

New Judges Orientation

February 4, 2015
Lubbock, Texas

James D. Bethke, Executive Director



Who We Are

Thirteen-member governing board administratively attached to the Office of Court Administration. Jim Bethke is the Executive Director. The Commission has eleven full-time staff.

OFFICERS:

Honorable Sharon Keller	Chair – Presiding Judge, Court of Criminal Appeals
Honorable Olen Underwood	Vice-Chair – Presiding Judge, 2 nd Administrative Judicial Region of Texas

EX OFFICIO MEMBERS:

Honorable Sharon Keller	Austin, Presiding Judge, Court of Criminal Appeals
Honorable Nathan Hecht	Austin, Chief Justice, Supreme Court
Honorable John Whitmire	Houston, State Senator
Honorable Royce West	Dallas, State Senator
Honorable Roberto Alonzo	Dallas, State Representative
Honorable Abel Herrero	Robstown, State Representative

MEMBERS APPOINTED BY GOVERNOR:

Honorable Olen Underwood	Conroe, Presiding Judge, 2 nd Administrative Judicial Region of Texas
Honorable Sherry Radack	Houston, Chief Justice, First Court of Appeals
Honorable Jon Burrows	Temple, Bell County Judge
Honorable B. Glen Whitley	Hurst, Tarrant County Judge
Honorable Linda Rodriguez Anthony Odiorne	San Marcos, Hays County Court at Law #2 Burnet, Assistant Public Defender, Regional Public Defender Office for Capital Cases
Don Hase	Arlington, Attorney, Ball & Hase

What We Do

Our Purpose

Is to provide financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

Our Grant Program

In FY 2014 over \$48 million awarded to Texas counties.
Formula grants awards totaled \$37 million (254 Counties)
Discretionary grant totaled \$11 million (22 Counties)

Our Fiscal and Policy Monitoring Program

The Commission monitors each county that receives a grant to ensure state money is being properly spent and accounted for and to enforce compliance by the county with the conditions of the grant, as well as with state and local rules and regulations.

Our Innocence Program

Since 2005, the Commission provides up to \$100,000 annually to University of Texas School of Law, Texas Tech University School of Law, the Thurgood Marshall School of Law, and the University of Houston Law Center to operate innocence clinics. This funding has contributed towards 11 exonerations.

Staff

Executive Director:
James D. Bethke

Marissa Kubinski, Executive Assistant

Wesley Shackelford, Deputy Director/
Special Counsel

Sharon Whitfield, Budget Analyst
Joan Thomas, Publications & Analyst

Edwin Colfax, Grants Manager
Dominic Gonzales, Associate Grants Manager
Traci Cruz, Grants Coordinator

Joel Lieurance, Senior Policy Analyst
Jamie Dickson, Policy Analyst
Debra Stewart, Fiscal Monitor

<http://tidc.texas.gov>

512-936-6994



TIDC Staff



512-936-6994

Gideon vs. Wainwright (1963)

In our adversarial system of criminal justice....

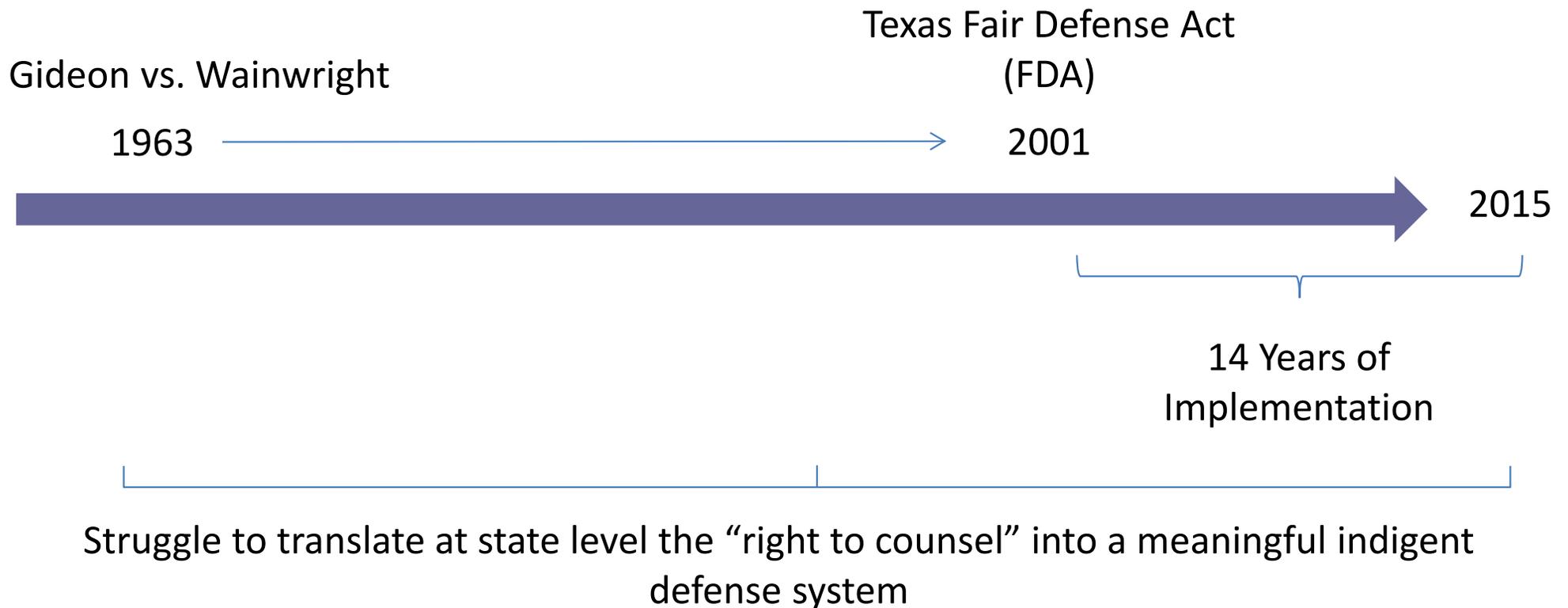
With government “quite properly” spending “vast sums of money to establish machinery to try defendants accused of crime”.....you need

