



**TEXAS INDIGENT DEFENSE COMMISSION
MEETING NOTEBOOK
AUGUST 30, 2016**

FULL BOARD - 10:00 A.M.

Location: Texas Association of Counties, 4th floor Board Room
1210 San Antonio Street, Austin, TX 78701
Garage Code: *6426



209 W. 14th Street, Room 202
Austin, Texas 78701
Phone: 512-936-6994; Fax: 512-463-5724
www.tidc.texas.gov

Chair:

Honorable Sharon Keller Chair – Presiding Judge, Court of Criminal Appeals

Vice Chair:

Honorable Olen Underwood Vice-Chair – Presiding Judge, 2nd Administrative Judicial Region of Texas

Ex Officio Members:

Honorable Sharon Keller	Austin, Presiding Judge, Court of Criminal Appeals
Honorable Nathan L. Hecht	Austin, Chief Justice, Supreme Court of Texas
Honorable Sherry Radack	Houston, Chief Justice, First Court of Appeals
Honorable Linda Rodriguez	Hays County
Honorable Brandon Creighton	Conroe, State Senator
Honorable John Whitmire	Houston, State Senator
Honorable Andrew Murr	Kerrville, State Representative
Honorable Abel Herrero	Robstown, State Representative

Members Appointed by the Governor:

Honorable Olen Underwood	Conroe, Presiding Judge, 2 nd Administrative Judicial Region of Texas
Honorable Jon Burrows	Temple, Bell County Judge
Mr. Anthony Odiorne	Burnet, Assistant Public Defender, Regional Public Defender Office for Capital Cases
Mr. Don Hase	Arlington, Attorney, Ball & Hase

Staff:

Jim Bethke	Executive Director	512-936-6994	Jbethke@tidc.texas.gov
Brandon Bellows	Policy Analyst	512-936-6996	Bbellows@tidc.texas.gov
Sharon Calcote	Project Manager	512-936-0990	Sharon.calcote@txcourts.gov
Edwin Colfax	Grant Program Manager	512-463-2573	Ecolfax@tidc.texas.gov
Traci Cruz	Grant Coordinator	512-936-7551	Tcruz@tidc.texas.gov
Jamie Dickson	Special Counsel/Policy Analyst	512-463-2573	Jdickson@tidc.texas.gov
Marissa Kubinski	Executive Assistant	512-936-6994	Mkubinski@tidc.texas.gov
Joel Lieurance	Senior Policy Monitor	512-936-7560	Jlieurance@tidc.texas.gov
Wesley Shackelford	Deputy Director/Special Counsel	512-936-6997	Wshackelford@tidc.texas.gov
Debra Stewart	Fiscal Monitor	512-936-7561	Dstewart@tidc.texas.gov
Joan Thomas	Publications Manager/Analyst	512-463-8015	Jthomas@tidc.texas.gov
Sharon Whitfield	Budget & Accounting Analyst	512-936-6998	Swhitfield@tidc.texas.gov
Carmen Tellez	Law Clerk	512-463-2889	ctellez@tidc.texas.gov



Table of Contents

Full Board

Agenda item number	Description	Page number
	Full Board agenda	1
2	Roll call – Full Commission	2
3	Minutes from June 2, 2016 Full Commission meeting	3
6.a	Recent activities	7
6.c	TIDC-OCA MOU	9
8	Research Update by PPRI	12
9.a	Fair Defense Account - Fund 5073 and FY16 budget	17
9.b	Pending FY2017 Discretionary grant request (Bell Co./Techshare)	20
9.c.i	Kaufman request	27
9.c.ii	Willacy request	32
9.e	Report on Discretionary grant program	37
9.f	Update on Hidalgo County PRDO participation	41
9.g	FY17 Formula grant RFA	42
9.h	FY17 revenue & budget	55
9.i	IDER manual	56
9.j	Report on fiscal monitoring program	57
10.a	Report on legislative workgroup and recommended proposals	62
10.b	Proposed model forms	85
10.c	Report on policy monitoring program	101
10.d	Report on 2016 indigent defense plan submission process	104
10.e	Report on Attorney General's Opinion on Constitutionality of SB 1876	105

TEXAS INDIGENT DEFENSE COMMISSION
209 WEST 14TH STREET, ROOM 202 • PRICE DANIEL BUILDING • (512) 936-6994
Austin, Texas 78701

DATE: Tuesday, August 30, 2016—10:00 a.m.
Texas Association of Counties Building, 4th Floor Boardroom
1210 San Antonio St, Austin, TX 78701

AGENDA

The Commission may discuss and/or take action on any of the following items:

1. Commencement of meeting – *Judge Sharon Keller*
2. Attendance of members
3. Approval of minutes from June 2, 2016
4. Opening remarks and Chair’s report – *Judge Sharon Keller*
5. Presentation of Robert O. Dawson Award - *Judge Sharon Keller*
6. Report from Director – *Mr. Jim Bethke*
 - a. Report on recent activities
 - b. FY16 Annual Report
 - c. Report on Memorandum of Understanding with Office of Court Administration
 - d. Legislative Appropriations Request
7. Report on evaluation of Comal Client Choice Program – *Professor Norman Lefstein, Indiana University Robert H. McKinney School of Law*
8. Research Update – *Texas A&M University – Public Policy Research Institute*
 - a. Caseload Study- Felony Appeals and Juvenile Cases – *Dr. Steve Wood*
 - b. Smart Defense Web Portal Project – *Dr. George Naufal*
 - c. Collin County Grant Project Update – *Dr. Dottie Carmichael*
9. Grants and Reporting – *Judge Jon Burrows*
 - a. Report on Fair Defense Account - Fund 5073 and FY16 budget
 - b. Consider Pending FY2017 Discretionary Grant Request (Bell Co./Techshare)
 - c. Consideration of Extraordinary Disbursement requests
 - i. Kaufman County
 - ii. Willacy County
 - d. Modifications to current grant awards
 - e. Report on Discretionary Grant Program
 - f. Report on Hidalgo County RPDO participation
 - g. Consider adoption/issuance of FY17 Formula Grant Request for Application (RFA)
 - h. Consider adoption of FY17 budget
 - i. Consider adoption of revised IDER Manual
 - j. Report on fiscal monitoring program— *Ms. Debra Stewart*
10. Policies and Standards – *Mr. Tony Odiorne*
 - a. Report on Legislative Workgroup and recommended proposals
 - b. Report on draft model forms for accepting and ruling on counsel requests
 - c. Report on Policy Monitoring program
 - d. Report on 2015 Indigent Defense Plan submission and Review Process
 - e. Report on Attorney General’s Opinion on Constitutionality of SB 1876
11. Next meeting
12. New business
13. Public comment
14. Adjournment

