



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

Vice Chair:
The Honorable Olen Underwood

Ex Officio Members:
Honorable Sharon Keller
Honorable Nathan Hecht
Honorable John Whitmire
Honorable Royce West
Honorable Roberto Alonzo
Honorable Abel Herrero

Members Appointed by Governor:
Honorable Olen Underwood
Honorable Sherry Radack
Honorable Jon Burrows
Honorable B. Glen Whitley
Honorable Linda Rodriguez
Mr. Anthony Odiome
Mr. Don Hase

Executive Director:
James D. Bethke

Report from the Texas Indigent Defense Commission for August 22, 2014 Texas Judicial Council Meeting

Since the Texas Indigent Defense Commission's last report to the Texas Judicial Council meeting on February 21, 2014, the Commission had a Policies and Standards Committee meeting on August 13th, a Grants and Reporting Committee meeting on August 15th, Strategic Planning Sessions on March 7th and August 8th, and full board meetings on June 13th and August 21st, 2014. The next Commission meeting will be in December 2014.

Member Updates

Governor Rick Perry reappointed Judge Olen Underwood, Judge B. Glen Whitley and Judge Jon Burrows to the Commission for new terms that expire on February 1, 2016.

Appropriations for Indigent Defense

The [2016-2017 Legislative Appropriations Request \(LAR\)](#) was submitted on August 4th. In preparation for the upcoming 84th legislative session, the Commission convened a legislative workgroup composed of a broad range of stakeholders to assist in developing recommendations per our statutory directive in Government Code Section 79.035(b). The workgroup played a vital role in the discussion of the Commission's legislative policy and various proposals to improve indigent defense. The Commission directed staff to submit the following requests as "exceptional items" or requests over and above its baseline budget:

- Statewide Regional Capital Public Defender Program
- Multi-County Technology Grant Program
- Close the Fair Defense Act Funding Gap

The Commission is requesting a new appropriation of \$3.1 million annually from general revenue and one full-time employee to continue the development and provide ongoing support for an existing program, the Regional Capital Public Defender Program (RPDO), founded in 2008 through a discretionary grant from the Commission to Lubbock County. Based upon the program's success in the 7th and 9th administrative judicial regions, Lubbock sought additional discretionary grants to serve the other seven administrative judicial regions in the less populous counties in Texas. The discretionary grants that have supported the expansion of the program are set to expire in 2017. This general revenue investment would be part of a state/county cost sharing agreement to ensure consistent and qualified representation in the most serious cases.

The Commission is also requesting a new appropriation of \$1.5 million annually from general revenue and one full-time employee to continue the development of an existing program, which is the development and expansion of the multi-county indigent defense technology grant program with the Texas Conference of Urban Counties' TechShare program.

In addition, the Commission is requesting a new appropriation of \$98.4 million annually from general revenue to defray the unfunded increased costs associated with the passage of the Fair Defense Act and to share more equally in the funding of this government responsibility. Four full-time employees are requested to administer the additional funding.

Grants: \$5.3 Million in Discretionary Grants Awarded for FY 15

On June 13, 2014 the Commission awarded new and continuing discretionary grants totaling \$5.3 million to support innovations in Texas counties to improve legal defense for the poor. 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 Commission's most significant new grant of \$717,516 was awarded to Travis County to implement a new managed assigned counsel (or MAC) program for managing the appointment of private attorneys assigned to protect the rights of indigent defendants. In addition, Edwards County was awarded a new grant of \$22,809 to provide videoconferencing technology to support indigent defense services. The Commission also approved \$4.6 million in continued funding for thirteen multi-year grant programs, including the Regional Public Defender for Capital Cases (RPDO), which serves 155 counties throughout the state. The RPDO, headquartered in and administered by Lubbock County, began in west Texas in 2008 and provides representation to defendants in death penalty cases. Since its inception the program has incrementally expanded to offer services statewide to counties with a population under 300,000 through inter-local agreements with Lubbock County. Eleven other new discretionary grants were expected to be considered by the Commission at its August 21st meeting.

Additional continued funding was also awarded for:

- Six specialized programs for indigent defendants with mental illness in Bell, Coryell, Collin, Montgomery, Kaufman and Wichita Counties;
- Defense resource for immigration-related issues in Dallas County;
- Lubbock County's Private Defender (managed assigned counsel) program;
- Three public defender offices in Burnet County, Hidalgo County (juvenile) and Dickens County (for the Caprock Region); and
- The El Paso Public Defender Unit for Specialty Court Programs.

