversarial judicial proceedings have not been initiated
2-9 against the defendant, a court or the courts' designee authorized
2-10 under Article 26.04 to appoint counsel for indigent defendants in
2-11 the county shall appoint counsel immediately following the
2-12 expiration of three working days after the date on which the court
2-13 or the courts' designee receives the defendant's request for
2-14 appointment of counsel. If adversarial judicial proceedings are
2-15 initiated against the defendant before the expiration of the three
2-16 working days, the court or the courts' designee shall appoint
2-17 counsel as provided by Subsection (c). In a county with a
2-18 population of 250,000 or more, the court or the courts' designee
2-19 shall appoint counsel as required by this subsection immediately
2-20 following the expiration of one working day after the date on which
2-21 the court or the courts' designee receives the defendant's request
2-22 for appointment of counsel. If adversarial judicial proceedings
2-23 are initiated against the defendant before the expiration of the
2-24 one working day, the court or the courts' designee shall appoint
2-25 counsel as provided by Subsection (c).

2-26 (j) Notwithstanding any other provision of this section, if
3-1 an indigent defendant is released from custody prior to the
3-2 appointment of counsel under this section, appointment of counsel
3-3 is not required until the defendant's first court appearance or
3-4 when adversarial judicial proceedings are initiated, whichever
3-5 comes first.

3-6 (k) A court or the courts' designee may without unnecessary
3-7 delay appoint new counsel to represent an indigent defendant for
3-8 whom counsel is appointed under Subsection (c) or (i) if:

3-9 (1) the defendant is subsequently charged in the case
3-10 with an offense different from the offense with which the defendant
3-11 was initially charged; and

3-12 (2) good cause to appoint new counsel is stated on the

3-13 record as required by Article 26.04(j)(2).
3-14 SECTION 3. Subsection (a), Article 14.06, Code of Criminal
3-15 Procedure, is amended to read as follows:
3-16 (a) Except as provided by subsection (b), in each case
3-17 enumerated in this Code, the person making the arrest or the person
3-18 having custody of the person arrested shall take the person
3-19 arrested or have him taken without unnecessary delay, but not later
3-20 than 48 hours after the person is arrested, before the magistrate
3-21 who may have ordered the arrest, before some magistrate of the
3-22 county where the arrest was made without an order, or, if necessary
3-23 to provide more expeditiously to the person arrested the warnings
3-24 described by Article 15.17 of this Code, before a magistrate in a
3-25 county bordering the county in which the arrest was made. The
3-26 magistrate shall immediately perform the duties described in
4-1 Article 15.17 of this Code.
4-2 SECTION 4. Article 15.17, Code of Criminal Procedure, is
4-3 amended by amending Subsection (a) and adding Subsections (e) and
4-4 (f) to read as follows:
4-5 (a) In each case enumerated in this Code, the person making
4-6 the arrest or the person having custody of the person arrested
4-7 shall without unnecessary delay, but not later than 48 hours after
4-8 the person is arrested, take the person arrested or have him taken
4-9 before some magistrate of the county where the accused was arrested
4-10 or, if necessary to provide more expeditiously to the person
4-11 arrested the warnings described by this article, before a
4-12 magistrate in a county bordering the county in which the arrest was
4-13 made. The arrested person may be taken before the magistrate in
4-14 person or the image of the arrested person may be broadcast by
4-15 closed circuit television to the magistrate. The magistrate shall
4-16 inform in clear language the person arrested, either in person or
4-17 by closed circuit television, of the accusation against him and of
4-18 any affidavit filed therewith, of his right to retain counsel, of
4-19 his right to remain silent, of his right to have an attorney
4-20 present during any interview with peace officers or attorneys
4-21 representing the state, of his right to terminate the interview at
4-22 any time, [of his right to request the appointment of counsel if he
4-23 is indigent and cannot afford counsel,] and of his right to have an
4-24 examining trial. The magistrate shall also inform the person
4-25 arrested of the person's right to request the appointment of
4-26 counsel if the person cannot afford counsel. The magistrate shall
5-1 inform the person arrested of the procedures for requesting
5-2 appointment of counsel. If the person does not speak and
5-3 understand the English language or is deaf, the magistrate shall
5-4 inform the person in a manner consistent with Articles 38.30 and
5-5 38.31, as appropriate. The magistrate shall ensure that reasonable
5-6 assistance in completing the necessary forms for requesting
5-7 appointment of counsel is provided to the person at the same time.
5-8 If the person arrested is indigent and requests appointment of
5-9 counsel and if the magistrate is authorized under Article 26.04 to
5-10 appoint counsel for indigent defendants in the county, the
5-11 magistrate shall appoint counsel in accordance with Article 1.051.
5-12 If the magistrate is not authorized to appoint counsel, the
5-13 magistrate shall without unnecessary delay, but not later than 24
5-14 hours after the person arrested requests appointment of counsel,
5-15 transmit, or cause to be transmitted to the court or to the courts'
5-16 designee authorized under Article 26.04 to appoint counsel in the
5-17 county, the forms requesting the appointment of counsel. The
5-18 magistrate [He] shall also inform the person arrested that he is
5-19 not required to make a statement and that any statement made by him
5-20 may be used against him. The magistrate shall allow the person
5-21 arrested reasonable time and opportunity to consult counsel and
5-22 shall admit the person arrested to bail if allowed by law. A
5-23 closed circuit television system may not be used under this

5-24 subsection unless the system provides for a two-way communication
5-25 of image and sound between the arrested person and the magistrate.
5-26 A recording of the communication between the arrested person and
6-1 the magistrate shall be made. The recording shall be preserved
6-2 until the earlier of the following dates: (1) the date on which
6-3 the pretrial hearing ends; or (2) the 91st day after the date on
6-4 which the recording is made if the person is charged with a
6-5 misdemeanor or the 120th day after the date on which the recording
6-6 is made if the person is charged with a felony. The counsel for
6-7 the defendant may obtain a copy of the recording on payment of a
6-8 reasonable amount to cover costs of reproduction.

6-9 (e) In each case in which a person arrested is taken before
6-10 a magistrate as required by Subsection (a), a record shall be made
6-11 of:

- 6-12 (1) the magistrate informing the person of the
6-13 person's right to request appointment of counsel;
6-14 (2) the magistrate asking the person whether the
6-15 person wants to request appointment of counsel; and
6-16 (3) whether the person requested appointment of
6-17 counsel.

6-18 (f) A record required under Subsection (e) may consist of
6-19 written forms, electronic recordings, or other documentation as
6-20 authorized by procedures adopted in the county under Article
6-21 26.04(a).

