



Texas Task Force on Indigent Defense

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Special Edition Newsletter

Indigent Defense-related Legislation

Four bills related to indigent defense were passed by the 80th Legislature and signed into law by the governor. Three of the bills included proposals that were adopted by the Task Force on Indigent Defense (Task Force) and presented to the legislature. The legislature also provided significant additional funding for indigent defense services. This special legislative update contains summaries of these bills, as well as the funding the legislature appropriated to assist counties.

Bill Summary

Below is a summary of the key bills that passed this session:

HB 1265 by Peña / Sponsor Sen. Seliger: HB 1265 makes minor technical changes to the Task Force on Indigent Defense's enabling statute. The first would allow the Task Force to meet four times per year rather than having to meet each quarter. The second change would strike the "ad hoc" from the definition of assigned counsel programs. An "ad hoc" appointment system allows for a judge to appoint attorneys arbitrarily instead of from a rotational list of attorneys, which is required by the Fair Defense Act. This removes the improper use of the term "ad hoc".

HB 1267 by Peña / Sponsor Sen. Seliger: HB 1267 allows appointed counsel to appeal a judge's failure to act on a request for payment within 60 days. This will encourage judges to act timely on attorney fee vouchers submitted. It also streamlines the payment system for paying attorneys for representing Texas Department of Criminal Justice inmates who are charged with new crimes who may not be represented by the State Counsel for Offenders. Under the bill, counties will pay appointed counsel for services provided according the local fee schedule and the comptroller shall reimburse counties for the cost of inmate indigent defense within 60 days after receiving a request for reimbursement. It also ensures that indigent inmate defense is governed by the Fair Defense Act. And last, it creates a new \$2 fee on criminal convictions (excluding pedestrian or parking related offenses) to be used for indigent defense services. The fee is expected to generate about \$7.6 million in new revenue annually.

SB 168 by Ellis / Sponsor Rep. Flores: SB 168 eliminates the scheduled 2007 sunset of the State Bar legal services fee, half of which is allocated to

See the [Task Force's Strategic Plan and FY06 Annual and Expenditure Report](#)

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indigent defense and half to civil legal services to the poor. The fee generates almost \$2 million per year for indigent defense, which must be used for demonstration and pilot programs, and to date has been used to fund six new public defender offices in Texas.

HB 1178 by Escobar / Sponsor Sen. Ellis: HB 1178 clarifies the circumstances under which a court is authorized to obtain from a defendant a waiver of the right counsel and under which circumstances an attorney representing the state is authorized to communicate with a defendant who is not represented by counsel. It also authorizes a court to proceed with a matter on 10 days notice to the defendant if an indigent defendant waives counsel or refuses appointed counsel and appears without counsel after given reasonable opportunity to request appointment. The bill also invalidates the accused's waiver of counsel if (A) the state's attorney attempts to obtain a defendant's waiver or communicates with a defendant who has requested counsel and not been denied appointment under Art. 26.04, Code of Criminal Procedure, and subsequently either failed to retain private counsel or waived the opportunity to retain private counsel or (B) the judge or magistrate directed or encouraged the defendant to communicate with the state's attorney without first advising the defendant of the right to counsel, procedures for requesting counsel, given the defendant reasonable opportunity to request appointed counsel, and subsequently the defendant was not denied appointment of counsel under Art. 26.04 and failed to retain or waived the right to counsel. Lastly, under the bill a judge or magistrate may not order a defendant rearrested or require another, higher bond because a defendant withdraws the waiver of counsel or requests the assistance of counsel, appointed or retained.

Funding

Also, through documenting of the need for better funding in Texas the legislature increased indigent defense funding by approximately 50 percent in HB 1267—the largest state increase since the inception of the Fair Defense Act in 2001. Texas currently ranks 43rd out of the 50 states-- last out of the ten most populous states. This will provide some needed relief to local government and help Texas continue its efforts to develop a more effective indigent defense delivery system. Otherwise, the existing funding streams (court costs, legal services fee, and surety bond fee) were continued and the amount of revenue is expected to slowly increase. On a related note, state indigent defense funding also appears poised to increase based on action by the 79th Legislature with regard to increasing juror pay. The revenue stream created by the juror pay bill has been exceeding the reimbursements to counties and any surplus in the fund over \$10 million is directed to indigent defense services, which is expected to be reached next year. The legislature also continued funding for innocence projects in the four public law schools up to \$100,000 per year per school. The funding for the Task Force is contained within the Office of Court Administration's budget in Article IV of the bill, which begins on page 489 of 922 in the [document](#).

Click [here](#) for a full update on the 80th Legislature, including indigent defense related bills that did not pass.