

Supreme Court of Texas

Misc. Docket No. 21-9123

Renewed Emergency Order Regarding Indigent Defense and the Border Security State of Disaster

ORDERED that:

1. Governor Abbott has declared a state of disaster concerning border security in 47 counties in the State of Texas. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. The Emergency Order Regarding Indigent Defense and the Border Security State of Disaster (Misc. Dkt. No. 21-9104) is renewed as follows.

3. To protect the constitutionally and statutorily guaranteed right to counsel of indigent criminal defendants, the following provisions of the Code of Criminal Procedure are modified in the counties affected by the state of disaster concerning border security (“affected counties”) for individuals arrested under Operation Lone Star launched by Governor Abbott on March 6, 2021, and who are brought before magistrates for proceedings under Article 15.17 in facilities designated by the Office of Court Administration (“OCA”).

a. Article 26.04(a) is modified to authorize the Executive Director of the Texas Indigent Defense Commission (“TIDC”) to approve procedures for appointing counsel that differ from an affected county’s procedures, but TIDC may not approve procedures inconsistent with Articles 26.04, 1.051, 15.17, 15.18, 26.05, and 26.052, unless otherwise provided in this Order.

b. Articles 15.17(a) and 26.04(b), (c), and (h) are modified to authorize a magistrate to appoint counsel for an indigent defendant upon request received at a proceeding under Article 15.17.

c. Articles 26.04(a), (d), and (e) are modified to waive the requirements to maintain a public appointment list and to appoint only from that list if an alternative appointment list is established by TIDC or its designee, and appointments may be made to attorneys from an appointment

list established by TIDC or its designee.

d. Articles 26.04(g) and (h) are modified to authorize TIDC to approve and establish an alternative program for appointing counsel.

e. Article 26.04(i) is modified to authorize the appointment of an attorney from any Texas county to represent a felony defendant.

f. Article 26.04(k) is modified to authorize TIDC or its designee to remove any attorney from consideration for an appointment for any reason.

g. Article 26.044 is modified to authorize TIDC as an additional entity permitted to designate an existing governmental entity or nonprofit corporation operating as a public defender's office to provide counsel.

h. Article 26.047 is modified to authorize TIDC as an additional entity permitted to appoint an existing governmental entity, nonprofit corporation, or bar association operating as a managed assigned counsel program to appoint counsel.

i. Should the costs for compensation of court-appointed counsel, investigators, defense interpreters, or experts be paid or reimbursed by the state, Article 26.05 is modified to authorize TIDC to adopt a fee schedule that differs from an affected county's schedule, to authorize TIDC or its designee to approve payments, and to remove any attorney from consideration who is shown to have submitted a claim for legal services not performed by the attorney, and to authorize OCA or TIDC or its designee to make payments.

4. OCA must post in a prominent place on its website the designated facilities in which this Order applies.

5. This Order expires on January 1, 2022, unless extended by the Chief Justice of the Supreme Court. This is an interim Order. The affected counties should move swiftly to modify any procedures necessary to provide for indigent defense in response to Operation Lone Star. An affected county may request to be exempted from this Order before it expires.

6. The Clerk of the Supreme Court is directed to:

a. post a copy of this Order on www.txcourts.gov;

b. file a copy of this Order with the Secretary of State; and

c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

7. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

Dated: October 12, 2021


Nathan L. Hecht, Chief Justice