

From: Texas Indigent Defense Commission
Sent: Monday, June 15, 2015 1:57 PM
Subject: 2015 Summer Edition Newsletter



Indigent Defense Newsletter 2015 Summer Edition

Next Commission Meeting

Friday, August 21, 2015, 9:00 a.m. to noon
Court of Criminal Appeals Courtroom
201 W. 14th Street, Supreme Court Building, Austin, Texas

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Message from Chair

At our June 4th Commission meeting I announced that our friend and long-time member, **Judge Glen Whitley**, is leaving the Commission. Judge Whitley was appointed to the Task Force on Indigent Defense by **Governor Rick Perry** and has been chair of the Grants and Reporting Committee throughout his tenure. Judge Whitley has accepted another appointment and is now on the board of regents for the University of North Texas at Dallas. We're really, really going to miss him!

Judge Whitley has been with us since we started out as the Task Force on Indigent Defense in 2002. In the beginning we had money from the legislature, but we had no structure, no design, and no staff. Everything that we have accomplished has been built since then. Judge Whitley has been part of it all, and I thank him for his invaluable assistance and guidance.

Be sure to view the [highlight video](#) that reflects on Judge Whitley's commendable service to the Commission.



"I am honored and have truly enjoyed my service to the Commission from its establishment until now. It is my belief that we've moved Texas forward in the quality of representation of the indigent. It's been a collective effort to do everything we can to help counties as they strive to improve their legal systems."

*Judge Glen Whitley,
Member and Chair of the
Grants and Reporting Committee,
2002-2015*

In news regarding the **84th Legislature**, we will be publishing a **special edition legislative update newsletter** on June 22nd, the day after the deadline for the governor to sign or veto bills passed during the regular session. Be sure to watch your inbox for this informative re-cap of legislation proposed by the Commission and other bills relating to indigent defense.

Sharon Keller



Some of TIDC members, staff, and indigent defense stakeholders that have been involved with the Commission since it was created

Pictured left to right are Andrea Marsh, Tony Fabelo, Sharon Whitfield, Bryan Wilson, Jon Burrows, Wesley Shackelford, Glen Whitley, Vice-Chair Olen Underwood, Chair Sharon Keller, Jim Bethke, and Dottie Carmichael

Message from Director

Congratulations to **Judge Glen Whitley** on his appointment to the board of regents for the University of North Texas at Dallas. Since our formation in 2002, Judge Whitley has been a steadfast presence and leader on the Commission. During his thirteen years of service, he missed only one of **fifty-one** board meetings and one of the **forty-six** Grants and Reporting Committee meetings. I am extremely grateful to Judge Whitley for his leadership, service, and dedication to our mission and look forward to our continued work together.

Each year the Commission staff coordinates with a group of indigent defense experts, grant professionals, and criminal justice practitioners to review new discretionary grant applications. The Commission is indebted to this panel of volunteers who dedicate their time and energy to help ensure that counties have an opportunity to improve their indigent defense systems with support and funding through the Commission. We are especially appreciative this year to two individuals who completed their tenth year of service on the panel--**Andrea Marsh**, Clinical Lecturer & Director of Pro Bono Programs, The University of Texas School of Law, and Professor **Catherine Burnett**, South Texas College of Law--and we thank the entire review team that also included **Sarah Pahl**, Texas Criminal Justice Coalition; **Kimberly Hild**, Criminal Justice Division, Office of the Governor; **Bob Wessels**, former Harris County Court Manager; and **Laura Garcia**, resource reviewer, Texas Association of Counties.



Andrea Marsh (left) with Chair Sharon Keller

As highlighted in the grants section below, the Commission has awarded a grant to the **Bexar County Public Defender's Office** that will enable them to be the first Texas county to provide a public defender to mentally ill indigent clients during Article 15.17 hearings, which are commonly referred to as the magistrate hearings. You can see the county's [press release](#) about the award on their website.

Additionally, at its meeting on June 4th the Commission received and published [An Evaluation of The Texas Innocence Projects](#) prepared by the Texas A&M Public Policy Research Institute. The report examines the factors shaping the organizational structure, operations, and impact of state funding through the Commission.



In closing, last week Supreme Court **Chief Justice Nathan Hecht**, Chair of the Texas Judicial Council, announced at their meeting the creation of a Criminal Justice Committee to study state law and policies about pretrial confinement and to recommend changes to help the criminal justice system, criminal defendants, and the public. **Presiding Judge Keller**, our Chair, was named as one of its members. For

more information, see the [story](#) that ran in the *Texas Lawyer*. Next Monday, watch for our report on the 84th Legislature.

Jim Bethke

Grants: \$6.4 Million in New and Continuing Discretionary Grants Awarded

On June 4, 2015 the Commission awarded new and continuing discretionary grants totaling **\$6.4 million** to support innovations in Texas counties to improve legal defense for the poor.