..... “procedural and substantive safeguard designed to assure fair trials before impartial tribunals in which defendants stands equal before the law”

“This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

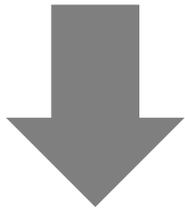
- Gideon v. Wainwright, 373 US 335 (1963)

Long Road to Make Indigent Defense Meaningful in Texas



Fair Defense Act of 2001 Adopted to Address Major Grievances with Texas Indigent Defense

**Texas Indigent Defense Commission
(formerly Texas Task Force on Indigent Defense)**



Set infrastructure to address grievances and implement FDA in 2001

No uniformity in local indigent defense appointment practices

Judges' discretion to select counsel, pay fees and determine who is indigent fueled appearance of cronyism

No consistent standards regarding training and experience

No state funding or oversight

Few Public Defender's Offices

Appearance of inconsistencies in qualifications for death penalty cases

No reporting on budget/performance

Structure in Place to Indigent Defense in Texas

Fair Defense Act
Passed in 2001
&
TIDC Created

Process Standards

Timing of Appointment

Method of Appointment

Compensation

Qualifications

Oversight

Required Plans

Transparency & Data
from New Reports

Fiscal & Program
Monitoring

State Funding

State Provides Some Funding to
Support Indigent Defense

Grants for Improvements

Improve Quality of Representation

Meets Constitutional Standards

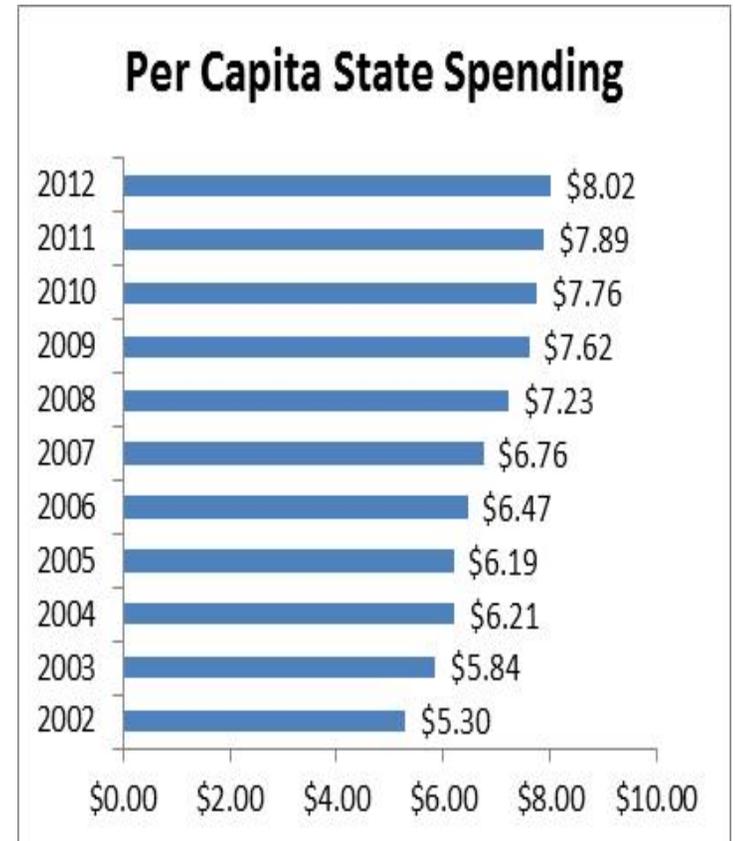
Heightens “prima facie”
legitimacy

Improves “Justice Outcomes”

