



Indigent Defense Newsletter 2016 Winter Edition

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Message from Chair

On behalf of the Commission members and staff, I thank our outgoing Commission member the **Honorable Royce West** for his friendship, service, and participation during his tenure. During the 84th Legislature, Sen. West was instrumental in the passage of [SB 1517](#) and [HB 3633](#) relating to indigent defense. He co-authored SB 1517, which 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. Sen. West sponsored HB 3633, which 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, and which limits the amount to be repaid to counties to the actual cost of the legal services provided.



I welcome the **Honorable Brandon Creighton** as our newest member of the Commission. Sen. Creighton was appointed to the Texas Judicial Council by Lt. Governor Dan Patrick, and in that role he joins TIDC. He is an eighth generation Montgomery County resident and a graduate of the University of Texas. Sen. Creighton holds his Doctor of Jurisprudence from Oklahoma City University School of Law. I look forward to our work together to keep improving indigent defense in Texas.

The Commission recently published its [FY 2015 Annual and Expenditure Report](#) that features its duties, activities, and accomplishments in fiscal year 2015 and highlights how some jurisdictions are successfully implementing strategies for improving indigent defense services.

In other news, the Commission recently awarded \$25.1 million in formula grants, along with several discretionary grants to support innovations in Texas counties to improve legal defense for the poor. More information on these grant awards is provided below.

Sharon Keller

Message from Director

The Commission is pleased to have published a revised *Fair Defense Laws*. The new [Fair Defense Laws - 2015-2017](#), available on our website, is an outstanding resource and includes all administrative rules promulgated by the Commission.



With the support of a grant from the Governor's Criminal Justice Division, the Commission collaborated with the National Legal Aid and Defender Association (NLADA) to publish a new resource for developing mentoring programs for attorneys providing indigent defense services. The report, [Indigent Defense Attorney Mentoring in Texas: A Guide to Establishing a Mentorship Program](#), includes [Mentoring Program Curriculum Menu Worksheets](#) and will be useful for chief public defenders, leaders of managed assigned counsel systems, indigent defense system administrators, judges, county officials, bar leaders, and others interested in improving the professional preparedness of attorneys providing this important representation.

I am also pleased to report the following recent Commission publications, trainings, and announcements:

[For the Defense: A New Mentorship Program](#)

[TACA Presentation on Indigent Defense Reporting & Fiscal Monitoring](#)

[TIDC and PPRI Awarded Major Federal Grant to Advance Evidence-Based Indigent Defense](#)

[TIDC Awards Grants to Fund Regional Public Defender Program in South Texas and to Support Defense in Capital Cases in Urban Counties; TIDC Announces Publication of Attorney Mentoring Program Publication](#)

[TIDC Provides New Resource to Assist Counties with SB 1517 Compliance](#)

[What do we mean by a "good" lawyer?](#)

Next, the Capital Area Private Defender Service (CAPDS) has published its first annual report. Travis County followed the lead of Lubbock County and has successfully transitioned from an ad hoc assigned counsel program to a managed assigned counsel program. The report highlights some of the remarkable work being done by its attorneys, investigators, and consultants. In addition to providing insight into several new programs, the report shares an overview of the CAPDS role in indigent defense in Travis County. The report is available at <http://adobe.ly/1MXcDAV>. The story of its implementation can be found in this presentation: [Implementation of the Capital Area Private Defender Service \(CAPDS\)](#).

In closing, I want to thank **Sen. Royce West** for his service to the Commission since 2013. He championed significant legislation to improve indigent defense. I also want to welcome **Sen. Brandon Creighton** as our newest Commission member and congratulate him on his appointment to the Texas Judicial Council.

Jim Bethke

Across the State

Immigration Practice Tip from the Criminal Justice Section of the State Bar of Texas Newsletter

By Guest Contributor Jordan Pollock, Assistant Public Defender, Immigration Specialist, Dallas County



Drug offenses generally cause dire immigration consequences for non-citizens, but there is a limited exception to deportability (and waiver available for those seeking relief who have a qualifying relative) for a single simple possession of less than 30 grams of marijuana. Texas's misdemeanor marijuana statute does not specify the amount in grams, but rather references possession of less than 2 ounces of marijuana. Because 2 ounces is more than 30 grams, if you must plead a non-citizen client to a marijuana offense (although avoiding drug convictions is always the best practice if possible), make sure the record is clear about the actual amount possessed. Ensuring the record reflects the amount being less than 30 grams will help preserve immigration relief and clarify any debate as to deportability.

