



## Indigent Defense Newsletter 2016 Spring/Summer Edition

### Grants and Reporting Committee Meeting

July 12, 2016 - 10:00 a.m. to noon  
Tom C. Clark Building, 1st floor conference room  
205 W. 14th Street, Austin, TX

### Policies and Standards Committee Meeting

August 17, 2016 - 2:00 p.m. to 4:00 p.m.  
Tom C. Clark Building, 1st floor conference room  
205 W. 14th Street, Austin, TX

### Commission Meeting

August 30, 2016 - 10:00 a.m. to noon  
Texas Association of Counties Building, 4th floor boardroom  
1210 San Antonio Street, Austin, TX

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### Message from Chair

The Commission conducted strategic planning on April 13th-15th to discuss legislative strategies related to governance of the Regional Public Defender Office (RPDO) and the upcoming Legislative Appropriations Request (LAR). We also discussed key strategies for indigent defense improvement and accountability in the areas of attorney caseloads, indigent defendants' access to counsel and the timing of attorney appointments, and Article 15.17 hearings and bail schedules.

The board also met on April 13th to consider several items of business, including a report on improvements in Hidalgo County attorney appointments in juvenile cases. The board previously voted at its December 3, 2015 meeting to withhold FY 2016 Formula Grant payments to Hidalgo County until the county addressed its distribution of attorney appointments in juvenile cases. Commission staff reported that the county has implemented changes that have corrected the issues and that all attorneys are now selected based on their position on the attorney appointment wheel. The Commission voted to release the previously withheld Formula Grant payments to Hidalgo County but is requiring the county to make monthly reports to Commission staff through

FY 2017 for continued monitoring of appointments. CBS 4 News Rio Grande Valley covered the [story](#).

Congratulations to Mr. Jack Stoffregen upon his retirement as the Chief Public Defender at the Regional Public Defender's Office (RPDO). Jack has led the RPDO since it was created with funds from a discretionary grant from the Commission in 2007. Jack has made a profound difference in death penalty representation, and we are grateful for his work. Some other highlights of Jack's career are included in this local [news story](#) about his retirement.

I also want to welcome Mr. Ray Keith as the new Chief Public Defender. Ray was previously the Assistant Chief Public Defender, and I look forward to his leadership at the RPDO.

And finally, congratulations to El Paso County Commissioner Vincent Perez who has been named the 2016 County Leader of the Year by American City & County magazine. His story, [Changing of the Guard: How a young politician from El Paso, Texas, took on corruption and stagnation to reform the county's criminal justice system](#), is the cover article of the magazine's June issue. The story chronicles his efforts to review El Paso County's indigent defense processes and the Commission's review that helped lead to reforms in the county's procedures.

Sharon Keller

### Message from Director

"[I love Texas!](#)" is how Bob Spangenberg would begin his speeches at our trainings. I am deeply saddened to report Bob passed away on June 22, 2016, at age 83. Not that long ago Texas didn't really have an indigent defense "system." No longer is that the case, and it is due in large part to the efforts spanning five decades of our Honorary Texan, Bob Spangenberg.

In the fall of 1979, Bob's first work in Texas was to design a five-county public defender program based in Laredo. That program never came to fruition, but it provided the ground work for Texas RioGrande Legal Aid's Regional Public Defender offices, currently serving four counties in South Texas with a new office about to open in Starr County. In the 1980's, working with the American Bar Association (ABA) through its Bar Improvement Program, he conducted feasibility studies in El Paso and Travis counties to establish public defender offices. El Paso opened its public defender office in 1987. In 1992, Bob gave a presentation to the Dallas County Commissioners Court and Senator Rodney Ellis on behalf of the ABA's Bar Improvement Program, *Regarding the Creation of a Statewide Public Defender System in Texas*. In 1996, he provided *An Overview of the Indigent Defense System in Cameron County* for the State Bar of Texas's Legal Services for the Poor in Criminal Matters Standing Committee on behalf of the ABA's Bar Improvement Program.