Texas Per Capita Spending

Bottom 10 in nation

Counties pay over 85%



TX Courts Statistic of the Day



Indigent Defense FY 2014

**TOTAL
NUMBER
OF CASES
ADDED**

801,587

MISDEMEANOR 530,335

FELONY 271,252

415,753

Cases with
Appointed
Counsel

42%
Misdemeanors

52%
Cases
Represented by
Appointed
Counsel

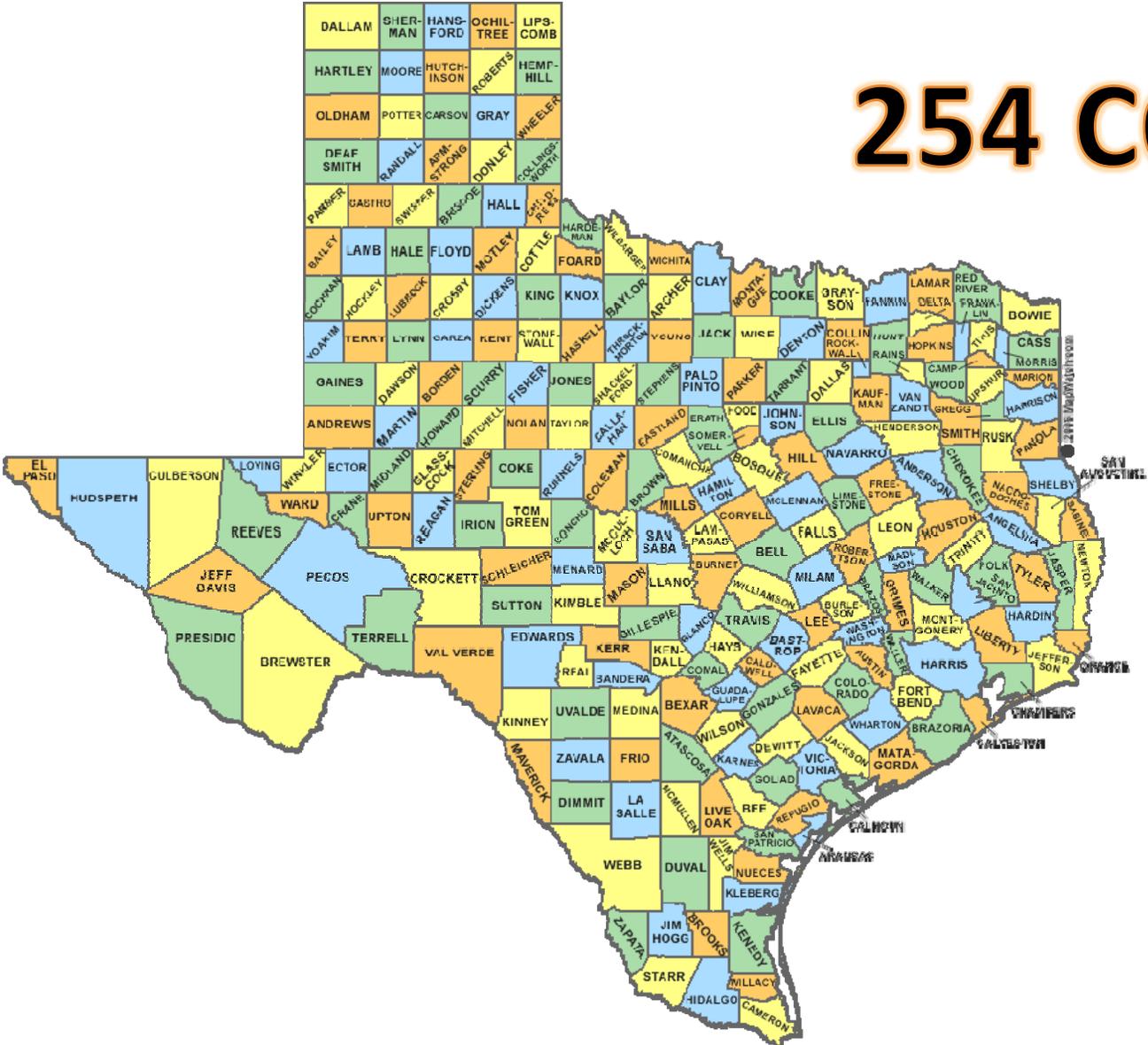
71%
Felonies



6,092

Attorneys Appointed to Represent
Indigent Defendants

254 COUNTIES



Fair Defense Act Framework:

