



TEXAS INDIGENT DEFENSE COMMISSION

Chair:
The Honorable Sharon Keller
Presiding Judge, Court of Criminal Appeals

Vice Chair:
The Honorable Olen Underwood

Ex Officio Members:
Honorable Sharon Keller
Honorable Wallace B. Jefferson
Honorable Roberto Alonso
Honorable Pete Gallego
Honorable Laura Weiser
Honorable Jeff Wentworth
Honorable John Whitmire

Members Appointed by Governor:
Honorable Jon Burrows
Mr. Knox Fitzpatrick
Mr. Anthony Odiorne
Honorable Sherry Radack
Honorable Olen Underwood
Honorable Laura Weiser
Honorable B. Glen Whitley

Executive Director:
James D. Bethke

Report from the Texas Indigent Defense Commission:

Since the last Texas Judicial Council meeting on June 8, the Texas Indigent Defense Commission has had two meetings, one on June 21 and another on August 20.

As you'll recall, a law passed during the 82nd Legislative Session, HB 1754, granted the Commission new autonomy and renamed the organization, which was formerly known as the Task Force on Indigent Defense. These actions required the Board to be reconstituted to create the initial governing body of the Commission. In conjunction with the June 21st meeting, Governor Rick Perry issued a [press release](#) formally announcing appointments to the Commission. The governor appointed the same members as served on the Task Force with the addition of Judge Laura Weiser of Victoria County Court at Law Number One. The appointments by the Governor herald the official move from Task Force to Commission. At the June meeting the Board selected Judge Keller to serve as the Chair and Jim was appointed to serve as Executive Director. The Commission then awarded more than \$12 million in grants to Texas counties (see [press release](#)). The Commission also promulgated new [flowcharts](#) describing the processes required by Articles [16.22](#) and [17.032](#), Code of Criminal Procedure to aid jurisdictions in handling defendants with mental health issues. The Commission issued its [July 2012 e-Newsletter](#) detailing the actions taken at the meeting and highlighted other new developments.

At the August 20th meeting the Commission awarded over \$2.2 million in grants to Texas counties (see [press release](#)). Members also adopted [proposed grant rules](#) and a new acknowledgment program – the **Gideon Recognition Award** -- to recognize local governments' advancements in providing indigent defense. Members received indigent defense plan submission status updates (more information below), reviewed its final FY 2012 budget, and set its initial budget for FY 2013. Proposed legislation ideas were tabled with a broad consensus that the proposals were noncritical and that funding issues were the top priority. They also signed a letter to state leadership requesting release of unexpended funds in the Fair Defense Account that have not been appropriated to the Commission (see more information on this in the LAR information below). Bexar County was commended for addressing all of the findings in a policy monitoring review of its indigent defense program. The Commission will also republish in the Texas Register (as required to do so every four years) its existing Continuing Legal Education rules and Contract Defender Program rules. Elected officials who attended the meeting included District Judge Cara Wood from Montgomery County, District Judge Jeff R. Steinhauser from Austin, Fayette and Waller Counties and Commissioner Patti Jones from Lubbock County.

The next meeting of the Commission will be in October when it holds a strategic planning session at Bastrop State Park (October 3-5).

Texas Indigent Defense Commission

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Legislative Appropriations Request

The [2014-2015 Legislative Appropriations Request \(LAR\)](#) was submitted on August 16th. Under HB 1754, the commission is now directed to submit its LAR separately from the Office of Court Administration. The Commission directed staff to submit the following requests as “exceptional items” or requests over and above its baseline budget:

- Restore estimated appropriation authority for indigent defense funding in the Fair Defense Account.
- Restore unexpended balance (UB) authority for indigent defense funding in the Fair Defense Account.
- Increase funding \$154 million over the biennium for increased indigent defense costs since passage of the Fair Defense Act in 2001.

A restoration of estimated appropriation and unexpended balance authority will allow greater funding levels – in excess of the current sum certain – to be allocated towards indigent defense, which will reduce county burdens. Currently there is over \$7.2 million in the overage of juror pay court costs in the Fair Defense Account from FY2011 that may not be spent without permission to carry forward unexpended balances between biennia. Because the funding sources for the Fair Defense Account include court fees and other sources that fluctuate from year to year the sum certain appropriation means that any additional revenue deposited to the account above that amount is unavailable for grants to counties. Staff anticipates this amount will be approximately \$3-4 million in revenue for FY2012 above what is appropriated to the Commission and similar amount for FY2013. Restoration of estimated appropriation authority rather than a sum certain amount would permit the Commission to spend the full amount of revenue flowing into the Fair Defense Account by increasing grant awards to counties. Since the money in the account is dedicated and can only be spent for indigent defense the extra unappropriated funds do not benefit any other program.

