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December 2012

indigent defense news in Texas

www.txcourts.gov/tidc

\$20 MILLION IN FORMULA GRANTS AWARDED TO TEXAS'S COUNTIES

The Commission adopted the FY2013 Formula Grants with \$20 million in funds using a new formula based 50% on population and 50% on indigent defense expenses. The formula takes into consideration reported administrative cost, regional programs and discretionary grants in the final calculation so that counties are neither harmed nor provided special benefit for these expenses. Finally, counties under 10,000 in population as of 2000 will no longer have a baseline used in the grant calculation. The new formula grants increase the portion of grants funds that counties can budget for most counties. The formula grants and their calculations have evolved over the years. In October 2012 the Commission and its staff convened at a strategic planning session to discuss whether there may be a better formula calculation to distribute the limited state funds available to counties pursuant to Section 79.037, Texas Government Code. (Continued on page four.)

Message from the Chair

Two of our Commission members' terms end on December 31st. At our last Commission meeting a few days ago the Commission presented Proclamations to express gratitude to Representative Pete Gallego and Senator Jeff Wentworth. Representative Gallego was one of the original members of the Texas Task Force on Indigent Defense in 2002. Over the years he served four years and during that time, last legislative session, he and Senator Whitmire, both, championed the passage of HB 1754 creating the Texas Indigent Defense Commission, streamlining processes for creating public defender offices, and permitting counties to establish managed assigned counsel programs. Senator Whitmire served six years on the Commission. The Commission wishes them both every success in their future endeavors.

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



Judge Keller with Mena Ramon (left), accepting on behalf of Representative Gallego, and Katie Ogden (right), accepting on behalf of Senator Whitmire



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

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

Laura Weiser, County Court at Law #1 Judge, Victoria County

Jeff Wentworth, State Senator

Glen Whitley, Tarrant County Judge

John Whitmire, State Senator

Around the Nation

Over 60 percent of New Mexican voters approved of a constitutional amendment to establish the Public Defender Department as an independent state agency and create an independent oversight agency for the Department ([link to NLADA article](#)). The passage of this amendment brings New Mexico into compliance with Principle #1 of the ABA Ten Principles of a Public Defense Delivery System ([link](#)), which states that the “public defense function, including the selection, funding, and payment of defense counsel, is independent.”

Around the Nation continues on page nine.

Message from the Executive Director

I hope this message finds everyone safe and sound following the holiday season. Now we look forward to a new year and legislative session during which we will explain to the legislature why increased funding for indigent defense is needed. There is a short article that I wrote for [County Magazine \(linked\)](#) regarding the Commission’s Legislative Appropriation Request. See pages 20 and 21. On page 22 is the Resolution passed by the Texas Judicial Council in support of additional state funding for indigent defense. Then beginning on pages 38-41 there is an excellent article on the Travis County Mental Health Public Defender Office, called *Spending Sanely*. We are pleased and honored to have an article in this newsletter written by Buck Files, President of the State Bar of Texas (see page eight).

There are several upcoming indigent defense training events coming up in the next several weeks and months:

The Ethics of Client Care and Procedural Justice: Practice Tips **January 15, 2013 1:30 pm to 3:30 pm, State Bar of Texas Webinar**

This program will focus on the procedural aspects of effectively interacting with a client. The idea sprung from thinking about what type of training could prove helpful in a mentoring program for less experienced criminal defense lawyers who take court appointments. This type of training is not readily available and there is a dearth of written materials reference court appointments. Some has been written on the concept of procedural justice and the courts. These writings provide a useful framework to measure the perception of justice received in the courts. The concept of procedural justice in a criminal setting probes a defendant’s perception of whether he or she was treated fairly, with respect, and in a neutral forum, regardless of the particular case outcome. When a client feels that he or she has been listened too and treated fairly, the likelihood of a client filing a grievance is lessened. ([Click here for registration information.](#))

Primer on Indigent Defense for Newly Elected Officials **January 17, 2013, 9am – noon, Location: Austin, State Capitol Extension Auditorium**

A summary of the core requirements of the fair defense law for newly elected judges, legislators, and their staffs at the Capitol. (Email terri.tuttle@txcourts.gov to register.)