Basic Legal Requirements:

- Timeframes for appointment of counsel
- Minimum attorney qualifications
- Fair, neutral, and non-discriminatory attorney selection process
- Standard of indigence
- Standard attorney fee schedule and payment process

Local Reporting Requirements:

- Indigent Defense Plan
- Indigent Defense Expenditures
- Appointed Attorney Caseload Numbers

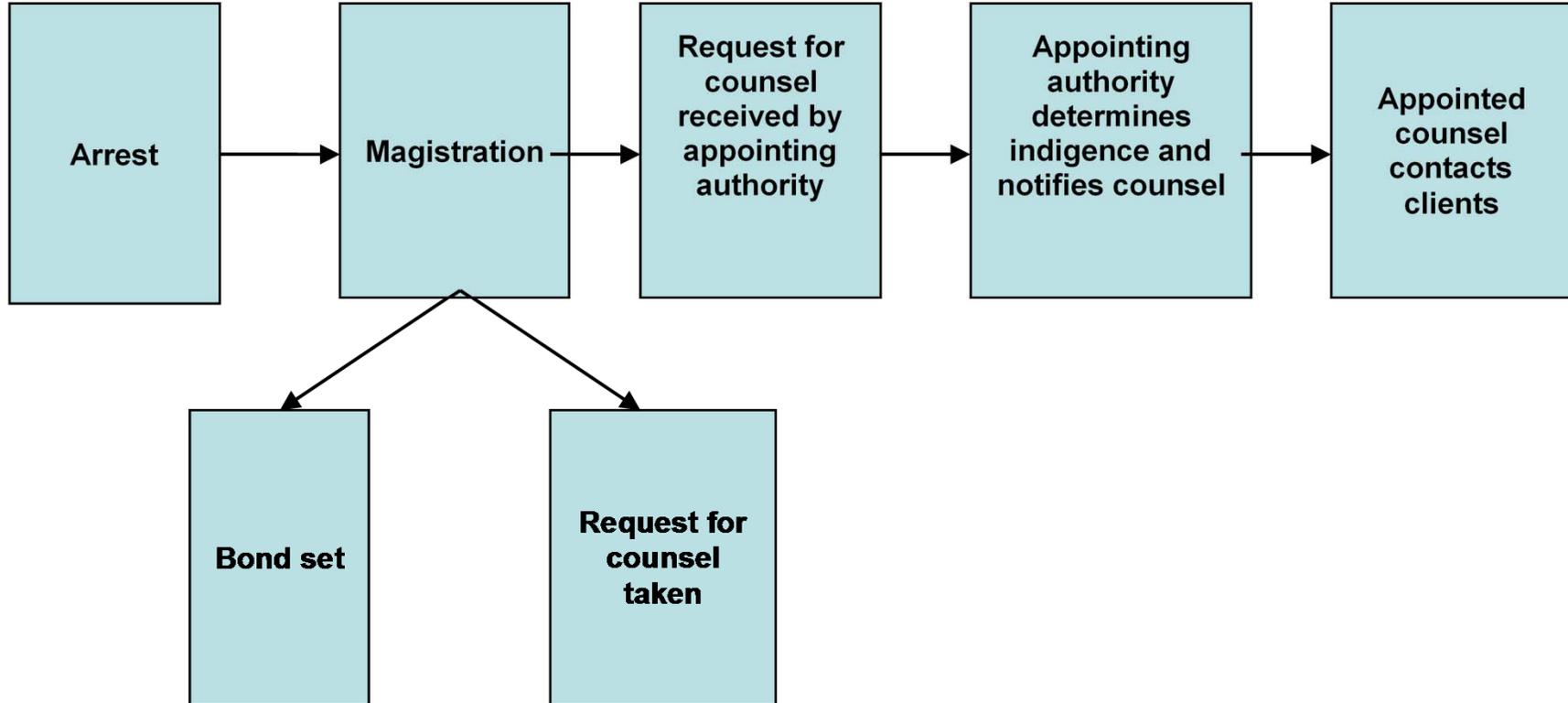
Timeline for *Appointment of Counsel* Counties with Population Over 250,000