TEXAS INDIGENT DEFENSE COMMISSION

Roll Call
COMMISSION MEMBERS

	MEMBER	PRESENT / ABSENT
1	THE HONORABLE SHARON KELLER	
2	THE HONORABLE BRANDON CREIGHTON	
3	THE HONORABLE JON BURROWS	
4	MR. DON HASE	
5	THE HONORABLE NATHAN HECHT	
6	THE HONORABLE ABEL HERRERO	
7	THE HONORABLE ANDREW MURR	
8	MR. ANTHONY ODORNE	
9	THE HONORABLE SHERRY RADACK	
10	THE HONORABLE LINDA RODRIGUEZ	
11	THE HONORABLE OLEN UNDERWOOD	
12	THE HONORABLE JOHN WHITMIRE	

Texas Indigent Defense Commission
Minutes of Meeting
Full Board

June 2, 2016 – Court of Criminal Appeals Courtroom
Austin, TX 78701

Judge Sharon Keller called the meeting to order at 1:00 p.m. Roll was called. Members present: Judge Sharon Keller, Judge Jon Burrows, Mr. Don Hase, Representative Andrew Murr, Mr. Anthony Odiorne, Justice Sherry Radack, Judge Linda Rodriguez, Judge Olen Underwood. TIDC staff present: Jim Bethke, Brandon Bellows, Sharon Calcote, Edwin Colfax, Traci Cruz, Jamie Dickson, Marissa Kubinski, Joel Lieurance, Wesley Shackelford, Debra Stewart, Joan Thomas, Sharon Whitfield, Carmen Tellez.

Judge Underwood moved the motion to approve the minutes from the April 13, 2016 meeting. Mr. Odiorne seconded; the motion passed unanimously. Judge Keller's opening remark comprised of a special mention to honor Jim Bethke's 15 years of service to the Commission.

Mr. Bethke's began his opening remarks with a presentation of certificates to the members of the Discretionary Grant review team. Those in attendance were Ms. Andrea Marsh and Mr. Bob Wessels. Mr. Bethke also provided a recap of the 15th year anniversary symposium of the signing of the Fair Defense Act held in Houston on May 6th, 2016 and Strategic Planning session in South Padre Island in April. He introduced the Commission's summer law clerk, Carmen Tellez. Mr. Bethke also discussed the Legislative Appropriation Request (LAR) key items including exceptional items to close the funding gap with additional general revenue and to provide additional general revenue for the Regional Public Defender for Capital Cases to maintain the 50/50 state / county funding split. Mr. Jim Allison with the County Judges & Commissioners Association of Texas provided public comment in reference to the LAR to which counties are requesting the Legislature to fully fund the costs of indigent criminal defense. Mr. Bethke also discussed potential changes to riders in the general appropriations bill. These changes include: remove FTE cap from TIDC's rider and bring within OCA overall FTE cap with new administrative funding for technical assistance staff \$100K per year; request revision to the Innocence Projects rider; and request technical correction to the RPDO rider to more clearly specify funding allocations.

Judge Rodriguez moved the motion to approve strategic planning consensus document. Justice Radack seconded; the motion passed unanimously. Judge Burrows moved the motion to direct staff to submit the FY18/19 Legislative Appropriations Request according to the materials on pages 20-21 of the meeting notebook. Mr. Hase seconded; the motion passed unanimously.

Mr. Shackelford discussed the legislative workgroup meetings. The workgroup will meet on June 23rd and July 15th. The proposals will be presented to the Policies and Standards committee in August. The recommended proposals will be presented to the next full Commission meeting on August 30th.

For the Grants & Reporting report, Ms. Whitfield discussed fund and cash balance for FY14-15. The remaining cash balance in AY14 is \$314,425 with \$303,781 in obligations, leaving a cash balance of \$10,644 that will be moved into AY16 funds. The remaining cash balance in AY15 is \$5,945,460 with \$1,969,621 in obligations, leaving a cash balance of \$3,975,839 that

will be moved into AY16 funds. Ms. Whitfield reviewed the comparison of revenue flow from FY14-16. The total revenue collected as of the end of May 2016 is \$21,768,832. The revised estimated budget as of June 2, 2016 for FY16 includes \$40,196,575 for total cash/revenue and \$37,774,544 in total budgeted/expended. There was a Committee motion to adopt revised FY16 budget according to meeting notebook Page 29 column labeled FY16 revised estimated budget as of June 2, 2016. The motion passed; there was no further discussion.

Mr. Colfax reviewed the FY16 Formula grants holds for special conditions and provided an update the FY14 & FY15 Formula Grant unresolved special conditions on Maverick County. Mr. Colfax mentioned a few developments from the active Discretionary grant programs including Comal County's Client Choice and the Regional Public Defender Office for Capital Cases new chief public defender, Ray Keith.

