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Presiding Judge, Court of Criminal Appeals

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James D. Bethke

## Report from the Texas Indigent Defense Commission for September 20, 2013 Texas Judicial Council Meeting

Since the Texas Indigent Defense Commission's last report to the Texas Judicial Council meeting on June 7, 2013, the Commission had a Policy and Standards Committee meeting on June 27th, a Grants and Reporting Committee meeting on August 22nd, and a full board meeting on August 23rd. The next Commission meeting date is December 12, 2013. Commission staff will present a two-day Indigent Defense Workshop on October 28<sup>th</sup> and 29<sup>th</sup> at the Texas Association of Counties. The [workshop agenda](#) is included at the end of this report.

### ***Member Updates:***

The Commission welcomes our newest member, **Judge Linda Rodriguez**. Governor Rick Perry designated Judge Rodriguez to serve on the Commission as the ex-officio member of the Texas Judicial Council. Judge Rodriguez has presided over County Court-at Law #2 in Hays County since 1990.



Judge Linda Rodriguez

### ***Increased Appropriations for Indigent Defense***

The Texas Indigent Defense Commission adopted a FY14 budget that allocates \$35 million to the indigent defense formula grant program. The budget reflects a \$15 million increase over the previous year thanks to legislative action to ensure that all dedicated funds collected specifically for indigent defense will again be available for that purpose. As a result, most counties will be eligible for a special, one-time formula grant payment disbursing funds that were accumulated in the Fair Defense Account but not appropriated in the legislature's previous budget. We are working to expedite the distribution of these funds and anticipate the timing of this special payment to be in December 2013. Counties in compliance with key provisions of the Fair Defense Act will be eligible to apply for formula grants.

### ***FY 14 Discretionary Grant Awards***

On August 23, 2013 the Commission awarded over \$10 million in discretionary grants to counties, including over \$7.7 million for continuing multi-year programs and \$2.39 for new single-year and multi-year programs. The Commission awards discretionary grants on a competitive basis to assist counties to develop new, innovative programs or processes to improve the delivery of indigent defense services.

The FY14 awards reflect the Commission's commitment to assist counties adopt proven technology solutions that foster the effective administration of indigent defense processes. This year, the Commission reviewed five county applications

to enhance and implement an indigent defense management system recently developed by Bell County with grant funds provided in 2011. The grant award to Tarrant County will extend Bell County's system to seven additional counties and provide a long-term shared solution that will become available to all Texas counties through the Conference of Urban Counties. Collin County's grant will develop similar indigent defense management tools within their existing Odyssey court system that will eventually be available to other counties using that system.

This year's awards also reflect the Commission's strategic initiative to support specialized direct client services programs. Coryell County and Galveston County each were awarded funding to establish specialized veterans defender programs. Dallas County was awarded funding to establish the Immigration/Criminal Law Program, which is designed to counsel non-citizen defendants about the immigration consequences of a guilty plea or conviction in a criminal proceeding. Finally, the award to Harris County will provide an additional Mental Health public defender for felony cases in addition to providing training and certification for private assigned counsel representing mentally ill defendants in Harris County.

The following multi-year discretionary grant programs were awarded funding for FY14:

- \$1,518,752 to Tarrant County to undertake a multi-county collaboration shared solution to implement the Bell County System in 9 counties (including: Tarrant, Brown, Coryell, Mills, Medina, Real, Uvalde, Victoria, and Bell) and to conduct additional functional extensions such as a Magistrate's Portal and Integrated Pretrial Services.
- \$436,240 to Collin County to implement a web-based e-Management solution to improve the efficiency of the indigent defense process and serve as a central data collection point for dates, times, documents, and other information including attorney wheel management, indigence determination, appointment, notification of appointment, and electronic payment voucher submission and approval. The vendor selected to implement this program for Collin County must agree to a one-time development fee as a provision to ensure that other counties can access the solution without redundant costs.
- \$93,525 to Coryell County to provide a veterans defender program. The veterans defender attorneys will have access to specialized support services for their clients such as clinical case management to improve representation outcomes.
- \$92,774 to Dallas County to establish the Immigration/Criminal Law Program, which is designed to counsel non-citizen defendants about the immigration consequences of a guilty plea or conviction in a criminal proceeding consistent with the Supreme Court ruling in *Padilla v Kentucky*. In addition to direct client services, Dallas County's program will provide training to other public defenders, judges, and private assigned counsel as well as serve as a resource.
- \$50,000 to Galveston County to establish a specialized legal representation program to serve veteran defendants. In addition to providing attorneys and resources for specialized support services, Galveston County's program intends to forge a significant partnership with Veterans Affairs, utilizing the Veterans Justice Outreach Initiative.