48 hours

24 hours

1 working day

1 working day



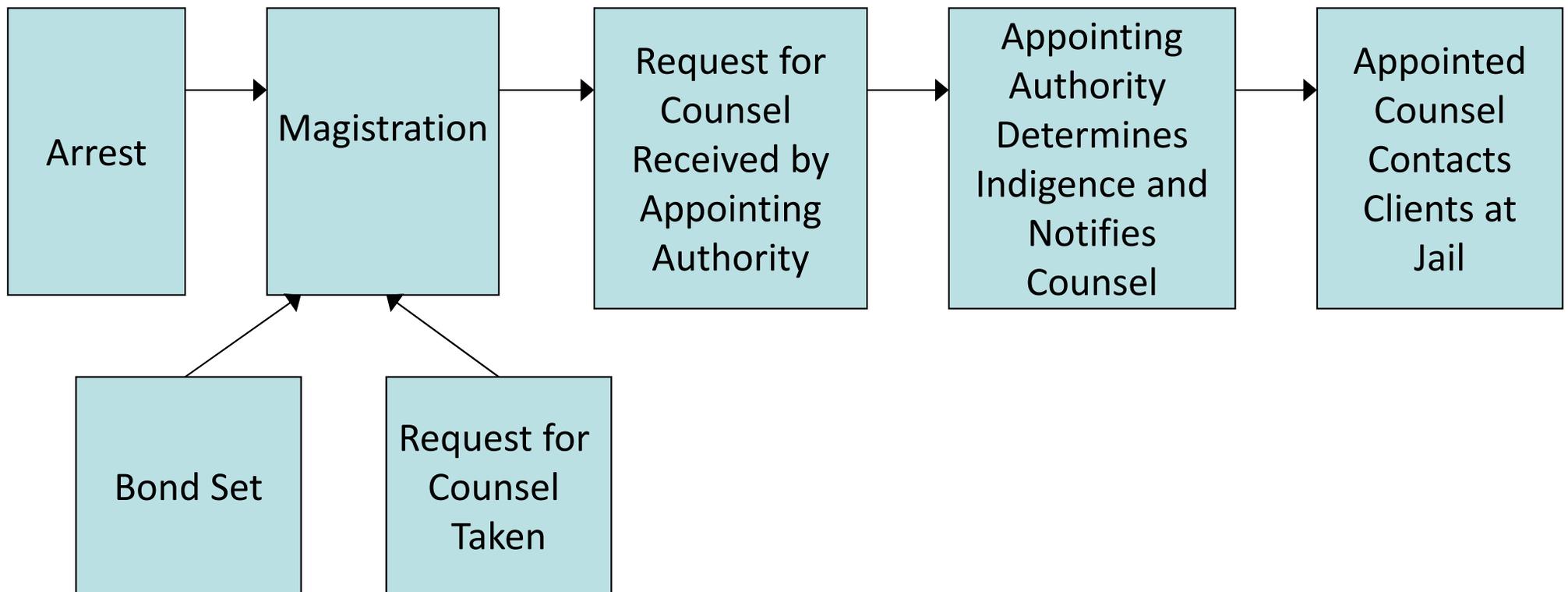
Timeline for *Appointment of Counsel* Counties with Population UNDER 250,000

48 hours

24 hours

3 working days

1 working day



Statutory Timelines for Taking and Ruling Upon Requests

24 hours to transfer request for counsel

Article 15.17 Hearing

- All persons asked if they want to request counsel
- Financial forms completed at time of hearing
- Financial forms sent to appointing authority within 24 hours



Appointing Courts

- Requests for counsel ruled upon w/in one working day
- Ruling based on standard of indigence stated in jurisdiction's indigent defense plan
- Ruling cannot be delayed if defendant bonds
- If appointed, counsel stays with case through case disposition

Fair Defense Act \ Key Provisions

Code of Criminal Procedure:

Art. 1.051. Right to Representation by Counsel

Art. 15.17. Duties of Arresting Officer and Magistrate

Art. 26.04. Procedures for Appointing Counsel

Art. 26.05. Compensation of Counsel Appointed

Family Code:

Sec. 51.10. Right to Assistance of Attorney

Sec. 51.101. Appointment of Attorney

Sec. 51.102. Appointment of Counsel Plan

Fair Defense Act \ Key Provisions

Government Code:

Chapter 79. Texas Indigent Defense Commission

Sec. 79.035. County Reporting Plan;

Sec. 79.036. Indigent Defense Information

Sec. 79.037. Technical Support; Grants

Texas Administrative Code:

Chapter 174: Indigent Defense Policies & Standards

Fair Defense Act Requirements

Statutory Requirement	Texas Statute
Arrestees must be taken before a magistrate for a hearing within 48 hours of arrest.	CCP 15.17(a)
For every hearing pursuant to CCP 15.17, the magistrate must make a record of informing the person of the person's right to request appointment of counsel, asking the person whether the person wants to request, and whether the person requested.	CCP 15.17(e)
Magistrate must transmit request for counsel to the appointing authority within 24 hours (if magistrate not authorized to make appointment).	CCP 15.17(a)
The judge (or designee) must rule on requests for counsel and appoint counsel to indigent defendants before the end of the first working day after the date on which the court or court's designee receives the defendant's request for appointment of counsel in counties of population of 250,000 or more, or by the end of the third working day following receipt of request in counties of population less than 250,000.	CCP 1.051(c)

