



TAC Legislative Conference

Indigent Defense: Issues & Updates

Honorable Jon Burrows, Bell County Judge

Mr. Jim Bethke, Executive Director

August 27, 2015

Austin, TX



The mission of the Texas Indigent Defense Commission 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.



Chair: The Honorable Sharon Keller,
Presiding Judge, Court of Criminal Appeals

Vice-Chair: The Honorable Olen Underwood

Executive Director: Mr. James D. Bethke

Ex Officio Members:
Honorable Sharon Keller
Honorable Nathan Hecht
Honorable John Whitmire
Honorable Royce West
Honorable Roberto Alonzo
Honorable Abel Herrero

Members Appointed by Governor:
Honorable Olen Underwood
Honorable Sherry Radack
Honorable Jon Burrows
Honorable Linda Rodriguez
Mr. Anthony Odiorne
Mr. Don Hase

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 Linda Rodriguez	San Marcos, Hays County Court at Law #2
Anthony Odiorne	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 grant awards totaled \$37 million (254 Counties).
Discretionary grants totaled \$11 million (22 Counties) .

Our Fiscal and Policy Monitoring Program

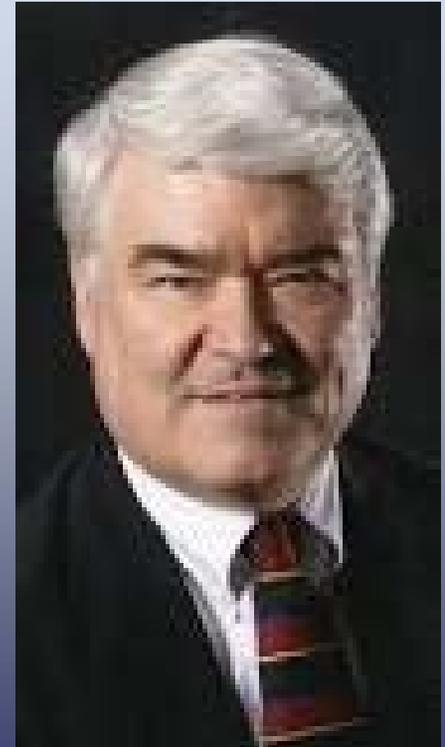
The Commission monitors each county that receives a grant to ensure state money is being properly spent and accounted for and to enforce compliance by the county with the conditions of the grant, as well as with state and local rules and regulations.

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.

Chief Justice Nathan Hecht State of the Judiciary 2015

[Video from State of Judiciary 2015](#)



Today's Agenda

Recap of 84th Legislature:

- ***Additional state funds and new legislation***

Issues:

- ***Costs, Caseloads, and Monitoring Performance***

Programs, Strategies, and Resources:

- ***RPDO for Capital Cases, Caseload Study, MAC Programs, and Technology Enhancements***

**Rep. Sylvester
Turner
Vice-Chair of
House
Appropriations
Committee**



Recap of 84th Legislature

Appropriations

Substantive Bills Passed

General Appropriations Act for FY16/17

- Just under **\$64 million** in General Revenue-Dedicated funding from the Fair Defense Account
- Approved **\$7.5 million** in General Revenue for the FY16/17 biennium
- Total appropriation of **\$71.5 million**
- First time the state has ever provided any General Revenue funding for indigent defense
- A significant step to the state sharing more of the costs

The new General Revenue funds include:

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

General Appropriations Act for FY16/17

- Appropriations bill also includes an expansion of funding for innocence projects to include law schools at:
 - Texas A&M University, and
 - University of North Texas,
 - in addition to the University of Texas,
 - University of Houston,
 - Texas Tech University, and
 - Texas Southern University
- \$100,000 per school per year for the six public universities with law schools
- Public Policy Research Institute's report, *An Evaluation of The Texas Innocence Projects*

Bills Endorsed by the Commission

HB 3633 authored by Rep. 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.