Mr. Colfax discussed the grant modification for Travis County Technical Support Award. In February 2015 TIDC applied for and was awarded a grant from the Governor's Criminal Justice Division for \$99,960 to contract with indigent defense experts to develop a comprehensive indigent defense mentoring program adaptable for different Texas Counties. This was completed in November 2015 and produced the guide, titled Indigent Defense Attorney Mentoring in Texas: A Guide to Establishing a Mentoring Program. The second component of the grant is to put the new resource into action through implementation of a pilot mentoring program in Travis County through the Capital Area Private Defender Service (CAPDS). Final costs for phase one of the grant project, producing the mentoring guide, came in under budget by \$14,379. Staff requested a budget amendment on the CJD grant to reallocate that amount from the report production to the Travis mentoring implementation project. CJD approved this amendment. There was a committee motion to add \$14,379 to FY16 Technical Support grant to Travis County and increase the FY16 technical support budget line item by the same amount. The motion passed; there was no further discussion.

Mr. Colfax discussed the modification of Discretionary Grant award to Conference of Urban Counties (CUC) Techshare. The Office of Court Administration identified some ambiguities in statute that put in question the Commission's authority to proceed to making a grant directly to the Conference of Urban Counties. Counsel advised staff that the Commission did not have clear authority to make this award. No grant documents have been issued to CUC. There was a committee motion to redirect award of FY16 Discretionary grant from the Conference of Urban Counties to Bell County for \$255,900. The motion passed; Judge Burrows abstained from the vote. There was no further discussion.

Mr. Colfax discussed the grant requests that were initiated in the FY2017 Discretionary grant cycle. Five counties submitted Intent to Submit applications and staff authorized four of them to proceed. Donley County was referred to the Caprock program based on its needs. Travis County and the Conference of Urban Counties submitted regular applications for FY17 Discretionary Grant Programs. A menu option application for the FY2017 Discretionary grant program was submitted by Anderson County for a video conferencing system. The staff recommendation is to consider awarding the grant pending receipt of requested clarifications confirming the deployment and indigent defense application of these systems and signed cooperation agreement or similar letter showing judicial commitment to utilize the system. There was a committee motion to award FY17 Discretionary grant to Anderson County for an amount not to exceed \$37,926 for a videoconferencing system. The motion passed; there was no further discussion.

Mr. Colfax discussed the FY17 Competitive Discretionary Grant request from Travis County for a Holistic Defense Program. In FY2015 Travis County began providing indigent defense services through a managed assigned counsel program with the help of a TIDC multi-year Discretionary Grant. The County contracts with the non-profit Capital Area Defender Service to administer the program. The holistic proposal seeks to provide three new positions (staff attorney, two social workers) for the managed assigned council program to work with the criminal defense attorneys in support of the indigent defendants. There was public comment from Judge David Crain in support of the grant application for mental health social workers. There was a committee motion to award FY17 Discretionary grant to Travis County for \$262,612 for a holistic defense initiative. The motion passed; Representative Murr abstained from the vote. There was no further discussion.

Mr. Colfax discussed the FY17 Competitive Discretionary Grant request from the Conference of Urban Counties (CUC) on behalf of 11 participating counties for maintenance and operation of TechShare Indigent Defense web-based appointment and compliance monitoring system. At the Grants & Reporting committee meeting it was requested that the motion be tabled and to further discuss the budget with CUC. No action was taken; the committee motion will remain pending.

Mr. Colfax reviewed the continue funding requests and future obligations. The yellow handout reflect changes made to the Travis County Managed Assigned Counsel program with the way the County calculated it's 2% indirect rate and how it charged it to the grant. Also, the indirect rate cannot apply to equipment costs. The adjustment for the Lubbock amount had to do with the special general revenue funding that was mistakenly included in the original figure for Lubbock County for providing capital defense services for Cameron and Hidalgo. There was a committee motion to award continued FY17 Discretionary grants according to the schedule on handout replacing page 55 of the meeting notebook. The motion passed; Mr. Odiorne abstained from the vote. There was no further discussion.

Mr. Colfax discussed the DNA mixture issue from the FY17 Technical Support Grant Request. The staff recommendation is to award Technical Support grants to Tarrant County and Travis County as requested for temporary scalable programs. It would include grant conditions requiring that expenses must be tied directly to documented demand for services in this area. Mr. Bob Wicoff with the Texas DNA Mixture Review Project provided public comment with a status on the project which has received about 400 requests from DA offices that have sent notification letters, as well as from prison postings. They currently have three contract attorneys and have evaluated about half of the cases so far.

There was a Committee motion to award technical support grant of up to \$184,474 to Travis County to support the state's response to mixed DNA protocol changes for period June 2, 2016-May31, 2017 and increase the FY16 technical support budget line item by the same amount. The motion passed with five votes for, and 3 against. There was no further discussion.

There was a committee motion to award Technical Support grant of up to \$100,000 to Tarrant County to support the state's response to mixed DNA protocol changes for period June 2, 2016 – April 30, 2017 and increase the FY16 technical support budget line item by the same amount. The motion passed with 5 votes for, 2 against and 1 member abstained.

Ms. Stewart provided a summary of the fiscal monitoring reviews. All the monitoring visits taken in FY15 have had final reports issued with one pending issue for Hutchinson County. The County overstated their indigent defense expenditure report expenditures by \$96,466.24 because they included civil case costs. Representative Murr moved the motion to withhold \$5,002 from a future formula grant payment to Hutchinson County. Judge Keller seconded; the motion passed unanimously.

Ms. Stewart also discussed the issue with categorization of psychological evaluation expenses as general or indigent defense related. The Ex Parte Motion from the defense counsel should be provided as support for psychological evaluations to be included as an allowable indigent defense expenditure. The motion to categorize psychological evaluation expenses as indigent defense if supported by Ex Part motion from defense counsel was withdrawn and the indigent defense expenditure report will be updated.

