



Indigent Defense News in Texas - January 2014

Message from the Chair

On behalf of the Commission I am pleased to announce the disbursement of **\$37 Million in formula grant funding** to Texas counties. In addition to regular quarterly payments totaling \$22 million over the fiscal year, most counties will receive a special one-time grant payment: a share of \$15 million that accumulated in the Fair Defense Account but was not previously appropriated. The Commission appreciates the efforts of our state's leadership, counties, and many other stakeholders to produce a budget that once again ensures that state funds collected specifically for indigent defense are available for that purpose. These formula grant awards are on top of \$10 million in discretionary grants awarded to 22 counties by the Commission at an earlier meeting. In other news, it was an honor to swear in our two new members, the Honorable Chief Justice Nathan Hecht and the Honorable Linda Ann Rodriguez. Both bring a wealth of knowledge and experience to the Commission. I look forward to serving with each of them. Next, it was my pleasure to present the Gideon Recognition Award to Montgomery County, recognizing the positive impact of the county's new indigent defense program for juvenile defendants, which is staffed by experienced attorneys who are all Board Certified in Juvenile Law. Congratulations Montgomery County!

Sharon Keller

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Montgomery County



TIDC Board

Justice Nathan L. Hecht is the Senior Justice of the Supreme Court of Texas and the senior Texas appellate judge in active service. Governor Rick Perry appointed him Chief Justice in September 2013, succeeding Wallace B. Jefferson, and he began as chief justice October 1, 2013.

From left: Honorable B. Glen Whitley; Honorable Olen Underwood; Honorable Linda Rodriguez; Mr. Anthony Odiorne; Honorable Sharon Keller; Honorable Nathan L. Hecht; Honorable Jon Burrows; Mr. Don Hase; Honorable John Whitmire

Message from the Director

As we start the New Year, I have much to be grateful for. Looking back, 2013 was an extraordinary year. The fact that the 83rd Texas Legislature increased funding for indigent defense to **\$78 million, up from \$0** just thirteen years ago, is nothing short of incredible. This does not happen by chance or luck. Our parent organization, the **Texas Judicial Council** passed a resolution to support **[Additional State Funding for Indigent Defense](#)**. The **Texas Association of Counties**, the **County Judges & Commissioners Association**, the **Conference of Urban Counties**, the **Texas Criminal Justice Coalition**, the **Texas Fair Defense Project**, and others worked with the Commission to enhance funding for indigent defense. These organizations and their dedicated staff members made a real difference and I am grateful for their support.

During the legislative session, it was a privilege to be at the Texas Capitol on March 18, 2013—exactly 50 years after the U.S. Supreme Court decision in Gideon to extend the right to court appointed counsel in felony cases to defendants in state courts—and observe the House and Senate pass resolutions commemorating this historic event.

I am also pleased to report that that the Commission and its staff were involved in issuing 14 major publications throughout the year. A leading example is the **[Texas Fair Defense Laws](#)**, a comprehensive resource for judges, policymakers and local officials.

We also held a number of training events, including A Primer on the Texas Fair Defense Act (January 2013) and the 50th Anniversary Commemoration of the Gideon Decision (March 2013), both held at the Capitol. The latter was co-sponsored by Senator Rodney Ellis. Then, on October 28th and 29th the Commission hosted its 2013 Indigent Defense Workshop for Texas counties. Thanks to a **grant** from the Governor's Criminal Justice Division, we were able to offer financial assistance to help cover a portion of travel expenses for those counties that sent officials to Austin for the workshop. **[Course Materials](#)** and **[videos](#)** from the workshop can be accessed via the TIDC website. Additionally, Commission staff gave 21 other presentations around the state totaling close to **30 hours of training** to more than **1,800 judges, county officials and lawyers**.

On top of these initiatives, Commission staff manages a multitude of projects and grant programs, and monitors how well counties are meeting the expectations of the Fair Defense laws. Their efforts and professionalism are unparalleled. Staff also works closely with our leading research partner, the **Public Policy Research Institute at Texas A&M** (PPRI), on conducting various evidence-based studies and the maintenance of the Commission's extensive website. I am also very grateful for the opportunity to work with the **Council of State Governments Justice Center**, led by **Dr. Antonio Fabelo**. The Justice Center completed a major study on the Harris County Public Defender Office (established through the Commission's discretionary grant program). The value provided to the state through PPRI and the Justice Center is immeasurable. (Recent studies conducted by the Commission and its research partners are chronicled later in this newsletter.)