**Bob Spangenberg**

Bob was a major contributor to the *Fair Defense Report: Analysis of Indigent Defense Practices in Texas*, issued by Texas Appleseed in 2000. "Appleseed was extremely fortunate to partner with Bob, because he brought legal knowledge and national expertise to the project that enabled us to make this important advance in Texas justice," said Annette LoVoi, executive director of the Texas Appleseed at the time of passage of the Fair Defense Act. In this report Bob cataloged, for the first time ever, information on indigent defense practices throughout Texas's 254 counties and offered concrete findings and recommendations. Prior to the *Fair Defense Report*, there was little documentation about indigent defense in Texas. The general feeling, however, was that the system was in very bad shape and criminal defendants were not receiving adequate representation. Because of Bob's tireless efforts, we now had substantial evidence that this was true.

It was the summer of 2001 when I first met Bob, the year Governor Perry signed into law the Fair Defense Act. Working with our Commission and local governments, Bob played a considerable role, sharing his expertise and passion to improve the delivery of indigent defense services for the poor in Texas.

In December 2008, the Task Force on Indigent Defense (now the Commission) honored Bob with the *Robert O. Dawson Indigent Defense Distinguished Service Award* for his efforts to improve

indigent defense in Texas over the prior decade. The award honors the late Professor Dawson for his outstanding contributions, and it recognizes outstanding service by a group or an individual to improve the way Texas provides counsel for its poorest citizens accused of crimes. As Presiding Judge Sharon Keller of the Court of Criminal Appeals and chair of the Commission remarked, Bob Spangenberg "worked tirelessly to help Texas and its local jurisdictions make significant improvements in indigent defense delivery systems."

Some highlights of the work done in whole or in part by Bob in Texas can be seen [here](#). His work has served Texas well in helping us to establish a meaningful infrastructure upon which to build a more effective indigent defense delivery system. Earlier this year, Bob was awarded the [ABA SCLAID Lifetime Achievement Award](#) by the Standing Committee on Legal Aid and Indigent Defendants at the ABA mid-year meeting in San Diego. This [tribute](#) to Bob is posted by the National Legal Aid and Defender Association (NLADA) on their website.

From the foundational support he provided us many years ago, to his countless papers and presentations over the span of five decades, Bob we love you too! Your positive influence has inspired us all to do better. On behalf of the entire Commission and its staff, we offer our deepest condolences to your family, and we pray you rest in peace.

Sincerely,

Jim

## Texas Fair Defense Act 15th Anniversary Symposium

On May 6th, the Commission co-sponsored the [Texas Fair Defense Act 15th Anniversary Symposium Celebration](#) with Senator Rodney Ellis, Texas Appleseed, The Texas Fair Defense Project, The Texas Criminal Justice Coalition, The University of Texas School of Law, George J. Beto Criminal Justice Center at Sam Houston State University, and Texas Defender Service. The event, held at the First Court of Appeals Courtroom in the Harris County 1910 Courthouse, was an opportunity to reflect on 15 years of new, innovative programs and on the challenges that lie ahead for improving indigent defense services. As part of the celebration, the Commission Executive Director Jim Bethke and Deputy Director Wesley Shackelford presented congratulatory resolutions to Senator Rodney Ellis, Senator Juan "Chuy" Hinojosa, Ms. Andrea Marsh, Mr. Jack Stoffregen, and Mr. Jim Allison for their many years of dedication and efforts to improve indigent defense services in Texas.



