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TEXAS INDIGENT DEFENSE COMMISSION

www.txcourts.gov/tidc

September 2011

\$8.1 MILLION AWARDED

At the final meeting of the Texas Task Force on Indigent Defense (now known as the Texas Indigent Defense Commission), the Board voted to award more than \$8.1 million dollars through several funding programs to help Texas counties improve their indigent defense efforts.

The Board also increased the formula funding by \$4 million. As a result counties can expect a slight increase in their FY11 final quarterly payment. (Read more about the grants awarded on page 4.)



Board members left to right: Knox Fitzpatrick, Judge Jon Burrows, Judge Glen Whitley, Presiding Judge Sharon Keller, Judge Alfonso Charles, Tony Odiorne, Judge Olen Underwood

Message from the Chair

During the 82nd Legislature Governor Perry signed a law (HB1754) establishing the Texas Indigent Defense Commission. This organization replaced and renamed the Task Force on Indigent Defense on September 1, 2011. The Task Force held its final meeting on August 25th and celebrated the 10-year anniversary of the Texas Fair Defense Act by hosting a reception following the meeting and to also thank all those who have worked with us on the mission to improve indigent defense in Texas. I'd like to take this opportunity to recognize Lubbock County for its recent Best Practice Award from Texas Association of Counties. The program awarded was the Special Needs Defender Program that was funded with grant awards by the Commission (formerly the Task Force). There is also a [video on YouTube](#) that might interest you.

Texas Counties have stepped up to the plate these past ten years to do the right thing and it's been my pleasure and honor to work with county leadership on this initiative.

Sharon Keller, Chair, Texas Indigent Defense Commission, Presiding Judge, Court of Criminal Appeals

See **Agenda and Registration** for Indigent Defense Symposium/Workshop - October 27, 28, Austin

Message from the Executive Director

On September 1, the date when most bills passed by the Legislature take effect, including a significantly reduced state budget, indigent defense funding for county programs remained unscathed. Equally important the Legislature strengthened the institutional structure of indigent defense in Texas by providing local governments more options to provide effective services and streamlining the process to establish a public defender programs as well as clarifying the types of processes that the Fair Defense Act governs. This was an incredibly good session for indigent defense and nationally reflects positively on the entire State. For a complete summary and review of all Legislative changes, I encourage you to go to our website or call our office if you have any questions.

If you have not done so already, I encourage you to register for the upcoming **Indigent Defense Symposium and Workshop** that is going to be held in Austin on October 27 -28. The format of the workshop this year is new. Day one will showcase some new and effective Texas programs and you will also hear from some nationally recognized authors and presenters on ideas to continue the betterment of indigent practices for the next ten years. Thanks to Senator Rodney Ellis, day one of the Symposium will be held in the Capitol Extension Auditorium so that anyone who wishes to attend in person may do so or observe the program live from the comfort of your office as the program is streamed over the Internet.

There will also be a book signing event featuring author Professor Sandra Guerra Thompson and her book "American Justice in the Age of Innocence." Professor Thompson is a professor of law at the University of Houston. I had the honor to work with Professor Thompson when she was the representative for the Texas public law schools on the Timothy Cole Advisory Panel on Wrongful Convictions for the Texas Legislature.

The second part of the event takes place on day two when select county teams will convene for a workshop, break into small workgroups, and like in past years prepare a plan of action to address specific indigent defense issues facing your county. Symposium presenters and staff will facilitate the workgroups. For details and to register see the [agenda/information sheet](#). I will look forward to seeing you Austin.

James Bethke, Executive Director, Texas Indigent Defense Commission

Introducing Paul Sembera

This summer, the Texas Indigent Defense Commission welcomed Paul Sembera a 3L from The University of Texas School of Law. He was born and raised in San Antonio and attended UT-Austin for his undergraduate degree in Ancient History. He hopes to have a career in criminal law after graduation. Paul is also an avid sports fan (college football in particular) and hopes to visit every Major League Baseball park by the time he is thirty!

While interning with the Commission, Paul was involved in a variety of projects. First, he worked on updating the Fair Defense Act codified by the Commission to ensure that it reflects the new legislation passed by the Texas Legislature this past session. Along with this, updated the commentary section of the FDA to make sure that the case law in the commentary sections is still good law. He also reviewed indigent defense contracts to ensure that the counties around Texas were following rules and guidelines set forth in the Texas Administrative Code and Commission. Finally, he has done preliminary research for an article, which will be written by Jim Bethke and the Texas A&M Public Policy Research Institute, on the effectiveness of mental health public defenders that employ a holistic approach in representing mentally ill defendants.





