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Report from the Texas Indigent Defense Commission for June 12, 2015 Texas Judicial Council Meeting

Since the Texas Indigent Defense Commission's last report to the Texas Judicial Council on February 20, 2015, the Commission had a full Commission meeting on March 6th, a Policies and Standards Committee meeting on April 9th, a Grants and Reporting Committee meeting on June 4th, and a full Commission meeting on June 4th. The next Commission meeting will be in August.

The Commission recently received a grant award from the **Governor's Criminal Justice Division (CJD)** of \$100,000 to develop a model mentoring program for court appointed attorneys. The grant funds will be used to contract with an expert to develop the model plan and curriculum that can be used by any county and to fund a pilot project in Travis County. The program will build on what has been learned through the few private defense counsel mentoring programs in Texas, including those in Harris, Comal, and Bell Counties. The final report is scheduled for completion in September.

Robert O. Dawson Award

At our Commission meeting on March 6th the Commission presented **Bob Wessels** with the **2014 Robert O. Dawson Indigent Defense Distinguished Service Award**. This award honors the late Professor Dawson for his outstanding contributions and symbolizes his lasting impact on the Texas Fair Defense Act and the Commission. The award recognizes outstanding service by a group or an individual to improve the way Texas provides counsel for its poorest citizens accused of crimes. Mr. Wessels has worked with the Commission on many projects to improve indigent defense systems — as a presenter at Indigent Defense Workshops, as a member of the fiscal year 2014 Discretionary Grant Review Team, and as the facilitator for the Technology Strategic Plan meeting held last August. Mr. Wessels also took the lead in assisting the Commission staff in developing the [Functionality and Data Guidelines for Indigent Defense Technology Projects](#).



Chair Sharon Keller with Bob Wessels

Gideon Recognition



Honorable Bill McKay, Honorable Les Hatch, and Honorable Patti Jones from Lubbock County with Chair Sharon Keller



Dickens County Treasurer Sandy Vickrey with Chair Sharon Keller



Chair Sharon Keller with Chief Public Defender Donnie Yandell of the Caprock RPDO, Texas Tech University School of Law students Brian Livingston and Kaelan Henze, and Dickens County Treasurer Sandy Vickrey

At our March 6th meeting the Commission also acknowledged **Lubbock County, Dickens County, and the Texas Tech University School of Law** upon receiving Gideon Recognition. The Commission established the Texas [Gideon Recognition Program](#) to commend local governments and others across Texas that seek to meet a high standard for indigent defense. The program was inspired by the 50th anniversary of the landmark U.S. Supreme Court case *Gideon v. Wainwright*. Counties may receive recognition for programs or achievements that demonstrate a significant level of innovation, such as a new solution to a problem, significantly streamlining a process, a measureable and significant increase in productivity, or improved service quality to indigent defendants or other stakeholders.

Lubbock County was recognized for its innovative approaches to providing indigent defendants with high quality representation through the **Regional Public Defender's Office for Capital Cases (RPDO)**, which the county established in 2008. The RPDO provides Texas counties the opportunity to participate in a capital defense system that has been hailed as the first of its kind and has been recognized nationally by the National Association of Counties. Initially serving the vast majority of counties in the 7th and 9th Administrative Judicial Regions, the RPDO responded to local interest from other counties by offering services throughout the entire state. As of November 2014, 162 counties were participating in the Regional Public Defender for Capital Cases. Additionally, in 2012 Lubbock County implemented the state's first countywide managed assigned counsel system (MAC), known locally as the Lubbock Private Defender Office (LPDO), which provides greater independence for the county's selection and payment of defense counsel and provides mentoring and training for panel attorneys.

Dickens County and Texas Tech University School of Law were recognized for establishing the **Caprock Regional Public Defender Office (CRPDO)** and helping to improve indigent defense for the at least sixteen rural counties that have participated in the CRPDO since its implementation. **Dickens County** played an active leadership role in the creation, implementation, and ongoing operation of the CRPDO, which provides zealous indigent defense representation in

communities that often lack access to local attorneys willing to accept court appointments. With grant support from the Commission, counties entered into a written agreement with **Texas Tech University School of Law** to serve as the public defender. In addition to vastly expanding access to quality legal representation for rural counties, over 36 Texas Tech University School of Law students have gained significant criminal defense experience and training under the supervision of the CRPDO's Chief Defender. This unique relationship with Texas Tech University has allowed the public defender to control costs, making the program more cost effective for participating counties without sacrificing the quality of services.