**Senator Rodney Ellis (center) with Jim Bethke (right) and Wesley Shackelford (left)**



**Senator Juan "Chuy" Hinojosa (center)**



***Ms. Andrea Marsha (right)***



***Mr. Jack Stoffregen (center)***



***Mr. Jim Allison (right)***



***Keynote speaker Lisa Foster,  
Director of Access to Justice,  
U.S. Department of Justice***

Keynote speaker Lisa Foster, Director of Access to Justice, U.S. Department of Justice discussed significant challenges related to appointing counsel in misdemeanor cases, attorney workloads, appointing counsel at a defendant's first appearance and bail, and assessing fines and fees, and how "...the collateral consequences of criminal convictions today - even for just fine-only misdemeanors - are significant." In addition, she echoed the belief that "[s]tatewide standards, state funding, transparency, accountability - those are the necessary prerequisites for an indigent defense system that lives up to Gideon's promise of equal justice for all regardless of one's economic station in life." The full text of Ms. Foster's address is available on the Department of Justice website [here](#), in addition to our [press release](#) about the event. A special thank you goes to the George J. Beto Criminal Justice Center at Sam Houston State University for filming the program, which will be posted on our website soon.

## **Legislative Update**

In March, Executive Director Jim Bethke testified at the House Committee on Criminal Jurisprudence public hearing about the constitutional requirements and local practices for the appointment of counsel to indigent defendants and about the operation of innocence projects at the state's six public law schools. The [Commission presentation](#), [Innocence Program presentation](#), a chart of [Exonerations by State-Funded Innocence Projects](#), and [an overview of FY 2015 Attorney Caseloads](#) are available, along with the [video of the hearing](#).

The TIDC 2016 Legislative Workgroup, which consists of a broad range of indigent defense stakeholders, met on June 23rd to consider and discuss recommendations for the upcoming legislature. The group will submit its recommended proposals to the Policies and Standards Committee and ultimately to the full Commission for consideration later this summer.

Governor Greg Abbott, Lt. Governor Dan Patrick, and Speaker Joe Straus issued this [letter](#) and [instructions](#) about the FY 2018-2019 Legislative Appropriations Request (LAR). Agencies have been directed to reduce budget requests for the upcoming biennium by four percent. The Office of Court Administration and TIDC LAR is due on August 5th.

## New Discretionary Grant Awarded to Travis County for Holistic Defense Initiative

On June 2nd, the Texas Indigent Defense Commission awarded a discretionary grant to Travis County to add additional support services to their managed assigned counsel program. Beginning in FY 2017 the Capital Area Private Defender Service (CAPDS) will have two full-time social workers working with defense counsel to improve outcomes for defendants with mental illness. In addition, a full-time attorney specializing in immigration and criminal law will join the team to ensure compliance with the U.S. Supreme Court's finding in *Padilla vs. Kentucky*. An essential part of an effective defense is advising clients of the collateral consequences they may face if convicted. In *Padilla* the court held that defense attorneys have a duty to fully advise clients of possible immigration consequences resulting from a criminal plea. Many criminal defense lawyers lack expertise in this complex area of law to effectively comply with this requirement.

TIDC's discretionary grant program provides assistance to counties to implement new programs that will improve indigent defense services. Counties interested in exploring discretionary grant opportunities should contact TIDC Grant Manager Edwin Colfax at [ecolfax@tidc.texas.gov](mailto:ecolfax@tidc.texas.gov) or 512-463-2508. The Discretionary Grant Request for Applications will be issued early in 2017, however, staff can begin working with counties now to consider the options and assist in developing effective applications.

## Bexar County Public Defender Program Works to Divert Defendants with Mental Illness from Jail to Treatment and Lasting Solutions

The Bexar County Public Defender is implementing an innovative program to provide representation to mentally ill defendants at the earliest stage of their cases with the help of a grant from the Texas Indigent Defense Commission. The program provides defense counsel at the magistration hearing and seeks to divert eligible defendants from jail to treatment. The goal is to improve defendant outcomes and break the cycle of repeated jail stays by helping defendants access services that help stabilize their lives and address the issues that often underlie the conduct that led them into the criminal justice system. Learn more and hear from one of the program's clients in this [KSAT news clip](#).

