

**Legislative Appropriations Request
For Fiscal Years 2018 and 2019**

**Submitted to the
Governor's Office of Budget, Planning and Policy
and the Legislative Budget Board**

by the

Texas Indigent Defense Commission, Texas Judicial Council

August 5, 2016

Modified September 12, 2016

FY 2018-19 LEGISLATIVE APPROPRIATIONS REQUEST
Texas Indigent Defense Commission, Texas Judicial Council

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ADMINISTRATOR'S STATEMENT

Overview

The mission of the Texas Indigent Defense Commission (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. Central to the Commission's approach is its commitment to respect local control, providing support where needed, while ensuring that counties understand that with autonomy comes responsibility.

This year marks the 15th Anniversary of the signing of The Fair Defense Act of 2001—the original blueprint for indigent defense developed by the Texas legislature that created the Commission. While the Commission remains administratively attached to the Office of Court Administration (OCA), the 82nd Legislature directed the Commission to submit its legislative appropriation request separate from OCA.

The Commission has developed and refined formula and discretionary grant programs to ensure that indigent defense funds are distributed fairly across the entire state while also promoting compliance with state law and encouraging the development of more effective indigent defense services. The Commission disbursed \$23.9 million in formula grants to 253 Texas counties in FY15. The Commission also disbursed \$4.7 million in discretionary grants in FY15 for programs serving 201 Texas counties. Discretionary grants are used to implement innovative programs, to remedy issues of non-compliance with state law requirements, and to assist counties that demonstrate overwhelming hardship in delivering services.

The total number of indigent persons being provided constitutionally guaranteed assistance of counsel in Texas has increased from 324,000 in FY02 to more than 460,000 in FY15, a 42 percent increase. Since the passage of the Fair Defense Act of 2001, spending for indigent defense in Texas has increased approximately 160%. This increase is largely driven by the implementation of better systems for ensuring that Constitutional requirements are met and qualified defendants have access to lawyers. Counties report that indigent defense is one of the major uncontrollable costs in their budgets because they have no control over the number of defendants who must be represented at a level of quality that meets the minimum standards imposed by the law.

Revenue the Commission receives to fund the GR-dedicated Fair Defense Account are decreasing. There was a 7.5% decline in court costs revenue received between FY13 and FY15. From FY15 to FY16, there was another 2% decline. Another 2% decline is anticipated in FY17. Consequently, the Commission has reduced its budget request for FY18/FY19 to reflect a 2% decrease per year in GR-dedicated funding. Without the necessary funding, the Commission cannot support a higher budget request.

The Commission is currently composed of the following 12 members:

- Court of Criminal Appeals Presiding Judge **Sharon Keller** of Austin—*Chair*
- 2nd Admin. Judicial Region Presiding Judge **Olen Underwood** of Conroe—*Vice Chair*
- Supreme Court Chief Justice **Nathan Hecht** of Dallas
- State Senator **Brandon Creighton** of Conroe
- State Senator **John Whitmire** of Houston
- State Representative **Abel Herrero** of Corpus Christi
- State Representative **Andrew Murr** of Junction
- Chief Justice of the Texas First Court of Appeals **Sherry Radack** of Houston
- Bell County Judge **Jon Burrows** of Temple
- Hays County Court at Law Number Two Judge **Linda Rodriguez** of San Marcos
- Mr. **Anthony Odiorne**, of Georgetown
- Mr. **Don Hase** of Arlington

Significant Changes in Policy and Services Provided

The right to counsel is guaranteed to all defendants, including those unable to afford a reasonable attorney fee, in the U.S. and Texas Constitutions. The government, whether it is the state or the county, must pay these costs. Without adequate funding for the defense of those too poor to hire counsel, Texas counties and the State of Texas may be put in greater jeopardy of lawsuits related to indigent defense. In recent years both Gillespie and Williamson Counties have faced major lawsuits related to indigent defense. In *Rothgery v. Gillespie County*, 554 U.S. 191 (2008), the United States Supreme Court held that Gillespie County had erred by delaying appointment of counsel. It also held that the right to counsel attaches at the article 15.17 hearing under the Texas Code of Criminal Procedure. In

another case, on June 8, 2012 the Texas Supreme Court unanimously ruled that a putative class of indigent misdemeanor defendants can proceed in its Section 1983 lawsuit alleging violations of the right to counsel in Williamson County, Texas. The plaintiffs in that case, *Heckman v. Williamson County*, 369 S.W.3d 137 (Tex. 2012), claimed that the county and its judges provided defendants inaccurate information about the right to counsel, failed to make timely rulings on requests for counsel, and denied appointed counsel to financially eligible defendants. In reversing an intermediate court of appeals decision dismissing the lawsuit, the Texas Supreme Court recognized that, "A criminal defendant's right to counsel--enshrined in both the United States and Texas Constitutions--ranks among the most important and fundamental rights in a free society." In the settlement of the lawsuit, Williamson County agreed to changes in its procedures as well as independent monitoring.

Similar litigation in New York prompted its current legislature to pass legislation with unanimous support from both parties switching from a county-funded to a state-funded system. The bill has been sent to Governor Cuomo and he has until the end of the year to decide what action to take. Like Texas, New York has historically required the counties to pay for indigent defense services. Under the proposed New York legislation, the state would reimburse its counties and New York City for ALL indigent defense costs phased in over seven years, starting at 25% in 2017 and providing full reimbursement beginning in 2023. This legislation was in response to a class action lawsuit alleging a systemic denial of counsel in five upstate New York counties. The *Hurrell-Harring* case was settled in 2014 and the legislation notes, "While the settlement agreement pertains to only five counties, its criteria establish a standard for providing indigent legal services that should apply statewide." It also noted that the state is constitutionally required to provide public defense services, and recognized that the current system "imposes a significant uncontrollable financial burden on counties dependent on real property taxes to fund needed services, and subject to a state imposed tax cap."

In 2015, local governments in New York spent nearly \$389 million for indigent defense and this amount is expected to increase substantially as the state takes over funding. Although Texas has nearly eight million more residents than New York, Texas and its counties spent only \$238 million last year. Meaningful state funding coupled with technical support provided by the Commission and its staff is necessary to assist counties in meeting their constitutional obligations, thus making such costly lawsuits less likely.

Commissioners Courts in five of the state's largest counties (Bexar, Dallas, El Paso, Harris, Travis) have recently passed resolutions requesting the state to fully fund indigent defense services as more than half the states currently do. All 254 counties have also requested full state funding through resolutions adopted through the County Judges and Commissioners Association of Texas.

Exceptional Items

1. Restoration of 4 Percent Reduction in Funding

DESCRIPTION/JUSTIFICATION:

The Commission respectfully requests restoration of the 4% reduction because the program is already underfunded at current levels. Indigent defense representation is not a discretionary expense, but rather a requirement by the U.S. and Texas Constitutions and an important part of operating a fair criminal justice system. State financial assistance to counties for indigent defense has driven much needed improvements in access to counsel. The reduction in state grants to counties to support indigent defense will need to be absorbed by Texas Counties, who will be forced to make up the difference.

EXTERNAL/INTERNAL FACTORS:

Texas counties are already struggling to fund approximately 88% of indigent defense costs and these costs continue to rise at a rate of approximately \$10 million per year. An additional cut of \$2.87 million will further hamper the ability of county governments to operate effective indigent defense systems that are an essential element of a fair adversarial justice system. Using FY15 data, a 4% cut of \$2.87 million equates to over 13,000 appointed misdemeanor cases or over 4,000 appointed felony cases. This impacts counties adversely and will increase the risk of noncompliance with constitutional requirements and state law due to mounting budget pressures on local governments.

2. Support 50/50 State-County Funding for Statewide Regional Public Defender Office for Capital Cases

DESCRIPTION / JUSTIFICATION:

In the most serious criminal cases where the death penalty is a possibility, the State has a unique interest in ensuring that appropriate defense representation is provided consistent with Constitutional standards and professional standards promulgated by the State Bar of Texas. In many parts of the state it can be difficult to find attorneys qualified to handle death penalty cases, as this type of representation is the most complex, time consuming, and challenging areas of defense practice.

The Regional Public Defender Office for Capital Cases (RPDO) is operated by Lubbock County and now serves 179 counties spanning all nine administrative judicial regions. Under current policy most counties are eligible to participate by paying membership dues. In

exchange for paying dues, when a member county has a capital murder case, a qualified defense team is provided by the program at no additional cost. The costs associated with a capital murder case have the potential to decimate the budgets of smaller counties. Member dues are determined by county population and capital case frequency. The Lubbock RPDO provides a way for counties to have greater budget predictability and mitigate the dramatic impact a capital case can have and help ensure that these most serious cases are tried effectively the first time.