6-22 SECTION 5. (a) Chapter 17, Code of Criminal Procedure, is
6-23 amended by adding Article 17.033 to read as follows:

6-24 Art. 17.033. RELEASE ON BOND OF CERTAIN PERSONS ARRESTED
6-25 WITHOUT A WARRANT. (a) Except as provided by Subsection (c), a
6-26 person who is arrested without a warrant and who is detained in
7-1 jail must be released on bond, in an amount not to exceed \$5,000,
7-2 not later than the 24th hour after the person's arrest if the
7-3 person was arrested for a misdemeanor and a magistrate has not
7-4 determined whether probable cause exists to believe that the person
7-5 committed the offense. If the person is unable to obtain a surety
7-6 for the bond or unable to deposit money in the amount of the bond,
7-7 the person must be released on personal bond.

7-8 (b) Except as provided by Subsection (c), a person who is
7-9 arrested without a warrant and who is detained in jail must be
7-10 released on bond, in an amount not to exceed \$10,000, not later
7-11 than the 48th hour after the person's arrest if the person was
7-12 arrested for a felony and a magistrate has not determined whether
7-13 probable cause exists to believe that the person committed the
7-14 offense. If the person is unable to obtain a surety for the bond
7-15 or unable to deposit money in the amount of the bond, the person
7-16 must be released on personal bond.

7-17 (c) On the filing of an application by the attorney
7-18 representing the state, a magistrate may postpone the release of a
7-19 person under Subsection (a) or (b) for not more than 72 hours after
7-20 the person's arrest. An application filed under this subsection
7-21 must state the reason a magistrate has not determined whether
7-22 probable cause exists to believe that the person committed the
7-23 offense for which the person was arrested.

7-24 (b) Article 17.033, Code of Criminal Procedure, as added by
7-25 this Act, applies only to a person who is arrested on or after the
7-26 effective date of this Act. A person who is arrested before the
8-1 effective date of this Act is covered by the law in effect at the
8-2 time of the arrest, and the former law is continued in effect for
8-3 that purpose.

8-4 SECTION 6. Article 26.04, Code of Criminal Procedure, is
8-5 amended to read as follows:

8-6 Art. 26.04. PROCEDURES FOR APPOINTING [COURT SHALL APPOINT]
8-7 COUNSEL. (a) The judges of the county courts, statutory county
8-8 courts, and district courts trying criminal cases in each county,

8-9 by local rule, shall adopt and publish written countywide
8-10 procedures for timely and fairly appointing counsel for an indigent
8-11 defendant in the county arrested for or charged with a misdemeanor
8-12 punishable by confinement or a felony. The procedures must be
8-13 consistent with this article and Articles 1.051, 15.17, 26.05, and
8-14 26.052. A court shall appoint an attorney from a public
8-15 appointment list using a system of rotation, unless the court
8-16 appoints an attorney under Subsection (f), (h), or (i). The court
8-17 shall appoint attorneys from among the next five names on the
8-18 appointment list in the order in which the attorneys' names appear
8-19 on the list, unless the court makes a finding of good cause on the
8-20 record for appointing an attorney out of order. An attorney who is
8-21 not appointed in the order in which the attorney's name appears on
8-22 the list shall remain next in order on the list.

8-23 (b) Procedures adopted under Subsection (a) shall:

8-24 (1) authorize only the judges of the county courts,
8-25 statutory county courts, and district courts trying criminal cases
8-26 in the county, or the judges' designee, to appoint counsel for
9-1 indigent defendants in the county;

9-2 (2) apply to each appointment of counsel made by a
9-3 judge or the judges' designee in the county;

9-4 (3) ensure that each indigent defendant in the county
9-5 who is charged with a misdemeanor punishable by confinement or with
9-6 a felony and who appears in court without counsel has an
9-7 opportunity to confer with appointed counsel before the
9-8 commencement of judicial proceedings;

9-9 (4) require appointments for defendants in capital
9-10 cases in which the death penalty is sought to comply with the
9-11 requirements under Article 26.052;

9-12 (5) ensure that each attorney appointed from a public
9-13 appointment list to represent an indigent defendant perform the
9-14 attorney's duty owed to the defendant in accordance with the
9-15 adopted procedures, the requirements of this code, and applicable
9-16 rules of ethics; and

9-17 (6) ensure that appointments are allocated among
9-18 qualified attorneys in a manner that is fair, neutral, and
9-19 nondiscriminatory.

9-20 (c) whenever a [the] court or the courts' designee
9-21 authorized under Subsection (b) to appoint counsel for indigent
9-22 defendants in the county determines that a defendant charged with a
9-23 felony or a misdemeanor punishable by confinement [imprisonment] is
9-24 indigent or that the interests of justice require representation of
9-25 a defendant in a criminal proceeding, the court or the courts'
9-26 designee shall appoint one or more practicing attorneys to defend
10-1 the defendant in accordance with this subsection and the procedures
10-2 adopted under Subsection (a). If the court or the courts' designee
10-3 determines that the defendant does not speak and understand the
10-4 English language or that the defendant is deaf, the court or the
10-5 courts' designee shall make an effort to appoint an attorney who is
10-6 capable of communicating in a language understood by the defendant
10-7 [him].

10-8 (d) A public appointment list from which an attorney is
10-9 appointed as required by Subsection (a) shall contain the names of
10-10 qualified attorneys, each of whom:

10-11 (1) applies to be included on the list;

10-12 (2) meets the objective qualifications specified by
10-13 the judges under Subsection (e);

10-14 (3) meets any applicable qualifications specified by
10-15 the Task Force on Indigent Defense; and

10-16 (4) is approved by a majority of the judges who
10-17 established the appointment list under Subsection (e).

10-18 (e) In a county in which a court is required under
10-19 subsection (a) to appoint an attorney from a public appointment

