

**From:** Texas Indigent Defense Commission <mkubinski@tidc.texas.gov>  
**Sent:** Monday, June 22, 2015 4:38 PM  
**To:** Dominic Gonzales  
**Subject:** Special Edition Newsletter - Texas 84th Legislature



**Special Edition Newsletter**  
**Texas 84th Legislature**  
**June 22, 2015**

## 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

On Monday June 1st the **84th Legislature** completed its work, and yesterday **Governor Greg Abbott** finalized his first slate of legislative bills as the 48th governor of our great state. Throughout the one hundred forty days of the legislative session, our dedicated legislators and their staff worked countless hours and many long days to achieve much on behalf of indigent defense in criminal matters.

To begin, I want to thank our **Chief Justice Nathan Hecht** and the **Texas Judicial Council** for their unwavering support and for the [Council's Resolution](#) in support of additional state funding for indigent defense. I also want to thank all of the legislators and staff with whom we worked this session, beginning with **Chairman Sylvester Turner** and his staff **Alison Brock** and **Dominique Calhoun**. Representative Turner chaired the appropriations subcommittee that made funding decisions on indigent defense and was the champion in the full committee for the importance of this work. I am also thankful to **Senator Juan Hinojosa** and his staff for their work on behalf of indigent defense in the Senate Finance Committee. Thank you also to the **Legislative Budget Board** and **George Dzuik** for their presentations and laying out our appropriations this session. The staff of the two budget committees were also critical to our success, and my thanks go to **Brady Vaughn** with Senate Finance and **Malika Te** with House Appropriations. In addition, **Mike Goldman** with the governor's office was also a great resource as we navigated the session.



*Rep. Sylvester  
Turner, Chair,  
Appropriations -  
Subcommittee on  
Articles I, IV & V*

There were also several members who carried significant indigent defense bills who deserve our thanks. These include **Representative Roberto Alonzo**, **Chairman Garnet Coleman**, **Senator Jose R. Rodriguez**, **Senator Kel Seliger**, **Senator Royce West**, and once again **Senator Juan Hinojosa**. Lastly, I want to especially acknowledge and thank **Chairman Abel Herrero**, as well as his committee director **Miguel Liscano** and policy analyst **Amanda Woog**, for their work on several indigent defense bills and for effectively leading the House Criminal Jurisprudence Committee where most of these bills were heard.

*Sharon Keller*

**Legislative Commission Members**



*Sen. John Whitmire*



*Sen. Royce West*



*Rep. Roberto Alonzo*



*Rep. Abel Herrero*

## 84th Legislature Appropriations

The [General Appropriations Act](#) for FY16/17 passed by the Legislature and signed by Governor Greg Abbott approved the Commission's base request of just under **\$64 million** in General Revenue-Dedicated funding from the Fair Defense Account and importantly approved **\$7.5 million** in General Revenue for the FY16/17 biennium for a total appropriation of **\$71.5 million**. This marks the first time the state has ever provided any General Revenue funding for indigent defense. Although the amount of new funding may be small compared to the need, it does represent a significant step to the state sharing more of the costs. The new General Revenue funds include:

1. \$2.6 million for the Lubbock-based Regional Public Defender Office for Capital Cases (RPDO);
2. \$500,000 for capital public defender services in Cameron and Hidalgo Counties for the biennium; and
3. \$4.4 million towards closing the Fair Defense Act funding gap.

The Commission will be working this summer to determine the best way to allocate these new funds. This will include meetings with local officials in Lubbock, Cameron, and Hidalgo Counties to determine the best approach to effectively fund and provide capital public defender services across the state.

The appropriations bill also includes an expansion of the funding for innocence projects to include law schools at Texas A&M University and the University of North Texas, in addition to the University of Texas, University of Houston, Texas Tech University, and Texas Southern University. This funding consists of \$100,000 per school per year for the six public universities with law schools. Commission staff will also be meeting with officials at these schools and the innocence projects at them to develop a strategy for building effective programs, which will build on the work done by the Public Policy Research Institute's report released last month, [An Evaluation of The Texas Innocence Projects](#).