In closing, I am grateful to the **State Bar of Texas** and the **Texas Criminal Defense Lawyers Association** for their ongoing efforts to improve the quality of public defense in Texas. And, to all lawyers who take court appointments, thank you for your professionalism in representing those who cannot afford to hire counsel. I know our system is not perfect. I know there is much more work that needs to be done. Yet I remain optimistic that working together, learning from one another, and taking our respective responsibilities to heart we can realize the promise of **Gideon**. I wish all good health, happiness, and success in 2014.

Jim Bethke



Chairman Sylvester Turner with fellow members of the Texas House of Representatives laying out House Resolution 808, commemorating the 50th anniversary of the landmark Supreme Court decision in *Gideon v. Wainwright*, March 18, 2013.



Senator Rodney Ellis welcoming special guests to the Senate floor at the commemoration of the 50th Anniversary of *Gideon*, March 18, 2013. From left: Senator Rodney Ellis, Texas Criminal Defense Lawyers Association President Lydia Clay-Jackson, exoneree David Wiggins, Presiding Judge of the Court of Criminal Appeals Sharon Keller, attorney for the state of Florida in the *Gideon* case Bruce Jacob, Texas State Bar President Buck Files, and Senator Judith Zaffirini.

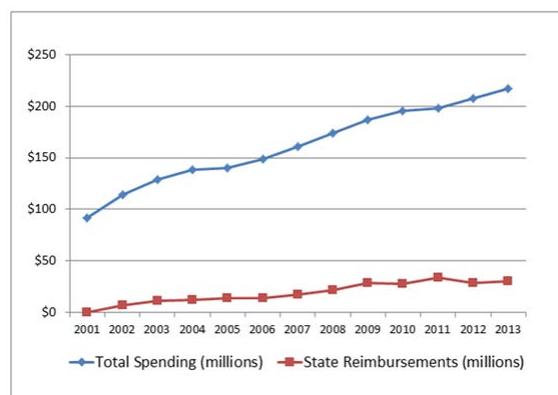
Notice to Attorneys on CLE and New Reporting Requirements

As we ring in 2014, why not use the occasion to let the attorneys on your appointment lists know about the new reporting requirements that begin later this year, as well as to remind them of the existing continuing legal education (CLE) requirements? The new attorney reporting requirements begin October 15th, 2014 and will continue annually thereafter. All attorneys who accept appointments in adult criminal and juvenile delinquency cases will have to submit a statement that describes the percentage of their practice time that was dedicated to work on those appointed cases for the previous October-September time period. The Texas Indigent Defense Commission's board slightly revised the form at its December 2013 meeting to include a question asking how the percentage figure was calculated, with possible responses including: Time records, Case counts, Combination of the above, and Other. You can provide the attorneys the [link](#) to the revised form and reporting instructions, too, and let them know if you want them to report using the TIDC's online system as most of you have indicated you will be doing. The online system will prevent county or court staff from having to collect paper forms submitted by the attorneys and entering the information online. The online system will also benefit attorneys by allowing them to complete the report to each county in which they accept appointments at the same time. You might also let the attorneys know that the county will also be reporting the cases disposed by each attorney by case type and court to the Commission by November 1, 2014. Policy makers will use the case and practice time reports to assess attorney workloads.

You may also use the opportunity to remind the attorneys about their obligation to complete CLE hours in criminal and/or juvenile law each year. The Commission's [rules](#) require attorneys to get at least six hours of criminal law CLE each year to be eligible for appointments in criminal cases and six hours of juvenile law CLE to receive juvenile court appointments. The rules are flexible and permit the hours to be earned by attending accredited programs, teaching at a CLE event, and through self-study without limitation. Many jurisdictions require more hours and are more restrictive in the ways the hours may be earned, such as limiting the number of self-study hours; therefore, you will want to be sure to refer to your own indigent defense plan(s) when informing the attorneys. These records may be gathered by collecting print-outs of each attorney's CLE hours from the State Bar website or through the submission of an affidavit from each attorney attesting to the courses taken and hours earned. Keeping a record of attorney CLE hours is one of the items Commission staff checks for during monitoring visits.