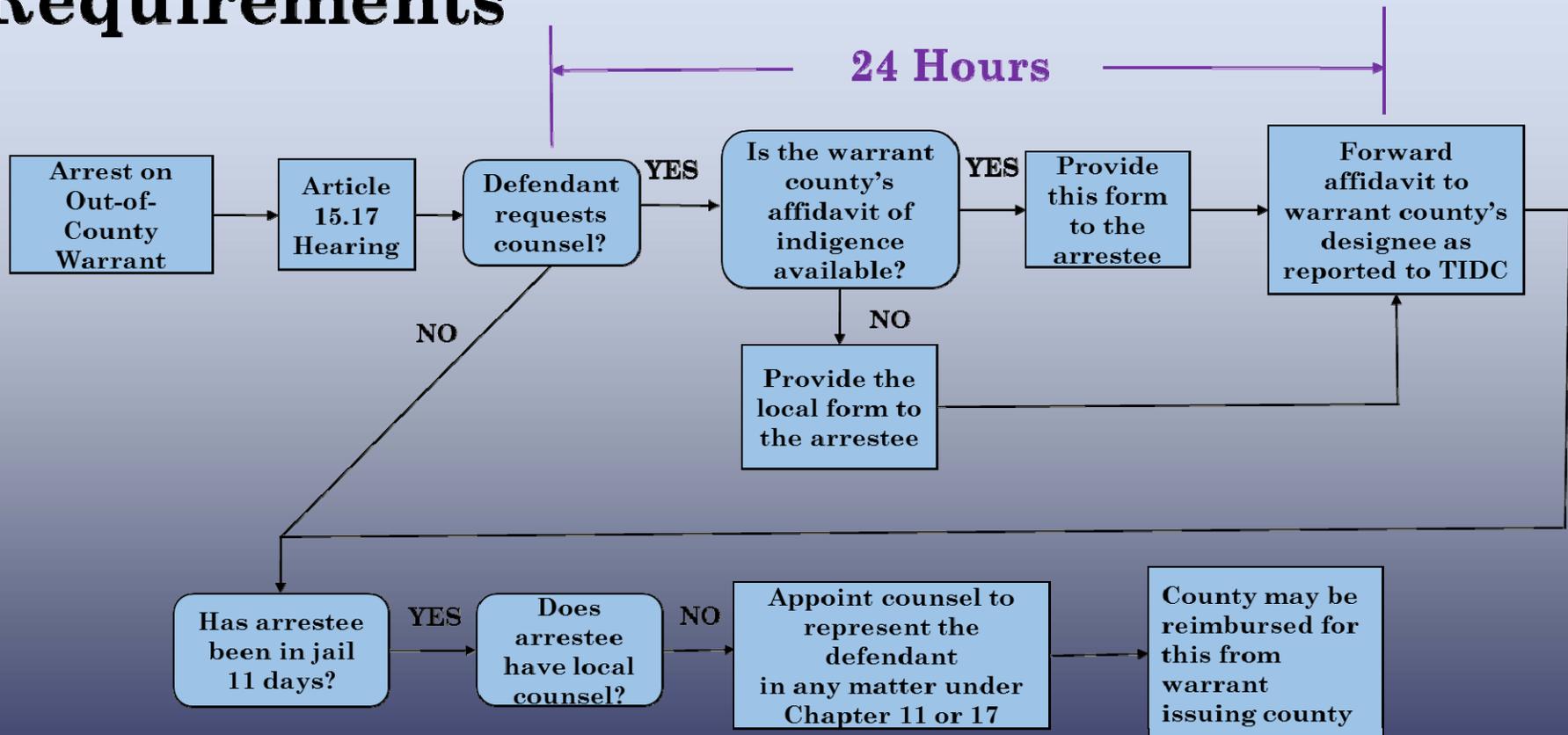
SB 316 authored by Sen. Hinojosa and sponsored by Rep. Leach requires courts to prioritize the appointment of an available public defender's office to make efficient use of such offices.

SB 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

Other Significant Indigent Defense Bills

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 1517 Requirements



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



INDIGENT DEFENSE DATA FOR TEXAS

Welcome to the Texas Indigent Defense Commission's clearinghouse of information on indigent defense. The purpose of this website is to provide information to the public and to serve Texas counties.

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County ID Plans

County ID Expenditures & Cases

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SB 1517

- A magistrate shall inform a defendant arrested on out-of-county warrant of the procedures for requesting appointed counsel and offer reasonable assistance in completing forms for requesting counsel. (Same requirement as before; only the procedures have changed.)
- A magistrate who conducts an Article 15.17 hearing shall transmit (or “cause to be transmitted”) all forms to the judge authorized to appoint counsel in the county that issued the warrant within 24 hours. (Same requirement as before.)