Legal Research in the Digital Age: Free Access to Online Resources from the Texas State Law Library

By Guest Contributor Leslie Prather, Assistant Director, State Law Library



The State Law Library's mission is to provide free access to a wide array of legal resources to all Texans. Our website, www.sll.texas.gov, is a place to find both primary law and a portal to a variety of secondary sources. These resources range from plain language self-help information, treatises that provide expert analysis of the law, and law reviews that provide perspective, to task oriented form drafting assistance. Additionally, our website gathers information on legal rights associations, legal hotlines, legal clinics, and lawyer referral throughout the state.

Our [Research from Home](#) page provides information on the registration process with a link to the online registration form and an overview of the types of resources we make available at no cost to individuals who register with us. Our [Digital Collection](#) page provides a variety of access points to the material available online. On the left-hand side of the page you will find our eBooks, arranged into broad subject areas. The eBooks include well known treatises geared to legal professionals such as the *Texas Criminal Practice Guide*, *Nutshells*, and *Hornbooks* that provide an overview of an area of law, and plain language resources that can help your clients understand the law. Criminal law titles are listed <http://www.sll.texas.gov/library-resources/collections/digital-collection/?subject=25>. Criminal Procedure titles are listed <http://www.sll.texas.gov/library-resources/collections/digital-collection/?subject=26>.

Databases are listed on the right-hand column of the page. Of particular interest to the criminal law bar may be the **AILA Link**, which is a fully searchable, immigration law website from the American Immigration Lawyers Association. This database includes *Immigration Law and the Criminal Client* and *Immigration Consequences of Criminal Activity*. **Fastcase** is a new database that includes state law from all the states and the federal level. This service includes Lois Law Libraries. These are mainly civil law, but do include texts on the practice of law. **HeinOnline** is best known for providing access to law review and journal articles. It is also a treasure trove of primary historical sources, Congressional record, Code of Federal Regulations, agency decisions, and some really comprehensive federal legislative history compilations. **National Consumer Law Center** provides respected publications that are being used by legal aid to assist with the numerous consumer law issues that confront someone in the criminal justice system.

[Texas Historical Statutes, 1879, 1895, 1911 & 1925 editions](#) are of interest for historical research. We are currently digitizing the statutes from 1926 -1965, and those will be available on our website in the coming year.

Another important resource available to you is the staff of the State Law Library. Our librarians are available to assist in finding information and help in navigating the resources with you over the phone, (844) 829-2843 or via our Ask a Librarian page, <http://www.sll.texas.gov/about-us/public-services/ask-a-librarian/>. We encourage you to take advantage of these resources or contact us for further information.

Indigent Defense Expenditure Review

Every Texas county is required to report annually by November 1st on the number of indigent cases in each court and their associated expenses. Staff conducts a thorough desk review of the reports, which provide the basis for eligibility in all of the Commission's grant programs, both formula and discretionary. Reviews of FY 2015 county reports revealed that over 460,000 cases received court-appointed counsel and total indigent defense costs reached \$238 million.

FY 2015 is the second year the report includes the number of cases handled by and amounts paid to each attorney. Counties reporting figures for FY 2015 showed appointed case figures and amounts paid to 6,259 attorneys across all counties. Case totals per attorney varied from one to 1,353 criminal cases disposed with a median of 45 total felony and misdemeanor cases disposed across all counties. The amount paid to each attorney also varied widely from \$50 to over \$497,000 across all counties with a median of just over \$16,000.

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 attorney fees reported on the court report did not match the corresponding detailed attorney fee report.

Attorney Practice-Time Reporting and Court Attorney Reporting

House Bill (HB 1318) passed by the 83rd Legislature requires all attorneys who accept appointments in adult criminal and juvenile delinquency cases to submit to each county an annual statement that describes the percentage of their practice time that is dedicated to work on those appointed cases. As of February 4, 2016, 3,708 attorneys had completed reports. The median percentage of practice time devoted to appointed criminal and juvenile cases across all counties was about 57 percent.

