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Report from the Texas Indigent Defense Commission for November 14, 2014 Texas Judicial Council Meeting

The next Texas Indigent Defense Commission meetings are a Grants and Reporting Committee meeting on December 2nd at 2 p.m. and a full Commission meeting on December 12th at 9 a.m. Both meetings will be held in the Court of Criminal Appeals Courtroom.

Gideon Award to Cameron County

Cameron County received a Gideon Recognition at the August 21st Commission meeting for their untiring efforts to reform the indigent defense system by enhancing the independence of the defense function, implementing effective processes to screen for eligibility, and ensuring counsel is appointed promptly and fairly. District Judge **Arturo Nelson** accepted the award on behalf of County Judge **Carlos Cascos** and everyone in Cameron County for their efforts to improve the quality of indigent defense services. Click [here](#) for coverage of the award in the *Valley Morning Star*. The Gideon Recognition program is for local governments across Texas that strive to meet a high standard for indigent defense, and it is inspired by the 50th anniversary of the landmark U.S. Supreme Court case *Gideon v. Wainwright*. In recognizing a county, the Commission seeks to promote innovative, high performing policies that are replicable in other counties.

Legislative Recommendations

TIDC is charged in Section 79.035, Texas Government Code, with recommending to the legislature ways to improve Texas' indigent defense system. The Commission approved the following three proposals for legislative consideration:

- **Repayment of Attorney's Fees:** Require that 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. Limit the amount to be repaid to counties to the actual cost of the legal services provided. Clarify the appropriate amount for attorney fee repayment orders in those cases where the defendant is represented by a public defender's office.
- **Expediting Post-Conviction Relief to Defendants Who Are Either Actually Innocent or Convicted and/or Sentenced Under a Void Statute:** Amend Texas Code of Criminal Procedure Articles 11.07 and 11.072 to require the court to appoint counsel for applicants for habeas corpus relief when the state agrees to relief on the grounds

that the defendant/applicant either is actually innocent or the law under which the person was convicted has been declared void.

- **Super-Regional Public Defender Program for Rural Counties:** Provide continuing state funding and statutory authority for super-regional public defender programs for rural counties. A resolution for the Council's consideration includes support for this program along with other state funding for indigent defense.

Grants: \$2 Million in Discretionary Grants Awarded plus FY15 Formula Grant RFA

On August 21, 2014 the Commission awarded additional discretionary grants totaling about \$2 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. Grants awarded by the Commission at this meeting included awards to bring **Anderson** and **Montgomery** Counties into the TechShare indigent defense technology project led by **Tarrant** County and the Conference of Urban Counties. **Bell** County also received a grant award of \$742,400 to design and build functional extensions to this technology system. The Commission also directed staff to work with the Office of Court Administration to provide project management services for its grant funded technology projects. In addition, **Bee** County received an award of \$250,000 to continue for another year its regional public defender program that also serves **Live Oak** and **McMullen** Counties. Lastly, **Williamson** County was awarded \$56,000 to partially implement recommendations from a full [assessment](#) of their indigent defense system completed by the Council of State Governments, Justice Center.

The Commission also released the [Request for Applications](#) for the FY15 Formula Grants. At its last meeting the Commission budgeted \$20 million for FY15 Formula Grants. Formula Grants are expected to be awarded at the Commission's December 21st meeting.

New Attorney and County Reporting Requirements under HB 1318

Attorneys were required by October 15, 2014 to submit their first annual report of the percent of their practice time devoted to criminal and juvenile delinquency appointments in each county over the previous fiscal year. Beginning November 1, 2014, county auditors were required to report appointed case counts and payments to individual attorneys during the previous fiscal year. These combined reports will provide a window into the workloads of attorneys accepting appointments across the State. The Commission launched the attorney reporting [portal](#) in late September, which was promoted via a special edition [e-Newsletter](#) sent to county officials and attorneys throughout the state. The Commission also created an optional Attorney Practice Time [Worksheet](#) to assist attorneys in calculating these percentage figures. Wesley Shackelford and Dominic Gonzales from staff also created a short 15 minute [presentation](#) that outlines the attorney reporting process, the new county reporting of case figures by attorney, and the weighted caseload study the Commission has been directed to complete.

As of November 6th, 3,730 attorneys had submitted their practice time reports. A total of 3,557 attorneys reported taking appointments in adult criminal cases and 1,346 attorneys in juvenile delinquency cases. About one-quarter of the attorneys reported accepting appointments in multiple counties, with one attorney accepting appointments in 18 counties. We expect the total numbers to increase as the counties using paper reporting forms submit their final reports and additional attorneys access the portal. As to the new attorney case count and payments report, more than 220

counties had submitted the report as of November 6th. In order to facilitate the new county reports, the Commission awarded discretionary grants to **Denton** and **Harris** Counties to assist them with making needed software changes to be able to comply with the new reporting requirements. The Commission will be analyzing this new set of reported information for its 2014 Annual 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.” Commission staff and our research partners at the Public Policy Research Institute at Texas A&M (PPRI) have twice convened a Delphi panel of expert attorneys to develop case time estimates for various case types. The final report will be completed prior to the convening of the legislature in January.