State Legislative News

Appropriations by 84th Legislature

The [Conference Committee Report on House Bill 1](#) (CCRHB 1), the General Appropriations Act, announced the funding for indigent defense at their meeting on May 20th. The Conference Committee on the budget approved the Commission's base request of just under \$64 million in General Revenue-Dedicated funding from Fund 5073/Fair Defense Account and approved \$7.5 million in additional General Revenue (GR) for the FY16/17 biennium. The new GR funding includes:

1. \$2.6 million for the Lubbock-based Regional Public Defender Office for Capital Cases (RPDO);
2. \$500,000 for capital public defender services in Cameron and Hidalgo Counties for the biennium; and
3. \$4.4 million towards closing the Fair Defense Act funding gap.

CCRHB 1 also includes an expansion of the funding for innocence projects to include law schools at Texas A&M University and the University of North Texas, in addition to the University of Texas, University of Houston, Texas Tech University, and Texas Southern University. Although the rider does contain a clerical error, the intent of the legislature is for the TIDC to provide \$100,000 per school per year for the six public universities with law schools.

Substantive Bills Passed by 84th Legislature

All four bills endorsed by the Texas Indigent Defense Commission were passed by the legislature, and two of these have been signed by the Governor:

[HB 3633](#) relating to repayment of attorneys fees was signed by the governor on May 23rd and is effective on September 1st. The bill requires attorney fee repayment orders issued as a condition of community supervision be subject to an "ability to pay" requirement as exists when they are ordered as court costs elsewhere in the Code of Criminal Procedure. It also limits the amount to be repaid to counties to the actual cost of the legal services provided. The bill also clarifies the appropriate amount for attorney fee repayment orders in those cases where the defendant is represented by a public defender's office.

[SB 1353](#) permits the Texas Indigent Defense Commission (TIDC) to directly participate with the Conference of Urban Counties (CUC)-TechShare Indigent Defense Technology program. It was signed by the governor on May 21st and is effective on September 1st.

[SB 662](#) to expedite post-conviction relief to defendants who are not guilty, guilty of only a lesser offense, or convicted and/or sentenced under a statute found to be unconstitutional was sent to the governor on May 26th. The bill requires

the court to appoint counsel for applicants for habeas corpus relief when the state agrees to relief on the grounds that the defendant/applicant is not guilty, guilty of only a lesser offense, or the law under which the person was convicted has been declared unconstitutional.

[SB 1057](#) provides statutory authority for the TIDC to provide continuing state funding at up to 50% of the cost for regional public defender programs and permits TIDC to provide the funds directly to such defender programs. The bill was sent to the governor on May 25th.

Other significant indigent defense bills:

[HB 48](#) creates the Timothy Cole Exoneration Review Commission under the auspices of the Texas Judicial Council and is administratively attached to the Office of Court Administration. The governor signed the bill on June 1st and it is effective immediately.

[SB 316](#) requires courts to prioritize the appointment of an available public defender's office to make efficient use of such offices. The bill was sent to the governor on May 26th.

[SB 1517](#) clarifies the procedures for appointment of counsel for a person arrested on an out of county warrant. The concept was first vetted through the TIDC legislative committee but final language was not agreed to until after the board's August meeting. The bill was sent to the governor on May 29th.

[SB 1743](#) expands the powers and duties of the Office of Capital Writs to include representing a defendant in cases involving a forensic science issue and changing the name of the agency to the Office of Capital and Forensic Writs. The bill was sent to the governor on May 30th.