The following single-year discretionary grant programs were awarded funding for FY14:

- \$95,350 to Harris County to provide an additional mental health public defender for felony cases and to provide training and certification for private assigned counsel representing mentally ill defendants.
- \$36,750 to Brown County to establish a regional indigent defense coordinator program as well as a videoconference system to allow the new Brown County Indigent Defense Coordinator to operate effectively between two counties and improve client access to defense attorneys.

- \$29,434 to Uvalde County for an Indigent Defense Coordinator as well as support for a Technology Coordinator to provide training and technical support to the 38<sup>th</sup> Judicial District.
- \$28,918 to Jefferson County for a videoconference system.
- \$9,800 to Bowie County to provide a case management system for the Bowie County Public Defender.

In addition to the \$2,391,543 awarded for new single-year and multi-year discretionary grant programs, the Commission awarded \$7,721,657 million for continued multi-year programs in Bell, Burnet, Collin, Dickens, El Paso, Fort Bend, Harris, Hidalgo, Kaufman, Lubbock, Montgomery and Wichita Counties.

### ***New Attorney and County Reporting Requirements under HB 1318***

The Commission has been working with stakeholders to develop forms and processes to implement [HB 1318](#) by Representative Sylvester Turner. The bill seeks to gather information on caseloads handled by attorneys providing representation to indigent defendants via two new reports beginning in 2014. The first requires attorneys handling such cases to report to each county annually by October 15th information for the preceding 12-month period (October 1-September 30) that describes the percentage of the attorney's practice-time that was dedicated to 1) Adult criminal cases in that county's district and county courts and 2) Juvenile delinquency cases in that county's district and county courts. The second requires each county to submit to the Commission annually the information provided to the county by those attorneys described above, along with information that describes for the same 12-month period the number of appointments made to each attorney accepting appointments in the county beginning November 1, 2014.

On the attorney practice-time report, we have been working with our partners at Texas A&M's Public Policy Research Institute (PPRI) to develop an online form to permit attorneys to report simultaneously for all counties in which they work. Alternatively, a jurisdiction may require or permit attorneys to report via a paper form to be promulgated by the Commission; however the county would then need to report this to the Commission. Penalties for attorneys failing to submit a required practice-time statement by the October 15th due date may be set by the judges locally and may include an attorney's removal from the list of attorneys eligible to receive future court appointments as is common practice with those who do not submit their required continuing legal education (CLE) hours.

As to the new county reporting of case and fee data by attorney, the Commission decided based on its consultation with stakeholders to build on the existing reporting infrastructure in the annual Indigent Defense Expenditure Report (IDER). The IDER already requires county auditors (or treasurers) to report the aggregate number of cases paid by case type (Juvenile, Capital Murder, Adult Felony, Adult Misdemeanor, Juvenile Appeals, Felony Appeals, and Misdemeanor Appeals) and by court along with the amount paid each year by November 1st (the same date as the new reporting requirement). The new report will require this information to be broken down by attorney. Attorney practice-time reports entered through the attorney portal described above will go directly to the Commission, thereby eliminating need for the county to forward it to the Commission. Templates with a standard data format (XML) will be developed with PPRI to permit county auditors/treasurers to complete and then upload the report rather than manually entering the data into the website.