Invitation to Texas Counties and Registration for a Very Special Event

Symposium on Indigent Defense followed by a County Workshop to Address Local Challenges October 27, 28, Austin

On day one, join a symposium of speakers and presentations sharing ideas to realize the promise of Gideon. Legislators, legislative staff, attorneys, county officials, members of the judiciary and other stakeholders will be in attendance. On day two, county teams will break into workgroup sessions to discuss possible solutions to improve indigent defense systems and working with what you have. County teams are encouraged to register early.

There will be plenty of seating for day one, however the invitation to day two is limited to approximately 20 county teams committed to bringing elected court and county officials with the chief public defender or an attorney who takes court appointments.

The Symposium will be live-streamed. A book signing event will also take place featuring author Professor Sandra Guerra Thompson and her book "American Justice in the Age of Innocence." The book may be purchased in advance on Amazon. Please bring your book to the Symposium for the book signing which will take place during the lunch break of the Symposium (day one) in the Lieutenant Governor's Reception Room. (Continued on next page.)

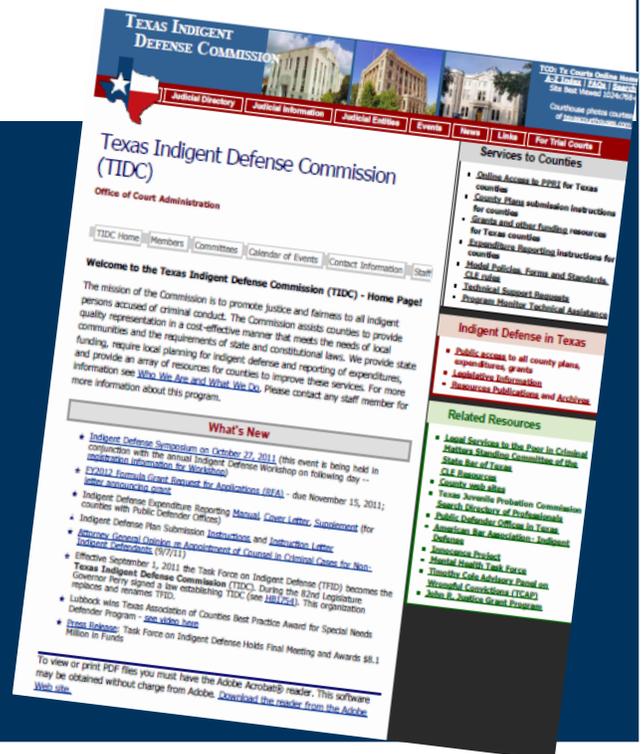
A special thank you is owed to Senator Rodney Ellis for securing the Capitol Extension Auditorium (1100 Congress Avenue), to Texas Association of Counties for use of the Events Center (1210 San Antonio) on day two, and to the National Association of Criminal Defense Lawyers for financial support.

There is no registration fee. Attendees will be responsible for their own travel costs. 5.25 hours of CLE including 1.25 of ethics will be applied for with the State Bar of Texas.

Here is the agenda and registration for this event. If you have any questions please contact Terri Tuttle at (512)463-8015 or email her at terri.tuttle@txcourts.gov.

Check out the Commission website

- Publications, articles about indigent defense
- Legislative information
- Video downloads of past workshop presentations
- Plan submission instructions
- Indigent defense expenditure reporting instructions
- Grant application information
- Public information access



GRANTS AND REPORTING UPDATE

\$8.1 Million Awarded - continued from page one

An increase was also made to the Equalization Disbursement, which the Commission voted to increase to \$11 million, or \$3 million more than previously budgeted. Tarrant County Judge Glen Whitley stated during the meeting, "Counties are hurting. Every one of us is trying to balance a budget right now." He stated that the awarded funds will "help our counties wrap up the end of the year" and provide funds "at the very beginning of the year, which I think will help them as they move forward."

In addition to the Formula Grant and Equalization increases, the Commission voted to award about \$650,000 to six counties to help offset extraordinary indigent defense costs. Counties awarded extraordinary funding include: Burleson, Cass, Harrison, Palo Pinto, Ward, and Wood. Cass County Judge Charles McMichael stated, "I am proud of the work the [Commission] does in helping poor rural counties in bearing indigent defense costs. It really makes a difference."