SB 1517

- If an indigent defendant is arrested on out-of-county warrant, the county that issued the warrant shall appoint counsel within:
 - Three working days after request if the arresting county has less than 250,000 population; or
 - One working day if the arresting county has over 250,000 population.
- Counsel shall be appointed regardless of whether formal proceedings have begun in the county that issued the warrant.

SB 1517

- If the defendant:
 - 1) Has not been transferred or released into the custody of the county issuing the warrant before the 11th day after the date of the arrest; and
 - 2) If counsel has not otherwise been appointed for the defendants in the arresting county under this article; then
- A court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the arresting county immediately shall appoint counsel to represent the defendant in any matter under Chapter 11 or 17, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county.

SB 1517

- Chapter 11, Code of Criminal Procedure
 - Habeas Corpus
- Chapter 17, Code of Criminal Procedure
 - Bail
- “If counsel is appointed for the defendant in the arresting county as required by this subsection, the arresting county may seek from the county that issued the warrant reimbursement for the actual costs paid by the arresting county for the appointed counsel.”

Programs, Strategies, and Resources

- **Regional Public Defender Office for Capital Cases (RPDO)**
 - Provides capital defense services to participating counties that pay an annual membership fee
 - Greater budget predictability and mitigates dramatic impact a capital case can have on counties
 - Ensures availability of constitutionally required representation in underserved areas
 - RPDO provides a team including attorneys, investigators, and mitigation specialists
- **Managed Assigned Counsel Programs (MAC)**
 - Authorized by Article 26.047, Code of Criminal Procedure to achieve some of the benefits of a public defender within an assigned counsel system
 - Enhances oversight, quality control, and professional development for private attorneys representing poor defendants
 - Provides greater independence from the judiciary as recommended in the American Bar Association's *Ten Principles of a Public Defense Delivery System*

Programs, Strategies, and Resources

- **Lubbock Private Defender Office (LPDO)**
 - **Operated by a non-profit organization that contracts with Lubbock County and governed by a board comprised of seven attorneys**
 - **Staff of eight led by a Chief Defender and a Professional Development Director and includes four social workers focused on mentally ill defendants**
 - **Office qualifies attorneys for appointments, provides administrative oversight, and manages the payment of attorney fees to a roster of approximately 75 criminal defense attorneys, including 19 on the specialized mental health attorney appointment wheel**
 - **Maximum caseloads of 65 cases per attorney**
 - **Oversight provided by a Managed Assigned Counsel Oversight Committee, which includes judges, commissioners court representatives, local defense bar, and the Lubbock County Director of Court Administration**

Programs, Strategies, and Resources

- **Capital Area Private Defender Service (CAPDS)**
 - **Non-profit organization provides services to Travis County under a contract and a memorandum of understanding with the county's judiciary**
 - **Staff of six led by an executive director and including a full-time investigator**
 - **Office qualifies and provides administrative oversight to a roster of approximately 250 criminal defense attorneys; maximum caseloads of 90 felony and 100 misdemeanor cases**
 - **Unlike the Lubbock Private Defender Office, some administrative functions remain with Travis County's Court Administration; the county auditor's office makes payments to attorneys and experts but CAPDS is still responsible for determining payment amounts**
 - **Key features same as Lubbock**
 - **Independent reviews of attorney performance and qualifications**
 - **Training program; and**
 - **Formal mentoring and assessment**
 - **Oversight provided through annual contract review and quarterly meetings with CAPDS board of directors**
 - **Oversight committee includes judges, court and county administrators, and leaders of the county's two specialized public defender offices**