Indigent Defense Expenditure Reports

Counties across Texas were required to submit their annual Indigent Defense Expenditure Reports by November 1, 2013. Statewide summary totals indicate that Texas counties spent \$217.1 million on indigent defense services in FY13 compared to \$207.5 million in FY12. This represents a total increase in costs of \$9.5 million over FY12, or a 4.5% increase. As of December 17, counties also reported appointing attorneys in 466,164 cases compared to 460,266 cases in FY12. Counties reported collecting over \$12.3 million from defendants in attorney fee recoupments.



Five staff members reviewed the submitted reports and called county officials to ask questions if anomalies appeared. Some common county reporting errors included: not reporting payments to regional programs; not reporting cases in which regional programs provided representation; incorrectly placing cases/expenses in the wrong category (e.g. misdemeanor cases and expenses may have been entered as felony cases and expenses); and not separating trial-level cases from appeals cases.

See the accompanying graph showing historical indigent defense spending in Texas.

FY2014 Formula Grants Issued

As mentioned in the "Message from the Chair," the Commission voted on December 12, 2013 to disburse \$37 million in formula grant funding to Texas counties to help them ensure that all Texans can access constitutionally required legal defense services. Counties are eligible to receive formula grants based on their compliance with the central requirements of the Fair Defense Act. The amount of a county's formula grant is calculated based on a combination of population and indigent defense expenditures. This year the award will come in two distinct portions.

The first payment will be from the release of funds by the 83rd Legislature. This portion is a special one-time formula grant payment disbursing the \$15 million that accumulated in the Fair Defense Account but which the legislature had not previously appropriated in the 2012-2013 state budget. In the last biennium the 82nd Legislature held back part of the funds collected for indigent defense to help balance the state budget. Thanks to the combined efforts of state leadership, county officials, Commission staff, and many others, this \$15 million is now released back to the Commission. It will be sent out to Texas counties in the one-time special payment. This amount is about forty percent of each county's award. The Commission asks that counties do not budget this special payment amount in future years.

The remaining portion will follow the special payment and will be issued in four regular quarterly payments in January, April, July and October. The total Commission budget for counties constituting the quarterly payments over the fiscal year is \$22 million. Most counties met all of the requirements to receive grant payments and will receive the special one-time payment at the end of December or after January 1. These counties will receive their first regular quarterly payment shortly thereafter. Fifty-eight counties received special conditions that have to be completed before they are eligible to receive the first regular quarterly payment. The special conditions do not affect the award amounts, only the timing of the special and quarterly payments. The special conditions that counties received were one or more of the following categories: 1) local judges not submitting their countywide indigent defense plan; 2) local judges not submitting contracts, public defender office plans, and managed assigned counsel plans under a new requirement from HB1318; 3) counties not submitting the required Formula Grant Resolution; and/or 4) a county or district clerk has not submitted all Texas Judicial Counsel monthly reports to the Office of Court Administration.

To see the full formula grant award schedule, see the following [link](#).

Program Assessments Issued in FY13

Wichita County Public Defender, October 2012 (PPRI)

- Public defenders were significantly more likely than private assigned counsel to get charges dismissed and felonies reduced to misdemeanors.
- Lower attorney and case processing costs yielded a net savings to the county of \$204 per case.
- Public defenders met with clients more promptly and spent more time on cases.

Kaufman County Public Defender, December 2012

- Significantly reduced pre-trial jail days for felony defendants and contributed to faster processing through the court system when compared with assigned counsel.
- PD costs per case were lower than assigned counsel in two of the three years studied.
- The reduction of pre-trial jail time has saved the county additional money.

Willacy County Public Defender, March 2013

- Provided quality representation, was staffed by well-trained attorneys and provided access to a staff investigator.
- Sample cases reviewed did not find significant differences in outcomes for PD defendants and non-PD defendants in reviewed cases.
- Review identified several compliance issues; most have been addressed, and follow-up is ongoing.

Lubbock Regional Public Defender for Capital Cases, June 2013 (PPRI)

- More prompt capital defense team appointment.
- Emphasis on early investigation & mitigation reduced likelihood of trials and death sentences compared with private assigned counsel.
- Provided better defense team services & immediate compliance with State Bar quality standards.