New Attorney and County Reporting Requirements under HB 1318

[HB 1318](#), effective September 1, 2014, seeks to gather information on caseloads handled by attorneys providing representation to indigent defendants via two new reports beginning this year. The first report requires attorneys handling such cases to report to each county annually by October 15th information for the preceding twelve-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 report 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 twelve-

month period the number of appointments made to each attorney accepting appointments in the county beginning November 1, 2014.

At its June 13th meeting the Commission adopted an optional, non-mandatory worksheet that attorneys may use to help them calculate their practice time percentages. The worksheet is not required to be completed and is not to be submitted, but it may be useful to assist attorneys in calculating the percentage of total practice time devoted to appointed adult criminal cases and juvenile delinquency/CINS cases in each county. This information is required to be submitted no later than October 15th, 2014 and annually thereafter either through the attorney portal we will be launching at the end of September or, in jurisdictions that permit it, via a paper Attorney Reporting Form with the same information. The latter option will require each county to report this information on to the Commission. Information on implementation of these new county and attorney requirements is available on this [Summary of HB 1318 Implementation](#) document. Use of the optional attorney worksheet will help attorneys consider the full variety of cases that make up their overall practice and allocate 100% of their time among these activities. It will also be made available with a link from the attorney portal website to provide attorneys immediate assistance when preparing to submit the report.

Weighted Caseload Study under HB 1318

In [HB 1318](#) the Texas Legislature also directed the Commission to conduct a Weighted Caseload Study “for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that... allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation.” Our research partners at the Public Policy Research Institute at Texas A&M (PPRI) recruited volunteer criminal defense attorneys who kept records of the time spent on cases over a twelve-week period. Following the conclusion of the attorney timekeeping data collection, PPRI circulated a broader survey to criminal defense attorneys, gathering their feedback on the adequacy of the descriptive use of time data. After this broader survey data is collected and compiled, it will then be assessed by the study’s Delphi Panel of attorneys in late August or September. The Delphi panel, a small group of very highly respected and experienced defense attorneys representing all nine administrative judicial regions, will review the study data, and, with the benefit of their experience and expertise, help to develop a consensus on typical time required for various aspects of representation by case type. In consultation with the Presiding Judges of the Administrative Judicial Regions, the Commission has recruited some of the best and most well-respected attorneys in the state to help guide the study through the final stages, including current Commissioner Don Hase and former member Knox Fitzpatrick.

Indigent Defense Plan Reviews

Commission staff has been reviewing all countywide adult and juvenile indigent defense plans to ensure they are in compliance with legal requirements and include the recent new provisions of HB 1318. Staff has been contacting county officials whose plans need to be amended to assist them in completing the needed changes. Many are only minor changes or additions that are needed for the plans to be fully compliant. Indigent defense plans are required to be submitted to the Commission every odd-numbered year and are next due November 1, 2015.

Commission Publications

- [Request for Applications \(RFA\) – FY 15 Discretionary Grants](#)
- [Attorney Caseload Reporting & Weighted Caseload Study brochure](#), March 2014
- [Indigent Defense in the Texas Juvenile Justice System](#), co-published with Texas Juvenile Justice Department, June 2014
- [Indigent Defense Expenditure Report Manual](#) and the [Public Defender Supplement](#), July 2014
- [July 2014 e-Newsletter](#) of the Texas Indigent Defense Commission
- [Optional Attorney Practice-time Worksheet](#), July 2014