Additional improvements to indigent defense processes will be made through Discretionary Grant programs in Bell and Hidalgo Counties. Discretionary Grants are competitive grants that help counties implement new and innovative programs to help improve the quality of indigent defense in Texas counties. The new programs are set to begin on October 1, 2011.

The specific programs approved for new funding are:

Bell County: Awarded \$233,200 to create a Mental Health Defense Campaign that would train attorneys specialized to represent defendants with mental health issues, provide social worker support to those attorneys, and develop specialized case management software.

Hidalgo County: Awarded \$243,033 to create a juvenile division in the existing Hidalgo County Public Defender Office. The division will employ two new attorneys and a social worker to assist in case management.

The Commission has distributed funds since 2002 to help counties meet the statutory and constitutional requirements to provide access to counsel for the poor.

Contact Bryan Wilson, Grants Administrator, for more information about Commission funding programs at (512)936-6996 or email him at bryan.wilson@txcourts.gov.

Commission Members:

Chair:

Sharon Keller

Presiding Judge, Court of Criminal Appeals

Vice Chair:

Olen Underwood, Presiding Judge, 2nd Administrative Judicial Region of Texas

Roberto Alonzo, State Representative

Jon Burrows, Bell County Judge

Alfonso Charles, Gregg County District Judge

Knox Fitzpatrick, Dallas Attorney, Fitzpatrick, Hagood, Smith & Uhl, L.L.P.

Pete Gallego, State Representative

Wallace B. Jefferson, Chief Justice, Supreme Court

Tony Odiorne, Public Defender, West Texas Regional Capital Public Defender

Sherry Radack, Chief Justice, First Court of Appeals

Jeff Wentworth, State Senator

Glen Whitley, Tarrant County Judge

John Whitmire, State Senator



Commission staff are available to assist. You 'can' give them a call. Don't hesitate to call us if you need assistance. Toll free in Texas: 866.499.0656



Set Yourself Up for IDER Success

At the end of each fiscal year, counties submit a variety of information to the Texas Indigent Defense Commission through the Indigent Defense Expenditure Report (IDER). The IDER allows counties to report expenditures like court-appointed attorneys' fees, licensed investigative and expert witness fees, and other direct litigation expenditures, as well as the number of cases that involved indigent defense payments in the preceding year. To set up your county for a successful IDER submission, the Commission offers the following guidance to appropriately count and report cases.

After reviewing attorney fee vouchers across the state, the fiscal monitor found that counties often count and report transactions rather than cases in the IDER. This occurs when the case number recorded in the general ledger after payment for indigent defense services is based on the number of invoices paid, rather than the number of cases present on the invoice.

An invoice may contain more than one case for a couple of reasons: First, the defendant may have been charged in more than one indictment/information. The same defendant charged in more than one indictment/information should be counted as more than one case (i.e., the same person named in two separate indictments should be counted as two cases). Please refer to page 4 the [Procedure Manual for the Indigent Defense Expenditure Report FY 2011](#).

Second, an invoice from an attorney may request payment for multiple appointments. For example, if an attorney submits an invoice for payment that contains four cause numbers, this counts as four cases. Counties sometimes report that one transaction as one case on the IDER, but this understates the actual number of appointments.

Proper case counting is important for the IDER because when counties receive a policy monitoring visit, the policy monitor examines the distribution of felony, misdemeanor, and juvenile cases paid across courts. This distribution gives an indication of the fairness of the appointment system. Counties that report the number of payments rather than the number of cases paid will distort the distribution of cases paid, the overall appointment rate in the county, as well as any cost-per-case calculations. Counties that adopt this type of reporting system may receive a monitoring visit from the Commission to provide analysis and instruction on appropriate IDER reporting procedures.

The IDER reporting mechanism establishes a uniform method for counties to submit indigent defense expenditures. Without proper counts of expenditures and cases, counties cannot easily demonstrate that they meet the obligations of the Fair Defense Act, and they understate their appointment rates of court-appointed attorneys. To set yourself and your county up for IDER success this year, please take a moment to examine your reporting system to ensure it provides the most accurate information possible.

Should you wish to contact the monitors at the Commission, please contact Carol Conner, fiscal monitor, carol.conner@txcourts.gov, or Joel Lieurance, policy monitor, joel.lieurance@txcourts.gov.