National Legislative News

On May 13, 2015 the U.S. Senate Judiciary Committee held a hearing on the right to counsel in misdemeanor cases. Below are links for what you need to know:

[Hearing Details](#)

[Commentary by The Marshall Project](#)

[Commentary by The Sixth Amendment Center](#)

[Supplemental letter from Koch Industries, General Counsel](#)

[Supplemental letter from American Council of Chief Defenders \(ACCD\)](#)

Grants: \$6.4 Million in New and Continuing Discretionary Grants Awarded

On June 4, 2015 the Commission awarded new and continuing discretionary grants totaling \$6.4 million to support innovations in Texas counties to improve legal defense for the poor. The new grants issued on June 4th include:

- Bexar County will implement an innovative program providing public defenders to mentally ill defendants at the very earliest stage of a case in order to advocate for appropriate defendants to be diverted to in-patient or out-patient programs instead of remaining in jail.
- Fort Bend County received an award to build on the success of its Mental Health Public Defender through the creation of a general public defender program that will handle a portion of felony and misdemeanor cases.

- El Paso County received a two-year Targeted/Specific Grant to assist the county in coping with a surge of indigent cases resulting from changes the county made in response to a Commission monitoring report; and
- The Bee County Regional Public Defender Office was also awarded a two-year sustainability grant to continue to provide quality representation in an otherwise underserved three-county region in South Texas.

The Commission also approved \$3,193,921 million in continued funding for nine multi-year grant programs, including:

- Regional Public Defender Office for Capital Cases (RPDO);
- Travis County Managed Assigned Counsel Program;
- Collin County Mental Health Managed Counsel Program;
- Coryell County Mental Health Contract Defender Program;
- Dallas County Criminal/Immigration Law Program;
- Dickens County Regional Public Defender Office;
- El Paso County Problem Solving Court Attorney;
- Kaufman County Mental Health Attorney/Advocate Team; and
- Wichita County Mental Health Program.

Policies and Standards

At its March 6, 2015 meeting the Commission adopted the following new rule under Title 1, Texas Administrative Code, Section 174.51, relating to requests for counsel after initiation of adversary judicial proceedings:

§174.51. Indigent Defense Plan Requirements. The countywide procedures adopted under Art. 26.04(a), Code of Criminal Procedure, must provide a method to allow defendants to obtain the necessary forms for requesting appointment of counsel and to submit completed forms for requesting appointment of counsel at any time after the initiation of adversary judicial proceedings.

The Commission also approved publication of the new attorney caseload reports mandated by [HB 1318](#) on its publicly accessible website. Reports are now available showing the total number of cases handled by each attorney by case type and the amount paid. These reports are:

- Sortable to show same information in each court within a county, rather than countywide; and
- Sortable to show same information for each attorney across all counties in which the attorney handled indigent cases.

The board also indicated at its March meeting that it would like to include information about the publication on the public website of the attorney practice time reports beginning after the FY15 submissions in October 2015. Following the submissions, staff will work with our partners at Texas A&M Universities Public Policy Research Institute (PPRI) to publish these reports on the website.

Recent Commission Publications

[2015 Spring Edition e-Newsletter](#)

[Fair Defense Law: the Primer for Texas Officials](#) (updated)

[Memo on Poverty Guidelines in Indigent Standards](#)

[Extraordinary Disbursement Grant Procedures](#) and [Application Form](#)
[Fiscal Monitor Operations and Procedures Manual](#)
[An Evaluation of The Texas Innocence Projects](#)

Articles and Media Featuring the Commission

[NLADA Defender Update highlights caseload study](#) (January 2015)
[Extraordinary grant award reported](#) (Brown County – February 2015)
[District Judge approved to use extraordinary funding](#) (Brown County – February 2015)
[PDO seeks more attorneys at assist with cases](#) (El Paso County – February 2015)
[December grant award in the news](#) (Young County – February 2015)
[TechShare Blog](#) and [TechShare Link Newsletter](#) (Bell County – March 2015)
[Commission awards Gideon Recognition](#) (Lubbock and Dickens Counties – March 2015)
[Justice on a Budget](#) – (Dawson, Garza, Lynn, and Gaines Counties – 106th Judicial Region – April 2015)
[A Public Defender’s Office for Fort Bend?](#) (Fort Bend County – April 2015)
[Bringing Balance to Pretrial Proceedings: Solutions for Early Representation of Indigent Defendants](#) (Texas Public Policy Foundation – April 2015)
[Fort Bend Commissioners back plan for public defender office](#) (Fort Bend County – May 2015)
[County looking for more funds, solutions for indigent defense](#) (El Paso County – May 2015)
[Public defender seeks grant to increase staff](#) (El Paso County – May 2015)