Articles and Media Featuring the Commission

[Portal helps indigent defense lawyers report work time](#) (September 2014)

[Revamped Indigent Defense System Has a Downside, Lawyers Say](#) (October 2014)

[Lawyers spar over new indigent defense office](#) (October 2014)

Indigent Defense Trainings and Events

Harris County Criminal Courts, Judicial Strategic Planning Session/Retreat

Texas Association of Counties’ Legislative Conference – Issues in Indigent Defense

Matagorda and Wharton Counties Indigent Defense Clinic – Attorney Reporting Requirements

Harris County Public Defender’s Office – Attorney Reporting Requirements

Fort Bend County Criminal Defense Lawyers Association – Attorney Reporting Requirements

Montgomery County Criminal Defense Lawyers Association – Attorney Reporting Requirements

Houston Bar Association – 5th Annual Juvenile Law Conference – Attorney Reporting Requirements

FY 14 Indigent Defense Expenditure Report Training – Gonzales County, County Auditors Conference in Waco, Ector County, and Austin

Staff Updates

Bryan Wilson has accepted a position as director of the Automobile, Burglary and Theft Prevention Authority. Bryan is one of the original Task Force on Indigent Defense staff and was with the Commission for over ten years. He was an incredible asset to the grant program and will be greatly missed by staff and many county officials he worked with over the years. Bryan’s last day with the Commission was October 12th.

Edwin Colfax and **Dominic Gonzales**. Mr. Colfax has been promoted to Grant Program Manager and Mr. Gonzales to Associate Grant Program Manager/Online Media Manager. Bryan’s Grant Administrator duties have been divided into the two new positions to best utilize existing staff experience.

Around the State

Comal County Client Choice

On September 18th I joined Edwin and Professor Norman Lefstein in New Braunfels at the court appointed attorney training event that is part of our grant project in Comal County. The training included sessions on client care and building effective attorney client relationships, following new discovery procedures under the Michael Morton Act, and working with forensic experts. One of the two ethics hours focused on the State Bar of Texas rules on attorney advertising and solicitation. The training was well received and well attended, and because the program was recorded, all court appointed attorneys will get the training even if they had scheduling conflicts during the live presentation.

Hidalgo County District Judge Admonished for Failure to Follow Rotation System

The State Commission on Judicial Conduct (SCJC) issued a public admonition of Judge Noe Gonzalez for his failure to follow the rotation system when appointing attorneys in his court. Judge Gonzalez is the presiding judge of the 370th Judicial District Court in Hidalgo County. Although the judge was also admonished over an unrelated matter, the provisions related to the Fair Defense Act are contained on pages 42-45 of SCJC's Public Sanctions [document](#). It includes data analyzing the distribution of appointments and funds paid to attorneys over a six year period. It found one attorney received nearly 22% of all appointments during that period, and the top three attorneys received 38% of all appointments out of a total of 192 attorneys. In conducting the analysis the SCJC referenced the Texas Indigent Defense Commission's [administrative rule](#) policy monitoring staff uses in analyzing the distribution of appointments. The SCJC concluded the judge failed to follow the requirement of the Fair Defense Act requiring that appointments be made in a fair, neutral, and nondiscriminatory manner, as well as the Hidalgo County Indigent Defense Plan that provides for the use of a rotation system. This is the first time Commission staff is aware of a SCJC action related to this issue.

At its August 21st meeting, the Commission also voted to send notice to Hidalgo County that it may seek to impose a remedy under its grant program for failure to address findings by the policy monitor related to distribution of appointments. Reviews dating back to 2009 have consistently found the distribution of appointments among attorneys that are presumed to not be fair, neutral, and non-discriminatory- a requirement of the Fair Defense Act. Hidalgo County has since amended its response to the most recent policy monitoring report to implement changes to its methods of assigning counsel to represent indigent defendants. *The Monitor* covered this story in an October article [here](#).

Around the Nation

A settlement was reached in [Hurrell-Harring et al. v. New York](#), a class action challenging systemic deficiencies in the indigent defense services in several New York counties. It provides systemic reforms to provide adequate defense services and may serve as a model for other counties in New York. The U.S. Department of Justice had recently filed a statement of interest in the litigation that declared that the right to counsel "is so fundamental to the operation of the criminal justice system that its diminishment erodes the principles of liberty and justice that underpin all of our civil rights in criminal proceedings." The *New York Times* covered the settlement [here](#).