### ***2013 Indigent Defense Plan Submission/New Requirements***

Indigent defense plans are required to be submitted to the Commission every odd-numbered year and are next due November 1st, 2013. The new attorney reporting requirements in [HB 1318](#) discussed above must now also be included in the attorney qualification section of each indigent defense plan. Additionally, most juvenile board plans must also be

amended because of HB 1318's new expedited time-frame for appointment of counsel. Beginning September 1st, counsel must be appointed to represent children prior to their initial detention hearing unless it is "not feasible due to exigent circumstances". Finally, HB 1318 requires the following additional items be submitted with the plan to the Commission, if applicable:

- Public defender's office plan or proposal;
- Any plan of operation for a managed assigned counsel program; and
- Any contract for indigent defense services.

Each of these new provisions has been incorporated into the [adult](#) and [juvenile](#) plan requirements adopted by the Commission. These were originally adopted by the Commission in 2009 to establish the minimum criteria for what topics each plan must include, while not prescribing how the items are addressed.

The Commission plans to continue to use the online system first rolled out for the 2009 plan submission process on the website maintained by PPRI. Building on the 2011 process the Commission will send out by late September the full instructions for this process. To permit judges to easily submit the needed revisions to their existing plans, we will also follow that up with an email to each of the judges responsible for submission of the existing plans (local administrative district, local administrative statutory county/constitutional county judge, and juvenile board chair) with a hyperlink directly to their plan or plans after logging into the system.

### ***Commission Publications since Last Update:***

- [Fair Defense Laws 2013/2015](#) contains all the statutes dealing with indigent defense and all the administrative rules adopted by the Commission. It is updated with all the changes made by the legislature and revisions to rules from the last two years. The legislative changes are discussed in each section and commentary with key court rulings and attorney general opinions are also included.
- [September 2013 e-Newsletter of Texas Indigent Defense Commission](#)
- [June 2013 e-Newsletter of Texas Indigent Defense Commission](#)
- [Judgment and Justice: An Evaluation of the Texas Regional Public Defender for Capital Cases](#) was published by the Public Policy Research Institute.

### ***Articles Featuring the Commission:***

- [Commissioners create oversight committee, adjust budget for private defender office: New agreement modifies county's private defender office](#) (June 2013)

### ***Indigent Defense Trainings and Events:***

- **June 12: "Rusty Duncan Public Defender Pre-Conference."** **Jim Bethke** and **Wesley Shackelford** provided updates on the Commission's budget and on key legislation that affects indigent defense.
- **July 11: "Forensic Science Roundtable."** **Jim Bethke** discussed indigent defense in Texas at this roundtable session of the Texas Forensic Science Commission.
- **July 18: Jim Bethke** was invited to participate in a one-day meeting sponsored by the Open Society Foundation to take a wide-angle look at U.S. Programs Justice Fund's investments over the past decade in indigent defense reform in the United States and to explore future opportunities that could advance or accelerate reform.
- **July 18: Wesley Shackelford** presented to the Regional Collection Specialists and Auditors for the Collection Improvement Program.

- **July 21: “Smart Partnerships for Cost Effective Indigent Defense.”** The **Honorable Sharon Keller**, the **Honorable Jim Burrows**, and **Mr. Jim Bethke** were invited to participate in this panel discussion at the 2013 County Solutions and Idea Marketplace of the National Association of Counties Annual Conference in Fort Worth.
- **August 5-6: Jim Bethke** presented at the All County Workshop hosted by the Conference of Urban Counties Techshare.
- **September 11: Bryan Wilson, Dominic Gonzales, Joan Thomas and Debra Stewart** traveled to Johnson County to conduct training for forty regional auditors on the Indigent Defense Expenditure Report and new legislative requirements under HB 1318.
- **September 20: Jim Bethke** presenting at Texas Association of Counties: Far West Texas Judicial Education.

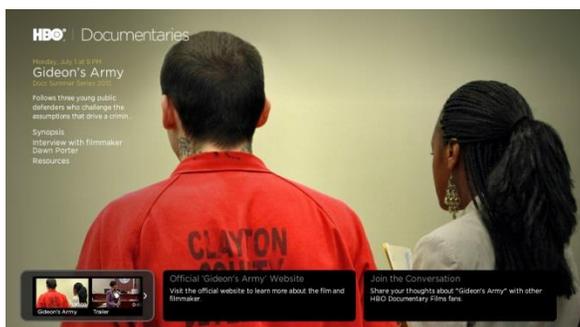
## Staff Updates:

**Terri Tuttle**, Executive Assistant/Special Projects, resigned in August. We are grateful for her service and we wish the best success in her new position with the Texas Department of Motor Vehicles Board. **Marissa Kubinski**, Administrative Assistant, was promoted to Executive Assistant to fill the vacancy.