10-20 list:
10-21 (1) the judges of the county courts and statutory
10-22 county courts trying misdemeanor cases in the county, by formal
10-23 action:
10-24 (A) shall:
10-25 (i) establish a public appointment list of
10-26 attorneys qualified to provide representation in the county in
11-1 misdemeanor cases punishable by confinement; and
11-2 (ii) specify the objective qualifications
11-3 necessary for an attorney to be included on the list; and
11-4 (B) may establish, if determined by the judges
11-5 to be appropriate, more than one appointment list graduated
11-6 according to the degree of seriousness of the offense and the
11-7 attorneys' qualifications; and
11-8 (2) the judges of the district courts trying felony
11-9 cases in the county, by formal action:
11-10 (A) shall:
11-11 (i) establish a public appointment list of
11-12 attorneys qualified to provide representation in felony cases in
11-13 the county; and
11-14 (ii) specify the objective qualifications
11-15 necessary for an attorney to be included on the list; and
11-16 (B) may establish, if determined by the judges
11-17 to be appropriate, more than one appointment list graduated
11-18 according to the degree of seriousness of the offense and the
11-19 attorneys' qualifications.
11-20 (f) In a county in which a public defender is appointed
11-21 under Article 26.044, the court or the courts' designee may appoint
11-22 the public defender to represent the defendant in accordance with
11-23 guidelines established for the public defender.
11-24 (g) A countywide alternative program for appointing counsel
11-25 for indigent defendants in criminal cases is established by a
11-26 formal action in which two-thirds of the judges of the courts
12-1 designated under this subsection vote to establish the alternative
12-2 program. An alternative program for appointing counsel in
12-3 misdemeanor and felony cases may be established in the manner
12-4 provided by this subsection by the judges of the county courts,
12-5 statutory county courts, and district courts trying criminal cases
12-6 in the county. An alternative program for appointing counsel in
12-7 misdemeanor cases may be established in the manner provided by this
12-8 subsection by the judges of the county courts and statutory county
12-9 courts trying criminal cases in the county. An alternative program
12-10 for appointing counsel in felony cases may be established in the
12-11 manner provided by this subsection by the judges of the district
12-12 courts trying criminal cases in the county. In a county in which
12-13 an alternative program is established:
12-14 (1) the alternative program may:
12-15 (A) use a single method for appointing counsel
12-16 or a combination of methods; and
12-17 (B) use a multicounty appointment list using a
12-18 system of rotation; and
12-19 (2) the procedures adopted under Subsection (a) must
12-20 ensure that:
12-21 (A) attorneys appointed using the alternative
12-22 program to represent defendants in misdemeanor cases punishable by
12-23 confinement:
12-24 (i) meet specified objective
12-25 qualifications, which may be graduated according to the degree of
12-26 seriousness of the offense, for providing representation in
13-1 misdemeanor cases punishable by confinement; and
13-2 (ii) are approved by a majority of the
13-3 judges of the county courts and statutory county courts trying
13-4 misdemeanor cases in the county;

13-5 (B) attorneys appointed using the alternative
13-6 program to represent defendants in felony cases:

13-7 (i) meet specified objective
13-8 qualifications, which may be graduated according to the degree of
13-9 seriousness of the offense, for providing representation in felony
13-10 cases; and

13-11 (ii) are approved by a majority of the
13-12 judges of the district courts trying felony cases in the county;

13-13 (C) appointments for defendants in capital cases
13-14 in which the death penalty is sought comply with the requirements
13-15 of Article 26.052; and

13-16 (D) appointments are reasonably and impartially
13-17 allocated among qualified attorneys.

13-18 (h) In a county in which an alternative program for
13-19 appointing counsel is established as provided by Subsection (g) and
13-20 is approved by the presiding judge of the administrative judicial
13-21 region, a court or the courts' designee may appoint an attorney to
13-22 represent an indigent defendant by using the alternative program.
13-23 In establishing an alternative program under Subsection (g), the
13-24 judges of the courts establishing the program may not, without the
13-25 approval of the commissioners court, obligate the county by
13-26 contract or by the creation of new positions that cause an increase
14-1 in expenditure of county funds.

14-2 (i) A court or the courts' designee required under
14-3 Subsection (c) to appoint an attorney to represent a defendant
14-4 accused of a felony may appoint an attorney from any county located
14-5 in the court's administrative judicial region.

14-6 (j) An attorney appointed under this article [subsection]
14-7 shall:

14-8 (1) make every reasonable effort to contact the
14-9 defendant not later than the end of the first working day after the
14-10 date on which the attorney is appointed and to interview the
14-11 defendant as soon as practicable after the attorney is appointed;
14-12 and

14-13 (2) represent the defendant until charges are
14-14 dismissed, the defendant is acquitted, appeals are exhausted, or
14-15 the attorney is relieved of his duties by the court or replaced by
14-16 other counsel after a finding of good cause is entered on the
14-17 record.

14-18 (k) A court may replace an attorney who violates Subsection
14-19 (j)(1) with other counsel. A majority of the judges of the county
14-20 courts and statutory county courts or the district courts, as
14-21 appropriate, trying criminal cases in the county may remove from
14-22 consideration for appointment an attorney who intentionally or
14-23 repeatedly violates Subsection (j)(1).

14-24 (l) Procedures adopted under Subsection (a) must include
14-25 procedures and financial standards for determining whether a
14-26 defendant is indigent. The procedures and standards shall apply to
15-1 each defendant in the county equally, regardless of whether the
15-2 defendant is in custody or has been released on bail.

15-3 (m) [(b)] In determining whether a defendant is indigent,
15-4 the court or the courts' designee may [shall] consider [such
15-5 factors as] the defendant's income, source of income, assets,
15-6 property owned, outstanding obligations, necessary expenses, the
15-7 number and ages of dependents, and spousal income that is available
15-8 to the defendant[, and whether the defendant has posted or is
15-9 capable of posting bail]. The court or the courts' designee may
15-10 not consider whether [deny appointed counsel to a defendant solely
15-11 because] the defendant has posted or is capable of posting bail,
15-12 except to the extent that it reflects the defendant's financial
15-13 circumstances as measured by the considerations listed in this
15-14 subsection.