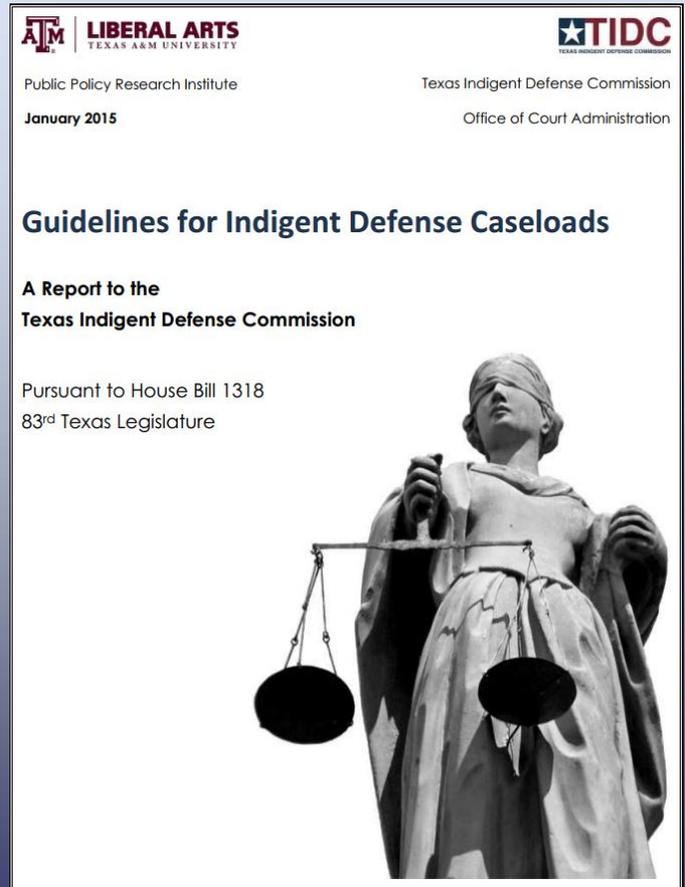
Programs, Strategies, and Resources

- **Multi-County Collaborations on Process Management Technology**
 - Commission awarded grant to ***Tarrant County*** to develop and implement indigent defense process management software in counties through the Conference of Urban Counties TechShare program.
 - Extends the solution developed through an earlier grant to Bell County that
 - Helps monitor key compliance data
 - Provides faster processing of requests for counsel and attorney appointments
 - Includes all-electronic attorney fee voucher payment process
 - Second grant awarded to ***Collin County*** to develop enhanced indigent defense functionality within the county's existing case management system, Tyler Technology's Odyssey software.
 - Collaboration with the Conference of Urban Counties TechShare group to
 - Identify needed enhancements to facilities required reporting
 - Streamline appointment and payment processes
 - Enable monitoring of statutory requirements
 - Functional enhancements developed will be made available to all counties using Odyssey through the regular annual software release cycle at no additional cost

Programs, Strategies, and Resources

- **Bexar County - Early Assignment of Counsel for Defendants with Mental Illness**
 - **Bexar County will be the first in Texas to provide counsel at the earliest stage of case when bond is set during Article 15.17 magistration hearings**
 - **Bexar County Public Defenders will:**
 - **Help mentally ill defendants understand the importance of their cooperation and participation in the mental health evaluation process**
 - **Advocate for their release on personal bonds with mental health treatment as a condition**
 - **The program will help ensure that available capacity in diversion programs is fully utilized**
 - **Reduce jail populations by minimizing unnecessary incarceration**

A Review of the Texas Weighted Caseload Study



House Bill 1318 / 83rd Legislative Session

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... allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation.