## Letter from Senator Rodney Ellis





# The Senate of The State of Texas

SENATOR RODNEY ELLIS  
District 13  
PRESIDENT PRO TEMPORE  
1999-2000

COMMITTEES:

Vice Chair, State Affairs  
Business and Commerce  
Transportation

June 19, 2015

The Honorable Sharon Keller  
Presiding Judge, Texas Court of Criminal Appeals  
201 W 14th St, Austin, TX 78701

Dear Judge Keller,

I am writing to congratulate you and the Texas Indigent Defense Commission for the important steps forward on indigent defense during the legislative session, and to thank you for being an effective partner with the legislature in our efforts to ensure fairness for all Texans in our criminal courts. Thirteen years after passage of the landmark Fair Defense Act, we can look around today and see a better justice system that more effectively protects the Constitutional rights of all Texans. Much of this progress has involved the hard work of county governments, the Commission and other stakeholders who have come together around improvements.

When it comes to cost, however, the counties still struggle to bear the responsibility for funding the indigent defense system with modest help from State grants. That is why I am heartened that my colleagues in the legislature have for the first time appropriated new general revenue for indigent defense. While modest in terms of the overall costs, the fact that the State has stepped up to contribute new money takes us one step closer to a more equitable and sustainable indigent defense funding mechanism.

The state's additional support for the Regional Public Defender (RPDO) for Capital Cases is another welcome sign of our legislature's stronger commitment to helping counties meet indigent defense requirements in those cases that are literally a matter of life and death. With so much at stake in these most serious criminal cases, the State has a special responsibility to see that capital cases are handled properly and with effective defense representation. The RPDO, operated by Lubbock County as a cooperative endeavor through inter-local agreements with participating counties, has demonstrated how collaboration and commitment to high standards can make a difference across our state.

I look forward to continuing to work with you and my colleagues in the legislature to build on these important successes.

Sincerely,

Rodney Ellis

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## Indigent Defense Bills

During the 84th Legislature's Regular Session there were 6,476 bills and joint resolutions filed (up 7% over the 83rd Legislature), of which 1,330 passed (down 9% from the 83rd). Sunday marked the last day that Governor Abbott could sign or veto bills passed during the session. In total, Governor Abbott vetoed 41 bills, signed 1,120, and allowed 169 bills to become law without his signature.

The Texas Indigent Defense Commission is grateful to report that all four bills it endorsed were passed by the legislature and signed by the Governor:

[HB 3633](#) authored by **Reps. Herrero** and **Collier** and sponsored by **Sen. West** requires attorney fee repayment orders issued as a condition of community supervision be subject to an "ability to pay" requirement as exists when they are ordered as court costs elsewhere in the Code of Criminal Procedure. It also limits the amount to be repaid to counties to the actual cost of the legal services provided. The bill also clarifies that when a defendant is represented by a public defender's office, the appropriate amount for an attorney fee repayment order is the amount that would have been paid to an appointed attorney had the county not had a public defender's office.

[SB 1353](#) authored by **Sen. Hinojosa** and sponsored by **Rep. Coleman** permits the Texas Indigent Defense Commission (TIDC) to directly participate with the Conference of Urban Counties (CUC)-TechShare Indigent Defense Technology program.

[SB 662](#) authored by **Sen. Rodriguez** and sponsored by **Rep. Alonzo** will expedite post-conviction relief to defendants who are not guilty, guilty of only a lesser offense, or convicted and/or sentenced under a statute found to be unconstitutional. The bill requires the court to appoint counsel for

applicants for habeas corpus relief when the state agrees to relief on the grounds that the defendant/applicant is not guilty, guilty of only a lesser offense, or the law under which the person was convicted has been declared unconstitutional.

[SB 1057](#) authored by **Sen. Hinojosa** and sponsored by **Rep. Herrero** provides statutory authority for the TIDC to provide continuing state funding at up to 50% of the cost for regional public defender programs and permits TIDC to provide the funds directly to such defender programs rather than via a grant to a county. The TIDC board will need to consider how to incorporate this new authority into its grant funding strategies in a fair and effective manner.