The Commission is also requesting appropriation of an additional \$154 million over the next biennium, which would allow the Commission to increase grant funding to counties in an amount that would make up the approximately \$77 million per year in increased indigent defense costs counties have incurred since passage of the Fair Defense Act. The Fair Defense Act provided more explicit guidance on how to comply with constitutional requirements that has resulted in increased costs for most jurisdictions. In an effort to safeguard constitutional rights under the Fair Defense Act, the costs expended by local jurisdictions have increased almost 120 percent from \$91.4 million in 2001 to \$198.4 million in 2011. Only a small fraction of this increased expense is covered through current Commission grant programs. In FY2012 \$29.7 million and in FY2013 \$32.5 million in dedicated state funds were available to counties. If current spending levels remain at approximately \$200 million per year (and they have increased every year), counties must make up approximately \$77 million per year in increased costs. To determine the amount of this exceptional item, the \$154 million total has been reduced by the amounts requested in the Commission's first exceptional item (to be funded by dedicated revenue already available in the state treasury), so that the total of both exceptional items for TIDC is \$154 million.

Three Indigent Defense Trainings Scheduled

November 13, 2012 *Recent Indigent Defense Developments and Opportunities*

10:00 a.m. – noon Capitol auditorium

This program will focus on new indigent defense developments and a preview of the upcoming legislative session.

January 17, 2013 *Primer on Indigent Defense and Funding for Newly Elected Officials*

9:00 a.m. - noon Capitol auditorium

A summary of the core requirements Fair Defense law for newly elected judges, legislators, and their staffs at the Capitol.

March 18, 2013 Commemorating Gideon's 50th Anniversary

8:30 - noon Capitol Auditorium
In collaboration with Senator Ellis

Criminal Justice Advisory Council

Judge Keller and Jim Bethke attended the Criminal Justice Advisory Council held at the Office of the Governor/Criminal Justice Division office on June 18. They were appointed to serve as Ex-Officio members in March 2012.

Staff Updates

Edwin Colfax, Project Manager, who administered the innocence projects program, is now Research Specialist (position previously held by Jennifer Willyard). His work will focus on program evaluations for discretionary grant funded projects across the state. His former position will be posted.

The Commission had two outstanding interns this summer from The University of Texas School of Law: Andrew Bluebond and Brad Estes. Andrew is a rising 2L. Before working at the Commission, Andrew completed his bachelor's degree in the Philosophy, Politics and Economics program at Claremont McKenna College. Andrew is a native of Akron, Ohio, making him a loyal but perpetually disappointed fan of the Cleveland Indians, Browns and Cavaliers. He is also a life-long creator and consumer of spicy food. Brad is a rising 2L. He received his B.A. in history from the University of Michigan in 2011, and wrote his colloquium paper on the intersection of technology, law, and the War on Drugs. He is interested in criminal law, sports law, and litigation, and tweets from @bradestes88 on these topics. Both have been working on several projects this summer including assisting the Executive Director with prepping for the Legislative Appropriation Request, assisting with a study underway in Harris County, a publication regarding managed assigned counsel systems and a law review article relating to representing the mentally ill offender. Staff said goodbye towards the end of August to these two amazing legal interns as they are returning to on campus interviews and to begin their second year at UT's law school. They will hopefully still work with us part-time but wish them the best this coming year.

Recent Presentations

On July 30th Jim Bethke gave a presentation to court officials attending the Texas Center for the Judiciary DWI College on the topic of [Using Data to Inform Policy Decisions, Promote Compliance, and Improve Justice Outcomes](#).

In early August Jim Bethke travelled to College Station to spend two days at Texas A&M's Public Policy Research Institute (PPRI). He had been asked to be on Review Committee for a Five Year Review of PPRI. He heard presentations for the review committee to assess PPRI's performance and prepare and submit a report to the university's College of Liberal Arts.

2011 Indigent Defense Plan Submission & Review Process

As of August 9th, 2012 ALL indigent defense plans were approved/submitted to the Commission as required by Section 79.036, Government Code. All counties are therefore eligible to receive disbursements of grant funds. Counties remain active in managing their plans filed with the Commission and seven plans are currently in the process of being updated. Staff reviews plans when changes are made to assure that the new language still meets all plan requirements for the respective section and will contact the local officials to address any needed changes.