## Proper Reporting of Mental Health Expert Fees on the Indigent Defense Expenditure Report

County Auditors and Treasurers will be submitting the annual Indigent Defense Expenditure Report (IDER) on November 1, 2016. Commission staff have recently encountered some confusion regarding the eligibility of some mental health expert fees during fiscal monitoring visits. Generally speaking, experts requested and hired by the defense to conduct a psychological evaluation and which are funded by the county are considered eligible indigent defense expenditures. These expenditures should be included in the Expert Witness Expenditures sections of the Indigent Defense Expenditure Report.

Not all psychological evaluations of a defendant who is indigent are eligible, however. For example, competency evaluations ordered by the court are not eligible defense costs, even if the defense attorney raises the competency issue with the judge. To determine whether a psychological evaluation is an eligible indigent defense expenditure, auditors should determine if the expert fees in question were initiated through an ex parte motion by the defense. In such circumstances, the resulting reports would be privileged information provided only to the defense attorney. By contrast, psychological evaluations ordered by the court and which yield expert reports made available directly to the court or to all parties would not be counted as eligible indigent defense expenditures. Please contact TIDC with any questions regarding reporting of such expenditures.

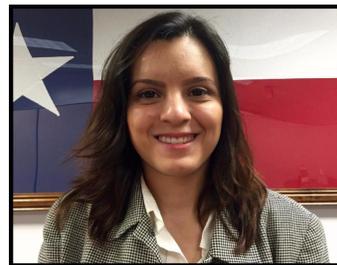
## Texas Smart Defense Web Portal State Advisory Committee



The first meeting of the Texas Smart Defense Web Portal State Advisory Committee was held on April 28th. The Texas A&M University's Public Policy Research Institute (PPRI), in partnership with the Commission, received a [grant](#) from the U.S. Department of Justice to help develop a web-based interface that can communicate information about quality indigent defense to Texas jurisdictions, advocates, and policymakers at state and local levels. The group provided helpful feedback to the project team as it begins work on the project.

### Staff News

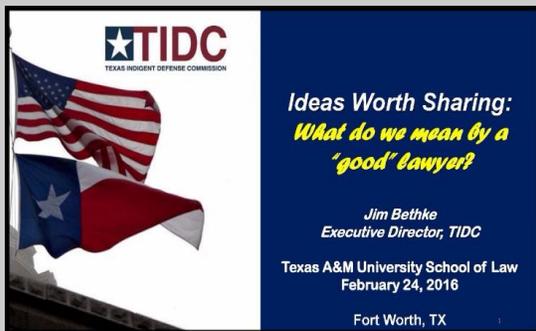
Ms. Carmen Tellez joined the staff as our summer law clerk. Carmen is a rising 2L from the University of Texas School of Law. She graduated *magna cum laude* from Texas A&M University with a Bachelor of Science in Forensic and Investigative Sciences in May of 2015. During her undergraduate study, Carmen interned with the Harris County District Attorney's Office and with a criminal defense firm in Bryan. Carmen is a native of Houston and plans to continue living in Texas to pursue a legal career in criminal law after graduation.



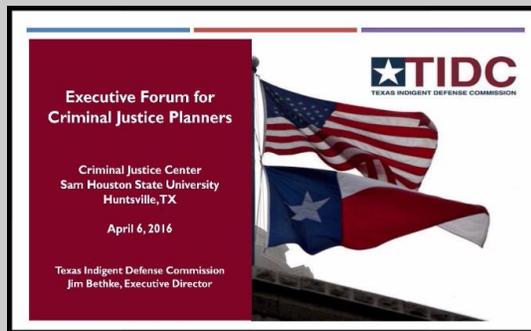
**Ms. Carmen Tellez**

### Training and Events

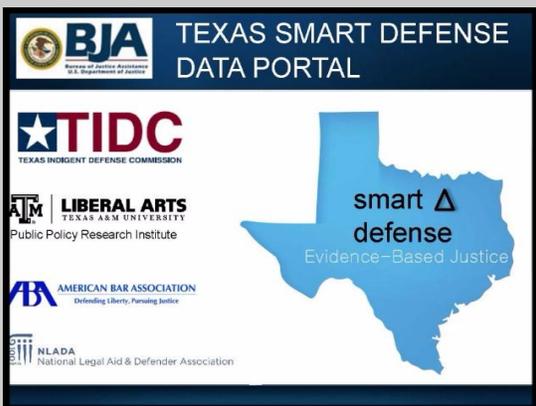
[Waller County Commissioners Court briefing](#)