New grants awarded include:

- **Bexar County** will implement an innovative program providing public defenders to mentally ill defendants at the very earliest stage of a case in order to advocate for appropriate defendants to be diverted to in-patient or out-patient programs instead of remaining in jail;
- **Fort Bend County** received an award to build on the success of its Mental Health Public Defender through the creation of a general public defender program that will handle a portion of felony and misdemeanor cases;
- **El Paso County** received a two-year Targeted/Specific Grant to assist the county in coping with a surge of indigent cases resulting from changes the county made in response to a Commission monitoring report; and
- The **Bee County Regional Public Defender Office** was also awarded a two-year sustainability grant to continue to provide quality representation in an otherwise underserved three-county region in South Texas.

Funding for continuing discretionary grants includes these **multi-year grant programs**:

- **Regional Public Defender Office for Capital Cases (RPDO);**
- **Travis County Managed Assigned Counsel Program;**
- **Collin County Mental Health Managed Counsel Program;**
- **Coryell County Mental Health Contract Defender Program;**
- **Dallas County Criminal/Immigration Law Program;**
- **Dickens County Caprock Regional Public Defender Office;**
- **El Paso County Problem Solving Court Attorney;**
- **Kaufman County Mental Health Attorney/Advocate Team; and**
- **Wichita County Mental Health Defense Program.**

Policies and Standards

Recent national attention has highlighted the need for misdemeanor arrestees to receive their **constitutional right to counsel**, an issue the Commission has addressed in its latest policy monitoring activity. On May 13, 2015, **United States Senator Charles Grassley**, Chair of the Senate Judiciary Committee, convened a hearing, "Protecting the Constitutional Right to Counsel for Indigents Charged with Misdemeanors." The hearing examined practices across the United States, including Texas, and emphasized the fact that twenty-five per cent of misdemeanor defendants in Texas appeared without counsel in 2014. Hearing testimony is available [here](#).

Although **misdemeanor appointment rates** across Texas have increased by more than half since the passage of the Fair Defense Act, much work remains to be done. The Commission continues to prioritize educational, monitoring, and grant initiatives that support the appointment of counsel in misdemeanor cases. As part of these efforts, policy monitoring staff sent letters to counties with a reported 2014 misdemeanor appointment rate below five percent. The letters asked county officials to determine whether the low misdemeanor appointment rates in their county were accurate; and, if so, to **examine the following questions about local practices**:

- Are requests for counsel at magistration (Article 15.17 hearings) being forwarded to the appointing authority within 24 hours of the request being made?
- Are all requests for counsel ruled upon within three working days of receipt of these requests?
- Is bond status being used in determining indigence?
- Are persons that appear at arraignment without counsel being told of the procedures to request counsel?
- Are the waiver of counsel provisions under Article 1.051, Code of Criminal Procedure, being properly administered?

Staff also completed "drop-in" reviews in ten West Texas counties, where they examined misdemeanor files and spoke with local officials about problems identified during our file review. Responses to our letter and problems documented in West Texas varied, but common themes emerged. Issues included: failure to record whether an arrestee requested counsel at magistration; incomplete processes for transferring requests for counsel to the appointing authority; and inaccurate data reporting. By periodically asking the

five questions listed above, **local officials can review the effectiveness of their procedures for handling requests for counsel.** Internal review by counties will help guarantee the constitutional rights of poor people charged in criminal matters and ensure the upward trend in misdemeanor appointment rates continues.

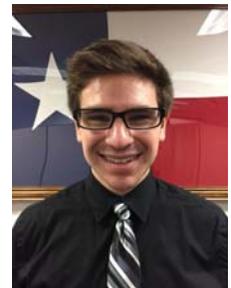
Thank You to Texas Tech Extern; Welcome Summer Law Clerks

Ashley Indelicato completed her Texas Tech University School of Law externship on April 30th. The Commission was fortunate to be selected for the second time to participate in the externship program in which third-year law students from Tech Law extern full-time for a semester of academic credit. Although Ashley was only required to work 490 hours, she provided well over 600 hours at no cost to the Commission. Ashley is now preparing for the July Bar exam and hopes to start her legal career in Austin.



Summer 2015 law clerk **Cory Dalton** is a 2L from the University of Texas School of Law. He graduated *summa cum laude* from the University of Texas at Arlington with a Bachelor's Degree in History and a Minor in Political Science. Cory is originally from Seattle but has lived in Grapevine, Texas most of his life. After law school he hopes to start his legal career in Austin or the Dallas-Fort Worth area.