Ms. Stewart discussed the financial reports and single audits sent in by counties. Williamson County had TIDC funds selected as a major program on state single audit and the independent auditor reported a finding. The finding was in regards to CLE hours. They found one attorney that was not reporting CLE hours as he was exempt from State Bar reporting due to his age.

Mr. Shackelford reported on the model forms and procedures. Staff plans to work with the board and stakeholder groups to develop a mini bench book, including proposed new and revised forms and the checklist. Mr. Shackelford also provided an update to the indigent defense plan submission and review process. As of May 19th, 2016 there were 13 counties that had not completed the submission process. These counties received a special condition on the FY16 Formula Grant, Statement of Grant Award.

Mr. Lieurance provided a summary of recent policy monitoring activity including recent developments with Collin and Randall counties. There was an issue with the Collin County's magistrate warnings and timely appointment of juvenile cases. Staff issued a report and the County responded back in April and have addressed each issue. Randall County had issues with their magistrate warnings and timely appointment of counsel. The County's response addressed these issues, however disagreed with staff's views on their waiver of counsel processes. The status of the rest of the policy monitoring visits is on pages 106-108 of the meeting notebook. Mr. Lieurance and Mr. Bellows visited nine counties in east Texas in May 2016: Camp, Delta, Franklin, Freestone, Leon, Morris, Rains, Red River, and Robertson. Mr. Lieurance also provided an updated on Hidalgo County. The County has submitted initial adult appointments by wheel. Since March 24, attorney appointments in juvenile cases have generally followed the wheel, except one attorney. The distribution of appointments since December 2015 shows the top four attorneys have received 1/5 times their representative share of appointments. The public defender office continues to receive numerous juvenile appointments.

Next meeting will take place on August 30th.

No further business discussed.

The meeting adjourned at 3 p.m.

Recent Activities

1. Trainings and Events

[American Council of Chief Defenders \(ACCD\) meeting](#) and [Community-Oriented Defender \(COD\) Network Annual Conference](#) (June 7th – 9th)

Public Defender Training: Texas Criminal Defense Lawyers Association (June 15th)

Justice Center Specialty Court Project meeting (June 15th)

Smart Defense Planning meetings (June 15th, July 20th)

2016 Legislative Workgroup (June 23rd and July 15th)

[Timothy Cole Exoneration Review Commission \(TCERC\) Meeting](#) (June 28th)

[Grants and Reporting Committee Meeting](#) (July 12th)

[Legal Services to the Poor in Criminal Matters Standing Committee of the State Bar](#) (July 29th)

Harris County Statutory County Court at Law Judges – Strategic Planning Session (August 1st)

RPDO Employee Satisfaction Survey and RPDO Funding & Governance (August 2nd)

[American Bar Association Annual Meeting](#) and [Standing Committee on Legal Aid and Indigent Defendants \(SCLAID\) Meeting](#) (August 4th – 6th)

[Legislative Appropriations Request \(LAR\) for Fiscal Years 2018 and 2019](#) (August 5th)

[Judicial Council Mental Health Committee](#) (August 5th)

[Policies and Standards Committee Meeting](#) (August 17th)

[Judicial Council Criminal Justice Committee](#) (August 18th)

[Judicial Council](#) (August 19th)

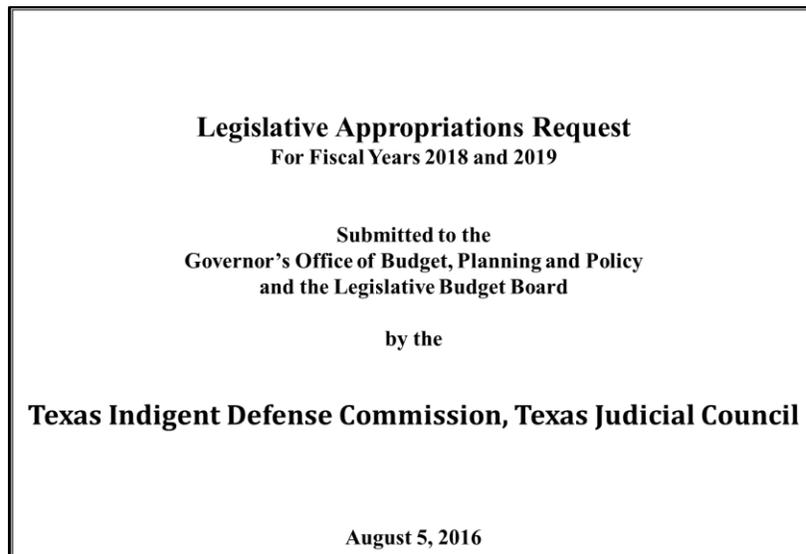
[TAC Legislative Conference on Indigent Defense](#) (August 25th)

Joint hearing of the Governor's Office of Budget, Planning and Policy & the Legislative Budget Board (August 30th)

2. Publications



[2016 Spring/Summer Edition e-newsletter](#)
(July 8th)



[Legislative Appropriations Request for Fiscal Years 2018 and 2019](#)
(August 5th)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is between the Texas Indigent Defense Commission (Receiving Agency) and the Texas Judicial Council on behalf of the Texas Office of Court Administration (Performing Agency) as required to implement House Bill 1754, 82nd Legislature. Performing Agency is established under Chapter 72 of the Texas Government Code. Receiving Agency is established under Chapter 79 of the Government Code. In addition to the services enumerated below, the Texas Indigent Defense Commission will continue to coordinate with the Texas Judicial Council in developing legislative proposals.