Based on the statewide impact and critical services that the office provides across the entire State, the Commission requests General Revenue equal to one-half of the office's operating budget, with the balance funded through membership dues of participating counties. In the FY16/17 biennium, \$2.6 million in GR was appropriated for the RPDO, which is approximately 24% of the program cost. An additional appropriation of \$2.9 million will provide for a sustainable 50/50 cost sharing arrangement with participating counties and ensure that the program remains affordable and accessible to all eligible counties throughout Texas that wish to participate.

EXTERNAL/INTERNAL FACTORS:

The Commission provided start-up funding through its discretionary grant program for each judicial region in the state which has helped make membership more affordable for counties. This additional GR would help ensure the long-term stability of the program as the Commission's start-up grants come to a close in 2017. As those grants close out, counties will be forced to make up the difference through higher membership dues. Many of those counties that have not joined the program cited cost as the primary obstacle. Because of the many budget pressures on county government, the more membership costs rise, the greater the risk that counties will drop out of the program, which could undermine its long-term viability.

Texas counties are already burdened by the increased costs associated with their compliance with the Fair Defense Act. By devoting GR to support this critical indigent defense service for counties, the State will take a significant step toward funding the underfunded indigent defense mandates. In addition, this GR investment will better ensure consistency and fairness in handling the state's most serious criminal cases.

The RPDO is an award winning program with a proven track record of effectiveness that provides genuine value to Texas counties. The National Association of Counties (NACO) presented Lubbock County with an Achievement Award for pioneering the Regional Public Defender Office. NACO presents Achievement Awards to recognize unique, innovative county programs. Applications for the awards are judged in part by how they modernize county government and increase services to county residents. The Texas Association of Counties Leadership Foundation also awarded Lubbock its Best Practices award for the Regional Public Defender Office.

3. Support Statewide Funding for Early Identification and Representation of Defendants with Mental Illness

DESCRIPTION/JUSTIFICATION:

The Commission requests \$10 Million in General Revenue over the biennium to provide early identification and specialized representation for defendants with mental illness and incentivize statewide implementation of Articles 16.22 and 17.032, Code of Criminal Procedure.

Over the FY14/15 biennium, specialized mental health public defender programs in seven counties disposed of approximately 12,400 cases at a cost of \$10 million. Additional state funding of \$10 million over the biennium would provide targeted grants to enhance existing defender programs and establish specialized defenders in counties currently without these programs. Articles 16.22 and 17.032, CCP, provide for the early identification and release on a personal recognizance bond of arrestees with mental illness if an evaluation and treatment plan is in place. Creating and enhancing defender programs to assist with implementation of Articles 16.22 and 17.032 statewide would provide access to specialized counsel and mental health professionals shortly after arrest, resulting in fewer jail days and earlier case resolution for arrestees.

EXTERNAL/INTERNAL FACTORS:

According to research from the Meadows Foundation, Texas spends over \$650 million in local justice system costs each year due to inadequately treated mental illness and substance abuse disorders. These costs are disproportionately allocated to "super-utilizers" cycling through the system largely because of unaddressed mental health needs. "In Texas, there are 22,000 people in poverty who suffer from mental illness and repeatedly use jails, ERs, crisis services, EMS, and hospitals. Another 14,000 are more deeply involved in the criminal justice system."

Specialized mental health indigent defense programs can improve defendant outcomes and reduce recidivism by providing assistance that may help stabilize people and connect them with support that may address some of the causes of the behaviors that have placed them in the criminal justice system. By providing representation at the very earliest stage in the case, these programs can identify and divert eligible non-violent defendants from jail to appropriate treatment programs and community based services that focus on long-term stabilization.

4. Provide Local Property Tax Relief to Texas Counties by Fully Funding Criminal Indigent Defense

DESCRIPTION/JUSTIFICATION:

The Commission seeks full state funding (100%) for criminal indigent defense, but suggests a stepped-up funding approach over a six-year period. Currently, counties bear most of the financial burden of complying with constitutional and state law in funding criminal indigent defense, with the state providing only about 12 percent of the costs through Commission grant programs. In an effort to both accommodate the state's transition to fully funding these constitutionally mandated expenses and also allow for the Commission to properly prepare for transition in administering a fully-state funded criminal indigent defense system, the Commission requests 50% funding for the next biennium, with a goal of recommending 75% funding for FY20/21, and 100% funding for FY22/23.

In 1963, the United States Supreme Court held in *Gideon v. Wainwright* that all criminal defendants charged with a felony had the right to be represented by counsel, regardless of their ability to afford an attorney. This federal constitutional mandate was left to the states to implement and finance. In turn, the State delegated its responsibility to provide and pay for these services to counties and the local property taxpayer.

Revenues received from this exceptional item would be distributed through the Commission's formula and discretionary grant programs. These grants would help address access to counsel, attorney workload, and quality of representation issues across the State. This exceptional item would also provide for a fiscal analyst (1.0 FTE), and three policy analysts (3.0 FTEs), one with mental health expertise, associated expenses, and funding to conduct a study on how best to transition to full state funding. If this exceptional item is fully funded, then exceptional items #1,2, and 3 would be paid out of this revenue.

EXTERNAL/INTERNAL FACTORS:

In 2001, the Texas legislature passed the Texas Fair Defense Act (FDA), creating the Commission to provide some state funding and oversight. Since passage of the FDA, state grants have covered a small percentage of the counties' indigent defense costs, while spending on indigent defense in Texas has risen from \$91.4 million to \$238 million annually. In FY16/17, the Legislature appropriated \$7.5 million in General Revenue for the first time to help defray the 160% increase in spending since the FDA's passage. With statewide indigent defense costs increasing at approximately \$10 million each year and GR-Dedicated funds decreasing, the GR appropriated to close the indigent defense funding gap for the current biennium only partially mitigated budget pressures.

All 254 counties have requested the State to fully fund indigent defense through resolutions adopted by the County Judges and Commissioners Association of Texas and by Commissioners Court resolutions adopted in Texas's urban counties.

Most states fully fund the constitutional requirement to provide counsel to indigent defendants in criminal cases. Other states delegate funding and supervisory responsibilities for indigent defense to local entities in a manner similar to Texas. Some of these states have faced successful litigation holding the state government liable when local funding proves insufficient to deliver defense services that meet constitutional standards. This exceptional item request is proffered to help assure Texas meets its constitutional obligations, regardless of the financial resources available in each of its counties.

Conclusion

Since 2001, the Commission has provided some funding to encourage and promote a better justice system across Texas. As a result, many jurisdictions have implemented more effective indigent defense delivery systems and thousands more people now have their right to appointed counsel honored. The right to counsel is guaranteed in both the Texas Constitution and the United States Constitution. Indigent defense is not a discretionary program. Texas counties currently bear the overwhelming burden of funding indigent defense. The funding requested here will continue the development, maintenance, and expansion of effective programs that fulfill a constitutional duty. The Commission respectfully requests that the state recognize the additional burden counties have assumed since the passage of the Fair Defense Act and appropriate additional GR to continue the development of outstanding programs and offset those additional costs counties have incurred.