8th Annual ABA Indigent Defense Summit -- Gideon at Fifty: The Way Forward

February 9, 2013, 7:30 am to 5 pm, Location: Dallas Hilton Anatole
([Click here for registration information.](#))

Commemorating Gideon’s 50th Anniversary

March 18, 2013, 8:30 am – noon, Location: Capitol Extension Auditorium
Sponsors: Senator Rodney Ellis, State Bar of Texas, Court of Criminal Appeals, Texas Criminal Defense Lawyers Association, TIDC

An event to recognize the 50th Anniversary of *Gideon v. Wainwright*, take stock of what has been accomplished, and discuss what lies ahead to realize the promise of *Gideon*. ([Click here for registration information.](#))

Best,

Jim Bethke
Executive Director



Texas Gideon Recognition 2012

Wichita County and its Public Defender's Office

The Texas Indigent Defense Commission is pleased to recognize local governments across Texas that strive to meet a high standard for indigent defense. **Wichita County** is the first Texas county to receive this recognition.

This recognition program is inspired by the upcoming 50th anniversary of the landmark U.S. Supreme Court case *Gideon vs. Wainwright* (March 18, 1963). Counties will be recognized based on how well their programs meet the principles of the Fair Defense Act and the American Bar Association's Ten Principles of a Public Defense Delivery System. Counties may receive recognition for programs or achievements that demonstrate a significant level of innovation, such as a new solution to a problem, significantly streamlining a process, a measurable and significant increase in productivity, or improved service to indigent defendants or other stakeholders. Recognition may also be given to counties with exceptionally high performing indigent defense systems. In recognizing a county, the Commission seeks to promote innovative, high performing policies that are replicable in other counties.

Wichita County supported the Commission in its seminal research measuring case outcomes related to indigent defense. The County has one of the most established public defender systems in the state. The county commissioners court, District and County judges, and the Public Defender's Office took the initiative to invite researchers to study the indigent defense system in place in Wichita County, specifically the public defender office's. The county's willingness to share Wichita County's indigent defense experience with researchers will benefit policymakers at all levels from the knowledge gained.

The program's participation in the research study provided evidence that clients represented by the public defender's office have better outcomes. They are more likely to have their case dismissed, and therefore have a lower chance of being found guilty. The higher dismissal rate helps the county to avoid about \$204 per case in court processing, prosecution, and pretrial detention costs, the study shows. A survey found public defenders spend more time with each defendant than other court-appointed lawyers. Even so, cost data demonstrates they still cost the county less per case. Cost and quality of counsel are perhaps the two most important considerations for counties contemplating a system for indigent defense service delivery. This study finds evidence that the public defender program supports both of these objectives.

The County, encouraged in particular by **County Judge Woody Gossom**, volunteered for this study and provided countless hours of assistance. County personnel provided researchers over five years of criminal justice and court records required for the study of the program. Wichita county officials made the research possible. **Jim Rasmussen, the Chief Public Defender**, was particularly gracious, providing researchers full access to his staff and to information about the office/program. Even local attorneys on the assigned counsel wheel provided input through the completion of surveys. Survey data from the study of the program shows public defender attorneys provide a higher level of service, and their work is supported by investigators in the majority of cases. Consequently, people represented by a public defender are more likely to have all charges against them dismissed, and are less likely to be found guilty overall. By the highest standard of defense – client acquittals – the public defender provides a better service than other court-appointed counsel. In addition, lower attorney and criminal case processing costs produce a net per case benefit of \$204 for the county and \$160 for each defendant represented by the public defender instead of a private assigned attorney. These findings should give other local jurisdictions in Texas the confidence to explore whether a public defender office might be a good fit in their community. The report answered these questions using data from Wichita County, Texas.



Above, left to right: Judge Sharon Keller, Judge Woodrow Gossom, Chief Public Defender James Rasmussen

Contact Terri Tuttle, Executive Assistant/Project Manager, to nominate a county or for more information about the Commission's Gideon Recognition program at (512)463-8015 or email her at terri.tuttle@txcourts.gov.

GRANTS AND REPORTING UPDATE

continued from page one

Five new/proposed formulas were considered. There are wide variances among counties in elements such as per capita spending before and after 2001, population, geographic location, prosecutorial filings, and market prices for legal services. No formula can capture all iterations of fairness. The Grants and Reporting Committee met on November 1, 2012 and adopted a new recommended formula and directed staff to review the formulas to identify all issues for the full Commission to meet and discuss on December 13, 2012.