It is mutually understood and agreed by and between the undersigned contracting parties that the Memorandum of Understanding between the contracting parties effective December 1, 2011 is terminated and this MOU replaces that agreement. The undersigned contracting parties also mutually understand and agree to the following:

- I. STATEMENT OF SERVICES TO BE PERFORMED.** Performing Agency will provide the following services for Receiving Agency.
- a. Finance and Operations Division:
 - Procure commodities and services for Receiving Agency, as requested by the Receiving Agency.
 - Prepare required reports related to Receiving Agency's procurements, including the State Use report, and HUB report. Performing Agency shall provide a copy of each report to Receiving Agency's Executive Director and Deputy Director in advance of submission.
 - Process all payment vouchers, including travel vouchers for Receiving Agency.
 - Process payroll and related reports for Receiving Agency employees.
 - Prepare budget and journal documents for Receiving Agency, as needed.
 - Track Receiving Agency property in the Statewide Property System (SPA).
 - Enter Legislative Appropriations Request and Operating Budget into the Automated Budget and Evaluation System for Texas (ABEST) based on information provided by Receiving Agency. Upon approval by the Receiving Agency, submit the report in ABEST according to Legislative Budget Board Instructions.
 - Manage records retention for all documents associated with services provided to Receiving Agency, in accordance with Receiving Agency's approved records retention plan.
 - Manage Receiving Agency's human resources functions, e.g., posting, interviewing, hiring.
 - Assist with properly documenting Family and Medical Leave Act and other special types of leave for employees of the Receiving Agency.
 - Issue identification badges and manage building access and parking for Receiving Agency employees.

- Make travel arrangements for Receiving Agency employees, as requested.

b. Legal Division:

- Review contracts, rules, grants and other legal documents.
- Maintain executed contract documents for Receiving Agency.
- Provide legal advice to Receiving Agency under an attorney client relationship.
- Maintain records retention schedule for Receiving Agency.

c. Information Services Division:

- Provide information technology hardware and software services to Receiving Agency.

II. TERM

This MOU is to begin September 1, 2016, or the date signed by authorized agency representative if signed after September 1, 2016, and shall continue until terminated.

III. AMOUNT

Receiving Agency shall reimburse the Performing Agency an amount agreed upon by the Executive Directors of the undersigned parties and approved by a vote of the board of the Texas Indigent Defense Commission.

THE UNDERSIGNED CONTRACTING PARTIES do hereby certify that (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of State Government, (2) the proposed arrangements serve the interest of efficient and economical administration of the State Government, and (3) the services, supplies, or materials contracted for are not required by Section 21 of Article 16 of the Texas Constitution to be supplied under contract given to the lowest responsible bidder.

Both the Performing Agency and the Receiving Agency certify that they have statutory authority to enter into this MOU under Section 18, House Bill 1754, 82nd Legislature, Regular Session (2011).



JUVENILE & APPELLATE ADDENDUM: Guidelines for Indigent Defense Caseloads

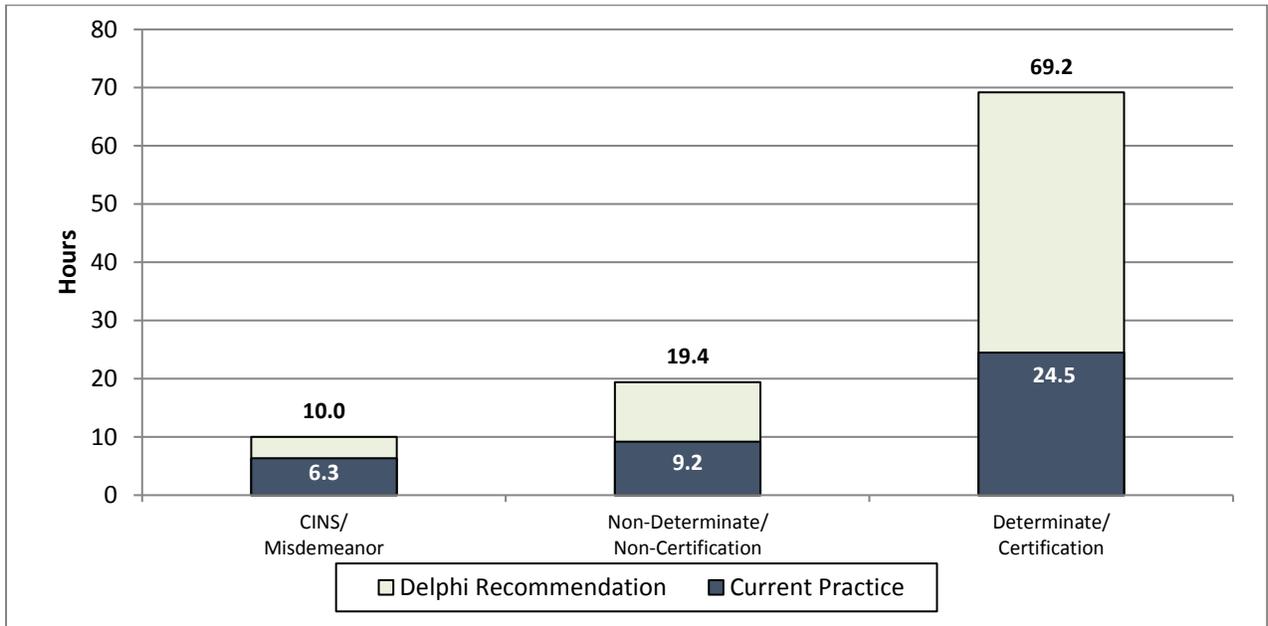
**A Report to the
Texas Indigent Defense Commission**

