



Indigent Defense News in Texas - September 2013

Message from the Chair

On behalf of the Commission, I am pleased to announce that our recently adopted FY14 budget includes \$35 million for formula grants to Texas counties to support indigent defense - a \$15 million increase over the previous year. Thanks to legislative action to restore our Commission's estimated appropriation authority for the Fair Defense Account and unexpended balance authority, all dedicated funds collected specifically to support indigent defense will again be available for that purpose. The increase allocates funds that accumulated in the Fair Defense Account but which were previously not appropriated by the legislature. We appreciate the challenges faced by counties working to ensure that constitutional and statutory indigent defense requirements are met, and we look forward to our continued collaboration to ensure that the rights of all Texans are protected in our criminal courts.



The Commission is also pleased to welcome our newest member, Judge Linda A. 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. Welcome Judge Rodriguez!

Inside

- [Message from Chair](#)
- [Message from Director](#)
- [New Attorney and County Reporting Requirements under HB 1318](#)
- [2013 Indigent Defense Plan Submission/New Requirements](#)
- [Publication of 2013-15 Fair Defense Laws](#)
- [FY14 Discretionary Grant Awards](#)
- [Discretionary Grant Program Evaluation Update](#)
- [Innocence Project Update](#)
- [Around the Nation](#)
- [Save the Date: Indigent Defense Workshop \(October 28th & 29th\)](#)
- [Contact Us](#)

Sharon Keller

Message from the Director

Following a busy legislative season I would like to bring to your attention several items that will impact counties and their indigent defense systems.

Based on the Commission's FY14 budget, 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.

The legislature also created several new indigent defense reporting requirements for counties in HB 1318 regarding attorneys handling indigent cases, discussed in greater detail below. We have reached out to county auditors and other stakeholders to help define a strategy for implementation of this legislation that will be most effective.

In addition to the new reporting requirements, HB 1318 directed the Commission to conduct a weighted caseload study. We have partnered with the Public Policy Research Institute at Texas A&M to conduct the study. Little is currently known about the amount of time being spent to defend criminal cases in Texas. Moreover, the most commonly cited national standards regarding attorney caseloads in public defense were developed in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals and appear to be based on a consensus of opinions rather than on objective evidence. A careful study of actual practice will shed light on the time it takes to provide appropriate representation in different kinds of cases and can facilitate a more evidence-based discussion about caseloads for attorneys handling indigent cases.

Looking ahead, TIDC is excited about our upcoming Indigent Defense Workshop for Texas county officials on October 28-29. In addition to covering recent developments in indigent defense, the workshops will share valuable information on defender programs for mentally ill defendants and opportunities for improving indigent defense through better information management. The [Indigent Defense Workshop Agenda and Registration Information](#) is available [here](#).

Jim Bethke

August 2013 Commission Meeting

(From Left) Honorable Sherry Radack, Member; Mr. Jim Bethke, Executive Director; Mr. Don Hase, Member; Mr. Anthony Odiorne, Member; Honorable B. Glen Whitley, Member



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.

Commission staff has been meeting with a variety of stakeholders, including counties, courts, and the criminal defense bar, to find ways to implement HB 1318 in a seamless manner while providing meaningful information to policymakers. 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. County auditors have indicated that they already collect this information as part of the attorney payment process. 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. Completed reports will be pre-populated into the IDER and show the attorney name, bar number, and practice-time percentage figure for each attorney (with case and payment reporting fields adjacent for completion of that part of the report). For subsequent years, attorney information will not need to be reentered because it will appear automatically in the IDER. 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 1, 2013. The new attorney reporting requirements in **HB 1318** discussed earlier in this newsletter 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 we plan to send out by mid-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.

The Commission also adopted revised plan template language for the minimum attorney qualifications section of the adult and juvenile plans, as well as the prompt appointment of counsel section of the juvenile plan. This language may be used to address the new requirements of HB 1318. They are posted [here](#) and the relevant text will also be included in the emails to the judges. The required public defender/managed assigned counsel plans and attorney contracts for indigent defense services may be uploaded as “Forms” on the plan submission website in the same way that attorney fee schedules, attorney fee vouchers, and other documents are currently submitted.

Publication of 2013-15 Fair Defense Laws

The Commission also recently published “Fair Defense Laws, 2013-2015” on our website [here](#). The publication 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. The Commission is grateful to law clerks Allison Cunningham and Brittany Long for their hard work in updating this important publication.