The final Formula is:

- The sum of \$5000 plus;
- A calculation applied to the funds budgeted for FY2013 formula grants by the Commission based:
 - 50 percent on the County's percent of state population; and
 - 50 percent on the County's percent of statewide FY2012 direct indigent defense expenditures (as defined in Title 1, Part 8, Texas Administrative Code Sec. 173.202(1)-(3)):
 - less discretionary funds provided by the Commission for expenditures defined in Title 1, Part 8, Texas Administrative Code Sec. 173.202(1)-(3)
 - less the reimbursed costs of operating a regional program
 - the baseline requirements contained in Section E of the Request for Applications do not apply to counties with a 2000 Census population of less than 10,000 but do apply to all other counties.
- The County shall not receive more in funds than what was actually spent by the county in the prior year.

The formula provides three major advantages. First, counties have a larger portion of formula grant funds that can be budgeted each year. The two part population and equalization formula left most counties guessing whether they would receive money. This often had more to do with skyrocketing expenses in other counties more than their own expenses. Second, the new formula ensures that more counties now qualify for funds. Many counties could not surpass their baseline even though they spent thousands or tens of thousands in the indigent defense costs. Finally, the new formula is simple. Any person can calculate their grant using the formula above. Since the new formula is simple it will be easy to release additional funds into the program if the legislature released the Fair Defense Account funds later in the year.

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

"The proposed formula, which is based 50% on county population and 50% on the county's share of actual indigent defense expenditures, strikes me as a principled and fair mechanism for allocating limited funding to counties."

Senator Rodney Ellis



12/13/12 Press
Release: **INDIGENT
DEFENSE
COMMISSION
ANNOUNCES \$20
MILLION IN GRANTS
TO COUNTIES,
(See Grant Award
Schedule)**



Update on Harris County Public Defender Office

Article by: Alex Bunin, Chief Public Defender, Harris County

On December 6, 2010, the Harris County Public Defender's Office (PDO) started with Alex Bunin's first day as Chief Defender. There were no other employees, offices or equipment. Two years' later, the office has 62 employees, an entire floor of offices, and state of the art technology. Forty lawyers represent indigent clients in misdemeanor mental health cases, non-capital felonies, juvenile cases, and appeals. They are assisted by six investigators, three psychosocial workers, two information technology specialists, and 11 administrative staff.

Harris County received a four-year discretionary grant from the Texas Indigent Defense Commission to start the office. Now in its third fiscal year, the grant funds 20 percent of the office's budget and the remaining 80 percent is paid by Harris County. After one more year, Harris County will be solely responsible for funding.

As a grant requirement, Harris County contracted with the Council of State Governments, Justice Center, to study the PDO and make recommendations about the office. Recently, the Justice Center issued an interim report describing the indigent defense system in Harris County, as well as the functioning of the PDO's misdemeanor mental health and appellate divisions (with the felony and juvenile divisions to be assessed in a later report). Both divisions showed higher success rates than the defense bar generally. The misdemeanor mental health division had a higher rate of dismissals and less guilty pleas. The appellate division had a higher reversal rate.

Earlier this year, the PDO also received a grant from the United States Department of Justice, Bureau of Justice Assistance, in the amount of \$349,360. The grant is meant to contribute to indigent defense knowledge and practice by testing approaches to providing quality indigent defense services using the Ten Principles of a Public Defense Delivery System developed by the American Bar Association in 2002. Specifically, the PDO will implement the "Future Appointed Counsel Training Program," which will establish a training, mentoring, and supervision program for new private lawyers based on national principles, state guidelines, and best practices from around the country.

Staff of the Harris County Public Defender Office



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

POLICIES AND STANDARDS UPDATE

Readoption of CLE and Contract Defender Rules

At its meeting on December 13, 2013 the Commission readopted without change its rules concerning Minimum Continuing Legal Education Requirements and its rules concerning Contract Defender Program Requirements. The Commission determined that the original justification for the rules continues to exist. The Commission published the rules as part of the regular rule review process required by Government Code Chapter 2001 and received no comments on the proposed rule review.