15-15 (n) [(c)] A defendant who requests a determination of

15-16 indigency and appointment of counsel shall:
15-17 (1) complete under oath a questionnaire concerning his
15-18 financial resources;
15-19 (2) respond under oath to an examination regarding his
15-20 financial resources by the judge or magistrate responsible for
15-21 determining whether the defendant is indigent; or
15-22 (3) complete the questionnaire and respond to
15-23 examination by the judge or magistrate.
15-24 (o) [(d)] Before making a determination of whether a
15-25 defendant is indigent, the court shall request the defendant to
15-26 sign under oath a statement substantially in the following form:
16-1 "On this _____ day of _____, 20 [19]__, I have
16-2 been advised by the (name of the court) Court of my right to
16-3 representation by counsel in the trial of the charge pending
16-4 against me. I certify that I am without means to employ
16-5 counsel of my own choosing and I hereby request the court to
16-6 appoint counsel for me. (signature of the defendant)"
16-7 (p) A defendant who is determined by the court to be
16-8 indigent is presumed to remain indigent for the remainder of the
16-9 proceedings in the case unless a material change in the defendant's
16-10 financial circumstances occurs. [(e)] If there is a material
16-11 change in financial circumstances after a determination of
16-12 indigency or nonindigency is made, the defendant, the defendant's
16-13 counsel, or the attorney representing the state may move for
16-14 reconsideration of the determination.
16-15 (q) [(f)] A written or oral statement elicited under this
16-16 article or evidence derived from the statement may not be used for
16-17 any purpose, except to determine the defendant's indigency or to
16-18 impeach the direct testimony of the defendant. This subsection
16-19 does not prohibit prosecution of the defendant under Chapter 37,
16-20 Penal Code.
16-21 (r) A court may not threaten to arrest or incarcerate a
16-22 person solely because the person requests the assistance of
16-23 counsel.
16-24 SECTION 7. Article 26.044, Code of Criminal Procedure, is
16-25 amended to read as follows:
16-26 Art. 26.044. PUBLIC DEFENDER [IN COUNTY WITH FOUR COUNTY
17-1 COURTS AND FOUR DISTRICT COURTS]. (a) In this chapter, "public
17-2 defender" means a governmental entity or nonprofit corporation:
17-3 (1) operating under a written agreement with a
17-4 governmental entity, other than an individual judge or court;
17-5 (2) using public funds; and
17-6 (3) providing legal representation and services to
17-7 indigent defendants accused of a crime or juvenile offense, as
17-8 those terms are defined by Section 71.001, Government Code.
17-9 (b) The commissioners court of any county, on written
17-10 approval of a judge of a county court, statutory county court, or
17-11 district court trying criminal cases in the county, [having four
17-12 county courts and four district courts] may appoint a governmental
17-13 entity or nonprofit corporation [one or more attorneys] to serve as
17-14 a public defender. The commissioners courts of two or more
17-15 counties may enter into a written agreement to jointly appoint and
17-16 fund a regional [A] public defender [serves at the pleasure of the
17-17 commissioners court]. In appointing a public defender under this
17-18 subsection, the commissioners court shall specify or the
17-19 commissioners courts shall jointly specify, if appointing a
17-20 regional public defender:
17-21 (1) the duties of the public defender;
17-22 (2) the types of cases to which the public defender
17-23 may be appointed under Article 26.04(f) and the courts in which the
17-24 public defender may be required to appear;
17-25 (3) whether the public defender is appointed to serve
17-26 a term or serve at the pleasure of the commissioners court or the

18-1 commissioners courts; and
18-2 (4) if the public defender is appointed to serve a
18-3 term, the term of appointment and the procedures for removing the
18-4 public defender.
18-5 (c) Before appointing a public defender under Subsection
18-6 (b), the commissioners court or commissioners courts shall solicit
18-7 proposals for the public defender. A proposal must include:
18-8 (1) a budget for the public defender, including
18-9 salaries;
18-10 (2) a description of each personnel position,
18-11 including the chief public defender position;
18-12 (3) the maximum allowable caseloads for each attorney
18-13 employed by the proponent;
18-14 (4) provisions for personnel training;
18-15 (5) a description of anticipated overhead costs for
18-16 the public defender; and
18-17 (6) policies regarding the use of licensed
18-18 investigators and expert witnesses by the proponent.
18-19 (d) After considering each proposal for the public defender
18-20 submitted by a governmental entity or nonprofit corporation, the
18-21 commissioners court or commissioners courts shall select a proposal
18-22 that reasonably demonstrates that the proponent will provide
18-23 adequate quality representation for indigent defendants in the
18-24 county or counties.
18-25 (e) The total cost of the proposal may not be the sole
18-26 consideration in selecting a proposal.
19-1 (f) [(b)] To be eligible for appointment as a public
19-2 defender, the governmental entity or nonprofit corporation [a
19-3 person] must be directed by a chief public defender who:
19-4 (1) is [be] a member of the State Bar of Texas;
19-5 (2) has [have] practiced law for at least three years
19-6 [one year]; and
19-7 (3) has substantial [have] experience in the practice
19-8 of criminal law.
19-9 (g) A [(c) The] public defender is entitled to receive
19-10 funds for personnel costs and expenses incurred in operating as a
19-11 public defender in amounts [an annual salary in an amount] fixed by
19-12 the commissioners court and paid out of the appropriate county
19-13 fund, or jointly fixed by the commissioners courts and
19-14 proportionately paid out of each appropriate county fund if the
19-15 public defender serves more than one county.
19-16 (h) A public defender may employ attorneys, licensed
19-17 investigators, and other personnel necessary to perform the duties
19-18 of the public defender as specified by the commissioners court or
19-19 commissioners courts under Subsection (b)(1).
19-20 (i) [(d)] Except as authorized by this article, the chief
19-21 [a] public defender or an attorney employed by a public defender
19-22 may not:
19-23 (1) engage in the private practice of criminal law; or
19-24 (2) accept anything of value not authorized by this
19-25 article for services rendered under this article.
19-26 (j) A public defender may refuse an appointment under
20-1 Article 26.04(f) if:
20-2 (1) a conflict of interest exists;
20-3 (2) the public defender has insufficient resources to
20-4 provide adequate representation for the defendant;
20-5 (3) the public defender is incapable of providing
20-6 representation for the defendant in accordance with the rules of
20-7 professional conduct; or
20-8 (4) the public defender shows other good cause for
20-9 refusing the appointment.
20-10 (k) [(e)] The judge may remove a public defender who
20-11 violates a provision of Subsection (i) [(d) of this article].

20-12 (1) [(f)] A public defender or an attorney appointed by a
20-13 court of competent jurisdiction shall represent each indigent
20-14 person who is charged with a criminal offense in a county having at
20-15 least four county courts and at least four district courts and each
20-16 indigent minor who is a party to a juvenile delinquency proceeding
20-17 in the county.]

20-18 [(g)] A public defender may investigate the financial
20-19 condition of any person the public defender is appointed to
20-20 represent. The defender shall report the results of the
20-21 investigation to the appointing judge. The judge may hold a
20-22 hearing to determine if the person is indigent and entitled to
20-23 representation under this article.

20-24 (m) [(h)] If it is necessary that an attorney other than a
20-25 public defender be [is] appointed, the attorney is entitled to the
20-26 compensation provided by Article 26.05 of this code.

21-1 [(i)] At any stage of the proceeding, including appeal or
21-2 other postconviction proceedings, the judge may appoint another
21-3 attorney to represent the person. The substitute attorney is
21-4 entitled to the compensation provided by Article 26.05 of this
21-5 code.]

21-6 [(j)] Except for the provisions relating to daily appearance
21-7 fees, Article 26.05 of this code applies to a public defender
21-8 appointed under this article.]

21-9 SECTION 8. Article 26.05, Code of Criminal Procedure, is
21-10 amended to read as follows:

21-11 Art. 26.05. COMPENSATION OF COUNSEL APPOINTED TO DEFEND.