FY 2017 Discretionary Grant Request for Applications

Counties interested in applying for funding for new indigent defense improvement programs should carefully review the [FY 2017 Discretionary Grant Request for Applications \(RFA\)](#). The deadline for the first step in the application process, a brief Intent to Submit Application (ISA), is 5 p.m. on March 11, 2016. Applicants that receive a Notice to Proceed with Full Application must submit their full application by 5 p.m. on May 6, 2016. The deadline for "Menu-Option" applications for certain programs is 5 p.m. on May 6, 2016, and they do not require an ISA. See the RFA for additional details. Grant process training materials are available on the Commission [website](#). Please contact Edwin Colfax, Grant Program Manager, with any questions or for assistance with the application process: ecolfax@tidc.texas.gov, or 512-463-2508.

Commission Awards \$25.1 Million in Formula Grants to Counties

At its December 3, 2015 meeting the Commission awarded \$24 million in FY 2016 formula grants to Texas counties. 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.

Please note that some counties have received a notice that their Formula Grant Award has special conditions that must be resolved before payments may be issued. These include indigent defense plan status, missing commissioners court resolutions, and delinquent trial court activity reports to the Office of Court Administration. Please contact the Commission for assistance in resolving any formula grant special conditions.

The Commission also awarded \$1.1 million in new Supplemental Capital Defense Formula Grants for those counties that are not eligible to join the Regional Public Defender Office for Capital Cases (RPDO). The Commission has supported most Texas counties in capital case indigent defense through support of the RPDO since 2008. Because Texas's largest counties are not eligible to participate in the RPDO, the Commission has allocated funds to provide supplemental formula grants to those counties to support indigent defense in capital cases. This funding is provided out of new general revenue provided to the Commission by the Texas Legislature in 2015.

Recent Discretionary Grant Awards

The Commission also made several discretionary grant awards at its December meeting.

- The Commission awarded a Discretionary Grant of \$681,120 to Starr County to create a regional public defender office to include Duval and Jim Hogg Counties. The counties will contract with Texas RioGrande Legal Aid (TRLA), which also currently operates successful public defender programs for Bee, Willacy, Live Oak, and McMullen Counties.
- The Commission also awarded a Technical Support Grant of \$400,000 to Harris County to support the state's response to recent changes in the protocol for analysis and reporting of mixed DNA evidence that can in some cases significantly change the inclusion statistics reported. The Texas Forensic Science Commission has convened a statewide working group including prosecutors, defenders, judges, and others to help ensure that affected defendants are notified and appropriate cases provided with legal assistance. This grant-funded project will be coordinated by the Harris County Public Defender, which has staff that have extensive experience developing responses to similar systemic problems with forensic evidence that have been discovered. The program will coordinate with the statewide working group and provide case review and assistance to defendants from anywhere in Texas.
- The Commission awarded a Technical Support Grant of \$39,000 to Travis County to implement indigent defense attorney mentoring services. The Commission recently issued a new report funded by a grant from the Governor's Criminal Justice Division (CJD) titled [Indigent Defense Attorney Mentoring in Texas: A Guide to Establishing a Mentoring Program](#). The remaining CJD grant funds will put this new resource into action through implementation of a pilot mentoring program in Travis County through the Capital Area Private Defender Service (CAPDS).
- The Commission also authorized an award of \$500,000 to Lubbock County to fund operation of a dedicated capital case public defender program for Hidalgo County by the RPDO. The legislature directed \$500,000 of the Commission's funds toward capital public defense in Cameron and Hidalgo Counties. After review of caseload and necessary county matching funds Cameron County declined to participate in the program. Commission staff is currently working with Lubbock and Hidalgo Counties to agree on budget and funding for the budget amount in excess of the legislatively directed funding.
- The Commission awarded a discretionary grant of up to \$255,000 to the Conference of Urban Counties to implement the upgraded TechShare Indigent Defense case management system together with a set of functional enhancements to the system for the eleven participating counties.

TIDC Withholds Grant Funds from Hidalgo County

The Texas Indigent Defense Commission voted at the December 3, 2015, board meeting to withhold fiscal year 2016 formula grant funding to Hidalgo County for continued non-compliance with policy monitoring rules. The Commission presumes a jurisdiction has a fair, neutral, and non-discriminatory appointment system if the top 10 percent of recipient attorneys receive less than three times their representative share of appointments. Beginning in 2009, the Commission made recommendations to Hidalgo County regarding the unequal distribution of attorney appointments

across adult and juvenile cases. Following several interim reviews, the county's attorney appointments for adult cases now fall within the threshold allowed by the monitoring rules. However, juvenile appointments still fall outside the threshold, with the top 10 percent of attorneys receiving over four times their representative share of appointments. TIDC is withholding first quarter FY 2016 grant funds of approximately \$165,000 from the county pending both corrective action and approval by the Board. Hidalgo County judges in attendance at the December meeting detailed for the Commission recently implemented process changes they hope will result in a more even distribution of attorney appointments in juvenile cases. The issue will be revisited at the April 2016 TIDC strategic planning meeting.