**Joan Thomas** and **Debra Stewart** joined the Commission as Fiscal Monitors. Joan earned both her Bachelor of Arts and Master of Public Administration degrees from Stephen F. Austin State University. She has served as a regional grant coordinator and has extensive legal assistant experience. Debra comes to the Commission from the Health and Human Services Commission – Office of Inspector General, Sub-recipient Financial Review Unit. Debra has a Bachelor of Business Administration degree with a concentration in Accounting from Southwest Texas State University and has held her CPA license since 1991.

**Allison Cunningham** and **Brittany Long**, UT Law Clerks, completed their summer internships and both will be assisting the Commission staff as part-time interns during the fall 2013 semester.

## Around the Nation:



The 50th anniversary of *Gideon v. Wainwright*, the landmark 1963 U.S. Supreme Court decision guaranteeing all criminal defendants a right to an attorney, prompted numerous articles, essays, and documentaries to commemorate an important chapter for indigent defense and to take stock of the current terrain. The HBO Documentary [Gideon's Army](#) follows several young public defenders in Georgia.

Making a notable contribution to the commemoration of Gideon, Clara Hernandez and Carole Powell, Chief Public Defender for El Paso County and Deputy Chief Public Defender for El Paso County, respectively, authored an essay published in the [June 2013](#) issue of The Yale Law Journal. The essay, [Valuing Gideon's Gold: How Much Justice Can We Afford?](#) explores Gideon's impact in El Paso County, including the creation of the El Paso Public Defender Office.





## Indigent Defense Workshop

*October 28-29, 2013*



### **Monday, October 28<sup>th</sup> and Tuesday, October 29<sup>th</sup> Texas Association of Counties, 1210 San Antonio, Austin, TX**

Please join the Texas Indigent Defense Commission and guests as we review recent developments and consider opportunities to improve the state's indigent defense system. County officials, members of the judiciary, legislators, legislative staff, attorneys and other stakeholders are encouraged to attend.

#### **AGENDA - Day One Workshop, October 28<sup>th</sup>**

- |                         |  |
|-------------------------|--|
| 8:30 a.m. – 9:00 a.m.   | <b>Registration</b>  |
| 9:00 a.m. – 9:15 a.m.   | <b>Opening Remarks</b><br>Jim Bethke, Executive Director, Texas Indigent Defense Commission<br>Christopher Burnett, Executive Director, Criminal Justice Division, Office of the Governor<br>Mary Anne Wiley, Deputy General Counsel, Office of the Governor   |
| 9:15 a.m. – 9:45 a.m.   | <b>Helpful Resources</b><br>David Slayton, Administrative Director, Office of Court Administration & Executive Director,<br>Texas Judicial Council<br>Dr. Ana Yanez-Correa, Executive Director, Texas Criminal Justice Coalition   |
| 9:45 a.m. – 10:15 a.m.  | <b>Recent Developments in Indigent Defense</b><br>Andrea Marsh, Executive Director, Texas Fair Defense Project<br>Jim Allison, General Counsel, County Judges and Commissioners Association  |
| 10:15 a.m. – 10:30 a.m. | <b>Break</b>   |
| 10:30 p.m. – 12:00 p.m. | <b>Re-Cap of 83<sup>rd</sup> Legislature</b> <ul style="list-style-type: none"> <li>○ New Reporting Requirements and Public Defender Access to Criminal History<br/>               Wesley Shackelford, Deputy Director, TIDC<br/>               Scott Ehlers, Legal and Policy Analyst, Harris County Public Defender's Office</li> <li>○ Weighted Caseload Study<br/>               Dr. Dottie Carmichael, Research Scientist, PPRI, Texas A&amp;M<br/>               Stephen F. Hanlon, Adjunct Professor of Law, Georgetown Law<br/>               Carl Richey, President, Justice Works<br/>               Peter Sterling, General Counsel, Missouri State Public Defender System</li> </ul>   |
| 12:00 p.m. – 1:30 p.m.  | <b>Lunch</b>   |
| 1:30 p.m. – 1:45 p.m.   | <b>Building a Better Indigent Defense System</b><br>Honorable Rodney Ellis, State Senator  |
| 1:45 p.m. – 3:15 p.m.   | <b>Managing and Understanding Your Indigent Defense Information</b><br>Bob Wessels, Moderator <ul style="list-style-type: none"> <li>○ Measures for Justice – Telling Your Story<br/>               Valerie West, Professor at John Jay College</li> <li>○ Smart Partnerships / State and County Collaboration<br/>               Charles Gray, TechShare Program Manager<br/>               Dr. Jennifer Willyard, Consultant, Managing to Excellence Corporation</li> <li>○ Building In-House Research Capacity<br/>               Honorable Julie Kocurek, Judge, 390<sup>th</sup> Criminal District Court<br/>               Mark Erwin, Travis County Courts, Technology Manager<br/>               Dr. Margaret Ledyard, Travis County Courts, Policy Analyst</li> <li>○ National Research Data Initiative: Developing an Indigent Defense Toolkit<br/>               Jim Bethke, Executive Director, Texas Indigent Defense Commission</li> </ul> |