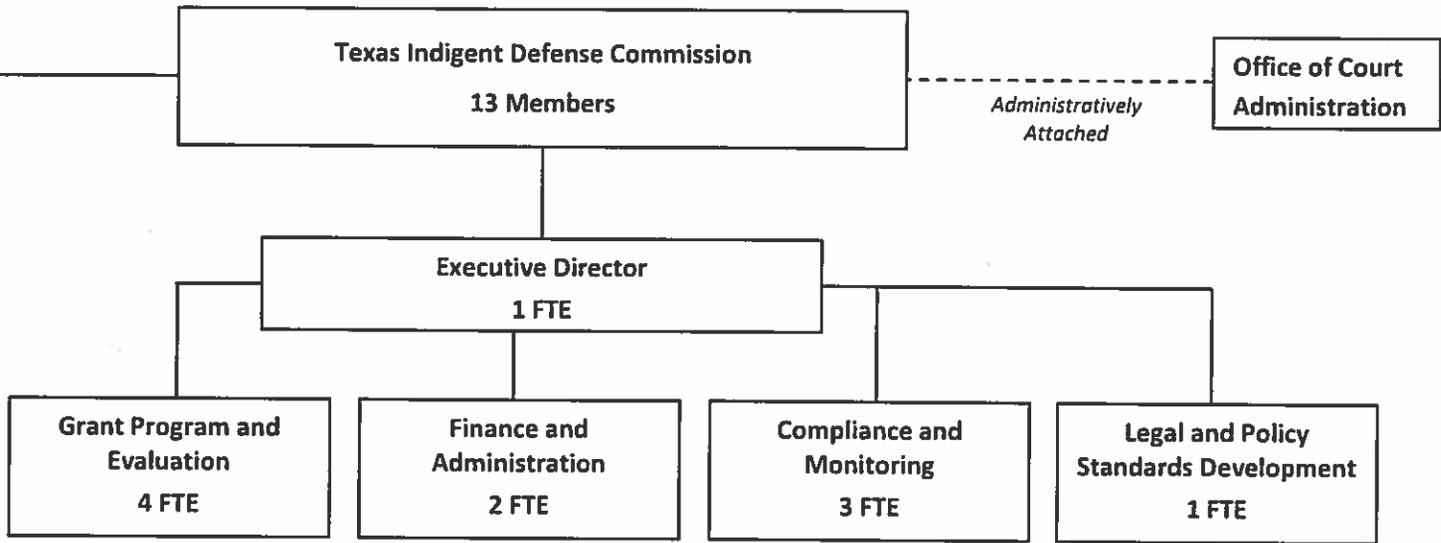
Respectfully Submitted,

James Bethke
Executive Director
Texas Indigent Defense Commission

Texas Indigent Defense Commission Board

Ex Officio Members:
 Presiding Judge of the Court of Criminal Appeals
 Chief Justice of the Supreme Court
 One of the Courts of Appeals Justices serving on the Council who is designated by the governor
 One of the members of the Senate serving on the Council who is designated by the lieutenant governor
 Member of the Senate appointed by the lieutenant governor
 Chair of the House Criminal Jurisprudence Committee
 Member of the House of Representatives appointed by the Speaker of the House
 A county court or statutory county court judge serving on the council who is designated by the governor

Governor Appointments:
 A district judge serving as a presiding judge of an administrative judicial region
 A judge of a constitutional county court or a county commissioner
 A judge of a constitutional county court or a county commissioner of a county with a population of 250,000 or more
 A practicing criminal defense attorney
 A chief public defender in Texas or the chief public defender's designee, who must be an attorney employed by the public defender's office



2.A. SUMMARY OF BASE REQUEST BY STRATEGY
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

212 Texas Indigent Defense Commission, Texas Judicial Council

Goal/Objective/STRATEGY	Exp 2015	Est 2016	Bud 2017	Req 2018	Req 2019
4 Improve Indigent Defense Practices and Procedures					
1 Improve Indigent Defense Practices and Procedures					
1 INDIGENT DEFENSE	\$32,126,325	\$36,196,849	\$35,629,857	\$33,818,599	\$32,668,063
TOTAL, GOAL 4	\$32,126,325	\$36,196,849	\$35,629,857	\$33,818,599	\$32,668,063
TOTAL, STRATEGY REQUEST	\$32,126,325	\$36,196,849	\$35,629,857	\$33,818,599	\$32,668,063
METHOD OF FINANCING					
General Revenue Funds:					
0001	\$0	\$3,750,000	\$3,750,000	\$3,750,000	\$3,750,000
SUBTOTAL	\$0	\$3,750,000	\$3,750,000	\$3,750,000	\$3,750,000
Interagency Contract - CJG					
444	\$0	\$99,960	\$0	\$0	\$0
SUBTOTAL	\$0	\$99,960	\$0	\$0	\$0
General Revenue Dedicated Funds:					
5073 Fair Defense	\$32,126,325	\$32,346,889	\$31,879,857	\$30,068,599	\$28,918,063
SUBTOTAL	\$32,126,325	\$32,346,889	\$31,879,857	\$30,068,599	\$28,918,063
TOTAL, METHOD OF FINANCING	\$32,126,325	\$36,196,849	\$35,629,857	\$33,818,599	\$32,668,063

2.B. SUMMARY OF BASE REQUEST BY METHOD OF FINANCE
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

212 Texas Indigent Defense Commission, Texas Judicial Council

METHOD OF FINANCE	Exp 2015	Est 2016	Bud 2017	Req 2018	Req 2019
GENERAL REVENUE FUND					
0001 General Revenue					
<i>REGULAR APPROPRIATIONS</i>					
Regular Appropriations from MOF Table (2016-17 GAA)	\$0	\$3,750,000	\$3,750,000	\$0	\$0
Regular Appropriations from MOF Table (2018-19 GAA)	\$0	\$0	\$0	\$3,750,000	\$3,750,000
TOTAL General Revenue Fund - 0001	\$0	\$3,750,000	\$3,750,000	\$3,750,000	\$3,750,000
GENERAL REVENUE FUND - DEDICATED					
5073 GR Dedicated - Fair Defense Account No. 5073					
<i>REGULAR APPROPRIATIONS</i>					
Regular Appropriations from MOF Table (2014-15 GAA)	\$30,546,228	\$0	\$0		
Regular Appropriations from MOF Table (2016-17 GAA)	\$0	\$31,777,573	\$31,859,378		
Regular Appropriations from MOF Table (2018-19 GAA)				\$30,068,599	\$28,918,063
<i>RIDER APPROPRIATION</i>					
Art. IV, OCA Rider B, Adjust Revenue Estimate (2014-15 GAA)	\$6,873,557	\$0	\$0		
Art. IV, OCA Rider B, Adjust Revenue Estimate (2016-17 GAA)	\$0	\$3,070,826	(\$1,509,183)		
<i>TRANSFERS</i>					
Art. IX, Sec. 17.06 Salary Increase for General State Employees (2014-15 GAA)	\$17,545	\$0	\$0		
Art. IX, Sec. 17.06 Salary Increase for General State Employees (2016-17 GAA)	\$0	\$20,481	\$20,481		
<i>LAPSED APPROPRIATIONS</i>					
Regular Appropriations from MOF Table (2014-15 GAA)	(\$5,311,005)	\$0	\$0	\$0	\$0
<i>UNEXPENDED BALANCES AUTHORITY</i>					
Strategy D.1.1. Indigent Defense (2016-17 GAA)	\$0	(\$2,521,991)	\$2,521,991	\$0	\$0
Strategy D.1.1. Indigent Defense (2016-17 GAA)	\$0	\$0	(\$1,012,808)	\$0	\$0
TOTAL GR Dedicated - Fair Defense Account No. 5073	\$32,126,325	\$32,346,889	\$31,879,857	\$30,068,599	\$28,918,063
OTHER FUNDS					
444 Interagency Contracts - CJG					
<i>REGULAR APPROPRIATIONS:</i>					
Regular Appropriations from MOF Table (2016-17 GAA)	\$0	\$99,960	\$0	\$0	\$0
TOTAL Interagency Contracts - CJG	\$0	\$99,960	\$0	\$0	\$0
GRAND TOTAL	\$32,126,325	\$36,196,849	\$35,629,857	\$33,818,599	\$32,668,063

2.C. SUMMARY OF BASE REQUEST BY OBJECT OF EXPENSE
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

212 Texas Indigent Defense Commission, Texas Judicial Council

OBJECT OF EXPENSE	Exp 2015	Est 2016	Bud 2017	Req 2018	Req 2019
1001 Salaries & Wages	\$729,955	\$834,281	\$839,285	\$839,285	\$839,285
1002 Other Personnel Costs	\$24,563	\$17,191	\$18,109	\$20,116	\$21,556
2001 Professional Fees & Services	\$461	\$228	\$228	\$228	\$228
2003 Consumables	\$1,528	\$1,638	\$3,000	\$3,000	\$3,000
2004 Utilities	\$3,978	\$3,316	\$3,600	\$3,600	\$3,600
2005 Travel	\$35,169	\$31,763	\$32,000	\$32,000	\$32,000
2006 Rent- Building	\$120	\$1,361	\$120	\$120	\$120
2007 Rent-Machine & Other	\$2,137	\$2,547	\$2,400	\$2,400	\$2,400
2009 Other Operating Expense	\$620,359	\$974,254	\$836,246	\$836,246	\$836,246
4000 Grants	\$30,708,055	\$34,330,270	\$33,894,869	\$32,081,604	\$30,929,628
OOE Total (Excluding Riders)	\$32,126,325	\$36,196,849	\$35,629,857	\$33,818,599	\$32,668,063
Grand Total	\$32,126,325	\$36,196,849	\$35,629,857	\$33,818,599	\$32,668,063

2.E. SUMMARY OF EXCEPTIONAL ITEMS REQUEST
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