Articles and Media Featuring the Commission

- [Innovation in Indigent Defense Makes for Smart Justice](#) (February 2014)
- [Keller and Bethke on Indigent Defense](#) (March 2014)
- [Commissioner Perez to Call for Texas Indigent Defense Commission Review](#) (March 2014)
- [Texas Indigent Defense Commission to Review El Paso County's Program](#) (March 2014)
- [Stubborn Judges Should Back Down](#) (March 2014)
- [Defending Juveniles](#): Montgomery County earns statewide recognition for contracting with board-certified attorneys to meet indigent juvenile defense needs (March 2014)
- [Big Changes Possible for Assigning Lawyers in Indigent Cases](#) (April 2014)
- [Plan Needed to Help Poor Defendants](#) (April 2014)
- [Council of Judges Says Commissioners Court Misled Public on Indigent Defense Pay Issue](#) (April 2014)
- [El Paso County Ranks 3rd in State for Indigent Defense Payouts](#) (April 2014)
- [El Paso Council of Judges Delays Attorney Pay Raise](#) (April 2014)
- [Indigent Defense System Debated: Other Texas Counties Take Judges Out of Process](#) (April 2014)
- [Bell County Commissioners Approve Grant Application](#) (May 2014)
- [Judges to Seek State Funding for Big Changes to Indigent Defense](#) (May 2014)
- [Indigent Legal Counsel Plan has Merit](#) (May 2014)
- [Reasonable Doubt: Can the Bexar County Public Defender's Office be Saved?](#) (May 2014)
- [Jefferson County Justice Reviewed](#) (May 2014)
- [Jefferson County on Notice of Lawsuit](#) (May 2014)
- [Ellis: Travis County Plan Could Transform Texas Indigent Defense](#) (June 2014)
- [Judges Win State Grant for Private Defender's Office in Travis County](#) (June 2014)
- [Don't Skimp on Indigent Defenders](#) (June 2014)
- [County Admits to Breaking Law](#) (June 2014)
- [Council of Judges to Improve Indigent Defense Appointment System](#) (July 2014)
- [In Waco, Checking on Defendants' Claims of Poverty](#) (July 2014)
- [Scrutiny of Indigent Defense Applicants is a Justice to Local Taxpayers](#) (July 2014)
- [County Concerns for the Capitol](#): What we've heard from county officials at the regional Legislative Exchanges held so far (July 2014)

Indigent Defense Trainings and Events

- **February 24-26**: State Bar of Texas Juvenile Law Section, Robert O. Dawson Juvenile Law Institute – 27th Annual Juvenile Law Conference. **Wesley Shackelford** presented to juvenile court judges, prosecutors, defense attorneys, and probation officers on the implementation efforts of HB 1318.

- **February 28:** Highland Lakes Bar Association. **Joel Lieurance** was invited to present on new reporting requirements for attorneys handling indigent defense cases to members of the Highland Lakes Bar Association.
- **March 27-28:** Texas Association of Pretrial Services. First Annual Conference and Training Institute. **Jim Bethke** and **Wesley Shackelford** presented to the pretrial services officers on front-end processes of indigent defense.
- **May 2:** Training for **Final Application for FY 15 Discretionary Grant Program**. **Bryan Wilson** and **Dominic Gonzales** provided training to county officials who received Notice to Proceed letters for FY 15 Discretionary Grant Applications.
- **May 12-14:** Texas Veterans Commission and Texas Department of State Health Services, 5th Annual Justice Involved Veteran's Conference. **Jim Bethke** presented to judges, lawyers, and Veterans Administration personnel in a panel discussion about **"Building Coalitions for Effective Veterans Treatment Courts."**
- **May 14-15:** Texas Center for the Judiciary, Criminal Justice Conference. **Commission Chair the Honorable Sharon Keller** and **Jim Bethke** presented an **"Update on Indigent Defense"** to Texas judges.
- **May 19:** **Jim Bethke** presented to the Jefferson County Commissioners Court, county officials, and members of the public.
- **June 2:** **Jim Bethke** presented to El Paso County judiciary and other officials.
- **June 11:** **"27th Annual Rusty Duncan Advanced Criminal Law Conference."** **Wesley Shackelford** provided a short legislative update to Texas public defenders.

Staff Updates

Traci Cruz joined the Commission as a grant program coordinator. Traci previously worked in grant administration at Florida State University in both the Sponsored Research Administration department and the College of Medicine. Traci graduated from Florida State with a degree in Biological Sciences.

Allison Cunningham and **Brittany Long**, University of Texas Law Clerks, assisted the Commission staff as part-time interns during the spring 2014 semester, and Brittany continued in that role during the summer. **Daniel Friedman** worked as an extern at the Commission during the spring 2014 semester under the Texas Tech University School of Law Regional Externship Program. Through this program, third-year law students from Tech Law extern full-time for a semester of academic credit during which they receive supervised experience and instruction in a professional setting. Externs work on law-related matters and are exposed to a broad range of lawyering skills. Daniel worked a total of 458 hours at no cost to the Commission.

Around the Nation

The *National Law Journal* published the article [Defenders Organizing to Give 'Gideon' Teeth](#) on May 12, 2014.

The National Association for Public Defense published an article by [Jonathan Rapping](#), President and Founder of [Gideon's Promise](#), on [reviving the image of the public defender as a hero](#).

The Missouri Project

A Study of the Missouri Public Defender System
and Attorney Workload Standards



Includes a National Blueprint for Future Workload Studies

The American Bar Association released the final report on the Missouri workload study project:

[The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards with a National Blueprint](#)

[American Bar Association, Indigent Defense Systems Improvement](#)