Fair Defense Act Requirements

continued

Statutory Requirement	Texas Statute
For persons out of custody, counsel must be appointed at defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.	CCP 1.051(j), and <i>Rothgery v. Gillespie County</i> , 128 S. Ct. 2578 (2008)
Appointed attorney must contact client by the end of the first working day after the day the attorney is appointed.	CCP 26.04(j)(1)
Appointed attorney must make every reasonable effort to interview defendant as soon as practicable after appointment.	CCP 26.04(j)(1)
For assigned counsel jurisdictions, assignment of counsel must be fair, neutral and non-discriminatory	CCP 26.04(a)
For assigned counsel jurisdictions, the court must make a finding of good cause on the record for any appointment out of order of the regular rotation list.	CCP 26.04(a)

What's Changed in this County?

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	Texas 2014
Felony Charges Added (from OCA report)	1,777	1,053	1,803	1,793	2,047	2,022	2,064	2,314	2,362	270,401
Felony Cases Paid	1,061	1,123	1,068	1,243	1,224	1,221	1,182	1,277	1,530	192,710
% Felony Charges Defended with Appointed Counsel	59.71%	106.65%	59.23%	69.33%	59.79%	60.39%	57.27%	55.19%	64.78%	71.27%
Misdemeanor Charges Added (from OCA report)	9,849	11,344	9,669	9,168	9,826	10,043	11,171	10,512	10,020	530,335
Misdemeanor Cases Paid	793	1,273	1,506	2,622	3,242	3,372	3,741	4,014	4,158	223,043
% Misdemeanor Charges Defended with Appointed Counsel	8.05%	11.22%	15.58%	28.60%	32.99%	33.58%	33.49%	38.18%	41.50%	42.06%

Heckman v. Williamson County, 369 S.W.3d 137, 159 (Tex. 2012)

Class action suit brought by **Fair Defense Project** against Williamson County alleging:

- County failed to inform accused persons of their right to counsel
- County provided inaccurate information to accused persons about their ability to qualify for appointed counsel
- County failed to provide counsel to indigent defendants who had requested counsel
- County permitted prosecutors to confront uncounseled accused persons regarding the merits of their cases without allowing them to request appointment of counsel

Heckman v. Williamson County, continued

- Texas Supreme Court allowed the class action suit to go forward

“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 plaintiffs in this civil action assert that they, and other similarly situated indigent criminal defendants, have been deprived of that right. . . .We reverse the court of appeals' judgment and remand to the trial court for further proceedings.”

- Parties later reached a settlement agreement.

Still an Issue?

- **2007 (regarding 2006 data) – TIDC Sends first Zero Appointment letter:**
 - **That year there were 23 counties** who did not report any misdemeanor cases paid.
- **In 2014, there were 9 counties** who reported no misdemeanor appointments.

<http://tidc.texas.gov>



Home

Commission ▾

Grants & Reporting ▾

Policies & Standards ▾

Local Plans ▾

Monitoring ▾

Innocence ▾

Resources ▾

Welcome to the Texas Indigent Defense Commission

A permanent standing committee of the [Texas Judicial Council](#), governed by a [board](#) consisting of eight ex officio members and five members appointed by the Governor.

SEARCH

INDIGENT DEFENSE DATA FOR TEXAS

The Texas Indigent Defense Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law. The purpose of this website is to provide access to the data that drives the Commission's work as well as information about indigent defense.

GET LOCAL DATA

LOGIN



WHAT'S NEW

Press Release: Weighted Caseload Study

The Commission released Guidelines for Indigent Defense Caseloads presenting the findings of the state's first criminal defense weighted caseload study. 

PUBLICATIONS

Guidelines for Indigent Defense Caseloads

01/14/2015

The Weighted Caseload Study was prepared by the Public Policy Research Institute (PPRI) with a Preface by Norman Lefstein, Professor of Law and Dean Emeritus at the Indiana University School of Law... 24

Login to Update Contact Info

- Contact Megan McIntire
- (979) 845-1041 or MMcIntire@ppri.tamu.edu

-OR-

Constitutional County Judge

Robert Johnston
703 N. Mallard, Suite 101
Palestine, TX 75801

phone: 903-723-7406
fax: 903-723-7494
email: rjohnston@co.anderson.tx.us



Change

Local Administrative District Judge

Deborah Oakes Evans
500 N. Church, Room 30
Palestine, TX 75801

phone: 903-723-7415
fax: 903-723-7803
email: judge87th@co.anderson.tx.us



Change

Other Counties: Leon (LADJ)