Indigent Defense Trainings and Events

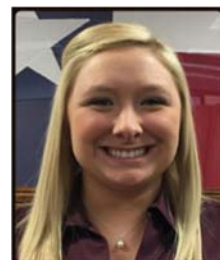
[Discretionary Grant Application Training](#) (February 2015)
[Travis County Commissioners Court Work Session - Capital Area Private Defender Service \(CAPDS\)](#) (March 2015)
 TechShare Indigent Defense Enhancement Workshop (April 2015)
 Tom Green County Bar Association (April 2015)
 86th Annual West Texas County Judges and Commissioners Association Conference (May 2015)
[NLADA Webinar on Travis County Managed Assigned Council \(Capital Area Private Defender Service\)](#) (May 2015)
[Criminal Justice Planners, Sam Houston State Criminal Justice Center](#) (May 2015)
 Bureau of Justice Statistics (BJS), Indigent Defense Expert Working Group (June 2015)

Staff Updates



Sharon Calcote is the Commission’s new IT Project Manager. Sharon will work half-time for TIDC and half-time for the Office of Court Administration. She will be primarily working with the grants team to help manage our technology related grant projects. She has been with state government for ten years, mostly with the Texas Legislative Council and more recently with the Department of Aging and Disability Services. Prior to working for the state Sharon worked for several years with Dell, including a stint in Ireland.

Ashley Indelicato completed her Texas Tech University School of Law externship on April 30th. The Commission was fortunate to be selected for the second time to participate in the externship program in which third-year law students from Tech Law extern full-time for a semester of academic credit. Although Ashley was only required to work 490 hours, she provided well over 600 hours at no cost to the Commission. Ashley is now preparing for the July Bar exam and hopes to start her legal career in Austin.





Summer 2015 law clerk **Cory Dalton** is a 2L from the University of Texas School of Law. He graduated *summa cum laude* from the University of Texas at Arlington with a Bachelor's Degree in History and a Minor in Political Science. Cory is originally from Seattle but has lived in Grapevine, Texas most of his life. After law school he hopes to start his legal career in Austin or the Dallas-Fort Worth area.

Summer law clerk **Jaret Kanarek** is also a 2L from the University of Texas School of Law. He is originally from Illinois and graduated *magna cum laude* from Illinois Wesleyan University with degrees in Economics and Philosophy. After graduating from college, Jaret came to Texas to make it his home and to pursue his legal career.



Across the State

On May 15th the **Texas Tech University School of Law** posthumously awarded an honorary bachelor's degree in Law and Social Justice to **Timothy Cole**. Mr. Cole was a student at the university in 1985 when he was expelled after a student accused him of rape. He was convicted and died in prison in 1999, but another man's confession coupled with DNA evidence ten years later showed that Cole was innocent. In fact, Cole was the first Texan to be posthumously exonerated of a crime through DNA testing. In 2009 the 81st Texas Legislature honored Cole by naming [House Bill 1736](#), relating to compensation of persons wrongfully imprisoned, the Tim Cole Act. **Governor Rick Perry** posthumously pardoned Cole in 2010.

Media about the recent arrest of 175 people in Waco after the deadly biker shootout at a local restaurant includes:

- [County expenses in biker cases could have major budget impact](#)
- [Waco prosecutors face difficult task in deadly biker gang shootout](#)
- [Federal lawsuit filed on behalf of one of the Waco biker-arrestees](#)

Around the Nation

- [Sixth Amendment Center: Public defenders struggle with ethical blindness](#) (February 2015)
- [Department of Justice Statement of Interest](#) – Fixed bond schedules violate 14th Amendment (Alabama - February 2015)
- [Hurrell-Harring v. New York settlement](#) (New York - March 2015)
- [Public Defense Work Must be Adequately Funded](#) (Albuquerque - March 2015)
- [Don't I Need a Lawyer? Pretrial Justice and the Right to Counsel at First Judicial Bail Hearing](#) (A Report of The Constitution Project National Right to Counsel Committee – March 2015)
- [Exoneration after 30 years on death row](#) (Alabama - April 2015)
- [Bipartisan support in Washington for reform of misdemeanor courts](#) (Georgia - May 2015)