COMING SOON: FY2012 Formula Grant Request for Applications

The [FY2012 Formula Grant packet](#) (green font is a hyperlink to the packet) will soon be sent to all 254 constitutional county judges and a courtesy letter will also be sent to all local administrative district and statutory judges and county financial officers informing them of the availability of funds. This year the local administrative judges and Chairs of Juvenile Boards must submit their biennial indigent defense plans before grant payments can be made. Plans are due November 1, 2011. The submission process information is on the following page of this newsletter and in the process of being sent out to the counties. Staff will work with counties to ensure all the statutory and Commission required elements are included in each plan. Please take note during the grant application process if there are any outstanding issues with your county's submission and contact Commission staff. The Formula Grant application may still be submitted. The grant application is due November 15, 2011. Email Bryan.wilson@txcourts.gov or call him at (512)936-6996 if you have any questions.

POLICIES AND STANDARDS UPDATE

Fiscal Monitor Activities

FY 2011 Fiscal Monitor Visits		
County	Date of Site Visit	Visit
Gregg	September 21-22, 2010	fiscal
Wood	September 23, 2010	tech assist
Galveston	January 25-27, 2011	fiscal
Colorado	January 27, 2011	tech assist
Bastrop	February 10, 2011	tech assist
Midland	March 8-9, 2011	fiscal
Ector	March 10, 2011	fiscal
Taylor	March 22, 2011	tech assist
Jones	March 22, 2011	fiscal
Shackelford	March 23, 2011	tech assist
Ellis	June 14-16, 2011	fiscal
Nacogdoches	June 28-29, 2011	fiscal
Cherokee	June 30, 2011	tech assist
Waller	July 11-12, 2011	fiscal
Austin	July 13, 2011	fiscal
Fayette	July 14, 2011	fiscal
Bosque	July 26, 2011	fiscal
Comanche	July 27&29, 2011	fiscal
Hamilton	July 28, 2011	fiscal

For technical assistance visits or questions on reporting expenses for the indigent defense expenditure report, please contact Carol Conner, fiscal monitor, 512.936.7561; or email: carol.conner@txcourts.gov.

2011 Biennial Indigent Defense Plan Submission

The judges in each county are required in Government Code Sect. 79.036 to submit their indigent defense plans, any revisions to the plans or verify that was previously submitted is still current by November 1, 2011. The Commission is going to build on the process used for submitting and approving plans in 2009 to accomplish this. The Commission is currently launching this process by sending out a letter with the [plan submission instructions](#) to each Local Administrative District Court Judge, Local Administrative Statutory County Court Judge or County Judge, and the Juvenile Board Chairman. Shortly thereafter an email will be sent to each of the judges responsible for submission of the existing plans with a hyperlink to log in to the system, review/update their local officials, review the existing plan and forms on file and then either verify and approve what is on file or submit revisions to the plan. Staff are standing by to assist. For technical issues contact Darby Brennan at dbrennan@ppri.tamu.edu or call (979)845-2003 and for substantive plan issues call (512)936-6994 or toll-free (866)499-0656.

AG Opinion on Appointment of Counsel for Non-Indigent Defendants

On September 7th, 2011, the attorney general issued [Opinion No. GA-0884](#) related to the appointment of counsel in criminal cases for non-indigent defendants. The opinion concluded that although a court generally has no duty to appoint counsel to a non-indigent, a court may do so when the interests of justice require. The opinion also addressed appropriate amounts of attorney fee repayment orders when the county is served by a contract defender. The attorney general concluded a court may require a defendant, in an order of community supervision, to pay attorney fees according to the county's schedule of fees established under article 26.05, Code of Criminal Procedure, regardless of the amount of the county's contract with individual attorneys.



TIDC

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Please contact any of the following staff members for assistance

James D. Bethke	Director
Edwin Colfax	Project Manager
Carol Conner	Fiscal Monitor
Dominic Gonzales	Grant Program Specialist
Marissa Kubinski	Administrative Assistant
Joel Lieurance	Policy Monitor
Wesley Shackelford	Deputy Director/Special Counsel
Terri Tuttle	Executive Assistant
Sharon Whitfield	Budget and Accounting Analyst
Jennifer Willyard	Grant Program Specialist
Bryan Wilson	Grants Administrator

Archived e-newsletters are available [online](#).