Rep. Sylvester Turner
District 139



Rep. Armando Walle
District 140



Sen. John Whitmire
District 15



Sen. Rodney Ellis
District 13



Sen. Sylvia Garcia
District 6

Texas Path to Indigent Defense Caseloads



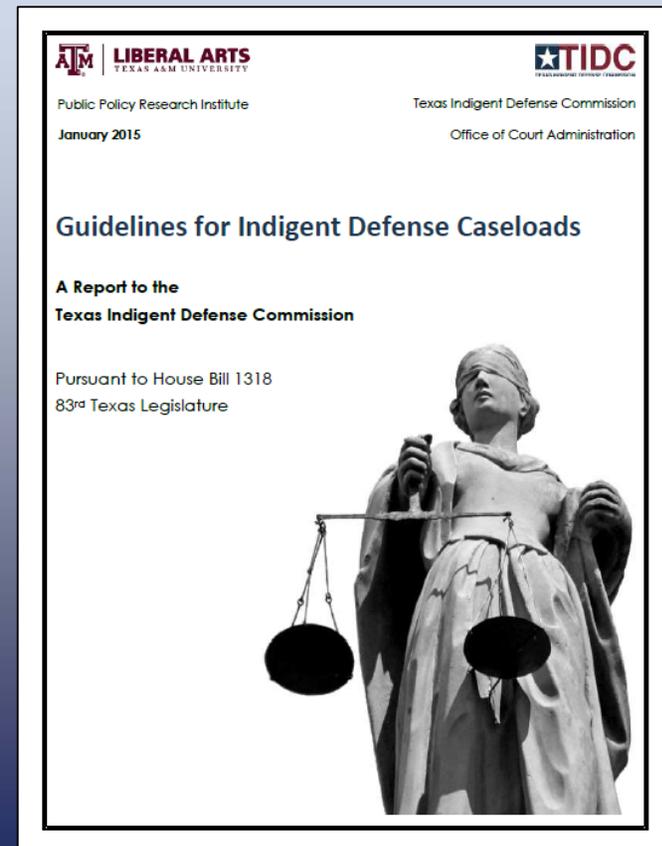
STATE BAR *of* **TEXAS**



Texas Criminal Defense Lawyers Association



LIBERAL ARTS
TEXAS A&M UNIVERSITY
PUBLIC POLICY RESEARCH INSTITUTE



HB 1318 Charge

WHAT IS REQUIRED FOR AN:

“ATTORNEY TO GIVE EACH INDIGENT DEFENDANT THE TIME AND EFFORT NECESSARY TO ENSURE EFFECTIVE REPRESENTATION”

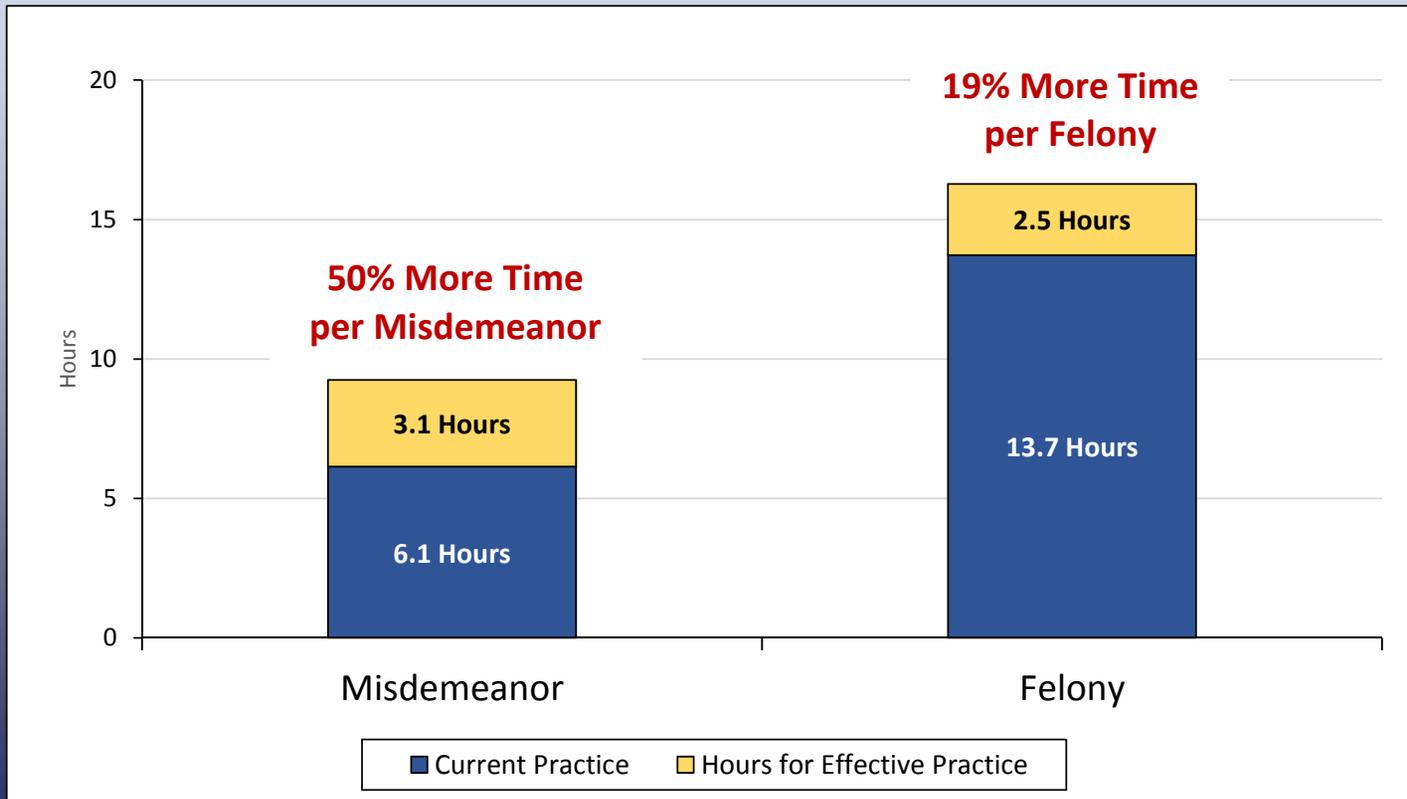
“STUDY MUST BE BASED ON RELEVANT POLICIES, PERFORMANCE GUIDELINES, AND BEST PRACTICES”