- 3:15 p.m. – 3:30 p.m. **Break**
- 3:30 p.m. – 3:45 p.m. **Introduction to Workgroups**  
Marshall Shelsy, Staff Attorney, Harris County Courts at Law
- 3:45 p.m. – 5:00 p.m. **Workgroup Sessions**

**AGENDA - Day two Workshop, October 29, 2013**

- 8:00 a.m. – 8:30 a.m. **Helpful Resources from the Texas Indigent Defense Commission**  
Honorable Sharon Keller, Presiding Judge, Court of Criminal Appeals, Chair  
TIDC Staff
- 8:30 a.m. – 9:45 a.m. **Elements of an Effective Mental Health / Veteran Defender Program**  
Jeanette Kinard, Director, Travis County Mental Health Public Defender Office  
Sara Forlano, Managing Attorney, Montgomery County Mental Health Managed Assigned  
Counsel  
Brockton D. Hunter, Criminal Defense Attorney, National Association of Criminal  
Defense Lawyers
- 9:45 a.m. – 11:00 a.m. **Workgroup Sessions**
- 11:00 a.m. – 12:00 p.m. **Workgroup Session Reports & Certificates**

**Registration Information - Form:**

*Texas Indigent Defense Commission – Indigent Defense Workshop  
Monday, October 28<sup>th</sup> and Tuesday, October 29<sup>th</sup>  
Texas Association of Counties, 1210 San Antonio, Austin, TX*

There is no registration fee. Space is limited and priority will be given to counties committed to bringing at least one elected official and one or two others from the court, county, defense attorney, or public defender’s office. Counties are responsible for their own travel expense. Workshop course materials and hotel information will be sent at a later date. Here are a few options of nearby [hotels](#) with limited rooms at the state government rate. The Commission will seek accreditation for continuing education credits from the following agencies, organizations or associations for 5 hours (including .5 hours of ethics): State Bar of Texas, Texas Center for the Judiciary, and Texas Association of Counties.

Registration deadline: **October 4, 2013**. Please fax this registration to: 512-463-5724, or email to [marissa.kubinski@txcourts.gov](mailto:marissa.kubinski@txcourts.gov).

**County Name:** \_\_\_\_\_

Team members who will attend (please limit to 3 members); highly recommend having elected officials on team (please don't forget **email** as all communication regarding workshop will be via email):

- 1. Name/title/email: \_\_\_\_\_
- 2. Name/title/email: \_\_\_\_\_
- 3. Name/title/email: \_\_\_\_\_

**The following must be provided:**

Please list three topics or issues that are of particular interest to your county:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_