

From: Texas Indigent Defense Commission
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Subject: 2015 Winter Edition Newsletter



Indigent Defense Newsletter 2015 Winter Edition

NEXT COMMISSION MEETING

Friday, March 6, 2015, 9:00 a.m. to noon
Court of Criminal Appeals Courtroom, 201 W. 14th St.
Supreme Court Building, Austin, TX

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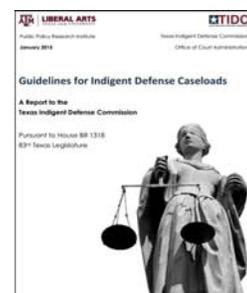
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Message from Chair

The Commission recently published its [FY 2014 Annual and Expenditure Report](#) and has updated the [Fair Defense Law: A Primer for Texas Officials](#). I am also happy to report the publication of the [Texas Guidelines for Indigent Defense Caseloads](#). The Commission partnered with Texas A&M University's Public Policy Research Institute (PPRI) to conduct the legislatively mandated study on criminal defense attorney caseloads. The final report was issued on January 15th and includes recommendations on attorney time needed for various types of cases. For more details, see [Guidelines for Indigent Defense Caseloads Published](#) below.



*Guidelines for Indigent
Defense Caseloads*

In other news, the Commission awarded FY 2015 Formula Grants totaling \$24 million and is currently administering \$9.5 million in active discretionary grants to support innovations in Texas counties to improve legal defense for the poor. For more grant news, see [Grants Update](#) below.

Sharon Keller

Message from Director

The 84th Legislature convened on January 13, 2015. The Commission through its Legislative Appropriations Request (LAR) is requesting the State to triple its investment in funding indigent defense. On February 2nd **Judge Sharon Keller** laid out the Commission's [LAR](#) to the Senate Finance Committee. Her oral testimony is available on this [archived webcast](#) beginning at 02:54

on the video timer, and the written submission can be seen [here](#). Thanks to **Laura Garcia, Jim Allison, Patricia Cummings**, and **Dr. Ana Yáñez-Correa** for testifying in support of the Commission's LAR. To hear the public testimony, go to this [webcast](#) beginning at 26:05. You can also see Dr. Yáñez-Correa's written testimony [here](#). Our next hearing is scheduled for February 18th before the House Appropriations Committee, and you can see the written submission for the hearing [here](#).

Other legislation of interest includes [HB 48](#) / [SB 81](#) establishing an exoneration review commission, [SB 260](#) requiring local judges to establish caseload caps in assigned counsel jurisdictions, and [SB 316](#) requiring priority in appointments be given to a public defender office where such offices exist. You can stay abreast of legislative developments related to the indigent defense budget, as well as bills impacting indigent defense, on our [legislative web page](#).

I am pleased to announce the promotions of [Edwin Colfax](#), [Dominic Gonzales](#), and [Joel Lieurance](#). Edwin has been promoted to Grant Program Manager and Dominic to Associate Grant Program Manager/Online Media Manager. The former Grant Administrator Bryan Wilson accepted another position, and those duties were divided into two positions to best utilize existing staff experience. Joel was promoted to Senior Policy Analyst. [Jamie Dickson](#) was recently hired to serve as our Policy Analyst. In this position, she is responsible for assisting jurisdictions in meeting the requirements of the Fair Defense Act through review of county systems and procedures and collaboration with officials to promote local compliance. [Traci Cruz](#) also joined the staff to serve as a Grant Coordinator. In addition, the Commission was fortunate to be selected for the second time to participate in the Texas Tech University School of Law Regional Externship Program. [Ashley Indelicato](#) joined staff in January and will be with us through the end of April. Please join me in congratulating long-serving staff for well-deserved promotions and welcoming our new staff.

Jim Bethke

Indigent Defense News

Guidelines for Indigent Defense Caseloads Published

The findings of the state's first criminal defense weighted caseload study have been published in [Guidelines for Indigent Defense Caseloads](#). The **83rd Legislature through HB 1318** directed the Commission to conduct a study on criminal defense attorney caseloads "for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that...allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation." The Commission partnered with Texas A&M University's Public Policy Research Institute (PPRI) to conduct the research, and the study was conducted in collaboration with the State Bar of Texas and the Texas Criminal Defense Lawyers Association. A national advisory board of experts in caseload studies was established to help guide the project. The study consists of three main parts that began with a time tracking component where attorneys tracked the types of work they completed by case type for a twelve-week period. This was followed by a survey to a broad cross section of Texas criminal defense attorneys. Lastly, a Delphi panel of highly experienced and respected criminal defense attorneys developed consensus on the appropriate amount of time that is needed for various aspects of representation by case type.