**Texas A&M University School of Law**



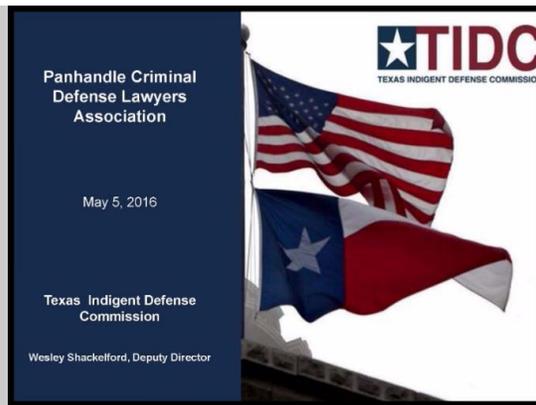
**Executive Forum for Criminal Justice Planners**



**Criminal Justice Planners - Smart Defense**



**Texas Association of Pre-Trial Services Annual Conference and Training Institute**



**Panhandle Criminal Defense Lawyers Association**



**Council of State Governments - West, Public Safety Committee**

## Recent Articles and Media

- [Texas Tech Law students represent rural indigent clients](#) (February 2016)
- [Senator Ellis: Criminal justice reforms in Waller County](#) (February 2016)
- [State Senator Rodney Ellis Visits Waller County, Asks Texas Lawmakers To Enact Criminal Justice Reforms](#) (February 2016)
- [County handcuffed to rising indigent defense costs](#) (February 2016)
- [Review of Waller County legal system to mend reputation: Analyst evaluates compliance with state defense law](#) (March 2016)
- [U.S. Department of Justice letter](#) about courts and their practices as they relate to indigents and, more specifically, about the assessment and enforcement of fines and fees in state and local courts (March 2016)
- [Rep. Canales to push for key measures that protect Texans from wrongful convictions, defend woman and children from family violence](#) (March 2016)
- [Expanding the Bexar County Public Defender's Office Has Not Been Easy](#) (March 2016)
- [Indicted Crystal City manager lands public-defense work](#) (March 2016)
- [Attorney review stalled amid Public Integrity Unit funding struggles](#) (March 2016)
- [Indigent defense costs growing rapidly, remain insufficient](#) (April 2016)
- [Decision on county's indigent defense grants expected Wednesday](#) (April 2016)
- [Hidalgo County earns back grant funding for indigent defense](#) (April 2016)
- [Buzzfeed on TX muni courts as revenue generators](#) (April 2016)
- [Lawsuit accuses El Paso of operating debtors prison for Texans who can't pay traffic tickets](#) (April 2016)
- [Harris County has a lot more to do to fix unfair justice system](#) (April 2016)
- [Travis County service gives indigent clients top level defense](#) (April 2016)
- [Texas Stakeholders Gather to Commemorate the 15 Year Anniversary of the Fair Defense Act](#) (May 2016)
- [Bexar County Seeks Greater Financial Assistance from the State](#) (June 2016)
- [Bexar County Asks State to Pay for Indigent Defense](#) (June 2016)
- [\\$1.3 million in presumed costs savings in Kaufman County in \\$1.9 million Brownlow defense](#) (June 2016)
- [Unexpected career: Stoffregen steps down from public defender's office after 42 years as lawyer](#) (June 2016)