Improving Processes for Handling Mentally Ill Defendants

Article 16.22 and Article 17.032 of the Code of Criminal Procedure set out certain methods of operation for the identification of mentally ill arrestees and for providing treatment and bonding options to these arrestees. These statutes are quite detailed, and in an effort to simplify the stream of events, the Commission has created flowcharts describing these statutes that are now available on our [website](#).

Other news

The [American Bar Association's Death Penalty Assessment Team](#) began an analysis of Texas law and procedure relevant to capital punishment. The assessment, according to a letter from the team's chair Prof. Jennifer Laurin of the University of Texas School of Law, "[W]ill cover twelve key aspects of death penalty administration, including defense services, procedural restrictions and limitations on state habeas corpus, the preservation and testing of DNA evidence, law enforcement identification and interrogation procedures, crime laboratories and medical examiners, prosecutors, the direct appeals process, clemency proceedings, jury instructions, an independent judiciary, the treatment of racial and ethnic minorities, and mental retardation and mental illness." The report should be released in early 2013 and may contain a series of recommendations.

Spotlight on Travis County

Travis County was one of three jurisdictions across the nation chosen by the [National Legal Aid and Defender Association \(NLADA\)](#) as part of its [Justice Standards, Evaluation, and Research Initiatives \(JSERI\)](#) to participate in a national research opportunity. The project's purpose is to increase the capacity and awareness of the defender community to value, collect, analyze and use data more effectively. The Criminal Justice Division, Office of the Governor, is providing funding for a research position to assist Travis County in this undertaking.

In addition, the Travis County Commissioners Court met regarding an extensive cost-benefit analysis conducted by the Criminal Justice Planning Division on the Mental Health Public Defender office. The findings were favorable showing both cost-effectiveness and better justice outcomes. The office (the first of its kind in the nation) focuses on diverting mental health defendants from spending costly time in jail. The office does this by coordinating defense with social services to get the clients more stabilized in life (vs. being repeatedly arrested and put in jail).

Around the Nation

[The U.S. Government Accountability Office \(GAO\) released a report assessing the ways in which the federal government has provided funding and other support to the states for indigent defense.](#) (GAO.gov, May 9, 2012) As we know, Texans are safest when our criminal justice system works accurately and fairly, but this becomes more challenging when some segments of the justice system are favored over others. Although the U.S. Constitution guarantees a right to an attorney, defenders get the least amount of money of all services in the public safety system. On one hand, law enforcement receives 30 percent of all federal funding and prosecution and courts receive about 7 percent. On the other hand, public defense receives less than 1 percent of federal funding. This imbalance is arguably more unfair in a jurisdiction like Texas where funding for indigent defense is shouldered in large part by counties. [A recent blog post](#) by U.S. Department of Justice highlights efforts it is taking to ameliorate this inequity through this year's Edward Byrne Memorial Justice Assistance Grant (JAG) solicitation. The post also includes a [link to a DOJ resource page](#) for courts and indigent defense providers.

[The Supreme Court of Washington has adopted new Standards for Indigent Defense Services.](#) (Supreme Court of Washington, June 15, 2012) The new standards take effect September 1, 2012, except Standard 3.4 regulating caseload limit guidelines which will take effect September 1, 2013. The new standards include guidelines for caseload limits and types of cases; administrative costs, limitations on private practice, qualifications of attorneys, appellate representation and use of legal interns. The rule was approved by a majority of the Court, with Justices Charles W. Johnson and Mary E. Fairhurst dissenting. Recognizing the fiscal impact new caseload guidelines will have on local governments, Chief Justice Barbara Madsen said, "We understand the delicate balance in providing a constitutional right to an attorney and the monetary impact on local governments. By delaying implementation of the caseload limits until 2013, our goal is to move towards the promise of the landmark U.S. Supreme Court case of *Gideon v. Wainwright*."

[The Michigan Advisory Commission on Indigent Defense completed its analysis of the state's indigent defense system, reported its findings and made recommendations for improving indigent defense in Michigan.](#) (Report of the Michigan Advisory Commission on Indigent Defense, June 22, 2012) The Commission recommended the creation of a "new and independent State agency [...] to promulgate and enforce standards applicable statewide for providing trial-level indigent defense services consistent with the ABA Ten Principles." Finding "a lack of quality, consistent data collection for indigent defense across the state," the Commission also recommended that the new agency "serve as the centralized data collector" and "ensure that standardized data from each county is collected."