



Indigent Defense News in Texas - June 2013

Message From Chair

The Commission welcomes two new members: **Senator Royce West** and **Mr. Don Hase**. **Lt. Governor Dewhurst** recently appointed Senator Royce West to the Commission. Senator West was first elected to the Texas Senate in November 1992. Since taking office he has represented the 23rd Senatorial District on behalf of the citizens of Dallas County in the Texas Legislature. Senator West is currently the Chairman of the Senate Committee on Jurisprudence - a post he was appointed to in October of 2012 - and is a member of Senate committees on Education, Finance, Health and Human Services, Higher Education, Intergovernmental Relations, as well as the Select Committee on Redistricting. In addition to his senatorial duties, Senator West is a partner in the law firm of West & Associates, L.L.P., which has offices in Houston and San Antonio, in addition to the main office in Dallas. **Governor Perry** appointed Mr. Don Hase to the Commission in May. Mr. Hase is a defense attorney in Arlington and is no stranger to the Commission. He has been actively involved in indigent defense-related matters over many years, has presented at past Commission trainings, and he is a past recipient of the Commission's **Robert O. Dawson** Distinguished Indigent Defense Award. We are very fortunate to have Senator West and Mr. Hase and welcome both.

Sharon Keller

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Judge Glen Whitley
administers the oath of office
to new Commission member
Don Hase



Senator Royce West

Message from Director

Sunday marked the last day that Governor Perry could sign or veto bills passed during the 83rd Regular Session. In total, Governor Perry **vetoed 26 bills**, signed 1,361, and allowed 13 bills to become law without his signature. Of the 1,361 signed bills, four bills are of particular interest for indigent defense: SB 1, SB 1044, HB 1318, and HB 1245. SB 1 is the General Appropriations Act and the source of State funding for indigent defense. The other three bills are discussed in more detail below in the Re-Cap of the 83rd Legislature. Per the Commission's Legislative Appropriation Request, the Legislature restored access to all dedicated funds for indigent defense by reinstating estimated appropriation authority and by reestablishing unexpended balance authority between biennia. These changes are estimated to generate an additional \$16.7 million above what was appropriated by the 82nd Legislature. With this additional revenue, the Commission's appropriation for the biennium is just under \$79 million for indigent defense. The Commission also requested an additional \$135.5 million in State funding out of General Revenue to offset the funding gap and share more equally with county government the costs associated with providing a fair defense. Although this request was given meaningful consideration, it was not granted. The Commission will continue its efforts during the interim to articulate the need and benefits of the State contributing more of its share of indigent defense costs in Texas. Please let us **know how you like the new format of the newsletter** and be sure to follow us on **Twitter**.

Jim Bethke

Re-Cap of the 83rd Legislature

There were three key bills that were signed by the Governor on June 14th that impact indigent defense. **HB 1318** by Representative Sylvester Turner is the most significant of these and includes three distinct parts. One part relates to the caseloads handled by attorneys providing representation to indigent defendants. The bill requires the Texas Indigent Defense Commission to conduct and publish a study by January 1, 2015 "for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney..." The bill also requires each county to submit to the Commission with its indigent defense plans beginning November 1, 2013 the plans of operation for the creation of a public defender's office or managed assigned counsel program, as well as a copy of any contract for indigent defense services maintained by the county. HB 1318 also requires attorneys on the appointment list to submit to county annually by October 15th information for the preceding fiscal year that describes the percentage of the attorney's practice time that was dedicated to appointed criminal and juvenile delinquency work in the county. (Starting October 15, 2014) In turn, the bill requires the 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 preceding fiscal year the number of appointments made to each attorney accepting appointments in the county. (Starting November 1, 2014) The Commission will partner with a variety of stakeholders, including counties, courts, and the criminal defense bar to implement this bill in way that is as seamless as possible while providing meaningful information to policy makers.

HB 1245 by Representative Sylvester Turner will permit criminal defense attorney investigators, experts and mitigation specialists to receive training using judicial and court personnel training funds administered by the court of criminal appeals. The bill goes into effect September 1, 2014 and the legislature include an appropriation to the Court of Criminal Appeals contingent on the bill's passage of \$115,200 in FY2015.

SB 1044 by Senator Jose Rodriguez will permit public defender's offices and the Office of Capital Writs to access criminal history record information from the Department of Public Safety at no charge. Currently if such offices access the information they must pay \$1 per electronic inquiry, \$10 per paper inquiry based on name, and \$15 per inquiry based on fingerprints. Full summaries of these bills are available on the Commission's [legislative information webpage](#).

In addition to the three indigent defense related bills above, the Legislature also passed two bills that were the subject of [recommendations](#) from the Timothy Cole Advisory Panel on Wrongful Convictions. **SB 1611** by Senator Ellis deals with discovery in criminal cases and is also known as the Michael Morton Act since it is designed to reduce the likelihood of wrongful convictions. The bill will require prosecutors to produce for and permit photocopying by the defense of witness statements, offense reports, and other relevant evidence. The bill should also increase efficiency and save resources for appointed counsel for indigent defendants since they will have immediate access to this information and will not need to spend time searching for it. The bill becomes effective January 1, 2014. **SB 344** by Whitmire relates to so-called "junk science" cases by permitting a convicted individual to file an application for a writ of habeus corpus to challenge a conviction based on scientific evidence that is now outdated or discredited by advances since the trial.