Montgomery Mental Health MAC, August 2013 (interim report)

- Caseworkers provided over 2,500 consultations with defendants' attorneys and over 1,500 referrals for needed social services.
- Attorneys and stakeholders gave positive reviews about the program's support services for mentally ill defendants.
- Clients were not significantly more likely to return to jail once released, even though most participate in special court programs with an enhanced parole supervision component.

Bell County Fair Indigent Defense Online Program, August 2013

- Successful web-based indigent defense process management solution.
- Increased transparency, FDA compliance monitoring, and system efficiency.
- Faster processing of requests for counsel and attorney appointments.
- All-electronic attorney fee voucher submission, review and payment process.

Recently Completed Reports in FY14

Bowie and Red River Public Defender, October 2013

- Provided earlier access to counsel for indigent defendants.
- Contributed to an improvement in case processing time.
- Reduced indigent defense costs.
- Enhanced compliance with ABA standards for public defense.

Tarrant County and Conference of Urban Counties TechShare Assessment of multi-county collaboration on indigent defense process management system, November 2013

- Assessment of prospects for multi-county collaboration on shared indigent defense management technology.
- Analyzed multiple county systems and practices.
- Recommend extension and continued development of Bell County system through Conference of Urban Counties TechShare Program.

Bell County Indigent Defense Evaluation, December 2013

- Comprehensive system evaluation report produced as part of technical support grant project.
- Demonstrates compliance with key statutory timelines for magistration and appointment of counsel.
- Uses data collected through FIDO system.

Harris County Public Defender, September 2013 (Council of State Governments Justice Center)

- Produced better defense outcomes than private assigned counsel in the cases studied.
- Conforms to American Bar Association's Ten Principles of a Public Defense Delivery System.
- Manages workload and provides a number of systemic value-added services to the county.

Texas Public Law School Innocence Projects FY13 Annual Reports

In 2005 the Texas Legislature directed the Texas Indigent Defense Commission to contract with four public law schools in Texas to operate innocence projects. These projects organize law students who work with attorneys to review claims of actual innocence from Texas inmates. During FY13 the projects received more than 2,500 requests for assistance and screened over 1,000 inmate questionnaires to determine if an investigation should proceed. Over 100 law students participated in the projects. Full Annual Reports from the participating innocence projects are available on the TIDC website:

- [UT Actual Innocence Clinic Annual Report](#)
- [University of Houston Innocence Project Annual Report](#)
- [TSU Thurgood Marshall School of Law Innocence Project Annual Report](#)
- [Texas Tech Innocence Program Annual Report](#)

Accross the State

The Texas Attorney General's Office issued opinion **GA-1030** regarding whether a justice of the peace may serve as a court-appointed investigator for an indigent defendant in a felony case. The AG's published summary of the opinion states "Chapter 27 of the Government Code does not directly prohibit a justice of the peace from simultaneously serving as a court-appointed investigator. Whether the Code of Judicial Conduct prohibits such dual service is a question for the State

Commission on Judicial Conduct to determine in the first instance. Whether any particular instance of this dual service creates an impermissible conflict of interest or loyalty is not a question we address here.”

White Papers Issued in Response to Forensic Problems

The [Texas Forensic Science Commission](#) and the [Texas Criminal Justice Integrity Unit](#) recently published two white papers that address problems associated with faulty forensic reports issued by an analyst in a state lab. The reports present the recommendations of stakeholder groups that were convened for roundtable discussions to consider [how to improve analyst certification](#) and [how to coordinate an effective response](#) when forensic breakdowns are discovered.

Policies and Standards Committee meeting

The Policies and Standards Committee meeting of the Texas Indigent Defense Commission will convene on Friday, January 24th beginning at 9 a.m. The meeting is open to the public and will be held in the Tom C. Clark Building, 6th Floor Conference Room, 205 West 14th Street, Austin, Texas 78701.

Training Opportunity

Next month, the American Bar Association at its [Midyear Meeting](#) will host its [Annual Summit on Indigent Defense Improvement](#) on **February 8th**. It's not too late to register and it promises to be an outstanding program.

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