21-12 (a) A counsel, other than an attorney with a public defender
21-13 [defender's office], appointed to represent a defendant in a
21-14 criminal proceeding, including a habeas corpus hearing, shall be
21-15 [reimbursed for reasonable expenses incurred with prior court
21-16 approval for purposes of investigation and expert testimony and
21-17 shall be] paid a reasonable attorney's fee for performing the
21-18 following services, based on the time and labor required, the
21-19 complexity of the case, and the experience and ability of the
21-20 appointed counsel:

21-21 (1) time spent in court making an appearance on behalf
21-22 of the defendant as evidenced by a docket entry, time spent in
21-23 trial, and [or] time spent in a proceeding in which sworn oral
21-24 testimony is elicited;

21-25 (2) reasonable and necessary time spent out of court
21-26 on the case, supported by any documentation that the court
22-1 requires; [and]

22-2 (3) preparation of an appellate brief and preparation
22-3 and presentation of oral argument to a court of appeals or the
22-4 Court of Criminal Appeals; and

22-5 (4) preparation of a motion for rehearing.

22-6 (b) All payments made under this article shall be paid in
22-7 accordance with a schedule of fees adopted by formal action of the
22-8 judges of the county courts, statutory county courts, and district
22-9 courts trying criminal cases in [county and district criminal court
22-10 judges within] each county. On adoption of a schedule of fees as
22-11 provided by this subsection, a copy of the schedule shall be sent
22-12 to the commissioners court of the county[, except that in a county
22-13 with only one judge with criminal jurisdiction the schedule will be
22-14 adopted by the administrative judge for that judicial district].

22-15 (c) Each fee schedule adopted shall state reasonable [will
22-16 include a] fixed rates or [rate,] minimum and maximum hourly rates,
22-17 taking into consideration reasonable and necessary overhead costs
22-18 and the availability of qualified attorneys willing to accept the
22-19 stated rates, [and daily rates] and shall [will] provide a form for
22-20 the appointed counsel to itemize [reporting] the types of services
22-21 performed [in each one]. No payment shall be made under this
22-22 article [section] until the form for itemizing [reporting] the

22-23 services performed is submitted to the judge presiding over the
22-24 proceedings and the judge approves the payment. If the judge
22-25 disapproves the requested amount of payment, the judge shall make
22-26 written findings stating the amount of payment that the judge
23-1 approves and each reason for approving an amount different from the
23-2 requested amount. An attorney whose request for payment is
23-3 disapproved may appeal the disapproval by filing a motion with the
23-4 presiding judge of the administrative judicial region. On the
23-5 filing of a motion, the presiding judge of the administrative
23-6 judicial region shall review the disapproval of payment and
23-7 determine the appropriate amount of payment. In reviewing the
23-8 disapproval, the presiding judge of the administrative judicial
23-9 region may conduct a hearing. Not later than the 45th day after
23-10 the date an application for payment of a fee is submitted under
23-11 this article, the commissioners court shall pay to the appointed
23-12 counsel the amount that is approved by the presiding judge of the
23-13 administrative judicial region [and approved by the court] and that
23-14 is in accordance with the fee schedule for that county.

23-15 (d) A counsel in a noncapital case, other than an attorney
23-16 with a public defender, appointed to represent a defendant under
23-17 this code shall be reimbursed for reasonable and necessary
23-18 expenses, including expenses for investigation and for mental
23-19 health and other experts. Expenses incurred with prior court
23-20 approval shall be reimbursed in the same manner provided for
23-21 capital cases by Articles 26.052(f) and (g), and expenses incurred
23-22 without prior court approval shall be reimbursed in the manner
23-23 provided for capital cases by Article 26.052(h).

23-24 (e) A majority of the judges of the county courts and
23-25 statutory county courts or the district courts, as appropriate,
23-26 trying criminal cases in the county may remove an attorney from
24-1 consideration for appointment if, after a hearing, it is shown that
24-2 the attorney submitted a claim for legal services not performed by
24-3 the attorney.

24-4 (f) All payments made under this article shall be paid from
24-5 the general fund of the county in which the prosecution was
24-6 instituted or habeas corpus hearing held and may be included as
24-7 costs of court.

24-8 (g) [(e)] If the court determines that a defendant has
24-9 financial resources that enable him to offset in part or in whole
24-10 the costs of the legal services provided, including any expenses
24-11 and costs, the court shall order the defendant to pay during the
24-12 pendency of the charges or, if convicted, as court costs the amount
24-13 that it finds the defendant is able to pay.

24-14 (h) [(f)] Reimbursement of expenses incurred for purposes of
24-15 investigation or expert testimony may be paid directly to a private
24-16 investigator licensed under Chapter 1702, Occupations Code, [the
24-17 Private Investigators and Private Security Agencies Act (Article
24-18 4413(29bb), Vernon's Texas Civil Statutes)] or to an expert witness
24-19 in the manner designated by appointed counsel and approved by the
24-20 court.

24-21 SECTION 9. Article 26.052, Code of Criminal Procedure, is
24-22 amended by amending Subsections (d) and (e) and adding Subsection
24-23 (m) to read as follows:

24-24 (d)(1) The committee shall adopt standards for the
24-25 qualification of attorneys to be appointed to represent indigent
24-26 defendants in capital cases in which the death penalty is sought
25-1 [for appointment to death penalty cases].

25-2 (2) The standards must require that an attorney
25-3 appointed to a death penalty case:

25-4 (A) be a member of the State Bar of Texas;

25-5 (B) exhibit proficiency and commitment to
25-6 providing quality representation to defendants in death penalty
25-7 cases;

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(C) have at least five years of experience in criminal litigation;
(D) have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies;
(E) have trial experience in:
(i) the use of and challenges to mental health or forensic expert witnesses; and
(ii) investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and
(F) have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases.

(3) The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(4) Not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to the defense of death penalty cases. The committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements.

(e) The presiding judge of the district court in which a capital felony case is filed shall appoint two attorneys, at least one of whom must be qualified under this chapter, [counsel] to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty [if the death penalty is sought in the case. The judge shall appoint lead trial counsel from the list of attorneys qualified for appointment. The judge shall appoint a second counsel to assist in the defense of the defendant, unless reasons against the appointment of two counsel are stated in the record].

(m) The local selection committee shall annually review the list of attorneys posted under subsection (d) to ensure that each listed attorney satisfies the requirements under this chapter.