Recent Presentation to TMAP

Dr. Ana Yáñez-Correa, Executive Director of the **Texas Criminal Justice Coalition**, and **Jim Bethke**, Executive Director of the Commission, presented a legislative update to attendees of the **Texas Minority Attorney Program** held May 16th at the Texas Law Center. Here are links to the [Power Point](#) and [additional reference materials](#).



New Report Documents Advantages for Counties Participating in the Regional Public Defender for Capital Cases

A new research report by the Public Policy Research Institute at Texas A&M University details the important benefits available to Texas counties participating in the Regional Public Defender Office for Capital Cases

(RPDO). The report, titled **Judgment and Justice: An Evaluation of the Texas Regional Public Defender for Capital Cases**, was requested by the Commission and is now available [here](#) on the Commission's website.

In some parts of the state it can be difficult to find a well-qualified legal team experienced with capital litigation. RPDO member counties pay an annual membership fee which protects against the high costs of defense in capital murder cases and guarantees access to a qualified capital defense team when the need arises.

Among the report's key findings:

- Because the costs of defense are pre-paid through an annual fee, member counties are willing to appoint a full capital team earlier and in a larger proportion of cases than non-member counties.
- RPDO's strategic focus on early mitigation investigations is much more likely to result in disposition of the case by plea, thus avoiding costly capital trials.
- Counties that join the RPDO are in immediate conformance with standards of quality for capital defense recommended by the State Bar of Texas Guidelines and Standards for Texas Capital Counsel.
- Sentencing outcomes are better for clients with public defenders. Just one in 26 RPDO clients in the matched study sample received a sentence of death. Among private assigned counsel, one in five clients received this worst possible outcome.

Commission member, past president of the National Association of Counties and Tarrant County Judge Glen Whitley said, "Capital cases have the potential to significantly disrupt county budgets, and particularly for smaller and mid-sized counties, that can cause major fiscal problems. This report shows how innovative regional approaches can provide counties with budget stability and the assurance that appropriate defense is provided." Commission member and Bell County Judge Jon Burrows said, "In order to meet our constitutional obligations to ensure fairness in our courts, counties have to be ready to step up. The RPDO provides counties with the resources they need to weather the capital case storm when it hits: ready access to specialized defense teams when needed and insurance against the financial impact of capital litigation."

The RPDO was formed through inter-local agreements with participating counties and supported through Commission discretionary grants. The program is administered by Lubbock County and now has offices throughout the state. Texas counties with populations below 300,000 are eligible to participate. More information is available on the RPDO's website at: <http://rpdo.org>.

Save the Date: Indigent Defense Workshop

The Commission will host a one and a half day Indigent Defense Workshop **October 28-29** at the Texas Association of Counties' Events Center. Topics will include presentations on



the nuts and bolts of administering indigent defense, state reporting, technology management processes, caseloads and more. County teams will break into smaller solution oriented workgroups on day two. An agenda will be available in August. You may pre-register now by sending an email to terri.tuttle@txcourts.gov. If planning to come, visit the Comptroller's [travel website](#) for hotels in the area to make a reservation well in advance.

Next Commission Meeting

The next Commission meeting will be Friday, **August 23rd** at 9:00 a.m. Location is the Court of Criminal Appeals courtroom, 201 W. 14th St., Austin.



Commission members meet on June 6. L-R: Tony Odiorne, Judge Jon Burrows, Judge Glen Whitley, Jim Bethke (Executive Director), Judge Olen Underwood, Don Hase.

Commission's Executive Director Receives Public Service Award

The Commission congratulates Jim Bethke, Executive Director of the Commission, who is being awarded the Daniel H. Benson Public Service Award by Texas Tech Law during the Texas Bar annual meeting on June 20th in Dallas. The award recognizes an alumnus who has demonstrated significant and substantial contributions to furthering ideals of public service in the law. Here is a link to the announcement of the recipients of this award:

<http://www.law.ttu.edu/alumni/awards/alumnireception.asp>.

Policies and Standards

New Appointments to Policies and Standards Committee

Judge Keller has re-appointed Judge Olen Underwood and Mr. Tony Odiorne and appointed Mr. Don Hase to the Policies and Standards Committee. Mr. Odiorne has been appointed Chair of this committee.

Grants and Reporting Update

FY2013 Formula Grant Payments

This fiscal year the Commission is awarding Texas counties formula grants totaling \$20 million. So far 234 counties have received payments for the first and second quarters totaling \$9.8 million. Eligible counties can expect to see third quarter payments in July and fourth quarter payments in December or January. There are 252 counties eligible for formula grants this fiscal year, however 18 counties have not yet received payments due to outstanding reports from district and county

clerks to the Office of Court Administration. These are Brewster, Burleson, Calhoun, Castro, Dallam, Edwards, Gillespie, Hudspeth, Irion, Lamb, Maverick, Newton, Orange, Reeves, Upton, Walker, Wilbarger and Zavala. Officials in these counties should contact their clerks to confirm that required reports are filed in order to receive pending grant payments.