Update yourself on <http://tidc.tamu.edu>

Commission Grant Program

Two types:

Formula Grants

Discretionary Grants

Formula Grant Program

Formula based 50% on Population and 50% on prior year's Expenses

Requirements:

- Compliant with state reporting requirements;
- Compliant with or action plan implemented to satisfy monitor findings
- Compliant with Fair Defense Act requirements

Timeline for Formula Grants

September	November 1st	November 21 st
RFA is Released	IDER is Due	Formula Application Due Date
	(Auditor Expenditure Report)	

January	Late April	Late July	Late Sept/Oct
First Payment	Second Payment	Third Payment	Fourth Payment
Q1	Q2	Q3	Q4

Four Types of Discretionary Grants

Competitive Discretionary Grants

- Awarded to assist counties in developing new, innovative programs or processes to improve delivery of indigent defense services.
- Prioritized for regional programs and direct client services
- Single and multi-year grants

Technical Support Grants

- Increase knowledge base about indigent defense or
- Establish program that may be replicated by other jurisdictions.

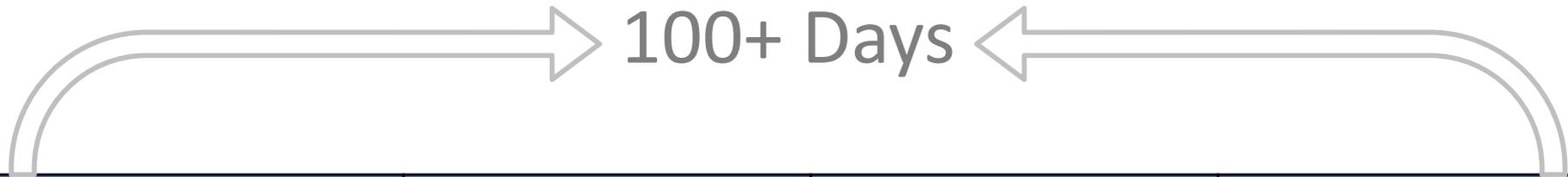
Targeted Specific Grants

- Available to counties with a monitor finding of non-compliance
- Grant is intended to remedy non-compliance

Extraordinary Expense Grants

- Available to counties that demonstrate indigent defense expenses which constitute financial hardship for the county.

Discretionary Grant Cycle



January	February	March	May
RFA is Released	Application Training	Tier 1 is Due	Application is Due
(Jan 27 th)	(February 27 th)	March 13 th	May 9 th

June	August	September	October
Commission Meets	SGA is negotiated		Begin Program Activities
			October 1 st