212 Texas Indigent Defense Commission, Texas Judicial Council										
Priority	Item	2018			2019			Biennium		
		GR and GR Dedicated	All Funds	FTEs	GR and GR Dedicated	All Funds	FTEs	GR and GR Dedicated	All Funds	
1	TIDC - Restore 4%	\$1,434,535	\$1,434,535		\$1,434,535	\$1,434,535		\$2,869,070	\$2,869,070	
2	Regional Public Defender Office	\$1,450,000	\$1,450,000		\$1,450,000	\$1,450,000		\$2,900,000	\$2,900,000	
3	Representing the Mentally Ill	\$5,000,000	\$5,000,000		\$5,000,000	\$5,000,000		\$10,000,000	\$10,000,000	
4	Local Property Tax Relief	\$103,600,000	\$103,600,000	4.0	\$108,600,000	\$108,600,000	4.0	\$212,200,000	\$212,200,000	
Total, Exceptional Items Request		\$111,484,535	\$111,484,535	4.0	\$116,484,535	\$116,484,535	4.0	\$227,969,070	\$227,969,070	
Method of Financing										
	General Revenue	\$110,050,000	\$110,050,000		\$115,050,000	\$115,050,000		\$225,100,000	\$225,100,000	
	General Revenue -Dedicated	\$1,434,535	\$1,434,535		\$1,434,535	\$1,434,535		\$2,869,070	\$2,869,070	
		\$111,484,535	\$111,484,535		\$116,484,535	\$116,484,535		\$227,969,070	\$227,969,070	
Full Time Equivalent Positions				4.0				4.0		
Number of 100% Federally Funded FTEs				0.0				0.0		

2.F. SUMMARY OF TOTAL REQUEST BY STRATEGY
85th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

212 Texas Indigent Defense Commission, Texas Judicial Council

Goal/Objective/STRATEGY	Base 2018	Base 2019	Exceptional 2018	Exceptional 2019	Total Request 2018	Total Request 2019
4 Improve Indigent Defense Practices and Procedures						
1 Improve Indigent Defense Practices and Procedures						
1 INDIGENT DEFENSE	\$33,818,599	\$32,668,063	\$111,484,535	\$116,484,535	\$145,303,134	\$149,152,598
TOTAL, GOAL 4	\$33,818,599	\$32,668,063	\$111,484,535	\$116,484,535	\$145,303,134	\$149,152,598
TOTAL, STRATEGY REQUEST	\$33,818,599	\$32,668,063	\$111,484,535	\$116,484,535	\$145,303,134	\$149,152,598

Budget Overview - Biennial Amounts
 85th Regular Session Agency Submission Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

212 Texas Indigent Defense Commission, Texas Judicial Council
 Appropriation Years: 2018-19

	General Revenue Funds		GR Dedicated		Federal Funds		Other Funds		All Funds		Exceptional Item Funds
	2016-17	2018-19	2016-17	2018-19	2016-17	2018-19	2016-17	2018-19	2016-17	2018-19	2018-19
Goal: 4. Improve Indigent Defense Practices and Procedures											
4.1.1 Tx Indigent Defense Comm	\$7,500,000	\$7,500,000	\$64,226,746	\$58,986,662			\$99,960		\$71,826,706	\$66,486,662	\$227,969,070
TOTAL, GOAL	\$7,500,000	\$7,500,000	\$64,226,746	\$58,986,662			\$99,960		\$71,826,706	\$66,486,662	\$227,969,070

3.A. Strategy Request
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

8/26/2016 4:12:50PM

212 Office of Court Administration, Texas Judicial Council

GOAL: 4 Improve Indigent Defense Practices and Procedures
 OBJECTIVE: 1 Improve Indigent Defense Practices and Procedures
 STRATEGY: 1 Improve Indigent Defense Practices and Procedures

Service Categories:

Service: 07 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2015	Est 2016	Bud 2017	BL 2018	BL 2019
Output Measures:						
KEY 1	# Monitoring Visits, Technical Support Visits, & Trainings Conducted	102.00	105.00	105.00	80.00	80.00
KEY 2	Percentage of Counties Receiving State Funds for Indigent Defense	100.00%	94.00%	94.00%	98.00%	98.00%
Objects of Expense:						
1001	SALARIES AND WAGES	\$729,955	\$834,281	\$839,285	\$839,285	\$839,285
1002	OTHER PERSONNEL COSTS	\$24,563	\$17,191	\$18,109	\$20,116	\$21,556
2001	PROFESSIONAL FEES AND SERVICES	\$461	\$228	\$228	\$228	\$228
2003	CONSUMABLE SUPPLIES	\$1,528	\$1,638	\$3,000	\$3,000	\$3,000
2004	UTILITIES	\$3,978	\$3,316	\$3,600	\$3,600	\$3,600
2005	TRAVEL	\$35,169	\$31,763	\$32,000	\$32,000	\$32,000
2006	RENT - BUILDING	\$120	\$1,361	\$120	\$120	\$120
2007	RENT - MACHINE AND OTHER	\$2,137	\$2,547	\$2,400	\$2,400	\$2,400
2009	OTHER OPERATING EXPENSE	\$620,359	\$974,254	\$836,246	\$836,246	\$836,246
4000	GRANTS	\$30,708,055	\$34,330,270	\$33,894,869	\$32,081,604	\$30,929,628
TOTAL, OBJECT OF EXPENSE		\$32,126,325	\$36,196,849	\$35,629,857	\$33,818,599	\$32,668,063

Method of Financing:

212 Office of Court Administration, Texas Judicial Council

GOAL: 4 Improve Indigent Defense Practices and Procedures
 OBJECTIVE: 1 Improve Indigent Defense Practices and Procedures
 STRATEGY: 1 Improve Indigent Defense Practices and Procedures

Service Categories

Service: 07 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2015	Est 2016	Bud 2017	BL 2018	RL 2019
1	General Revenue Fund	\$0	\$3,750,000	\$3,750,000	\$3,750,000	\$3,750,000
SUBTOTAL, MOF (GENERAL REVENUE FUNDS)		\$0	\$3,750,000	\$3,750,000	\$3,750,000	\$3,750,000
Method of Financing:						
5073	Fair Defense	\$32,126,325	\$32,346,889	\$31,879,857	\$30,068,599	\$28,918,063
SUBTOTAL, MOF (GENERAL REVENUE FUNDS - DEDICATED)		\$32,126,325	\$32,346,889	\$31,879,857	\$30,068,599	\$28,918,063
Method of Financing:						
444	Interagency Contracts - CJG	\$0	\$99,960	\$0	\$0	\$0
SUBTOTAL, MOF (OTHER FUNDS)		\$0	\$99,960	\$0	\$0	\$0
TOTAL, METHOD OF FINANCE (INCLUDING RIDERS)					\$33,818,599	\$32,668,063
TOTAL, METHOD OF FINANCE (EXCLUDING RIDERS)		\$32,126,325	\$36,196,849	\$35,629,857	\$33,818,599	\$32,668,063
FULL TIME EQUIVALENT POSITIONS:		10.4	10.9	11.0	11.0	11.0

STRATEGY DESCRIPTION AND JUSTIFICATION:

212 Office of Court Administration, Texas Judicial Council

GOAL: 4 Improve Indigent Defense Practices and Procedures
OBJECTIVE: 1 Improve Indigent Defense Practices and Procedures
STRATEGY: 1 Improve Indigent Defense Practices and Procedures

Service Categories:

Service: 07 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2015	Est 2016	Bud 2017	BL 2018	BL 2019
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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 Commission administers a statewide grant program, a fiscal and policy monitoring program, a technical support program, and develops policies and standards. The Commission receives all statewide indigent defense information reported by counties and provides reports and analysis to the state leadership, legislature, and the public. OCA provides administrative support to the Commission.

EXTERNAL/INTERNAL FACTORS IMPACTING STRATEGY:

This strategy is funded primarily from the Fair Defense Account, a dedicated account in General Revenue. This principle funding stream for indigent defense is derived from dedicated court costs and fees. Deposits to the Fair Defense Account have substantially decreased in recent years, primarily due to a decrease in filed cases. This decrease has occurred as indigent defense costs continue to rise. Since the passage of the Fair Defense Act of 2001, spending for indigent defense in Texas has increased approximately 160%, going from \$91.4 million to \$238 million annually. This increase is largely driven by the implementation of better systems for ensuring that Constitutional requirements are met and qualified defendants have access to lawyers. For the first time, the FY16/17 budget included an appropriation of General Revenue for indigent defense. With statewide indigent defense costs increasing at approximately \$10 million/year and GR-Dedicated funds decreasing, the \$7.5 million of GR for the current biennium only partially mitigated those budget pressures. Counties continue to bear the overwhelming majority of indigent defense costs, with state grants only covering approximately 12%.

Revenues the Commission receives to fund the GR-dedicated Fair Defense Account are decreasing. There was a 7.5% decline in court costs revenue received between FY13 and FY15, a 2% decline from FY15 to FY16, and another 2% decline anticipated in FY17. Consequently, the Commission reduced its budget request for FY18/FY19 to reflect a 2% decrease per year in GR-dedicated funding.