Pursuant to House Bill 1318
83rd Texas Legislature

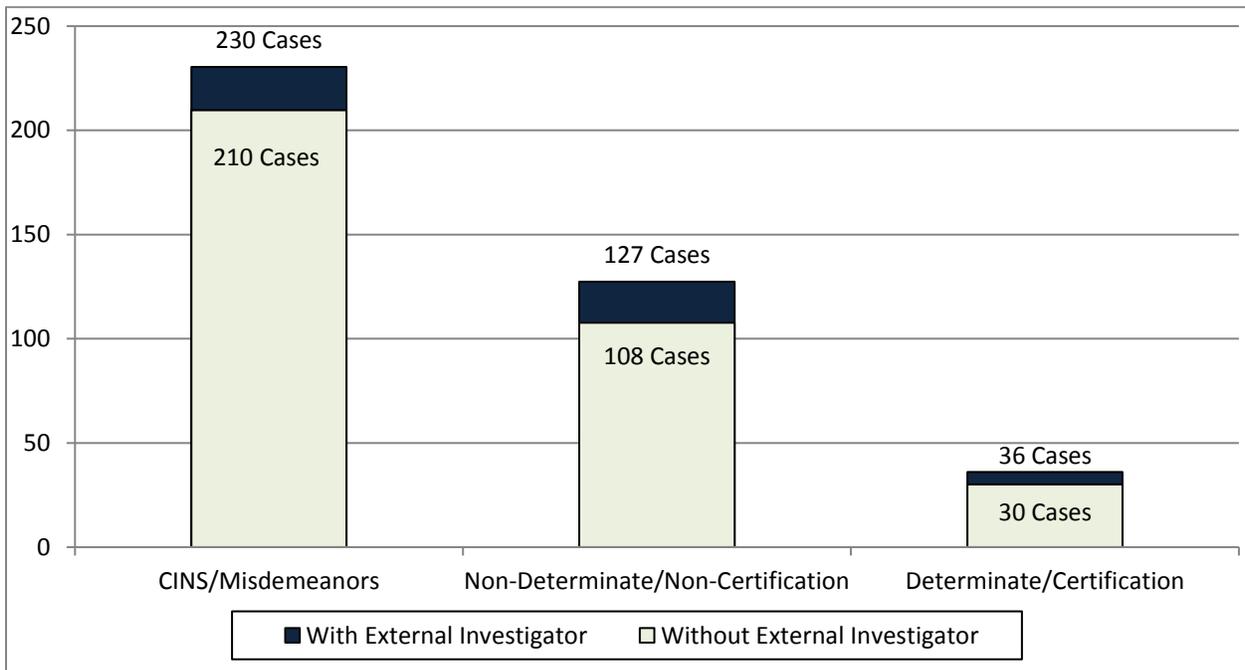


Juvenile Weighted Caseload Findings

Current Practice Hours and Recommended Delphi Hours by Case Type

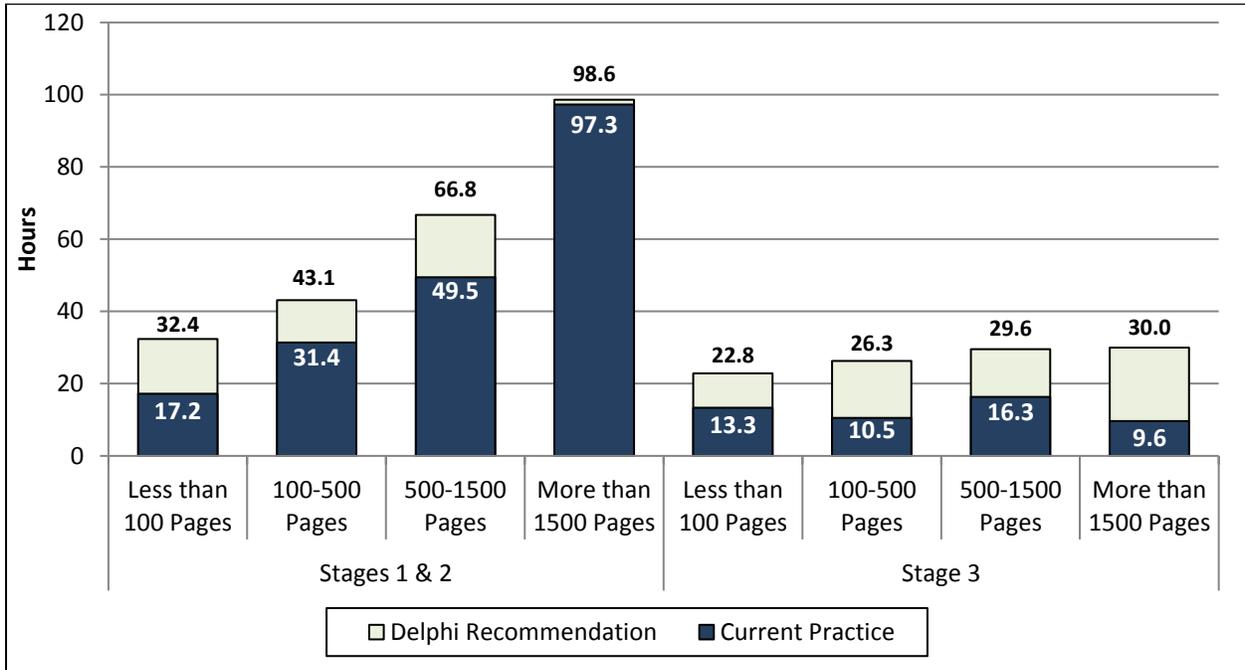


Final Recommended Caseload Guidelines for Texas

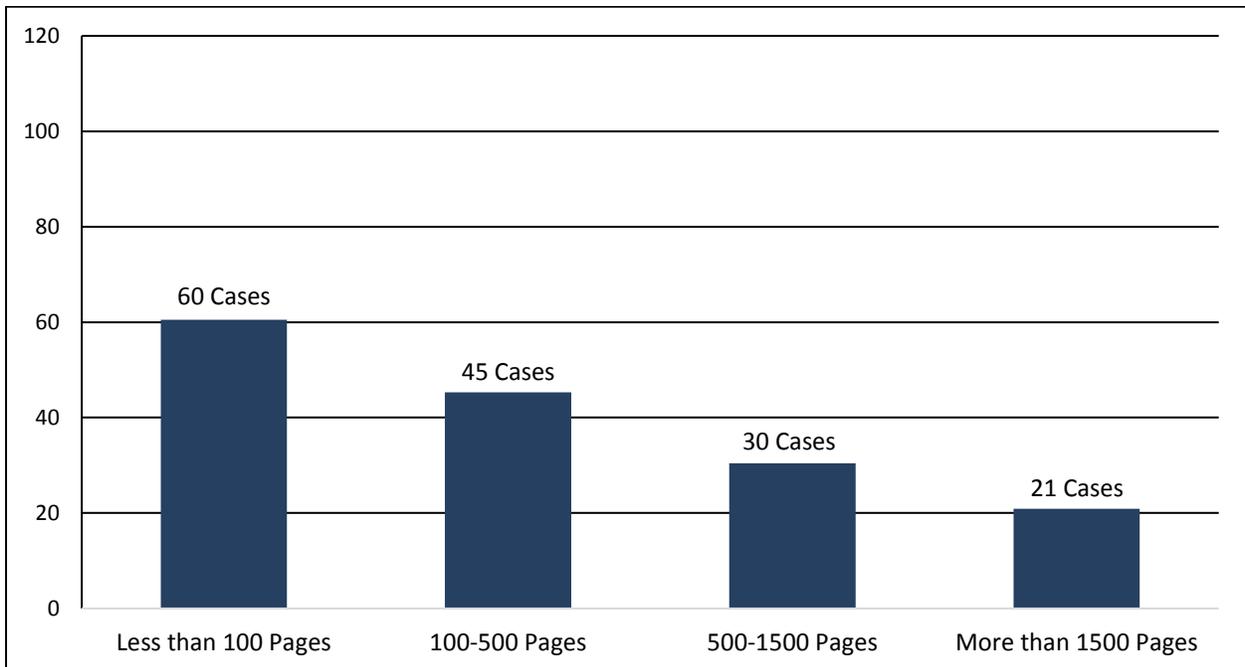


Appellate Weighted Caseload Findings

Current Practice Hours and Recommended Delphi Hours by Appellate Stage and Trial Transcript Page Length



Final Recommended Caseload Guidelines for Texas



act

SMART For liberty and justice