Online Resources Available to Texas Counties

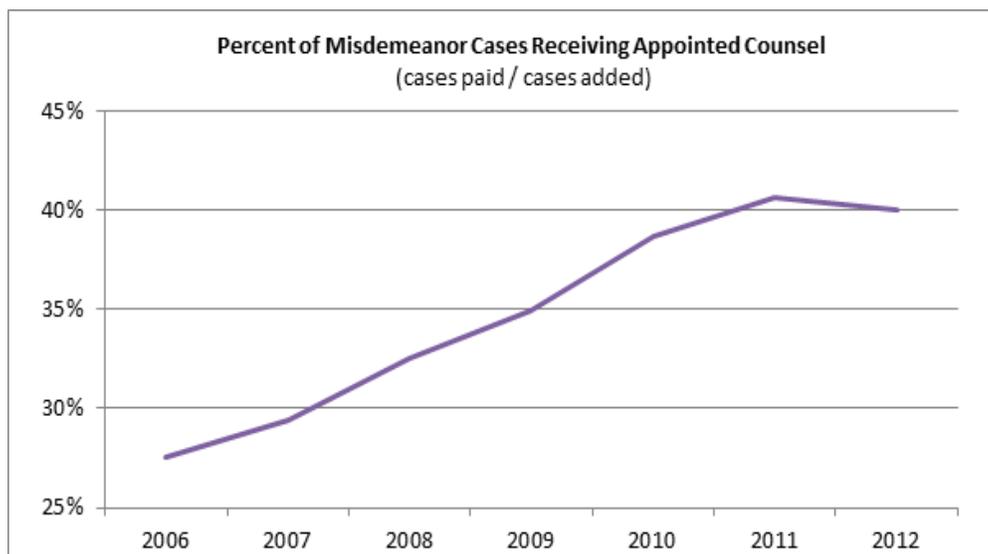
These are just a few of the most recent presentations and publications available on the [Commission website](#).

- November 13, 2012 Indigent Defense Workshop [agenda](#), [PowerPoint](#) and [audio recording](#)
- Presentation at NLADA Annual Conference December 6: [Planning, Collecting, and Analyzing Data in Setting Strategic Outcomes](#)
- [Flowcharts](#) describing Articles 16.22 and 17.032 of the Code of Criminal Procedure to aid jurisdictions in improving defense processes related to mental health issues
- [FY12 Indigent Defense Expenditure Report \(IDER\) Manual, Supplement for PDOs and Cover Letter](#) due November 1, 2012
- [Veterans Defender Resource](#), Published March 28th, 2012
- [Improved, Increased Access to Texas Indigent Defense Data Online](#)

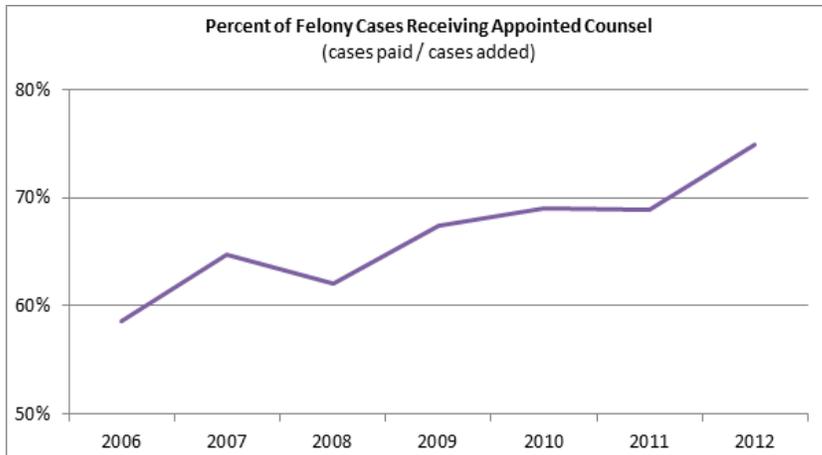
Indigent Defense Appointment Trends

As a result of the Fair Defense Act (FDA), jurisdictions have dramatically changed local procedures for appointing counsel. The FDA provided statutory requirements for jurisdictions to make prompt appointments of counsel and to report these cases and associated expenses to the Task Force on Indigent Defense (now the Texas Indigent Defense Commission). Since the first year of the FDA, the number of indigent persons served by counties has increased from approximately 324,000 persons to approximately 459,000 persons. Spending on indigent defense has increased from \$91.4 million in 2001 to \$207.5 million in 2012.