Thank You to Grant Review Team



The Commission thanked members of the Grant Review Team for the FY14 Discretionary Grant program. This year's team members were **Cathy Burnet, The Honorable Thomas Lee, Andrea Marsh** (pictured left with Jim Bethke and Judge Underwood), **Leah Pinney, Joe Ransom, Kimberly Hild and Bob Wessels**. The team met on several occasions to review the FY14 applications for competitive grants that fund innovative indigent defense programs in counties that truly make a difference. The Commission would not be able to make

these grants without the team members' expertise, time and service.

Commission Thanks TLIP Interns

The Commission is grateful for the assistance of two law interns from the Texas Legislative Intern Program (TLIP), **Ms. Thalia Dubose** and **Ms. Simone Wilson**. They both worked on a national census on indigent defense delivery, caseloads and expenditures since January. Pictured right is Jim Bethke, Simone Wilson and Judge Olen Underwood. The TLIP is sponsored by Senator Rodney Ellis.



Lubbock Updates Managed Assigned Counsel Program

On June 10th the Lubbock County Commissioners Court approved a revised agreement to contract indigent defense services out to the Lubbock Criminal Defense Lawyers Association. The county uses an innovative approach to indigent defense known as a managed assigned counsel (MAC) program. The Texas Indigent Defense Commission supports Lubbock County's efforts to continue to develop this type of system, as it exemplifies one of the most

"Representation for indigent individuals is not going to go away, so why not improve indigent defense and do so in the most efficient way

important aspects of the American Bar Association's 10 Principles of a Public Defense Delivery System--the selection, funding and payment of defense attorneys is independent of the judiciary. There are also MAC programs in Collin and Montgomery counties, both of which focus on mental health-related defense. Here is a link to the [press release](#) issued by Lubbock County regarding its new managed assigned counsel system.

possible... "

Bill McCay, Lubbock County
Commissioner

Commission Summer Interns

Each summer the Commission benefits from the work and service performed by interns. **Ali McGuigan** joined TIDC as an intern on May 13th. She is from Austin and attends Texas Christian University where she is currently studying Political Science (International Relations) with minors in Criminal Justice and Spanish. She has been assisting with an important records management project and she is working on a national survey of indigent defense case data. **Allison Cunningham** was born and raised in Austin. She majored in English and minored in Philosophy during undergrad at UT and is now a rising 2L at UT Law. This summer she hopes to further develop her legal research and writing skills and learn more about the process of appointment of defense counsel to indigent defendants. **Brittany Long** was born and raised in Houston. During her undergraduate studies at UT majoring in Government and minoring in Philosophy, Brittany interned at the Criminal Justice Division of the Office of the Governor as a member of the Governor's Fellowship Program. She was appointed to the Juvenile Justice Advisory Board at the conclusion of her fellowship and continues to serve as a board member for the state of Texas. She is now a rising 2L at UT Law. Both Allison and Brittany are working on Commission publications projects.



Ali McGuigan



Allison Cunningham



Brittany Long

Contact us



www.txcourts.gov

209 W. 14th St., Rm 202

Austin, TX 78701

Ph: 512.936.6994

Commission Members

Chair:

The Honorable Sharon Keller
Presiding Judge, Court of Criminal Appeals

Vice Chair:

The Honorable Olen Underwood

Ex Officio Members:

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Honorable Roberto Alonzo
Honorable Abel Herrero
Honorable Sherry Radack
Honorable Royce West
Honorable John Whitmire

Members Appointed by Governor:

Honorable Jon Burrows
Mr. Don Hase
Mr. Anthony Odiorne
Honorable Olen Underwood
Honorable B. Glen Whitley

Staff

Jim Bethke, Executive Director jim.bethke@txcourts.gov

Edwin Colfax, Project Manager edwin.colfax@txcourts.gov

West Garrett, Research Specialist west.garrett@txcourts.gov

Dominic Gonzales, Grant Program Specialist
dominic.gonzales@txcourts.gov

Marissa Kubinski, Administrative Assistant
marissa.kubinski@txcourts.gov

Joel Lieurance, Policy Monitor joel.lieurance@txcourts.gov

Wesley Shackelford, Deputy Director/Special Counsel
wesley.shackelford@txcourts.gov

Terri Tuttle, Executive Assistant/Project Manager
terri.tuttle@txcourts.gov

Sharon Whitfield, Budget and Accounting Analyst
sharon.whitfield@txcourts.gov

Bryan Wilson, Grants Administrator bryan.wilson@txcourts.gov

New Format for Newsletter

This is a new format for the Commission newsletter. There is now a forwarding feature to forward it to someone who might be interested in this information. There is also an easier way to edit your subscription (at very end at left). We **welcome and appreciate any and all feedback** on the newsletter as it will assist us in improving it. We've also joined Twitter so please be sure to **follow us!**

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