3.A. Strategy Request
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

8/26/2016 4:12:50PM

212 Office of Court Administration, Texas Judicial Council

GOAL: 4 Improve Indigent Defense Practices and Procedures
 OBJECTIVE: 1 Improve Indigent Defense Practices and Procedures
 STRATEGY: 1 Improve Indigent Defense Practices and Procedures

Service Categories

Service: 07 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2015	Est 2016	Bud 2017	BL 2018	BL 2019
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EXPLANATION OF BIENNIAL CHANGE (includes Rider amounts):

<u>STRATEGY BIENNIAL TOTAL - ALL FUNDS</u>		<u>BIENNIAL CHANGE</u>	<u>EXPLANATION OF BIENNIAL CHANGE</u>	
<u>Base Spending (Est 2016 + Bud 2017)</u>	<u>Baseline Request (Bl. 2018 + Bl. 2019)</u>		<u>\$ Amount</u>	<u>Explanation(s) of Amount (must specify MOFs and FTEs)</u>
\$71,826,706	\$66,486,662	\$ (5,340,044)	\$ (2,869,070)	Decrease is attributable to the mandated 4% budget reduction.
			\$ (99,960)	Interagency Contract-CJG, not included in base for 18-19.
			\$ (2,371,014)	Decrease is attributable to a decline in court cost revenue received.
			<u>\$ (5,340,044)</u>	<u>Total of Explanation of Biennial Change</u>

3.A.1. PROGRAM-LEVEL REQUEST SCHEDULE
 85th Regular Session, Agency Submission, Version 1

Agency Code: 212		Agency: Office of Court Administration / Texas Indigent Defense Commission				Prepared by: Sharon Whitfield					
Date:											
Goal	Goal Name	Strategy	Strategy Name	Program	Program Name	16-17 Base	Requested 2018	Requested 2019	Biennial Total 18-19	Biennial Difference	
										\$	%
D	Indigent Defnese	D.1.1	Improve Indigent Defense Practices and Procedures		Texas Indigent Defense Commission	571,726,746	533,818,599	532,668,063	566,486,662	(\$5,240,084)	-7.3%

3.B. RIDER REVISIONS AND ADDITIONS REQUEST

Agency Code: 212	Agency Name: Office of Court Administration	Prepared by: Sharon Whitfield	Date: 08/05/2016	Request Level: Baseline																																								
Current Rider Number	Page Number in 2016-17 GAA	Proposed Rider Language																																										
1	IV-25	<p>Performance Measure Targets. The following is a listing of the key performance target levels for the Office of Court Administration, Texas Judicial Council. It is the intent of the Legislature that appropriations made by this Act be utilized in the most efficient and effective manner possible to achieve the intended mission of the Office of Court Administration, Texas Judicial Council. In order to achieve the objectives and service standards established by this Act, the Office of Court Administration, Texas Judicial Council shall make every effort to attain the following designated key performance target levels associated with each item of appropriation.</p> <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td align="center">2016</td> <td align="center">2018</td> <td align="center">2017</td> <td align="center">2019</td> </tr> <tr> <td colspan="5"> D. Goal: INDIGENT DEFENSE</td> </tr> <tr> <td colspan="5">D.1.1. Strategy: TX INDIGENT DEFENSE COMM</td> </tr> <tr> <td colspan="5">Output (Volume):</td> </tr> <tr> <td colspan="5">Number of Monitoring, Technical Support Visits and Training Conducted</td> </tr> <tr> <td></td> <td align="center">405-80</td> <td></td> <td align="center">405-80</td> <td></td> </tr> <tr> <td colspan="5">Percentage of Counties Receiving State Funds</td> </tr> <tr> <td></td> <td align="center">94 98%</td> <td></td> <td align="center">94 98%</td> <td></td> </tr> </table> <p><i>Updating measures for 2018-2019 projections.</i></p>				2016	2018	2017	2019	 D. Goal: INDIGENT DEFENSE					D.1.1. Strategy: TX INDIGENT DEFENSE COMM					Output (Volume):					Number of Monitoring, Technical Support Visits and Training Conducted						405-80		405-80		Percentage of Counties Receiving State Funds						94 98%		94 98%	
	2016	2018	2017	2019																																								
 D. Goal: INDIGENT DEFENSE																																												
D.1.1. Strategy: TX INDIGENT DEFENSE COMM																																												
Output (Volume):																																												
Number of Monitoring, Technical Support Visits and Training Conducted																																												
	405-80		405-80																																									
Percentage of Counties Receiving State Funds																																												
	94 98%		94 98%																																									

3.B. RIDER REVISIONS AND ADDITIONS REQUEST

8	IV-26	<p>Texas Indigent Defense Commission (TIDC).⁵ Amounts appropriated above from the General Revenue-Dedicated Fair Defense Account No. 5073 in Strategy D.1.1., Texas Indigent Defense Commission, includes \$1,064,988 and 11.00 FTEs in fiscal year 2016 and \$1,064,988 and 11.0 FTEs in fiscal year 2017 for the administration of the Commission. Except as otherwise provided relating to appropriations for the Office of Capital and Forensic Writs and all necessary amounts to cover payroll related benefit costs, all balances and amounts deposited into the General Revenue-Dedicated Fair Defense Account No. 5073 are appropriated above in Strategy D.1.1., Texas Indigent Defense Commission, for all uses authorized by Government Code, Chapter 79. All balances and amounts deposited (estimated to be \$30,068,599 in excess of \$33,700,000 in fiscal year 2016 2018 and \$28,918,063 \$33,700,000 in fiscal year 2017 2019 are appropriated to the TIDC for the same purpose. Included in these estimates are amounts collected from court costs pursuant to Code of Criminal Procedure, Art. 102.0045, Fee for Jury Reimbursement to Counties (estimated to be \$7,500,000 \$6,600,000 in fiscal year 2016 2018 and \$7,500,000 \$6,600,000 in fiscal year 2017 2019).</p> <p>The TIDC shall make grants to counties from the General Revenue-Dedicated Fair Defense Account No. 5073, with funds being disbursed by the Comptroller. No portion of the appropriation made by this section shall be used to offset the Office of Court Administration’s administrative support provided to the TIDC except by mutual agreement of the TIDC and the Office of Court Administration.</p> <p><i>The TIDC requests removal of the informational language related to administration of the Commission. Staffing levels and administrative costs are subject to approval by the Committee. While informational, it could hinder the Commission’s ability to effectively manage the program by limiting staff levels and operating costs. The TIDC also requests replacing the current “in excess of \$37,500,000” language with estimated deposited amounts to ensure the TIDC has access to all funds in the account not allocated to the Office of Capital and Forensic Writs. As currently written, the TIDC would not have access to additional revenues until it hits a higher threshold (\$33,700,000) than the appropriated amount (\$30,678,838 after the 4% reduction). The Fee for Jury Reimbursement to Counties revenue estimate has been updated to reflect historical trends.</i></p>
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3.B. RIDER REVISIONS AND ADDITIONS REQUEST

11	IV-26	<p>Innocence Projects. Out of amounts appropriated above in Strategy D.1.1., Texas Indigent Defense Commission, \$400,000<u>600,000</u> in each year of the biennium from the General Revenue-Dedicated Fair Defense Account No. 5073 shall be used by the Commission to contract with law schools at the University of Houston, the University of Texas, Texas Tech University, Texas Southern University, University of North Texas and Texas A&M University for innocence projects<u>to support innocence project screening, investigation and litigation activities regarding claims of actual innocence in non-capital cases in Texas and associated expenses necessary to conduct those activities. The intent of this funding is to provide direct assistance to investigate actual innocence cases post-conviction and pursue relief for defendants with credible claims of actual innocence. While providing this funding to law schools provides opportunities for student involvement in innocence work, this funding is not intended for legal clinic expenses, teaching and student supervision.</u> The amount of each contract with each university shall be \$100,000. Any unobligated and unexpended balances remaining from the \$400,000<u>600,000</u> in funds designated for innocence projects as of August 31, 2016<u>2018</u> are appropriated to Strategy D.1.1., Texas Indigent Defense Commission, for the same purpose for the fiscal year beginning September 1, 2016<u>2018</u>.</p> <p><i>Updating rider to correctly identify the actual total dollar amount of contracts allocated to the six law schools following the addition of two newly eligible public law schools by the 84th Legislature. Also clarifying that the primary purpose of the funding is to support necessary substantive assistance for wrongfully convicted persons rather than the supporting law clinic teaching.</i></p>
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3.B. RIDER REVISIONS AND ADDITIONS REQUEST

18	IV-27	<p>Regional Public Defender Office for Capital Cases.</p> <p>a. Amounts appropriated above in Strategy D.1.1, Texas Indigent Defense Commission, include an amount not to exceed \$250,000 in fiscal year 2016<u>2018</u> and \$250,000 in fiscal year 2017<u>2019</u> in General Revenue that shall be used by the Commission as a grant to a for administration and operation of the Regional Public Defender Program<u>Office for Capital Cases.</u> that is limited to a county that:</p> <ul style="list-style-type: none">(1) Possesses a population as defined in Government Code §312.011(20) of fewer than 300,000; or(2) (A) Possesses a population as defined in Government Code §312.011(20) of fewer than 800,000;-and (B) Shares a border with the Republic of Mexico. <p>b. Any amounts remaining each fiscal year under subsection (a) above may be used to expand the Regional Public Defender <u>Office</u> for Capital Cases program to service other eligible counties.</p> <p><i>Updating rider to adjust the years for the 2018-19 biennium and to accommodate program title change.</i></p>
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4.A. Exceptional Item Request Schedule
85th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