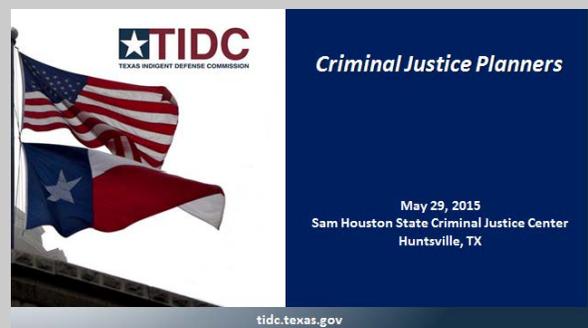
Summer law clerk **Jaret Kanarek** is also a 2L from the University of Texas School of Law. He is originally from Illinois and graduated *magna cum laude* from Illinois Wesleyan University with degrees in Economics and Philosophy. After graduating from college, Jaret came to Texas to make it his home and to pursue his legal career.



Recent Commission Publications and Trainings



**Fair Defense Law:
A Primer for Texas Officials
(updated)**



**Criminal Justice Planners, Sam Houston State
Criminal Justice Center**

Across the State

On May 15th the **Texas Tech University School of Law** posthumously awarded an honorary bachelor's degree in Law and Social Justice to **Timothy Cole**. Mr. Cole was a student at the university in 1985 when he was expelled after a student accused him of rape. He was convicted and died in prison in 1999, but another man's confession coupled with DNA evidence ten years later showed that Cole was innocent. In fact, Cole was the first Texan to be posthumously exonerated of a crime through DNA testing. In 2009 the 81st Texas Legislature honored Cole by naming [House Bill 1736](#), relating to compensation of persons wrongfully imprisoned, the Tim Cole Act. **Governor Rick Perry** posthumously pardoned Cole in 2010.

Around the Nation

By Geoff Burkhart, Guest Contributor

Geoff Burkhart is an Attorney and Project Director with the American Bar Association. He frequently writes on criminal law issues.



Byrne JAG

Each year, the federal government awards between \$170 million and \$2 billion to state and local governments through the **Edward Byrne Memorial Justice Assistance Grant Program** ("Byrne JAG"). For decades, that money has flowed to prosecution and law enforcement while trickling to public defense. But times may be changing.

Byrne JAG grew out of the Omnibus Crime Control and Safe Streets Act of 1968, which sought to improve state and local law enforcement. The program was renamed following the high-profile murder of 22-year-old New York City police officer Edward "Eddie" Byrne in 1988. In 2005, Congress merged the Byrne Program with the Local Law Enforcement Block Grant (LLEBG), creating Byrne JAG.

Historically, less than 1% of Byrne JAG funds have gone to public defense. In many jurisdictions, this has led to an imbalance that was increasingly difficult to square with ABA policy. See, e.g., ABA Ten Principles of a Public Defense Delivery System, Principle 8 (requiring parity in resources between prosecution and defense providers).

But thanks in part to the work of the [Access to Justice Initiative](#), the DOJ has heeded the defense bar's call. Despite a multitude of projects for which Byrne JAG funds may be used--law enforcement, prosecution, courts, crime prevention, corrections, drug treatment, victims and witnesses--the DOJ identified just five "JAG Priority Areas" in its current Byrne JAG solicitation. One is indigent defense:

Another key priority area is support for indigent defense. BJA continues to encourage states and SAAs to use JAG funds to support the vital needs of the indigent defense community, as indigent defense reform continues to be a concern that needs to be addressed across the nation. In 2002, the American Bar Association (ABA) published Ten Principles of a Public Defense Delivery System which represent fundamental building blocks for implementing quality legal representation for indigent defendants.

This sentiment has been echoed on the Hill, where Republican Senator Chuck Grassley recently called for better funding distribution:

Perhaps we need a better federal effort in coordinating and maybe even dispensing these funds, combined with transparency and accountability for why states aren't spending available funds for indigent defense.

While the time is ripe for public defenders to receive Byrne JAG funds, defense providers should first learn about the distribution process. Each state's governor selects a "State Administering Agency" (SAA)--in Texas, the Criminal Justice Division of the Governor's Office--responsible for developing a statewide strategic plan (available online) and applying for and administering Byrne JAG funds. A state's award is based on its population and violent crime, weighted equally. At a minimum, each state must receive .25% of the total Byrne JAG allocation. The money awarded to the state is then split: 60% for state government, 40% for local. When approaching SAAs, public defenders should be armed with a thorough knowledge of this process, as well as the favorable language in the current Byrne JAG solicitation.

This year, DOJ plans to award approximately \$255.7 million to state and local agencies. What percentage will flow to public defense?

The Byrne JAG Program is run by the DOJ's [Bureau of Justice Assistance](#) (BJA). Texas' [strategic plan](#) and [Byrne JAG profile](#) are available on BJA's website. Additionally, the [National Criminal Justice Association](#) (NCJA) hosts Byrne JAG webinars and materials on its website. Finally, Andrew Stanner, Senior Counsel at the DOJ's Access to Justice Initiative, is available to speak to defenders who want to engage with their SAAs about Byrne JAG funding. In particular, he could share examples of successful efforts by defenders in other states.

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Commission Members