Prior to the study, the best available caseload standards were published in 1973 by the National Advisory Commission (NAC) on Criminal Justice Standards and Goals. Since then important changes have occurred that extend the time required for competent and effective criminal defense. The *Guidelines* report recommends that for the delivery of reasonably effective representation, criminal defense attorneys should carry an annual full-time equivalent caseload of no more than 226 misdemeanors or 128 felonies, or 43 percent fewer misdemeanors and 15 percent fewer felonies than allowed under NAC standards. Local jurisdictions can use these new Texas-specific parameters to better manage the number of cases assigned to attorneys. For more information, see the [presentation](#) given by **Jim Bethke, Dr. Dottie Carmichael**, and **Professor Stephen Hanlon** entitled "Metrics and Workloads: Guidelines for Indigent Defense Caseloads" at the American Bar Association 2015 Midyear Meeting in Houston.

Implementation of New Legislative Requirements from 83rd Legislative Session: FY 2014 Appointment Trends

The Commission implemented new reporting requirements in [House Bill \(HB\) 1318](#), which will for the first time provide policy makers at both the state and local levels detailed information on caseloads handled by attorneys representing indigent defendants. Beginning November 1, 2014, counties are required to annually report the number of appointed cases handled by each attorney for the preceding fiscal year. Counties reporting as of December 15, 2014, showed appointed case figures and amounts paid to 6,090 attorneys in 249 counties. Case totals per attorney varied from one to 1476 with a median of thirty-nine total felony and misdemeanor cases disposed across all counties. The amount paid to each attorney also varied widely from \$30 up to \$419,668 across all counties with a median of just over \$15,000. For an analysis of statewide attorney fees per case, by case type and appointment type, see [Attorney Fees per Case \(2010-2014\)](#). In addition, data reported to the Commission and to the Office of Court Administration indicates that the percent of misdemeanor cases receiving appointed counsel has increased from 28 percent in FY 2006 to 41

percent in FY 2014, while the percent of felony cases receiving appointed counsel has risen from 59 percent in FY 2006 to 71 percent in FY 2014.

HB 1318 also requires all attorneys who accept appointments in adult criminal and juvenile delinquency cases to submit an annual statement that describes the percentage of their practice time that is dedicated to work on those appointed cases to each county. Each county is in turn required to submit this information to the Commission beginning November 1, 2014, along with the number of appointments made to every attorney who accepts appointments in the county. As of December 15, 2014, 3,995 attorneys had completed the reports using the online reporting portal. The median percentage of practice time devoted to appointed criminal and juvenile cases across all counties was about 50 percent. Attorneys reported working on indigent defense cases in one to eighteen different counties.

As stated in the message from the director, the Commission also partnered with Texas A&M University's Public Policy Research Institute (PPRI) to conduct a mandated study on criminal defense attorney caseloads. The final report on the study is discussed in more detail in [Guidelines for Indigent Defense Caseloads Published](#) above.

Comal County Client Choice Begins

On February 2nd **Comal County** kicked off its first-in-the-nation Client Choice pilot project. Indigent defendants are now given the option to choose their attorney from the lawyers who have been qualified by the courts to handle indigent cases. The program aims to enhance the independence of indigent defense, foster more effective attorney-client relationships, and create new and stronger incentives for attorneys to provide good quality representation. Not all defendants wish to exercise the choice option, so the county reverts to the attorney rotation system when defendants decline. The project includes an impact assessment report, which should be completed next year. The program has generated significant interest in the press. On December 28, 2014 the *Associated Press* published the news story [Indigent Defense Idea to Get First Test in U.S.](#), which was picked up by dozens of media outlets around the country.

Capital Area Private Defender Service (CAPDS)

Congratulations to the **Travis County** Managed Assigned Counsel program that began operations on January 1st. The program is called [Capital Area Private Defender Service \(CAPDS\)](#) and is a non-profit organization that provides services to Travis County under a contract and a memorandum of understanding with the county's judiciary. The program is carried out by a staff of six led by an executive director and including a full-time investigator. The office qualifies and provides administrative oversight to a roster of approximately 250 criminal defense attorneys through its caseload standards and policies and procedures. While the CAPDS office will not be responsible for making payments to attorneys and experts, it will still be responsible for making an independent determination of payment amounts, and the county auditor's office will continue to make the actual payments as in the past. The program's oversight committee includes judges, court and county administrators, and leaders of the county's two specialized public defender offices. Oversight will be provided through an annual contract review and quarterly meetings with the CAPDS board of directors.