DATE 9/13/2016
 TIME 10:36:38AM

Agency code: 212

Agency name:

Office of Court Administration, Texas Judicial Council

CODE	DESCRIPTION	Excp 2018	Excp 2019
	Item Name: Restoration of the 4% Reduction in Funding Item Priority: 1 IT Component: No Anticipated Out-year Costs: Yes Involve Contracts > \$50,000: No Includes Funding for the Following Strategy or Strategies: 04-01-01 Improve Indigent Defense Practices and Procedures		
	OBJECTS OF EXPENSE:		
4000	GRANTS	1,434,535	1,434,535
	TOTAL, OBJECT OF EXPENSE	\$1,434,535	\$1,434,535
	METHOD OF FINANCING:		
5073	Fair Defense	1,434,535	1,434,535
	TOTAL, METHOD OF FINANCING	\$1,434,535	\$1,434,535

DESCRIPTION / JUSTIFICATION:

The Commission respectfully requests restoration of the 4% reduction because the program is underfunded at current levels. Indigent defense representation is not a discretionary expense, but rather a requirement by the U.S. and Texas Constitutions and an important part of operating a fair criminal justice system. State financial assistance to counties for indigent defense has driven much needed improvements in access to counsel. The reduction in state grants to counties to support indigent defense will need to be absorbed by Texas Counties, who will be forced to make up the difference.

EXTERNAL/INTERNAL FACTORS:

Texas counties are already struggling to fund approximately 88% of indigent defense costs and these costs continue to rise at a rate of approximately \$10 million per year. An additional cut of \$2.87 million will further hamper the ability of county governments to operate effective indigent defense systems that are an essential element of a fair adversarial justice system. Using FY15 data, a 4% cut of \$2.87 million equates to over 13,000 appointed misdemeanor cases or over 4,000 appointed felony cases. This impacts counties adversely and will increase the risk of noncompliance with constitutional requirements and state law due to mounting budget pressures on local governments.

DESCRIPTION OF ANTICIPATED OUT-YEAR COSTS :

Restoration of the reduced funding would continue to be available for grants in the out years.

ESTIMATED ANTICIPATED OUT-YEAR COSTS FOR ITEM:

2020	2021	2022
\$1,434,535	\$1,434,535	\$1,434,535

4.A. Exceptional Item Request Schedule
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE 8/5/2016
 TIME 12:30:34PM

Agency code: 212

Agency name:

Office of Court Administration, Texas Judicial Council

CODE	DESCRIPTION	Excp 2018	Excp 2019
	Item Name: Support 50/50 State-County Funding for Statewide Regional Public Defender Office for Capital Cases Item Priority: 2 IT Component: No Anticipated Out-year Costs: Yes Involve Contracts > \$50,000: No Includes Funding for the Following Strategy or Strategies: 04-01-01 Improve Indigent Defense Practices and Procedures		
OBJECTS OF EXPENSE:			
4000	GRANTS	1,450,000	1,450,000
TOTAL, OBJECT OF EXPENSE		\$1,450,000	\$1,450,000
METHOD OF FINANCING:			
1	General Revenue Fund	1,450,000	1,450,000
TOTAL, METHOD OF FINANCING		\$1,450,000	\$1,450,000

DESCRIPTION / JUSTIFICATION:

In the most serious criminal cases where the death penalty is a possibility, the State has a unique interest in ensuring that appropriate defense representation is provided consistent with Constitutional standards and professional standards promulgated by the State Bar of Texas. In many parts of the state it can be difficult to find attorneys qualified to handle death penalty cases, as this type of representation is one of the most complex and challenging areas of practice.

The Regional Public Defender Office for Capital Cases (RPDO) is operated by Lubbock County and now serves 179 counties spanning all nine administrative judicial regions. Under current policy most counties are eligible to participate by paying membership dues. In exchange for paying dues, when a member county has a capital murder case, a qualified defense team is provided by the program at no additional cost. The costs associated with a capital murder case have the potential to decimate the budgets of smaller counties. Member dues are determined by county population and capital case frequency. The Lubbock RPDO provides a way for counties to have greater budget predictability and mitigate the dramatic impact a capital case can have and help ensure that these most serious cases are tried effectively the first time.

Based on the statewide impact and critical services that the office provides across the entire State, the Commission requests General Revenue equal to one-half of the office's operating budget, with the balance funded through membership dues of participating counties. In the FY16/17 biennium, \$2.6 million in GR was appropriated for the RPDO, which is approximately 24% of the program cost. An additional appropriation of \$2.9 million will provide for a sustainable 50/50 cost sharing arrangement with participating counties and ensure that the program remains affordable and accessible to all eligible counties throughout Texas that wish to participate.

EXTERNAL/INTERNAL FACTORS:

The Commission provided start-up funding through its discretionary grant program for each judicial region in the state which has helped make membership more affordable for counties. This additional GR would help ensure the long-term stability of the program as the Commission's start-up grants come to a close in 2017. As those grants close out, counties will be forced to make up the difference through higher membership dues. Many of those counties that have not joined the program cited cost as the primary

4.A. Exceptional Item Request Schedule
85th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

DATE 8/5/2016
 TIME 12:30:34PM

Agency code: 212

Agency name:
 Office of Court Administration, Texas Judicial Council

<u>CODE</u>	<u>DESCRIPTION</u>	<u>Excp 2018</u>	<u>Excp 2019</u>
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obstacle. Because of the many budget pressures on county government, the more membership costs rise, the greater the risk that counties will drop out of the program, which could undermine its long-term viability.

Texas counties are burdened by the increased costs associated with their compliance with the Fair Defense Act. By devoting GR to support this critical indigent defense service for counties, the State will take a significant step toward funding the underfunded indigent defense mandates. In addition, this GR investment will better ensure consistency and fairness in handling the state's most serious criminal cases.

The RPDO is an award winning program with a proven track record of effectiveness that provides genuine value to Texas counties. The National Association of Counties (NACO) presented Lubbock County with an Achievement Award for pioneering the Regional Public Defender Office. NACO presents Achievement Awards to recognize unique, innovative county programs. Applications for the awards are judged in part by how they modernize county government and increase services to county residents. The Texas Association of Counties Leadership Foundation also awarded Lubbock its Best Practices award for the Regional Public Defender Office.

DESCRIPTION OF ANTICIPATED OUT-YEAR COSTS :

If appropriated, funding provided for the Regional Public Defender Office would be available in TIDC's base budget and available for continuance of the program.

ESTIMATED ANTICIPATED OUT-YEAR COSTS FOR ITEM:

<u>2020</u>	<u>2021</u>	<u>2022</u>
\$1,450,000	\$1,450,000	\$1,450,000

4.A. Exceptional Item Request Schedule
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE 8/5/2016
 TIME 12:30:34PM

Agency code: 212

Agency name:
 Office of Court Administration, Texas Judicial Council

CODE	DESCRIPTION	Excp 2018	Excp 2019
	Item Name: Support Statewide Funding for Early Identification and Representation of Defendants with Mental Illness Item Priority: 3 IT Component: No Anticipated Out-year Costs: Yes Involve Contracts > \$50,000: No Includes Funding for the Following Strategy or Strategies: 04-01-01 Improve Indigent Defense Practices and Procedures		
OBJECTS OF EXPENSE:			
4000	GRANTS	5,000,000	5,000,000
TOTAL, OBJECT OF EXPENSE		\$5,000,000	\$5,000,000
METHOD OF FINANCING:			
1	General Revenue Fund	5,000,000	5,000,000
TOTAL, METHOD OF FINANCING		\$5,000,000	\$5,000,000

DESCRIPTION / JUSTIFICATION:

The Commission requests \$10 Million in General Revenue over the biennium to provide early identification and specialized representation for defendants with mental illness and incentivize statewide implementation of Articles 16.22 and 17.032, Code of Criminal Procedure.

Over the FY14/15 biennium, specialized mental health public defender programs in seven counties disposed of approximately 12,400 cases at a cost of \$10 million. Additional state funding of \$10 million over the biennium would provide targeted grants to enhance existing defender programs and establish specialized defenders in counties currently without these programs. Articles 16.22 and 17.032, CCP, provide for the early identification and release on a personal recognizance bond of arrestees with mental illness if an evaluation and treatment plan is in place. Creating and enhancing defender programs to assist with implementation of Articles 16.22 and 17.032 statewide would provide access to specialized counsel and mental health professionals shortly after arrest, resulting in fewer jail days and earlier case resolution for arrestees.