SECTION 10. Subsection (h), Article 102.075, Code of Criminal Procedure, is amended to read as follows:

(h) The comptroller shall deposit money received under this article to the credit of the following accounts in the general revenue fund according to the specified percentages:

| NAME OF ACCOUNT | PERCENTAGE |
|---|------------|
| abused children's counseling | 0.02% |
| crime stoppers assistance | 0.6% |
| breath alcohol testing | 1.28% |
| Bill Blackwood Law Enforcement Management Institute | 5.04% |
| law enforcement officers standards and education | 11.63% |
| comprehensive rehabilitation | 12.37% |
| operator's and chauffeur's license | 25.9% |
| criminal justice planning | 29.18% |
| fair defense account | 13.98% |

SECTION 11. Chapter 51, Family Code, is amended by adding Section 51.101 to read as follows:

Sec. 51.101. APPOINTMENT OF COUNSEL PLAN. (a) The juvenile board in each county shall adopt a plan that:

Texas Fair Defense Act.txt

27-19 (1) specifies the qualifications necessary for an
27-20 attorney to be included on an appointment list from which attorneys
27-21 are appointed to represent children in proceedings under this
27-22 title; and
27-23 (2) establishes procedures for:
27-24 (A) including attorneys on the appointment list
27-25 and removing attorneys from the list; and
27-26 (B) appointing attorneys from the appointment
28-1 list to individual cases.
28-2 (b) A plan adopted under subsection (a) must:
28-3 (1) to the extent practicable, comply with the
28-4 requirements of Article 26.04, Code of Criminal Procedure, except
28-5 that:
28-6 (A) the income and assets of the child's parent
28-7 or other person responsible for the child's support must be used in
28-8 determining whether the child is indigent; and
28-9 (B) any alternative plan for appointing counsel
28-10 is established by the juvenile board in the county; and
28-11 (2) recognize the differences in qualifications and
28-12 experience necessary for appointments to cases in which:
28-13 (A) the allegation is:
28-14 (i) conduct indicating a need for
28-15 supervision;
28-16 (ii) delinquent conduct, and commitment to
28-17 the Texas Youth Commission is not an authorized disposition; or
28-18 (iii) delinquent conduct, and commitment
28-19 to the Texas Youth Commission without a determinate sentence is an
28-20 authorized disposition;
28-21 (B) determinate sentence proceedings have been
28-22 initiated; or
28-23 (C) proceedings for discretionary transfer to
28-24 criminal court have been initiated.
28-25 SECTION 12. Section 71.001, Government Code, is amended to
28-26 read as follows:
29-1 Sec. 71.001. DEFINITIONS. In this chapter:
29-2 (1) "Ad hoc assigned counsel program" means a system
29-3 under which private attorneys, acting as independent contractors
29-4 and compensated with public funds, are individually appointed to
29-5 provide legal representation and services to a particular indigent
29-6 defendant accused of a crime or juvenile offense.
29-7 (2) "Chair" means the chair of the council.
29-8 (3) "Contract defender program" means a system under
29-9 which private attorneys, acting as independent contractors and
29-10 compensated with public funds, are engaged to provide legal
29-11 representation and services to a group of unspecified indigent
29-12 defendants who appear before a particular court or group of courts.
29-13 (4) [(2)] "Council" means the Texas Judicial Council.
29-14 (5) "Crime" means:
29-15 (A) a misdemeanor punishable by confinement; or
29-16 (B) a felony.
29-17 (6) "Defendant" means a person accused of a crime or a
29-18 juvenile offense.
29-19 (7) "Indigent defense support services" means criminal
29-20 defense services that:
29-21 (A) are provided by licensed investigators,
29-22 experts, or other similar specialists, including forensic experts
29-23 and mental health experts; and
29-24 (B) are reasonable and necessary for appointed
29-25 counsel to provide adequate representation to indigent defendants.
29-26 (8) "Juvenile offense" means conduct committed by a
30-1 person while younger than 17 years of age that constitutes:
30-2 (A) a misdemeanor punishable by confinement; or
30-3 (B) a felony.

30-4 (9) "Public defender" has the meaning assigned by
30-5 Article 26.044(a), Code of Criminal Procedure.
30-6 SECTION 13. Subchapter C, Chapter 71, Government Code, is
30-7 amended by adding Section 71.0351 to read as follows:
30-8 Sec. 71.0351. INDIGENT DEFENSE INFORMATION. (a) Not later
30-9 than January 1 of each year, in each county, a copy of all formal
30-10 and informal rules and forms that describe the procedures used in
30-11 the county to provide indigent defendants with counsel in
30-12 accordance with the Code of Criminal Procedure, including the
30-13 schedule of fees required under Article 26.05 of that code, shall
30-14 be prepared and sent to the Office of Court Administration of the
30-15 Texas Judicial System in the form and manner prescribed by the
30-16 office. Except as provided by Subsection (b), the local
30-17 administrative district judge in each county, or the person
30-18 designated by the judge, shall prepare and send to the office of
30-19 court administration a copy of all rules and forms adopted by the
30-20 judges of the district courts trying felony cases in the county.
30-21 Except as provided by subsection (b), the local administrative
30-22 statutory county court judge in each county, or the person
30-23 designated by the judge, shall prepare and send to the office of
30-24 court administration a copy of all rules and forms adopted by the
30-25 judges of the county courts and statutory county courts trying
30-26 misdemeanor cases in the county.
31-1 (b) If the judges of two or more levels of courts adopt the
31-2 same formal and informal rules and forms as described by Subsection
31-3 (a), the local administrative judge serving the courts having
31-4 jurisdiction over offenses with the highest classification of
31-5 punishment, or the person designated by the judge, shall prepare
31-6 and send to the Office of Court Administration of the Texas
31-7 Judicial System a copy of the rules and forms.
31-8 (c) In each county, the county auditor, or the person
31-9 designated by the commissioners court if the county does not have a
31-10 county auditor, shall prepare and send to the Office of Court
31-11 Administration of the Texas Judicial System in the form and manner
31-12 prescribed by the office and on a monthly, quarterly, or annual
31-13 basis, with respect to legal services provided in the county to
31-14 indigent defendants during each fiscal year, information showing
31-15 the total amount expended by the county to provide indigent defense
31-16 services and an analysis of the amount expended by the county:
31-17 (1) in each district, county, statutory county, and
31-18 appellate court;
31-19 (2) in cases for which a private attorney is appointed
31-20 for an indigent defendant;
31-21 (3) in cases for which a public defender is appointed
31-22 for an indigent defendant;
31-23 (4) in cases for which counsel is appointed for an
31-24 indigent juvenile under Section 51.10(f), Family Code; and
31-25 (5) for investigation expenses, expert witness
31-26 expenses, or other litigation expenses.
32-1 (d) As a duty of office, each district and county clerk
32-2 shall cooperate with the county auditor or the person designated by
32-3 the commissioners court and the commissioners court in retrieving
32-4 information required to be sent to the Office of Court
32-5 Administration of the Texas Judicial System under this section and
32-6 under a reporting plan developed by the Task Force on Indigent
32-7 Defense under Section 71.061(a).
32-8 (e) On receipt of information required under this section,
32-9 the Office of Court Administration of the Texas Judicial System
32-10 shall forward the information to the Task Force on Indigent
32-11 Defense.
32-12 SECTION 14. Chapter 71, Government Code, is amended by
32-13 adding Subchapter D to read as follows:
32-14 SUBCHAPTER D. TASK FORCE ON INDIGENT DEFENSE

32-15 Sec. 71.051. ESTABLISHMENT OF TASK FORCE; COMPOSITION. The
32-16 Task Force on Indigent Defense is established as a standing
32-17 committee of the council and is composed of eight ex officio
32-18 members and five appointive members.