SOURCES FOR POLICIES, GUIDELINES, AND BEST PRACTICES

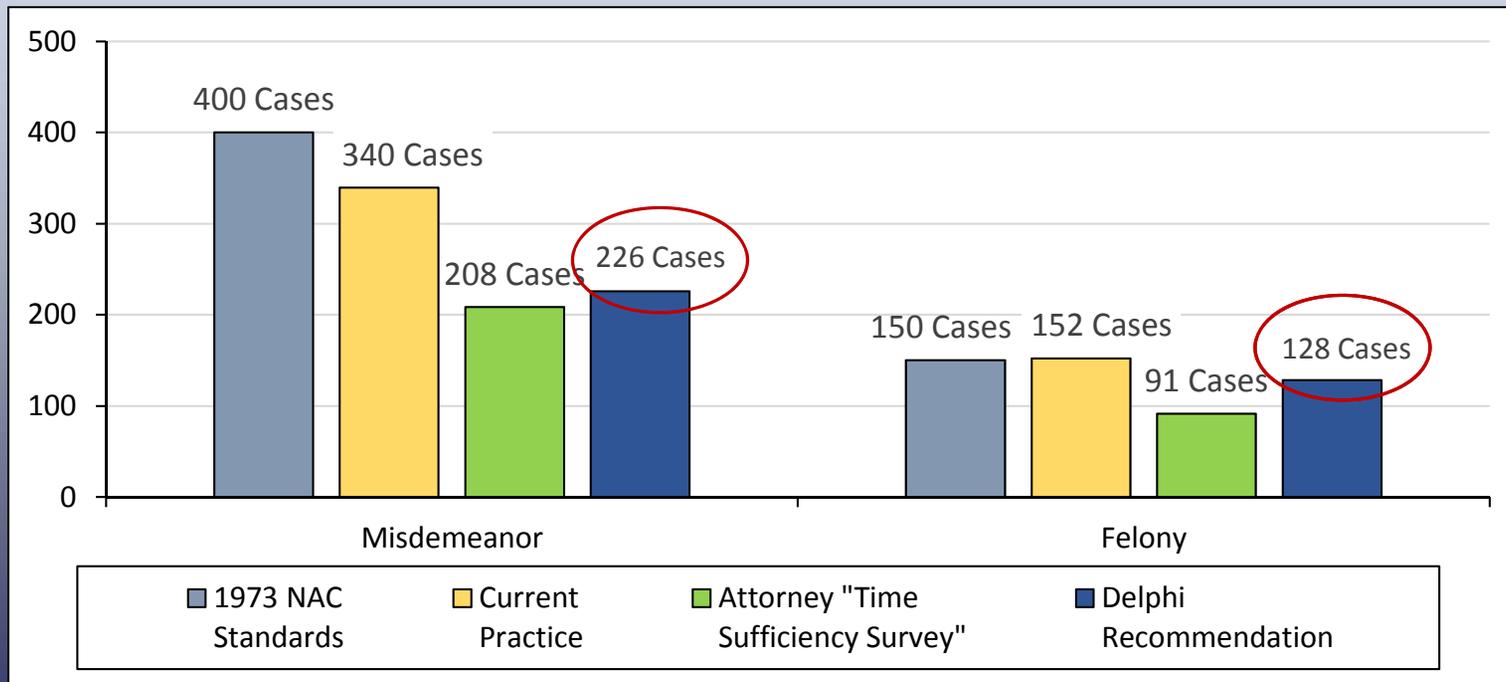
- 1. Court Decisions**
- 2. Texas Rules of Professional Conduct**
- 3. SBOT Performance Guidelines**
- 4. ABA Standards for Criminal Justice,
Defense Function Standards**