EXTERNAL/INTERNAL FACTORS:

According to research from the Meadows Foundation, Texas spends over \$650 million in local justice system costs each year due to inadequately treated mental illness and substance abuse disorders. These costs are disproportionately allocated to "super-utilizers" cycling through the system largely because of unaddressed mental health needs. "In Texas, there are 22,000 people in poverty who suffer from mental illness and repeatedly use jails, ERs, crisis services, EMS, and hospitals. Another 14,000 are more deeply involved in the criminal justice system."

Specialized mental health indigent defense programs can improve defendant outcomes and reduce recidivism by providing assistance that may help stabilize people and connect them with support that may address some of the causes of the behaviors that have placed them in the criminal justice system. By providing representation at the very earliest stage in the case, these programs can identify and divert eligible non-violent defendants from jail to appropriate treatment programs and community based services that focus on long-term stabilization.

4.A. Exceptional Item Request Schedule
85th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

DATE 8/5/2016
 TIME 12:30:34PM

Agency code: 212

Agency name:
 Office of Court Administration, Texas Judicial Council

CODE	DESCRIPTION	Exp 2018	Exp 2019
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DESCRIPTION OF ANTICIPATED OUT-YEAR COSTS :

If appropriated, funding for representing the mentally ill are anticipated to be available in TIDC's base budget for grants in the out-years.

ESTIMATED ANTICIPATED OUT-YEAR COSTS FOR ITEM:

	2020	2021	2022
	\$5,000,000	\$5,000,000	\$5,000,000

4.A. Exceptional Item Request Schedule
85th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

DATE 9/13/2016
 TIME 10:36:38AM

Agency code: 212

Agency name:

Office of Court Administration, Texas Judicial Council

CODE	DESCRIPTION	Exp 2018	Exp 2019
	Item Name: Provide Local Property Tax Relief to Texas Counties by Fully Funding Criminal Indigent Defense Item Priority: 4 IT Component: No Anticipated Out-year Costs: Yes Involve Contracts > \$50,000: Yes Includes Funding for the Following Strategy or Strategies: 04-01-01 Improve Indigent Defense Practices and Procedures		
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	310,000	310,000
1002	OTHER PERSONNEL COSTS	1,550	1,550
2003	CONSUMABLE SUPPLIES	1,600	1,600
2004	UTILITIES	1,400	1,400
2005	TRAVEL	15,000	15,000
2009	OTHER OPERATING EXPENSE	108,000	8,000
4000	GRANTS	103,162,450	108,262,450
TOTAL, OBJECT OF EXPENSE		\$103,600,000	\$108,600,000
METHOD OF FINANCING:			
I	General Revenue Fund	103,600,000	108,600,000
TOTAL, METHOD OF FINANCING		\$103,600,000	\$108,600,000
FULL-TIME EQUIVALENT POSITIONS (FTE):		4.00	4.00

DESCRIPTION / JUSTIFICATION:

The Commission seeks full state funding (100%) for criminal indigent defense, but suggests a stepped-up funding approach over a six-year period. Currently, counties bear most of the financial burden of complying with constitutional and state law in funding criminal indigent defense, with the state providing only about 12 percent of the costs through Commission grant programs. In an effort to both accommodate the state's transition to fully funding these constitutionally mandated expenses and also allow for the Commission to properly prepare for transition in administering a fully-state funded criminal indigent defense system, the Commission requests 50% funding for the next biennium, with a goal of recommending 75% funding for FY20/21, and 100% funding for FY22/23.

In 1963, the United States Supreme Court held in *Gideon v. Wainwright* that all criminal defendants charged with a felony had the right to be represented by counsel, regardless of their ability to afford an attorney. This federal constitutional mandate was left to the states to implement and finance. In turn, the State delegated its responsibility to provide and pay for these services to counties and the local property taxpayer.

Revenues received from this exceptional item would be distributed through the Commission's formula and discretionary grant programs. These grants would help address access to counsel, attorney workload, and quality of representation issues across the State. This exceptional item would also provide for a fiscal analyst (1.0 FTE), and three policy analysts (3.0 FTEs), one with mental health expertise, associated expenses, and funding to conduct a study on how best to transition to full state funding. If this

4.A. Exceptional Item Request Schedule
85th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

DATE 9/13/2016
 TIME 10:36:38AM

Agency code: 212

Agency name:

Office of Court Administration, Texas Judicial Council

CODE DESCRIPTION

Excp 2018

Excp 2019

exceptional item is fully funded, then exceptional items #1,2, and 3 would be paid out of this revenue.

EXTERNAL/INTERNAL FACTORS:

In 2001, the Texas legislature passed the Texas Fair Defense Act (FDA), creating the Commission to provide some state funding and oversight. Since passage of the FDA, state grants have covered a small percentage of the counties' indigent defense costs, while spending on indigent defense in Texas has risen from \$91.4 million to \$238 million annually. In FY16/17, the Legislature appropriated \$7.5 million in General Revenue for the first time to help defray the 160% increase in spending since the FDA's passage. With statewide indigent defense costs increasing at approximately \$10 million each year and GR-Dedicated funds decreasing, the GR appropriated to close the indigent defense funding gap for the current biennium only partially mitigated budget pressures.

All 254 counties have requested the State to fully fund indigent defense through resolutions adopted by the County Judges and Commissioners Association of Texas and by Commissioners Court resolutions adopted in Texas's urban counties.

Most states fully fund the constitutional requirement to provide counsel to indigent defendants in criminal cases. Other states delegate funding and supervisory responsibilities for indigent defense to local entities in a manner similar to Texas. Some of these states have faced successful litigation holding the state government liable when local funding proves insufficient to deliver defense services that meet constitutional standards. This exceptional item request is proffered to help assure Texas meets its constitutional obligations, regardless of the financial resources available in each of its counties.

DESCRIPTION OF ANTICIPATED OUT-YEAR COSTS :

Appropriations for fully funding criminal indigent defense would be available in the out-years.

ESTIMATED ANTICIPATED OUT-YEAR COSTS FOR ITEM:

2020	2021	2022
\$222,200,000	\$222,200,000	\$232,200,000

APPROXIMATE PERCENTAGE OF EXCEPTIONAL ITEM : 0.05%

CONTRACT DESCRIPTION :

This would be a consulting contract for \$100,000 to conduct a study of how best to transition to full state funding. This study would consider the best way to distribute the funds and provide local property tax relief. It would also address needed enhancements in indigent defense services, equitable means to distribute the funds, appropriate caseload and other quality controls, and any needed amendments to the FDA. This contract would be for 1 year.

4.B. Exceptional Items Strategy Allocation Schedule
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE 8/4/2016
 TIME 4:26:54PM

Agency code 212 Agency name Office of Court Administration, Texas Judicial Council

Code Description	Excp 2018	Excp 2019
Item Name: Restoration of the 4% Reduction in Funding		
Allocation to Strategy: 4-1-1 Improve Indigent Defense Practices and Procedures		
OBJECTS OF EXPENSE:		
4000 GRANTS	1,434,535	1,434,535
TOTAL, OBJECT OF EXPENSE	\$1,434,535	\$1,434,535
METHOD OF FINANCING:		
5073 Fair Defense	1,434,535	1,434,535
TOTAL, METHOD OF FINANCING	\$1,434,535	\$1,434,535

4.B. Exceptional Items Strategy Allocation Schedule
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE 8/4/2016
 TIME 4:26:54PM

Agency code **212** Agency name **Office of Court Administration, Texas Judicial Council**

Code	Description	Excp 2018	Excp 2019
Item Name: Support 50/50 State-County Funding for Statewide Regional Public Defender Office for Capital Cases			
Allocation to Strategy: 4-1-1 Improve Indigent Defense Practices and Procedures			
OBJECTS OF EXPENSE:			
4000	GRANTS	1,450,000	1,450,000
TOTAL, OBJECT OF EXPENSE		\$1,450,000	\$1,450,000
METHOD OF FINANCING:			
1	General Revenue Fund	1,450,000	1,450,000
TOTAL, METHOD OF FINANCING		\$1,450,000	\$1,450,000

4.B. Exceptional Items Strategy Allocation Schedule
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE 8/26/2016
 TIME 4:21:22PM

Agency code 212 Agency name Office of Court Administration, Texas Judicial Council

Code	Description	Excp 2018	Excp 2019
Item Name: Support Statewide Funding for Early Identification and Representation of Defendants with Mental Illness			
Allocation to Strategy: 4-1-1 Improve Indigent Defense Practices and Procedures			
OUTPUT MEASURES:			
	1 # Monitoring Visits, Technical Support Visits, & Trainings Conducted	9.00	9.00
OBJECTS OF EXPENSE:			
	4000 GRANTS	5,000,000	5,000,000
TOTAL, OBJECT OF EXPENSE		55,000,000	55,000,000
METHOD OF FINANCING:			
	1 General Revenue Fund	5,000,000	5,000,000
TOTAL, METHOD OF FINANCING		55,000,000	55,000,000