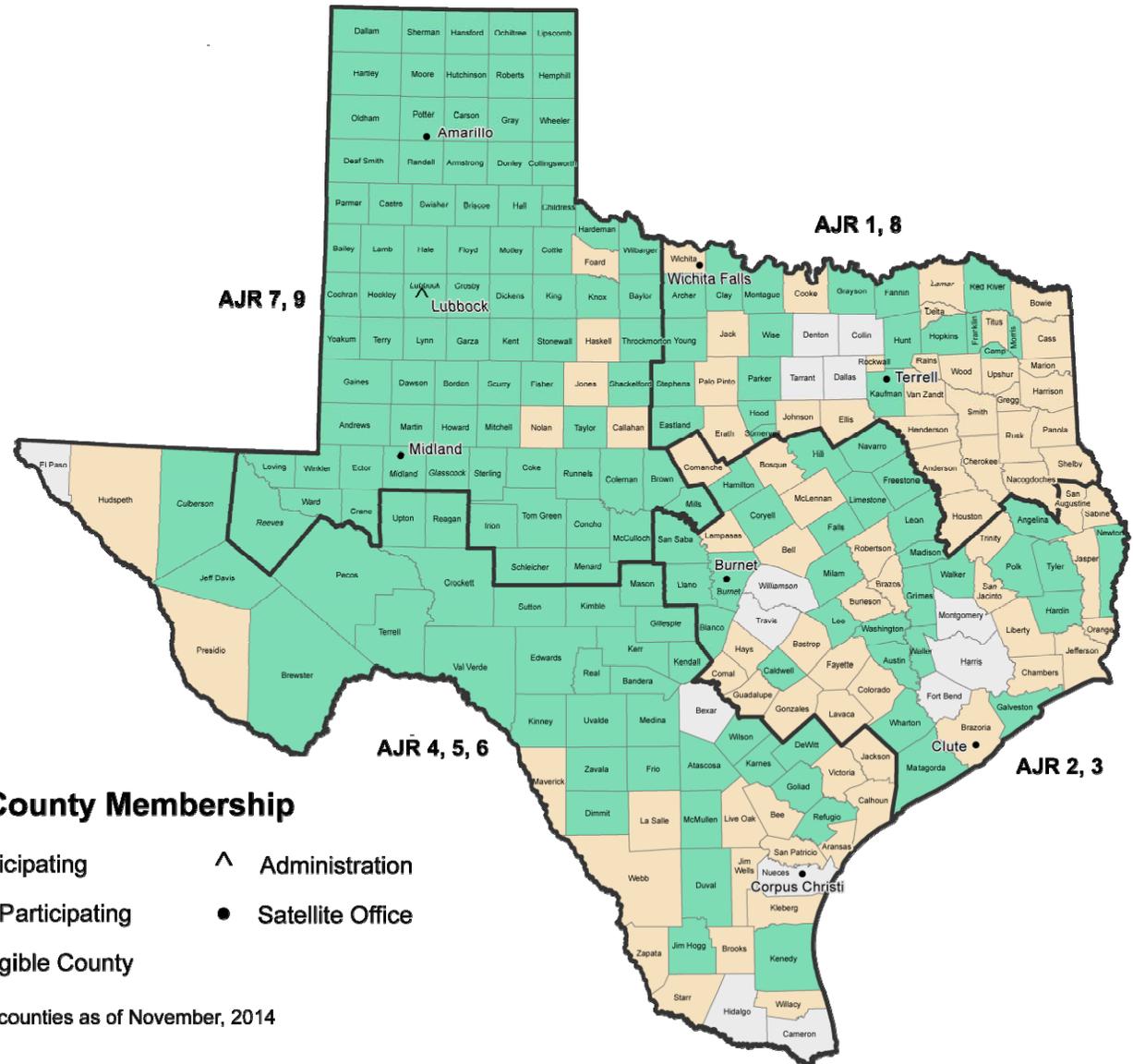
Regional Public Defender Office for Capital Cases

- Lubbock County Serves 162 Counties
- Operates in all nine (9) Administrative Judicial Regions
- Recognized by National Association of Counties Achievement Award
- Texas Association of Counties Best Practices Award

RPDO County Membership

- Participating
- Not Participating
- Ineligible County
- ^ Administration
- Satellite Office

Participating counties as of November, 2014



Death Penalty “Insurance” for Counties

Recognition

Lubbock Recognized Nationally

The National Association of Counties (NACO) presented Lubbock County with an Achievement Award for pioneering the Regional Public Defender Office. NACO presents Achievement Awards to recognize unique, innovative county programs. Applications for the awards are judged—in part—by whether they modernize county government and increase services to county residents.

The Texas Association of Counties (TAC) Leadership Foundation also awarded Lubbock its Best Practices award for the RPDO.

The cost of a capital murder case can easily bankrupt a rural county. The RPDO was recognized as a way to mitigate the potential costs associated with capital cases, which led to the following headline in [County](#), TAC’s monthly magazine.



Office Evaluation/Assessment



Meet State Bar Capital Defense Guidelines

Independence from Judicial Influence

More Prompt and More Frequent Capital Team Appointment

Better Non-Attorney Defense Team Services

Greater Investment in Mitigation to Increase Plea Rates

Fewer Cases Ending in a Death Sentence

Lower Average Cost-per-Case

Value for Member Counties

Other Examples of Discretionary Grants

County	Program Title
Bee	Regional Public Defender Office: Bee, Live Oak, and McMullen Counties
Bell	Mental Health Case Workers for Assigned Counsel System
Burnet	Burnet County Public Defender Office
Collin	Mental Health Managed Counsel Program
Dickens	Caprock Regional Public Defender Office / Texas Tech University School of Law
El Paso	Public Defender for a Problem Solving Court
Fort Bend	Mental Health Public Defender Program
Harris	Harris County Public Defender Office
Hidalgo	Hidalgo County Public Defender's Office - Juvenile Section
Kaufman	Mental Health Attorney/Advocate Team
Lubbock	Regional Public Defender Office for Capital Cases
Lubbock	Private Defender Office (Managed Assigned Counsel Program)
McLennan	Indigent Defense Coordinator
Montgomery	Mental Health Managed Assigned Counsel Program
Wichita	Mental Health Social Worker for Public Defender Office
Travis	Capital Area Private Defender Services

Staff Contacts / for Grant Help

Contacts:

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dgonzales@tidc.texas.gov

Traci Cruz: 512-936-7551
tcruz@tidc.texas.gov

TIDC requesting **\$196.8 Million** to Close the Funding Gap

