

## **TEXAS INDIGENT DEFENSE COMMISSION – ATTORNEY CASELOAD REPORTING & WEIGHTED CASELOAD STUDY**

HB 1318 was the most significant bill related to indigent defense passed by the 83<sup>rd</sup> Texas Legislature. It includes significant new reporting requirements related to caseloads handled by attorneys providing representation to indigent defendants. Commission staff met with a variety of stakeholders, including court and county officials, criminal defense practitioners, legislative staff, national authorities, and others to find ways to effectively implement HB 1318 in a seamless manner while providing meaningful information to policymakers.

**New Attorney Reporting – HB 1318** included the following provision in Article 26.04, Code of Criminal Procedure:

An attorney appointed under this article shall: ... not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code.

Beginning October 15, 2014, the bill requires all attorneys handling indigent defense cases to annually report to the county for the preceding fiscal year (October 1<sup>st</sup> - September 30<sup>th</sup>) the percentage of the attorney's practice time that was dedicated to appointed 1) criminal cases (trial and appeals) and 2) juvenile work (trial and appeals) in the county. This report should not include work on other types of appointed work such as CPS or guardianship cases, nor should it include practice time devoted to federal criminal appointments. Attorneys must submit this report to each county in which they accept appointments.

With significant input from TCDLA leadership, the Commission adopted this [form](#) and reporting instructions. The Commission is working with our partners at Texas A&M's Public Policy Research Institute (PPRI) to create an electronic attorney reporting portal. This will permit attorneys to report their work in all counties at the same time directly to the Commission, with the report viewable by the counties. The judges in each county may specify through their indigent defense plan the method for attorneys to use for submitting their report (online or paper form).

Attorneys are not required to use a particular methodology to complete the practice time report. Some may do so by using time records, if they keep such records. Other attorneys may use a case counting methodology. The reporting form will ask the attorney to note what method(s) they used to calculate the percentage figures reported.

The Commission is working with TCDLA to develop a worksheet(s) that attorneys may use to help calculate the practice time percentages. The worksheet will help an attorney allocate their practice time among various case types and counties. Use of the worksheet is strictly voluntary and will not be submitted to the county or Commission.

Penalties for failing to submit a required practice time report by the October 15<sup>th</sup> due date may be prescribed by the judges handling criminal or juvenile cases in each county. Many judges have already chosen to amend their indigent defense plans to provide for an attorney's removal from the list of attorneys eligible to receive future court appointments until they complete the report. This is similar to current enforcement of the annual CLE requirements. Please review your local plan available at:

<http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx>

**New County Reporting of Attorney Caseloads – HB 1318** included the following provision in Section 79.036, Government Code:

Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j)(4), Code of Criminal Procedure.

In addition to the attorney reporting requirements above, starting November 1, 2014 the bill requires each county to submit to the Commission annually the information provided to the county by the 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.

As to the new county reporting of case and fee data by attorney, the Commission decided based on its consultation with stakeholders to build on the existing reporting infrastructure in the annual Indigent Defense Expenditure Report (IDER). The IDER already requires county auditors (or treasurers) to report the aggregate number of cases paid by case type (Juvenile, Capital Murder, Adult Felony, Adult Misdemeanor, Juvenile Appeals, Felony Appeals, and Misdemeanor Appeals) and by court along with the amount paid each year by November 1st (the same date as the new reporting requirement). The new report will require this information to be broken down by attorney. County auditors have indicated that they already collect this information as part of the attorney payment process.

**Weighted Caseload Study – HB 1318** included the following provision:

Not later than January 1, 2015, the Texas Indigent Defense Commission shall conduct and publish a study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that, when the attorney's total caseload, including appointments made under Article 26.04, Code of Criminal Procedure, appointments made under Title 3, Family Code, and other work, is considered, allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation. The study must be based on relevant policies, performance guidelines, and best practices. In conducting the study ... the commission shall consult with criminal defense attorneys, criminal defense attorney associations, the judiciary, and any other organization engaged in the development of criminal indigent defense policy that the commission considers appropriate.

The goal is to provide policymakers with an objective analysis of the time required to represent different types of court-appointed cases. This kind of study has not been done in Texas before, but jurisdictions around the country have undertaken similar research because they have recognized the value of understanding data and its power to help improve their justice systems. The Commission is working with PPRI to conduct the weighted caseload study. Attorneys have been recruited to document and categorize their time spent on cases for twelve weeks using simple timekeeping software developed by JusticeWorks. At the conclusion of the data collection phase, a panel of experts will review the time data together with survey data and make recommendations regarding the time demands of various types of cases.

While this study will not be the last word on indigent defense needs in Texas, it will be an evidence informed starting point to demonstrate what is necessary to provide appropriate representation in various types of cases. The information learned through the study may serve as a management tool to guide decision making for public defenders and managed assigned counsel systems. For assigned counsel systems, the study will provide objective information to the courts about the resources different types of cases typically demand. This study will also provide policymakers at the state and local level with objective information upon which to base funding decisions. To learn more about this research please visit the study website at <http://texaswcl.tamu.edu>.