FY14 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 38th 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 for Continued Multi-Year programs, including:

- Bell County's Mental Health Defense Campaign awarded \$34,000
- Burnet County's Central Texas Regional Public Defender Office awarded \$200,440
- Collin County's Mental Health Managed Assigned Counsel Program awarded \$183,296
- Dickens County's Caprock Regional Public Defender Office awarded \$288,400
- El Paso County's Specialty Court Public Defender awarded \$51,226
- Fort Bend County's Mental Health Public Defender Office awarded \$36,685
- Harris County's Public Defender Office awarded \$1,620,251
- Hidalgo County's Public Defender Office-Juvenile Section awarded \$136,379
- Kaufman County's Mental Health Attorney/Advocate Team awarded \$88,146
- Lubbock County's Expansion of Regional Public Defender for Capital Cases awarded \$4,700,364
- Lubbock County's Felony & Misdemeanor Managed Assigned Counsel Program awarded \$160,000
- Montgomery County's Regional Mental Health Court awarded \$177,451
- Wichita County's Mental Health Social Worker awarded \$45,019



County and Court Officials from Brown County participated in the TechShare Summit hosted at the Conference of Urban Counties.

Discretionary Grant Program Evaluation Update

In addition to formula funding, TIDC provides discretionary grants to counties interested in developing a new program to improve indigent defense. In order to build the knowledge base about effective indigent defense programs, grant evaluation reports are prepared by commission staff or research partners to assess the impact of

Bell County Discretionary Grant
Closeout Evaluation Report

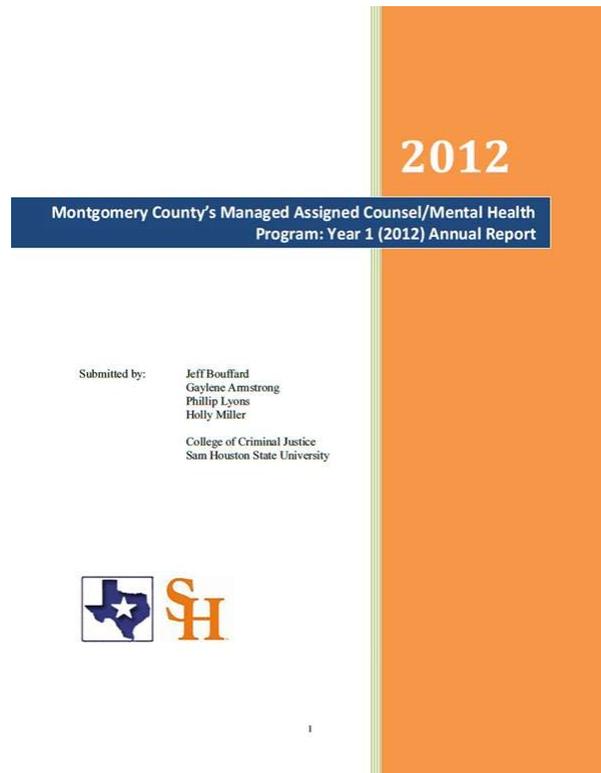
Portable Web-Based Indigent Defense Solution



the funded programs. Two of these reports were recently issued. TIDC reviewed Bell County's project to develop and implement a web-based indigent defense process management system. The report concluded that the system helped to change the culture of the Bell County system toward one more focused on accountability, efficiency and transparency. The Bell County system has yielded many important benefits for judges, defense attorneys and court staff, as well as for the auditor's and district clerk's offices. As described above in Tarrant County's FY14 discretionary grant award, the

Conference of Urban County's TechShare program is working to make a long-term shared solution available to all Texas counties.

Research partners at Sam Houston State University recently issued a report on the first year of operation of the Montgomery County Managed Assigned Counsel – Mental Health Program. The program includes a managing attorney coordinating a group of specially qualified private attorneys and employs social workers who provide assistance to defendants with severe depression, bipolar disorder, or schizophrenia. Other program evaluations are available on TIDC's website.



Innocence Project Update

Since 2005 the Texas Indigent Defense Commission has contracted with the four public law schools in Texas to operate **innocence projects**. These projects provide investigative and legal

services to identify and rectify wrongful convictions of Texas inmates in non-death penalty cases. For the 2014-2015 biennium, the legislature has restored the previous funding level of \$100,000 per year, per project, which is an increase from \$80,000 in the previous biennium. Since the state began funding the innocence projects, **ten exonerations** of wrongfully convicted Texans have been identified and overturned with their assistance. In many of these cases the same investigation that cleared an innocent person also identified the actual perpetrators. The funded projects operate at the University of Texas, Texas Tech, Texas Southern University and the University of Houston.

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.



Save the Date: Indigent Defense Workshop



Indigent Defense Workshop

October 28-29, 2013



Monday, October 28th and Tuesday, October 29th
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 28th

8:30 a.m. – 9:00 a.m.

Registration

9:00 a.m. – 9:15 a.m.

Opening Remarks

Jim Bethke, Executive Director, Texas Indigent Defense Commission
Christopher Burnett, Executive Director, Criminal Justice Division, Office of the Governor
Mary Anne Wiley, Deputy General Counsel, Office of the Governor

There is no registration fee, but space is limited. Counties are responsible for their own travel expense. Arrangements will be made for a small block of government rate rooms at a hotel nearby, however attendees may select a hotel of their choice.

Registration deadline: October 4, 2013.

Please email registration material to marissa.kubinski@txcourts.gov.

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