Grants Update

Counties interested in applying for funding for new indigent defense improvement programs should carefully review the [FY 2016 Discretionary Grant Request for Applications \(RFA\)](#). The deadline for the first step in the application process, the Intent to Submit Application (ISA), is 5 p.m. on March 13, 2015. Full applications are due at 5 p.m. on May 8, 2015. A Grant Application Training webinar will be conducted on February 27, 2015 at 2 p.m. CST. Participants can join the webinar from a computer, tablet, or smartphone, and a dial in by phone option will also be available. To join the webinar on the 27th, go to <https://global.gotomeeting.com/join/530208901>.

At its December 12, 2014 meeting the Commission awarded \$24 million in FY 2015 formula grants. 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 expenditure figures. In January the Commission issued the *2015 Formula Grant* award letters. Payments will be issued in four regular quarterly payments in January, April, July, and October. Please note that some counties have special conditions placed on their formula grant awards pending resolution of outstanding issues.

This past summer the Commission conducted a Technology Funding Strategic Planning Session to review ongoing and future indigent defense technology programs through the context of its mission and legal responsibilities under the Fair Defense Act. The session was intended to clarify standards and preferred functionality and led the Commission to adopt [Recommended Functionality and Data Guidelines for Indigent Defense Technology Projects](#).

Indigent Defense Expenditure Reports

Counties across Texas were required to submit their annual Indigent Defense Expenditure Reports by November 3, 2014. Statewide summary totals indicate that Texas counties spent \$230 million

on indigent defense services in FY 2014 compared to \$217.1 million in FY 2013. This represents a total increase in costs of \$13 million over FY 2013, or a 6 percent increase. As of December 15, 2014, counties also reported appointing attorneys in over 464,000 cases compared to 471,000 cases in FY 2013. Counties reported collecting over \$12.4 million from defendants in attorney fee recoupments.

Staff members reviewed the submitted expenditure reports and contacted county officials to ask questions about any apparent anomalies. 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); not separating trial-level cases from appeals cases; and not completing the court attorney report.

Program Evaluations

[Montgomery County Managed Assigned Counsel Mental Health Program](#)

The final report documented favorable attorney assessments of the program's support services for mentally ill defendants and reviewed recidivism data.

Cameron County Receives Gideon Recognition

Congratulations to **Cameron County** on receiving a [Gideon Recognition](#) from the Commission. The Gideon Recognition program is for local governments across Texas that strive to meet a high standard for indigent defense, and it is inspired by the 50th anniversary of the landmark U.S. Supreme Court case *Gideon v. Wainwright*. In recognizing a county, the Commission seeks to promote innovative, high performing policies that are replicable in other counties. **Cameron County District Judge Arturo Nelson**, his staff, and the County were recognized for their untiring efforts to improve the indigent defense system in Cameron County by enhancing the independence of the defense function, implementing effective processes to screen defendants for eligibility, and ensuring counsel is appointed promptly and fairly.



*The Honorable Sharon Keller presents
Gideon Recognition to
Cameron County District Judge Arturo Nelson*

Training Opportunities

The National Association of Criminal Defense Lawyers (NACDL) has announced a new scholarship program for indigent defense providers. Scholarships will be awarded in the form of full or partial reimbursement of the registration costs of [training programs](#) offered by NACDL and other organizations as listed on their application. Limited travel reimbursement stipends may also be awarded to qualifying individuals to help defray the costs of travel and lodging. More information about the scholarships, including detailed eligibility criteria and application deadlines, is available on the [NACDL indigent defense webpage](#).

Commission Members

Ex Officio Members:

Honorable Sharon Keller, Chair
Honorable Nathan Hecht
Honorable John Whitmire
Honorable Royce West
Honorable Roberto Alonzo
Honorable Abel Herrero

Members Appointed by Governor:

Honorable Olen Underwood, Vice-Chair
Honorable Sherry Radack
Honorable Jon Burrows
Honorable B. Glen Whitley
Honorable Linda Rodriguez
Anthony Odiorne
Don Hase

Mission Statement

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.

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