## Other News of Interest

- [American Bar Association Summit on Public Defense](#) (February 2016)
- [U S Rep Ted Lieu introduces No Money Bail Act of 2016](#) (California's 33rd Congressional District - February 2016)
  - Related article: [Debtor's prison in 21st-century America](#) (February 2016)
  - Related article: [End the cycle of debt for indigent defendants](#) (February 2016)
- [When the Public Defender Says, I Can't Help](#) (Louisiana - February 2016)
- [Louisiana Campaign for Equal Justice](#)
- [Survey: Few courts require lawyers for poor in critical early state](#) (Michigan - February 2016)
- [Public defense reform bill introduced, ACLU says it's not enough](#) (Utah - February 2016)

[The Nobility of Good Lawyers with Bad Clients](#) (Oregon - February 2016)  
[Pretrial Justice Institute \(PJI\) and the Right to Counsel National Campaign](#) (March/April 2016)  
[Right To Counsel \(R2C\) Newsletter](#) (March 2016)  
 Including [The Colorado Bail Book: A Defense Practitioner's Guide to Adult Pretrial Release](#)  
 and [Launch of a National Task Force on Fines, Fees and Bail Practices](#)  
[NYSAC: State Budget Should Assume Indigent Defense Costs](#) (New York - March 2016)  
[40 years after Gregg v. Georgia: A National Conference on the Death Penalty](#) (March/April 2016)  
[State Legislature Passes Measure to Address Disparities in New York's Justice System](#)  
 (June 2016)  
[A Big Victory for Public Defense in New York](#) (June 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.*



## Big Changes in New York

New York State is about to take a major step forward for public defense. Under a measure passed by both houses of its legislature, the State would gradually assume public defense funding, a burden currently shouldered by the counties. To understand this tremendous change, some background is necessary.

In 1965, just two years after the United States Supreme Court's decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963), New York Governor Nelson Rockefeller signed into law Article 18-B, giving New York's 62 counties three options for public defense provision: (1) a public defender office; (2) a contract with a legal aid society; or (3) a panel of assigned private counsel. It provided no state oversight, standards, workload limits, or funding. Without these guarantees, the quality of representation suffered throughout the state.

After decades of patchy, subpar representation, Chief Judge Judith Kaye created a commission to assess public defense in New York. The Kaye Commission's findings were alarming, if not unusual for public defense in the United States: grossly inadequate funding, excessive workloads, a lack of standards regarding attorney performance or defendant eligibility, and rampant meet-and-plead practices. The Commission recommended that the State assume full funding and oversight of public defense.

Efforts to leverage the Kaye Commission Report legislatively stalled, and the *Hurrell-Haring* lawsuit followed. (See [my column for this newsletter dated April 1, 2015](#).) The *Hurrell-Haring* settlement provided for great improvements to New York public defense—the State assumes the duty to provide lawyers, counsel at arraignment, workload limits, and standards implementation—but those improvements applied only to the five counties that were the subject of the lawsuit.

Since the settlement, public defense leaders have pushed for the State of New York to implement these same changes statewide. The reasoning is clear: if the practices detailed in *Hurrell-Haring* were unconstitutional and unethical in the five counties subject to the lawsuit, how could they be constitutional and ethical in the remaining counties?

The [bill](#) just passed by the New York Assembly notes in its justification that "[t]his would be the first time in New York that a statewide entity will be [fiscally] responsible for legal representation of all indigent criminal defendants." The change would not occur overnight, however. Instead, state funding would gradually be phased in. By 2023, the State will assume full funding.

Observers have hailed the bill's passage as a ["historic moment for equal justice."](#) It is unclear whether Governor Andrew Cuomo will sign the bill. However, public defense commentators have noted that, with unanimous support from both houses, the bill will likely be ["veto-proof."](#)

## Commission Members

### Ex Officio Members:

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

### Members Appointed by Governor:

Honorable Olen Underwood, Vice-Chair  
Honorable Jon Burrows  
Mr. Anthony Odiorne  
Mr. 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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