Weighted Caseload Study
RESULTS

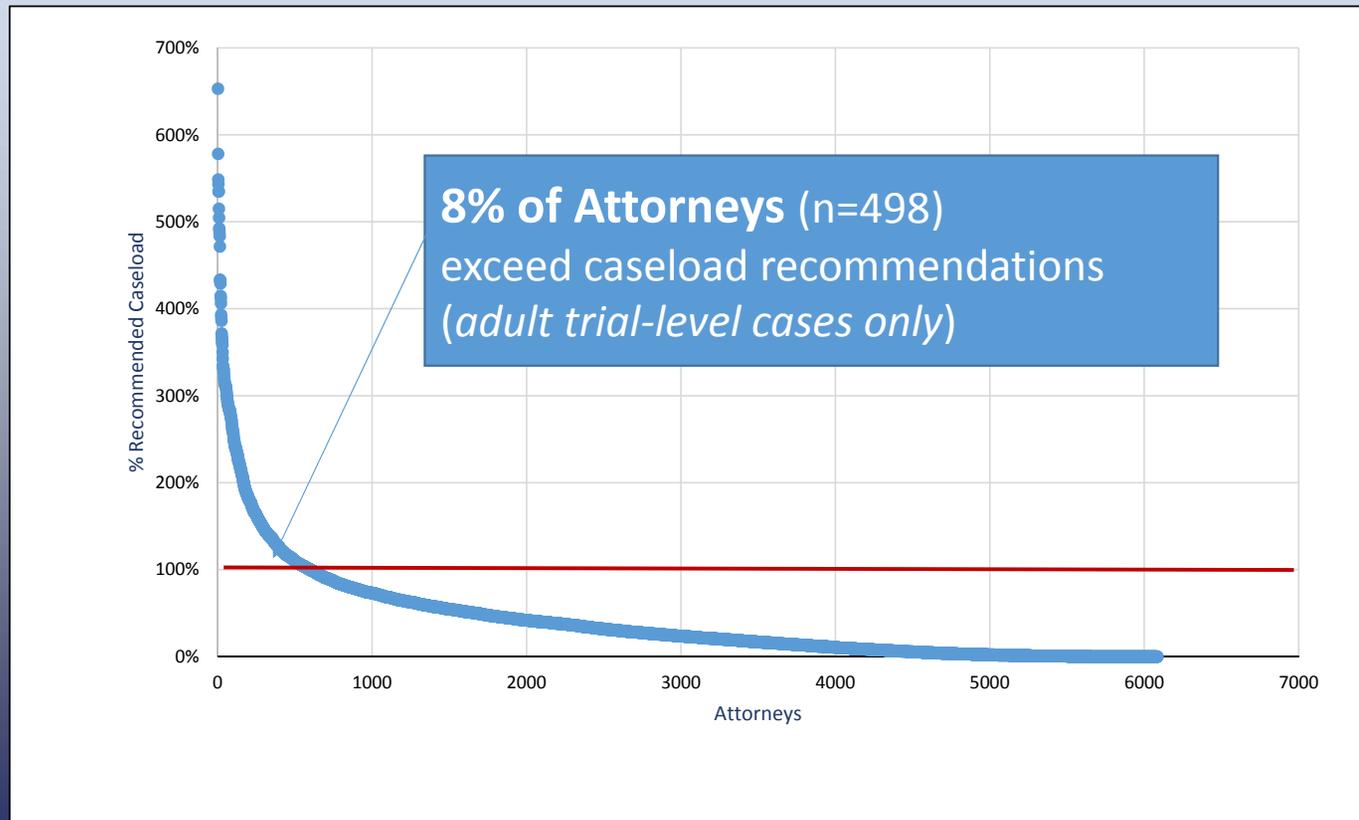
Additional Time Required



Bottom Line



Recommended Caseload Guidelines Exceeded



Case Weights Applied

	This is the weight:		This is how it's applied:	
	Cases per 2,087 Hour Work Year	Current Annual Caseload	Case Weight Applied to Current Caseload	Percent of Recommended Limit
MA	236	45	45/236	19.1%
MB	216	104	104/216	48.1%
SJF	174	66	66/174	37.9%
F3	144	25	25/144	17.4%
F2	105	10	10/105	9.5%
F1	77	5	5/77	6.5%
Percent of recommended caseload this attorney is representing:				138.5%

Automatic Caseload Calculator

TIDC TEXAS INDIGENT DEFENSE COMMISSION

INDIGENT DEFENSE DATA FOR TEXAS
 Welcome to the Texas Indigent Defense Commission's clearinghouse of information on indigent defense. The purpose of this website is to provide information to the public and to serve Texas counties.

Home | County Indigent Defense Plans | County Indigent Defense Expenditures | TIDC Grants and Funding | County Dashboard

Quick Links

- Download the Caseload Calculator
- Summary of Funding
- County Indigent Defense Plan
- County Datasheet
- County Dashboard

Texas Counties

Getting Started: Click a county on the map, or select a county from the drop-down in Quick Stats 2013 panel.

Quick Stats 2013

Texas

- Current Population Estimate: 26,251,278
- Total Indigent Defense Costs: \$217,068,685.09
- Formula-Based Grant Amount: \$19,883,998.00
- Discretionary Grant Amount: \$6,755,923.01
- Non-Capital Felony Trial-Level Cases Paid: 191,558
- Misd. Trial-Level Cases Paid: 228,357
- Juvenile Trial-Level Cases Paid: 48,114
- Appeals Cases Paid: 3,093
- Capital Cases Paid: 487

Directions: Please fill in the yellow highlighted areas with your current annual caseload, by case type.

	Misdemeanor B	Misdemeanor A	State Jail	Felony 3	Felony 2	Felony 1
Recommended Caseload Limit	236	216	174	144	105	77
Current Annual Caseload						