In addition to the prompt appointment requirements that went into effect in 2002, the legislature amended Article 1.051 of the Code of Criminal Procedure to provide waivers of counsel requirements in 2008. These statutory changes have caused the percent of misdemeanor cases receiving appointed counsel to increase. According to data reported to the Texas Indigent Defense Commission and to the Office of Court Administration, the percent of misdemeanor cases receiving appointed counsel rose from 27.5% in 2006 to 40.7% in 2011. This rise seemed to reach a plateau in 2011.



For felony cases, the percent of persons receiving appointed counsel has risen sporadically since 2006, from 58.7% in 2006 to 74.9% in 2012.



Williamson County Litigation Update

Recently the Texas Fair Defense Project (TFDP) and Williamson County reached a tentative settlement agreement in the Heckman v. Williamson County case, which was approved by the Williamson County Commissioners Court on November 20th. The case was originally filed by the TFDP in 2006 as a proposed class action on behalf of all misdemeanor defendants in the county courts at law in Williamson County. The suit named the county, constitutional county judge, all the county court at law judges, and magistrate as defendants.

The plaintiffs in Heckman alleged that the county and its judges provide defendants inaccurate information about the right to counsel, fail to make timely rulings on requests for counsel, and deny appointed counsel to financially eligible defendants. There was also a claim related to open courts, which is not specifically discussed below.

The defendants previously won a ruling at the 3rd District Court of Appeals dismissing the case holding that none of the named plaintiffs had standing to pursue all of the proposed classes' claims and thus never had standing to litigate certification.

Petitioners asked the Supreme Court of Texas to reinstate the litigation and arguments on it were heard by the court on November 9, 2011. On June 8, 2012 the Texas Supreme Court unanimously ruled that Heckman did have standing and a putative class of indigent misdemeanor defendants could proceed in its Section 1983 lawsuit alleging violations of the right to counsel in Williamson County, Texas. In reversing the 3rd District Court of Appeals decision dismissing the lawsuit, the Texas Supreme Court recognized that, "A criminal defendant's right to counsel--enshrined in both the United States and Texas Constitutions--ranks among the most important and fundamental rights in a free society." The Heckman opinion can be found here: <http://www.supreme.courts.state.tx.us/historical/2012/jun/100671.pdf>

Contact Wesley Shackelford, Deputy Director/Special Counsel, for more information about Commission Policies and Procedures at (512)936-6997 or email him at wesley.shackelford@txcourts.gov.

The settlement agreement:

- Requires the magistrate and judges in Williamson County to abide by the provisions of the Code of Criminal Procedure related accepting, transferring, and timely ruling upon requests for counsel;
- Creates several new ways for defendants to obtain information on the status of counsel requests once submitted and requires judges to timely notify defense lawyers of appointments once made;
- Requires the courts to follow the provisions of Art. 1.051, Code of Criminal Procedure, related to waivers of counsel;
- Provides for an enforcement mechanism that permits TFDP to monitor on a quarterly basis the county's compliance with the settlement agreement;
- Provides TFDP access to records maintained by the sheriff, jail, and courts, as well as to newly collected records maintained by the magistrate to facilitate review of attorney appointment procedures in the county;
- Relies on the benchmarks for substantial compliance in Texas Indigent Defense Commission's Rule 174.28, Texas Administrative Code, concerning prompt rulings on requests for counsel;
- Expires after four years or earlier as to any County Court at Law that completes eight consecutive quarters in which no action for enforcement or notice of non-compliance has been filed against that Court.



Message from the State Bar of Texas President Buck Files

One of the core purposes of the State Bar of Texas is to further access to the justice system for all Texans. I want to thank you for your dedication to providing this important service to the indigent. While you are working hard to serve Texas citizens, your dedicated State Bar staff is working hard to serve you and help you succeed. Think about it: A staff of talented individuals is working on your behalf, providing vast tools and resources for you, including many that won't cost you a dime. I want to share a few of them with you.

Recently, an attorney called to ask me an ethics question, and I referred her to the State Bar's Ethics Helpline. She was immediately suspicious and believed it would be a waste of her time to make the call. Yesterday, she sought me out to thank me for the recommendation and to tell me that the lawyer at the other end of the line spent over an hour with her covering all of the ethical issues in her case and answering all of her questions. If you need help on an ethics issue, call the free Ethics Helpline at (800) 532-3941 to receive non-binding advice -- this may help you avoid a grievance.