Timothy Cole Exoneration Review Commission Update

The [Timothy Cole Exoneration Review Commission \(TCERC\)](#) first met on October 29, 2015, in the Texas Supreme Court Courtroom. The initial meeting covered an array of background information on the topic of exoneration, as well as the areas the Commission may review and examine. Representative John T. Smithee was selected as the presiding officer of the Commission. An exoneree, Richard Miles, also addressed the Commission to provide an overview of his case. Representative Ruth Jones McClendon and Senator Rodney Ellis, the House author and Senate sponsor of the legislation creating the Commission, each addressed the Commission with their thoughts on how it might proceed. Timothy Cole's family also attended and was acknowledged, and a video was shown about Timothy Cole's life.

The Commission met again on December 10, 2015, where information on Texas exoneration since 2010 was reviewed. Background information on electronic recording of interrogations was presented, as well as the practices in other states in regards to this topic. The Commission discussed various areas of interest for research, and it was decided that staff would distribute a poll to Commission members to identify the top research areas of interest. Research is currently being conducted on the top area selected for further study, electronic recording of interrogations, in preparation for the next Commission meeting at 1:30 p.m. on Tuesday, March 22nd.



*Timothy Cole Exoneration Review
Commission meeting
December 10, 2015*

Weighted Caseload Study Addendum: Juvenile and Appellate Cases

At its March 6, 2015, meeting, the Commission approved a proposal from Texas A&M University's Public Policy Research Institute (PPRI) to conduct a study to develop evidence-based recommendations for setting attorney caseload guidelines in juvenile trial-level cases and adult felony appeals cases. PPRI is using the same framework it used in its adult trial-level caseload study published in January 2015. The analysis of attorney time-keeping records has already been completed for both phases of the study. Next, a Delphi panel of expert juvenile defense attorneys and one of criminal appellate attorneys were convened in mid-January 2016. Each panel consisted of about twenty highly skilled, experienced attorneys who, through online surveys and then at an in-person meeting, reached consensus on how much time is required for various cases in order to provide reasonably effective representation in juvenile and criminal appellate cases. PPRI will now analyze this data and prepare a final report that will include a summary of the research methodology and final recommendations for caseloads for juvenile and criminal appellate cases in Texas. The report is expected to be completed in March.



Delphi Juvenile Attorneys Panel



Delphi Appellate Attorneys Panel

TIDC Provides New Resource to Assist Counties with SB 1517 Compliance

Article 15.18 of the Code of Criminal Procedure was amended this past legislative session by [SB 1517](#), and the changes became effective September 1, 2015. The new requirements affect local practices regarding the appointment of counsel for defendants arrested and jailed on out-of-county warrants. While the new law clarified the requirements for both the warrant-issuing and arresting counties, the implementation has created some challenges in locating relevant documents and transmitting the required information from the arresting to warrant-issuing county. To address these challenges, the Texas Indigent Defense Commission has created an [Out-Of-County Arrest Contacts and Affidavit of Indigence Link](#) where officials from arresting counties can determine by court level (juvenile, county, and district court) the appropriate contact person in the warrant-issuing county, as well as the relevant affidavits of indigence for each county.

While the list comprises TIDC's current information for all 254 counties, contact information or the affidavit of indigence for some counties or court levels may be missing. Counties were required to submit their affidavits of indigence to TIDC as part of their indigent defense plans for the first time in 2015. Please review the online contact information and affidavits of indigence for your county to ensure they are accurate and complete.

Further information can be found on TIDC's website at:

http://www.tidc.texas.gov/media/40449/sb-1517flowchart_summary.pdf

Recent Articles and Media

[Jefferson County joins capital defense collaboration](#) (October 2015)

[Area counties should consider regional defender option to save tax dollars](#) (October 2015)

[Texas Tech University School of Law](#) (November 2015)

[Harvard Law Library Readies Trove of Decisions for Digital Age](#) (November 2015)

[Commission Begins Study of Wrongful Convictions](#) (November 2015)

[Indigent Defense Grant Money Withheld from Hidalgo County](#) (December 2015)

[Texas Commission Votes to Withhold Grant Money from Hidalgo County](#) (December 2015)