Other significant indigent defense bills:

[HB 48](#) authored by **Reps. McClendon, Leach, Herrero, Moody, and Simpson** and sponsored by **Reps. Alvarado, Farney, Farrar, Susan King, and Rose** creates the **Timothy Cole Exoneration Review Commission** under the auspices of the Texas Judicial Council and administratively attached to the Office of Court Administration. The new organization is charged with reviewing proven wrongful convictions where the exoneration occurred since January 1, 2010. It is to identify the main causes of those convictions and make recommendations to prevent such tragedies from reoccurring in the future. The bill became effective immediately upon Governor Abbott's signature on June 1, 2015.



**Governor Abbott signing HB 48**

[SB 316](#) authored by **Sen. Hinojosa** and sponsored by **Rep. Leach** requires courts to prioritize the appointment of an available public defender's office to make efficient use of such offices.

[SB 1517](#) authored by **Sen. Seliger** and **Sen. West** and sponsored by **Rep. Coleman** clarifies the procedures for appointment of counsel for a person arrested and jailed in a county based on a warrant issued by a different county, which has been confusing under existing law. The bill requires the arresting county to accept a request for counsel from an arrestee and transfer the request to the warrant issuing county promptly. The warrant issuing county must then appoint counsel to an indigent person under the normal one or three day time frames after receiving the request regardless of whether the arrestee has yet been transferred to that county. The arresting county must also appoint counsel on the 11th day following arrest, if the defendant has not been released from custody or transferred to the county issuing the warrant to represent the defendant in habeas corpus or bail proceedings, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county. This time frame is because of the Art. 15.21, Code of Criminal Procedure, requirement to release an arrested person who has not been picked up by the warrant issuing county before the 11th day after arrest. The bill authorizes the arresting county to seek from the county that issued the warrant reimbursement for the actual costs paid by the arresting county for the appointed counsel.

[SB 1743](#) authored by **Sen. Hinojosa** and sponsored by **Rep. Herrero** expands the powers and duties of the Office of Capital Writs to include representing a defendant in cases involving a forensic science issue and changing the name of the agency to the Office of Capital and Forensic Writs.

## 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.*



### Grassley Hearing on Right to Counsel in Misdemeanor Cases

On May 13, 2015, the U.S. Senate Judiciary Committee held a hearing on an oft-overlooked subject: *misdemeanors*. During his opening statement, **Senator Chuck Grassley** explained why these low-level convictions are important: "The overwhelming majority of people who face criminal charges are prosecuted for misdemeanors." In his home state of Iowa, for instance, 80% of prosecutions were for misdemeanor violations.

But the sheer volume of misdemeanors is not the only cause for concern. Misdemeanor defendants are regularly denied counsel. As Grassley noted, "the Supreme Court's Sixth Amendment decisions regarding misdemeanor defendants are violated thousands of times every day. No Supreme Court decisions in our history have been violated so widely, so frequently, and for so long."

Grassley's statement was followed by testimony from Iowa Supreme Court Justice Mark S. Cady, Professor David A. Singleton, Federal Public Defender Neil Fulton, Professor Erica J. Hashimoto, and Professor Robert C. Boruchowitz. The witnesses painted a grim picture, in which millions of

uncounseled or under-counseled criminal defendants face charges that could profoundly affect their lives.

As Professor Boruchowitz testified, the consequences of misdemeanor conviction can be significant. While misdemeanants do not face lengthy prison sentences, they can face jail time, probation, fines and fees, denial of employment, denial of professional licenses, student loan ineligibility, loss of housing or food stamps, or deportation.

Several national organizations--including the American Bar Association, the National Association of Criminal Defense Lawyers, the National Legal Aid and Defender Association, the American Civil Liberties Union, the Constitution Project, and the National Association for Public Defense--filed statements in advance of the hearing, arguing the case for reform. The increased attention paid misdemeanors by Democrats and Republicans alike is undoubtedly a step in the right direction. Many experts are now directing the conversation toward solutions, such as decriminalization, reclassification, and better defense funding.

"The Grassley hearing" may be viewed in its entirety [online](#).

## 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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