The Texas Lawyers' Assistance Program provides free and confidential crisis counseling and referrals for lawyers, judges, and law students facing substance abuse or mental health issues. Last year, TLAP worked with 431 lawyers in need and connected with 155 concerned colleagues, family members, and friends. Available 24 hours a day, 365 days a year, the toll-free number at (800) 343-8527 is staffed with knowledgeable professionals who can provide assistance to Texas lawyers in need. A number of other TLAP resources are also available on the State Bar's website, including videos and guides that focus on wellness, dealing with stress, depression, and substance abuse.

The State Bar of Texas provides Casemaker, a legal research tool, to all of its members -- for free. Casemaker allows lawyers to search the full text of cases dating to the 1920s and includes print and email functions. Users can also link to opinions from case citations in the course materials in TexasBarCLE's Online Library. Approximately 12,000 Texas lawyers are currently using Casemaker. This is only one of the many benefits that are available to the lawyers of Texas.

The State Bar's Resources for Tough Times, which are easily accessed at TexasBar.com, are vital programs to assist in building and managing your law practice. These include the career center (including an option to sign up for the email job alerts), member discounts, and professional development and practice management programs -- all designed to support you whether you're just starting a practice or looking to take your current one to the next level. To build your practice, consider using the Lawyer Information Referral Service. In addition to client referrals, participating lawyers also receive a 20 percent discount on the top-notch programs offered by TexasBarCLE.

TexasBarCLE's Law Practice Management program is another excellent resource. The LPM offers a wide range of free advice on starting and maintaining a practice, "how-to" brochures, product reviews, self-assessment, and much more. Check out the many other user-friendly legal research and practice-building options at TexasBarCLE.com. Of course, TexasBarCLE still offers the best live courses in the state.

The State Bar staff is here for you, striving daily toward the goal of helping you succeed. Make sure you visit TexasBar.com to take advantage of their hard work and see how you and your practice can flourish by using these -- and the many other -- outstanding benefits which you receive as a member of the State Bar of Texas. And again, thank you for what you do each day, ensuring access to justice for indigent Texans.

Buck Files

President, State Bar of Texas



Holiday Greetings Y'all! Pictured above, back row L-R: Brandon Dudley (Senator Ellis), Judge Laura Weiser, Judge Olen Underwood, Knox Fitzpatrick, Dr. Trey Marchbanks, Sharon Whitfield, Dr. Dottie Carmichael, Jim Bethke, Judge Glen Whitley, Bryan Wilson, Edwin Colfax, Justice Sherry Radack, Terri Tuttle, Dr. Tony Fabelo, Casey Kennedy (Office of Court Administration); front row L-R: Judge Sharon Keller, Carol Conner, Marissa Kubinski, Wesley Shackelford, Joel Lieurance. Not in photo above but pictured right is TIDC staff member/photographer Dominic Gonzales.



Around the Nation (continued from page two)

On January 22, 2013, the **Department of Justice and the National Association of Criminal Justice** will host a webinar focused on understanding state and federal resources. During the webinar, state and federal resources available to the public defense community will be highlighted, and the Justice Department's recent efforts to encourage jurisdictions to bring all system stakeholders together in the criminal justice planning process for the allocation of Byrne Justice Assistance Grant (Byrne JAG) funds will be discussed. Representatives from the Department of Justice will discuss funding opportunities available through the Byrne JAG program, federal support for public defense initiatives, current opportunities for training and technical assistance, and will highlight the work of DOJ's Access to Justice Initiative. In addition, webinar attendees will hear from state public defenders about the process of applying for grant funds and review strategies for integrating the indigent defense function into criminal justice resource planning. During this 50th anniversary year of *Gideon v. Wainwright*, the landmark case that secured the right to counsel in criminal proceedings, the Justice Department is placing renewed emphasis on helping states meet their constitutional obligation to provide effective representation to indigent defendants. The webinar will be held on January 22nd, 2013, at 3pm. [Register for the Webinar.](#)

Archived e-newsletters are available online.

Interactive Features:

If you're viewing this as a PDF, be sure to take advantage of many of this newsletter's interactive features. Many of the stories feature hyperlinks to additional material, including videos, reports, national news items.