32-19 Sec. 71.052. EX OFFICIO MEMBERS. The ex officio members
32-20 are:

- 32-21 (1) the following six members of the council:
32-22 (A) the chief justice of the supreme court;
32-23 (B) the presiding judge of the court of criminal
32-24 appeals;
32-25 (C) the member of the senate appointed by the
32-26 lieutenant governor;
33-1 (D) the member of the house of representatives
33-2 appointed by the speaker of the house;
33-3 (E) one of the courts of appeals justices
33-4 serving on the council who is designated by the governor to serve
33-5 on the Task Force on Indigent Defense; and
33-6 (F) one of the county court or statutory county
33-7 court judges serving on the council who is designated by the
33-8 governor to serve on the Task Force on Indigent Defense or, if a
33-9 county court or statutory county court judge is not serving on the
33-10 council, one of the statutory probate court judges serving on the
33-11 council who is designated by the governor to serve on the task
33-12 force;
33-13 (2) the chair of the Senate Criminal Justice
33-14 Committee; and
33-15 (3) the chair of the House Criminal Jurisprudence
33-16 Committee.

33-17 Sec. 71.053. APPOINTMENTS. (a) The governor shall appoint
33-18 with the advice and consent of the senate five members of the Task
33-19 Force on Indigent Defense as follows:

- 33-20 (1) one member who is an active district judge serving
33-21 as a presiding judge of an administrative judicial region;
33-22 (2) one member who is a judge of a constitutional
33-23 county court or who is a county commissioner;
33-24 (3) one member who is a practicing criminal defense
33-25 attorney;
33-26 (4) one member who is a public defender or who is
34-1 employed by a public defender; and
34-2 (5) one member who is a judge of a constitutional
34-3 county court or who is a county commissioner of a county with a
34-4 population of 250,000 or more.
34-5 (b) The members serve staggered terms of two years, with two
34-6 members' terms expiring February 1 of each odd-numbered year and
34-7 two members' terms expiring February 1 of each even-numbered year.
34-8 (c) In making appointments to the Task Force on Indigent
34-9 Defense, the governor shall attempt to reflect the geographic and
34-10 demographic diversity of the state.
34-11 (d) A person may not be appointed to the Task Force on
34-12 Indigent Defense if the person is required to register as a
34-13 lobbyist under Chapter 305 because of the person's activities for
34-14 compensation on behalf of a profession related to the operation of
34-15 the task force or the council.

34-16 Sec. 71.054. VACANCIES. A vacancy on the Task Force on
34-17 Indigent Defense must be filled for the unexpired term in the same
34-18 manner as the original appointment. An appointment to fill a
34-19 vacancy shall be made not later than the 90th day after the date
34-20 the vacancy occurs.

34-21 Sec. 71.055. MEETINGS; QUORUM; VOTING. (a) The Task Force
34-22 on Indigent Defense shall meet at least quarterly and at such other
34-23 times as it deems necessary or convenient to perform its duties.

34-24 (b) Six members of the Task Force on Indigent Defense
34-25 constitute a quorum for purposes of transacting task force

34-26 business. The task force may act only on the concurrence of five
35-1 task force members or a majority of the task force members present,
35-2 whichever number is greater. The task force may develop policies
35-3 and standards under Section 71.060 only on the concurrence of seven
35-4 task force members.

35-5 (c) A Task Force on Indigent Defense member is entitled to
35-6 vote on any matter before the task force, except as otherwise
35-7 provided by rules adopted by the task force and ratified by the
35-8 council.

35-9 Sec. 71.056. COMPENSATION. A Task Force on Indigent Defense
35-10 member may not receive compensation for services on the task force
35-11 but is entitled to be reimbursed for actual and necessary expenses
35-12 incurred in discharging the member's duties as a task force member.
35-13 The expenses are paid from funds appropriated to the task force.

35-14 Sec. 71.057. BUDGET. (a) The Task Force on Indigent
35-15 Defense budget shall be a part of the budget for the council. In
35-16 preparing a budget and presenting the budget to the legislature,
35-17 the task force shall consult with the executive director of the
35-18 Office of Court Administration of the Texas Judicial System.

35-19 (b) The Task Force on Indigent Defense budget may include
35-20 funds for personnel who are employees of the council but who are
35-21 assigned to assist the task force in performing its duties.

35-22 (c) The executive director of the Office of Court
35-23 Administration of the Texas Judicial System may not reduce or
35-24 modify the Task Force on Indigent Defense budget or use funds
35-25 appropriated to the task force without the approval of the task
35-26 force.

36-1 Sec. 71.058. FAIR DEFENSE ACCOUNT. The fair defense account
36-2 is an account in the general revenue fund that may be appropriated
36-3 only to the Task Force on Indigent Defense for the purpose of
36-4 implementing this subchapter.

36-5 Sec. 71.059. ACCEPTANCE OF GIFTS, GRANTS, AND OTHER FUNDS;
36-6 STATE GRANTS TEAM. (a) The Task Force on Indigent Defense may
36-7 accept gifts, grants, and other funds from any public or private
36-8 source to pay expenses incurred in performing its duties under this
36-9 subchapter.

36-10 (b) The State Grants Team of the Governor's Office of Budget
36-11 and Planning may assist the Task Force on Indigent Defense in
36-12 identifying grants and other resources available for use by the
36-13 task force in performing its duties under this subchapter.

36-14 Sec. 71.060. POLICIES AND STANDARDS. (a) The Task Force on
36-15 Indigent Defense shall develop policies and standards for providing
36-16 legal representation and other defense services to indigent
36-17 defendants at trial, on appeal, and in postconviction proceedings.
36-18 The policies and standards may include:

36-19 (1) performance standards for counsel appointed to
36-20 represent indigent defendants;

36-21 (2) qualification standards under which attorneys may
36-22 qualify for appointment to represent indigent defendants,
36-23 including:

36-24 (A) qualifications commensurate with the
36-25 seriousness of the nature of the proceeding;

36-26 (B) qualifications appropriate for
37-1 representation of mentally ill defendants and noncitizen
37-2 defendants;

37-3 (C) successful completion of relevant continuing
37-4 legal education programs approved by the council; and

37-5 (D) testing and certification standards;

37-6 (3) standards for ensuring appropriate appointed
37-7 caseloads for counsel appointed to represent indigent defendants;

37-8 (4) standards for determining whether a person accused
37-9 of a crime or juvenile offense is indigent;