4.B. Exceptional Items Strategy Allocation Schedule
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE 9/13/2016
 TIME 10:48:50AM

Agency code 212 Agency name Office of Court Administration, Texas Judicial Council

Code	Description	Excp 2018	Excp 2019
Item Name: Provide Local Property Tax Relief to Texas Counties by Fully Funding Criminal Indigent Defense			
Allocation to Strategy: 4-1-1 Improve Indigent Defense Practices and Procedures			
OUTPUT MEASURES:			
	1 # Monitoring Visits, Technical Support Visits, & Trainings Conducted	32.00	32.00
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	310,000	310,000
1002	OTHER PERSONNEL COSTS	1,550	1,550
2003	CONSUMABLE SUPPLIES	1,600	1,600
2004	UTILITIES	1,400	1,400
2005	TRAVEL	15,000	15,000
2009	OTHER OPERATING EXPENSE	108,000	8,000
4000	GRANTS	103,162,450	108,262,450
TOTAL, OBJECT OF EXPENSE		\$103,600,000	\$108,600,000
METHOD OF FINANCING:			
	1 General Revenue Fund	103,600,000	108,600,000
TOTAL, METHOD OF FINANCING		\$103,600,000	\$108,600,000
FULL-TIME EQUIVALENT POSITIONS (FTE):		4.0	4.0

**6.E. Estimated Revenue Collections Supporting Schedule
85th Regular Session, Agency Submission, Version I
Automated Budget and Evaluation System of Texas (ABEST)**

Agency Code **212** Agency name **Office of Court Administration, Texas Judicial Council**

FUND/ACCOUNT	Act 2015	Exp 2016	Exp 2017	Bud 2018	Est 2019
.5073 Fair Defense					
Beginning Balance (Unencumbered)	\$6,245,076	\$5,097,021	\$2,905,858	\$746,751	\$0
Estimated Revenue					
3195 Additional Legal Services Fee	2,344,127	2,300,958	2,300,958	2,300,958	2,300,958
3704 Court Costs	21,395,820	21,021,684	20,601,250	20,189,225	19,785,441
3725 State Grants Pass-thru Revenue	0	99,960	0	0	0
3858 Bail Bond Surety Fees	2,027,169	2,039,946	2,039,946	2,039,946	2,039,946
3972 Other Cash Transfers Between Funds	6,697,267	6,600,000	6,600,000	6,600,000	6,600,000
Subtotal Actual/Estimated Revenue	32,464,383	32,062,548	31,542,154	31,130,129	30,726,345
Total Available	\$38,709,459	\$37,159,569	\$34,448,012	\$31,876,880	\$30,726,345
DEDUCTIONS:					
Expended/Budgeted/Requester - Baseline - TIDC	(32,126,325)	(32,346,889)	(31,879,857)	(30,068,599)	(28,918,063)
Expended/Budgeted/Requested - Baseline - OCFW	(1,113,882)	(1,438,501)	(1,353,083)	(1,339,960)	(1,339,961)
Transfer - Employee Benefits - TIDC	(183,694)	(232,161)	(232,161)	(232,161)	(232,161)
Transfer - Employee Benefits - OCFW	(188,537)	(236,160)	(236,160)	(236,160)	(236,160)
Total, Deductions	\$33,612,438	\$34,253,711	\$33,701,261	\$31,876,880	\$30,726,345
Ending Fund/Account Balance	\$5,097,021	\$2,905,858	\$746,751	\$0	\$0

REVENUE ASSUMPTIONS:

Based on recent historical trends, funding from Court Costs are declining for this program. This schedule shows a 2% decline in court costs revenue starting with 2017. This fund is also shared with the agency, Office of Capital and Forensic Writs

CONTACT PERSON:

Sharon Whitfield

6.1. PERCENT BIENNIAL BASE REDUCTION OPTIONS
10% REDUCTION
85th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

212 Texas Indigent Defense Commission, Texas Judicial Council

Item Priority and Name / Method of Financing	REVENUE LOSS			REDUCTION AMOUNT			TARGET
	2018	2019	Biennial Total	2018	2019	Biennial Total	
First 5% - Indigent Defense							
Category: Programs - Service Reductions (Contracted)							
Item Comment: A reduction to this strategy would cut existing funding to an already underfunded program. Since passage of the Fair Defense in 2001, total indigent defense expenditures have increased by \$107 million, more than a 120 percent increase. This proposed reduction of over \$1.7 million per year in grants to counties amounts to the state passing on to counties the costs of representing either approximately 5,500 non-capital felony cases or 17,500 misdemeanor cases.							
Strategy 4-1-1 Improve Indigent Defense Practices and Procedures							
<u>General Revenue</u>							
0001 General Revenue	\$0	\$0	\$0	\$187,500	\$187,500	\$375,000	
General Revenue Total	\$0	\$0	\$0	\$187,500	\$187,500	\$375,000	
<u>GR Dedicated</u>							
5073 GR Dedicated	\$0	\$0	\$0	\$1,519,787	\$1,519,787	\$3,039,574	
GR Dedicated Total	\$0	\$0	\$0	\$1,519,787	\$1,519,787	\$3,039,574	
Item Total	\$0	\$0	\$0	\$1,707,287	\$1,707,287	\$3,414,574	

Second 5% - Indigent Defense

Category: Programs - Service Reductions (Contracted)

Item Comment: A reduction to this strategy would cut existing funding to an already underfunded program. Since passage of the Fair Defense in 2001, total indigent defense expenditures have increased by \$107 million, more than a 120 percent increase. This proposed reduction of over \$1.7 million per year in grants to counties amounts to the state passing on to counties the costs of representing either approximately 5,500 non-capital felony cases or 17,500 misdemeanor cases.

Strategy 4-1-1 Improve Indigent Defense Practices and Procedures

<u>General Revenue</u>						
0001 General Revenue	\$0	\$0	\$0	\$187,500	\$187,500	\$375,000
General Revenue Total	\$0	\$0	\$0	\$187,500	\$187,500	\$375,000
<u>GR Dedicated</u>						
5073 GR Dedicated	\$0	\$0	\$0	\$1,519,787	\$1,519,787	\$3,039,574
GR Dedicated Total	\$0	\$0	\$0	\$1,519,787	\$1,519,787	\$3,039,574
Item Total	\$0	\$0	\$0	\$1,707,287	\$1,707,287	\$3,414,574
General Revenue Total	\$0	\$0	\$0	\$375,000	\$375,000	\$750,000
GR Dedicated Total	\$0	\$0	\$0	\$3,039,574	\$3,039,574	\$6,079,148
Strategy Total	\$0	\$0	\$0	\$3,414,574	\$3,414,574	\$6,829,148

7.B. Direct Administrative and Support Costs
 85th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

DATE: 8/4/2016
 TIME: 4:30:11PM

Agency code: 212

Agency name: Office of Court Administration, Texas Judicial Council

Strategy	Exp 2015	Est 2016	Bud 2017	BL 2018	BL 2019
4-1-1 Improve Indigent Defense Practices and Procedures					
OBJECTS OF EXPENSE:					
1001 SALARIES AND WAGES	\$729,955	\$834,281	\$839,285	\$839,285	\$839,285
1002 OTHER PERSONNEL COSTS	24,563	17,191	18,109	20,116	21,556
2001 PROFESSIONAL FEES AND SERVICES	461	228	228	228	228
2003 CONSUMABLE SUPPLIES	1,528	1,638	3,000	3,000	3,000
2004 UTILITIES	3,978	3,316	3,600	3,600	3,600
2005 TRAVEL	35,169	31,763	32,000	32,000	32,000
2006 RENT - BUILDING	120	1,361	120	120	120
2007 RENT - MACHINE AND OTHER	2,137	2,547	2,400	2,400	2,400
2009 OTHER OPERATING EXPENSE	152,487	154,294	166,246	166,246	166,246
Total, Objects of Expense	\$950,398	\$1,046,619	\$1,064,988	\$1,066,995	\$1,068,435
METHOD OF FINANCING:					
5073 Fair Defense	950,398	1,046,619	1,064,988	1,066,995	1,068,435
Total, Method of Financing	\$950,398	\$1,046,619	\$1,064,988	\$1,066,995	\$1,068,435
FULL-TIME-EQUIVALENT POSITIONS (FTE):	10.4	10.9	11.0	11.0	11.0

DESCRIPTION

Texas Indigent Defense Commission support staff are centralized within one strategy. Positions supported include the Director, attorneys, accountants, executive assistant, project manager, and program specialists.