[Hidalgo County \\$660K State Grant in Jeopardy; Fourth time since 2009 court found out of compliance](#) (December 2015)

[Judges Say Indigent Defense Program in Compliance: Attorneys who received disproportionate number of cases identified](#) (December 2015)

[Texas Indigent Defense Commission Touts Criminal-Defense Mentoring Programs](#) (December 2015)

[State grant funds legal aid for some arrestees with mental illness](#) (December 2015)

[Lubbock County officials update indigent defense appointment process](#) (December 2015)

[Bell County prepares for future capital murder cases](#) (December 2015)

[Records: Judge assigned cases to his personal attorney](#) (December 2015)

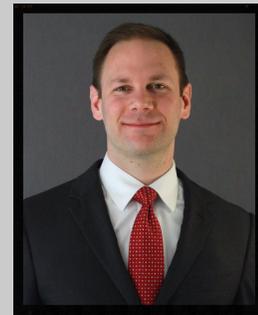
[Bell County Indigent Defense Attorney Mentorship Program:](#)

[Bell County program used as statewide model](#) (December 2015)
[FYE 15 General Fund final amendments approved](#) (December 2015)
[For those accused in Harris County, it's time to right a legal wrong](#) (January 2016)
[Bail hearings: Where prosecutors and magistrates ensure defenseless people stay in jail](#) (January 2016)
[New Fort Bend defender's office will make process more efficient](#) (January 2016)
[Judges vote in two new overseers of indigent defense program](#) (January 2016)
[The cost of Gabriel Hall's capital murder trial increased by \\$14,000, according to officials](#) (January 2016)
[Only truly indigent defendants should be getting free lawyers](#) (January 2016)
[Texas leading massive review of criminal cases based on change in DNA calculations](#) (January 2016)
[1 in a million? Wrongful conviction experts study DNA odds](#) (January 2016)

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.



Louisiana Public Defense

Public defense is underfunded in jurisdictions across the country. But it's hard to find a place in worse shape than Texas's neighbor to the east.

In September of last year, Orleans Assistant Public Defender Tina Peng wrote a [Washington Post op ed](#) entitled "I'm a public defender. It's impossible for me to do a good job representing my clients." Peng described a million-dollar deficit, impending furloughs, and caseloads twice that discussed in American Bar Association standards.

That same month, [John Oliver](#) explored New Orleans caseloads on Last Week Tonight, a popular television show. He referenced a National Association of Criminal Defense Lawyers (NACDL) study of Orleans Public Defenders a few years ago that found attorneys there spending just *seven minutes per case*. Oliver explained that Orleans Public Defenders had created a crowdfunding page to bridge their budget gap. But crowdfunding was falling short, too. As Oliver quipped, "Nobody should be in jail because a kickstarter didn't meet its goal."

But Orleans defenders continued to show grit. In November, Derwyn Bunton, the Orleans Public Defender, [asked a judge](#) to stop assigning new cases to his office. The next month, Orleans [announced](#) that it would begin refusing case assignments due to chronic underfunding—funding far below what was needed to represent 85% of New Orleans criminal defendants. The office [made good on its promise](#) in January 2016, refusing many felony cases. As of this writing, the drama in New Orleans is still unfolding.

What lessons does Louisiana hold for Texas? Both are county-based systems overseen by a statewide commission. To different degrees, both face excessive caseloads and insufficient funding. Could Texas face similar troubles?

Perhaps the question is better framed the other way around: What lessons does Texas hold for Louisiana? The Texas Indigent Defense Commission (TIDC) has become a model statewide commission. Attorneys, judges, and legislators across the state have vigorously supported the office and rightly made public defense a priority for the state's 254 counties. While Texas has not solved all of its public defense problems, unlike many states, it is on the right path.

Will attorneys, judges, and legislators in Louisiana come to realize the indispensable role public defense plays in upholding citizens' constitutional rights, ensuring a fair criminal justice system, and reducing mass incarceration? Only time will tell. But it's important to keep an eye on Texas's neighbor to the east. It serves as a stark reminder of the consequences of grossly excessive caseloads and insufficient funding.

Commission Members

Ex Officio Members:

Honorable Sharon Keller, Chair
Honorable Nathan Hecht
Honorable Sherry Radack
Honorable Brandon Creighton
Honorable John Whitmire
Honorable Abel Herrero
Honorable Andrew Murr

Members Appointed by Governor:

Honorable Olen Underwood, Vice-Chair
Honorable Jon Burrows
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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