37-10 (5) policies and standards governing the organization

37-11 and operation of an ad hoc assigned counsel program;
37-12 (6) policies and standards governing the organization
37-13 and operation of a public defender consistent with recognized
37-14 national policies and standards;
37-15 (7) standards for providing indigent defense services
37-16 under a contract defender program consistent with recognized
37-17 national policies and standards;
37-18 (8) standards governing the reasonable compensation of
37-19 counsel appointed to represent indigent defendants;
37-20 (9) standards governing the availability and
37-21 reasonable compensation of providers of indigent defense support
37-22 services for counsel appointed to represent indigent defendants;
37-23 (10) standards governing the operation of a legal
37-24 clinic or program that provides legal services to indigent
37-25 defendants and is sponsored by a law school approved by the supreme
37-26 court;
38-1 (11) policies and standards governing the appointment
38-2 of attorneys to represent children in proceedings under Title 3,
38-3 Family Code; and
38-4 (12) other policies and standards for providing
38-5 indigent defense services as determined by the task force to be
38-6 appropriate.
38-7 (b) The Task Force on Indigent Defense shall submit policies
38-8 and standards developed under Subsection (a) to the council for
38-9 ratification.
38-10 (c) Any qualification standards adopted by the Task Force on
38-11 Indigent Defense under Subsection (a) that relate to the
38-12 appointment of counsel in a death penalty case must be consistent
38-13 with the standards specified under Article 26.052(d), Code of
38-14 Criminal Procedure. An attorney who is identified by the task
38-15 force as not satisfying performance or qualification standards
38-16 adopted by the task force under Subsection (a) may not accept an
38-17 appointment in a capital case.
38-18 Sec. 71.061. COUNTY REPORTING PLAN; TASK FORCE REPORTS.
38-19 (a) The Task Force on Indigent Defense shall develop a plan that
38-20 establishes statewide requirements for counties relating to
38-21 reporting indigent defense information. The plan must include
38-22 provisions designed to reduce redundant reporting by counties and
38-23 provisions that take into consideration the costs to counties of
38-24 implementing the plan statewide. The task force shall use the
38-25 information reported by a county to monitor the effectiveness of
38-26 the county's indigent defense policies, standards, and procedures
39-1 and to ensure compliance by the county with the requirements of
39-2 state law relating to indigent defense. The task force may revise
39-3 the plan as necessary to improve monitoring of indigent defense
39-4 policies, standards, and procedures in this state.
39-5 (b) The Task Force on Indigent Defense shall annually submit
39-6 to the governor, lieutenant governor, speaker of the house of
39-7 representatives, and council and shall publish in written and
39-8 electronic form a report:
39-9 (1) containing the information forwarded to the task
39-10 force from the Office of Court Administration of the Texas Judicial
39-11 System under Section 71.0351(e); and
39-12 (2) regarding:
39-13 (A) the quality of legal representation provided
39-14 by counsel appointed to represent indigent defendants;
39-15 (B) current indigent defense practices in the
39-16 state as compared to state and national standards;
39-17 (C) efforts made by the task force to improve
39-18 indigent defense practices in the state; and
39-19 (D) recommendations made by the task force for
39-20 improving indigent defense practices in the state.
39-21 (c) The Task Force on Indigent Defense shall annually submit

39-22 to the Legislative Budget Board and council and shall publish in
39-23 written and electronic form a detailed report of all expenditures
39-24 made under this subchapter, including distributions under Section
39-25 71.062.

39-26 (d) The Task Force on Indigent Defense may issue other
40-1 reports relating to indigent defense as determined to be
40-2 appropriate by the task force.

40-3 Sec. 71.062. TECHNICAL SUPPORT; GRANTS. (a) The Task Force
40-4 on Indigent Defense shall:

40-5 (1) provide technical support to:

40-6 (A) assist counties in improving their indigent
40-7 defense systems; and

40-8 (B) promote compliance by counties with the
40-9 requirements of state law relating to indigent defense;

40-10 (2) direct the comptroller to distribute funds,
40-11 including grants, to counties to provide indigent defense services
40-12 in the county; and

40-13 (3) monitor each county that receives a grant and
40-14 enforce compliance by the county with the conditions of the grant,
40-15 including enforcement by directing the comptroller to:

40-16 (A) withdraw grant funds; or

40-17 (B) require reimbursement of grant funds by the
40-18 county.

40-19 (b) The Task Force on Indigent Defense shall direct the
40-20 comptroller to distribute funds as required by Subsection (a)(2)
40-21 based on a county's compliance with standards developed by the task
40-22 force and the county's demonstrated commitment to compliance with
40-23 the requirements of state law relating to indigent defense.

40-24 (c) The Task Force on Indigent Defense shall develop
40-25 policies to ensure that funds under Subsection (a)(2) are allocated
40-26 and distributed to counties in a fair manner.

41-1 (d) A county may not reduce the amount of funds provided for
41-2 indigent defense services in the county because of funds provided
41-3 by the Task Force on Indigent Defense under this section.

41-4 Sec. 71.063. IMMUNITY FROM LIABILITY. The Task Force on
41-5 Indigent Defense or a member of the task force performing duties
41-6 on behalf of the task force is not liable for damages arising from
41-7 an act or omission within the scope of the duties of the task
41-8 force.

41-9 SECTION 15. Articles 26.041, 26.042, 26.043, 26.045, 26.046,
41-10 26.047, 26.048, 26.049, 26.050, 26.053, as added by Senate Bill No.
41-11 1781, 77th Legislature, Regular Session, 2001, 26.054, as added by
41-12 Senate Bill No. 1781, 77th Legislature, Regular Session, 2001, and
41-13 26.058, Code of Criminal Procedure, are repealed.

41-14 SECTION 16. The change in law made by this Act applies only
41-15 to a person arrested for or charged with an offense committed or,
41-16 for purposes of Title 3, Family Code, a child taken into custody
41-17 for conduct or alleged to have engaged in conduct that occurs on or
41-18 after the effective date of this Act and to the appointment of
41-19 counsel for that person or child. A person arrested for or charged
41-20 with an offense committed or a child taken into custody for conduct
41-21 or alleged to have engaged in conduct that occurs before the
41-22 effective date of this Act is covered by the law in effect when the
41-23 offense was committed or the conduct occurred, and the former law
41-24 is continued in effect for that purpose.

41-25 SECTION 17. A county having established a public defender
41-26 under a statute repealed or amended by this Act may continue the
42-1 existence and operation of the public defender under the terms of
42-2 the repealed or amended statute as that statute existed immediately
42-3 before the effective date of this Act if the public defender is a
42-4 governmental entity or nonprofit corporation described by
42-5 Subsection (a), Article 26.044, Code of Criminal Procedure, as
42-6 amended by this Act. The change in law made by this Act to Article