Percent of Recommended Limit for Case Type	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Percent of Recommended Limit for All Case Types	0.0%					

TIDC Online

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Texas Counties

Getting Started:
Click a county on the map, or select a county from the drop-down in Quick Stats 2014 panel.

Quick Stats 2014

Current Population Estimate	26,642,612
Total Indigent Defense Costs	\$226,159,667.52
Formula-Based Grant Amount	\$21,844,810.25
Discretionary Grant Amount	\$6,558,425.85
Non-Capital Felony Trial-Level Cases Paid	186,626
Mod. Trial-Level Cases Paid	218,497
Juvenile Trial-Level Cases Paid	45,332
Appeals Cases Paid	3,013
Capital Cases Paid	473

<http://tidc.tamu.edu/public.net/>

Texas Indigent Defense Commission
www.tidc.texas.gov

TIDC TEXAS INDIGENT DEFENSE COMMISSION

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.

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

- Grant Training Opportunity**
Discretionary Grant Training Friday, Feb 27, 2:00 PM (Central Standard Time)
Access the webinar from your computer, tablet or smartphone.
- Appropriations Committee Comments on Indigent**

PUBLICATIONS

- The Fair Defense Act and the Role of the Magistrate** 02/13/2015
Published in The Recorder: The Journal of Texas Municipal Courts
- FY16 Discretionary Grant Request for Applications** 01/27/2015

www.tidc.texas.gov

Helpful Links

- TIDC website - www.tidc.texas.gov
- TIDC Special Edition Newsletter – Texas 84th Legislature –
<http://archive.constantcontact.com/fs166/1117104151347/archive/1121378355399.html>
- Guidelines for Indigent Defense Caseloads (pursuant to HB 1318, 83rd Texas Legislature) -
<http://tidc.texas.gov/resources/publications/reports/special-reports/weightedcaseloadstudy.aspx>
- Judgment and Justice: An Evaluation of the Texas Regional Public Defender for Capital Cases -
http://tidc.texas.gov/media/18616/130607_finalcapitaldefenderreport.pdf