act SMART is a web portal that allows the public to understand Texas public defense at a glance

act SMART collects public defense data from each of Texas's 254 counties using several sources—court data, census data, direct reporting—and displays it in an accessible way

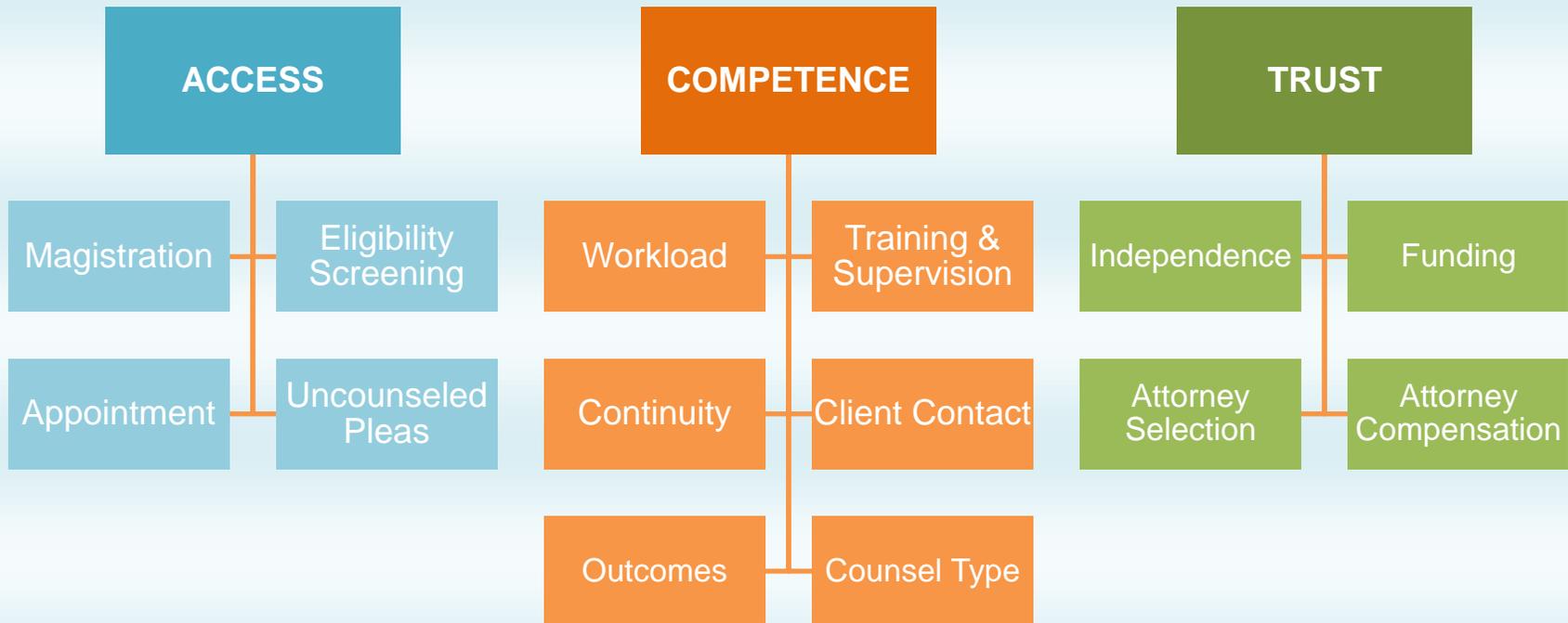
act SMART is funded by the United States Department of Justice and is a collaboration between four organizations:





SMART For liberty and justice

act SMART collects data in 3 broad categories
ACCESS to counsel, legal COMPETENCE, and public TRUST:



**Texas Indigent Defense Commission
Fund and Cash Balance FY14 - 15**

Fund Balance by Year	AY14 Actuals as of August 30, 2016	AY15 Actuals as of June 2, 2016	Total funds (AY14 - AY15) available as of June 2, 2016
Cash in Fund	\$217,205	\$5,945,460	\$6,162,665
Obligations/ Obligations Paid	(\$206,561) *	(\$1,969,621) **	(\$2,176,182)
Cash Available to Move	\$10,644	\$3,975,839	\$3,986,483 ***
			Cash moved to AY16

FY14:	As of August 30
Cash Remaining in FY 14 Ledger	217,205
Obligations Paid:	
Formula Grant - Maverick Co.	\$48,886
Targeted Specific Grant - Harris Co.	\$104,424
Discretionary Grant - Tarrant Co.	\$53,251
Total Obligations Paid for AY14	\$206,561 *
 Fund Balance - Cash moved to AY16 in June	 \$10,644
Cash Available to Move to AY16	\$10,644

FY15:	As of August 30
Cash Remaining in FY 15 Ledger	\$5,945,460
Obligations:	
Discretionary Grant - FY15 Bell Co.	\$474,529
Formula Grant - Maverick Co.	\$0
Discretionary Grant - FY15 Collin Co.	\$375,991
Targeted Specific Grant - El Paso Co.	\$245,580
Technical Support Grant - Comal Co.	\$141,765
PPRI Contract (Research)	\$28,882
Obligations Paid	\$702,874
Total Obligations for AY15	\$1,969,621 **
 Cash Available to Move to AY16	 \$3,975,839
 Cash Moved to AY16 - September 15	 \$500,000
Cash Moved to AY16	\$3,986,483
Total Cash Available to Move to AY16	\$4,486,483

Texas Indigent Defense Commission
Comparison of Revenue Flow (FY14 - FY16)

Revenue Received

	FY14				FY15				FY16				
	Court Costs (3704)	Surety Bond (3858)	State Bar (3195)	Total	Court Costs (3704)	Surety Bond (3858)	State Bar (3195)	Total	Court Costs (3704)	Surety Bond (3858)	State Bar (3195)	General Revenue	Total
September	\$16,320	\$20	\$73,535	\$89,875	\$7,527	\$1,029	\$66,997	\$75,553	\$25,543	\$0	\$48,363	\$3,750,000	\$3,823,906
October	\$134,297	\$39	\$19,532	\$153,868	\$157,482	\$0	\$11,550	\$169,032	\$101,065	\$24	\$13,098		\$114,186
November	\$5,270,304	\$453,393	\$50,185	\$5,773,883	\$5,279,032	\$486,948	\$46,020	\$5,812,000	\$5,142,784	\$503,129	\$44,623		\$5,690,536
December	\$154,582	\$57,041	\$15,015	\$226,638	\$86,537	\$20,134	\$8,548	\$115,219	\$30,205	\$429	\$11,115		\$41,749
January	\$105,899	\$15,286	\$3,738	\$124,923	\$48,280	\$18	\$5,915	\$54,213	\$26,088	\$367	\$6,858		\$33,313
February	\$4,940,658	\$506,244	\$0	\$5,446,902	\$4,282,222	\$412,302	\$4,194	\$4,698,718	\$4,631,450	\$491,527	\$3,478		\$5,126,455
March	\$84,266	\$1,122	\$0	\$85,388	\$567,184	\$76,211	\$1,865	\$645,260	\$8,587	\$1,454	\$2,275		\$12,316
April	\$30,483	\$1	\$2,925	\$33,408	\$93,509	\$2,458	\$1,755	\$97,722	\$34,408	\$9	\$20,833		\$55,249
May	\$6,078,978	\$522,777	\$519,805	\$7,121,560	\$5,653,280	\$507,377	\$654,363	\$6,815,019	\$5,868,954	\$507,875	\$607,523		\$6,984,351
June	\$47,592	\$2,924	\$1,194,018	\$1,244,534	\$34,860	\$1,209	\$1,155,945	\$1,192,014	\$141,918	\$17,837	\$765,098		\$924,853
July	\$139,096	\$264	\$331,893	\$471,253	\$88,552	\$130	\$319,183	\$407,865	\$2,447	\$0	\$610,870		\$613,317
August	\$5,578,294	\$537,880	\$91,441	\$6,207,615	\$5,097,356	\$519,353	\$63,354	\$5,680,063	\$5,008,233	\$517,295	\$130,233		\$5,655,761
Total Revenue Collected	\$22,580,769	\$2,096,992	\$2,302,085	\$26,979,846	\$21,395,820	\$2,027,169	\$2,339,688	\$25,762,677	\$21,021,684	\$2,039,946	\$2,264,363	\$3,750,000	\$29,075,993
Revenue Appropriated	\$21,412,893	\$2,100,000	\$1,800,000	\$25,312,893	\$22,000,000	\$2,000,000	\$2,200,000	\$26,200,000	\$22,000,000	\$2,000,000	\$2,300,000	\$3,750,000	\$30,050,000
Collected vs Appropriated	\$1,167,876	(\$3,008)	\$502,085	\$1,666,953	(\$604,180)	\$27,169	\$139,688	(\$437,323)	(\$978,316)	\$39,946	(\$35,638)	\$0	(\$974,007)

Juror Pay

FY11	\$7,299,671
------	-------------

FY12	\$7,620,331
------	-------------

FY13	\$9,042,121
------	-------------

FY14	\$7,375,603
------	-------------

FY15	\$6,697,267 *
------	---------------

* A reduction of \$678,336 from FY14

FY16	\$6,600,000 **
------	----------------

** Estimate for FY16

** This money is usually received between Nov. - Dec.

Estimate

Sept - Aug.	FY14	FY15	FY16 Est.*
Court Costs	\$22,580,769	\$21,395,820	\$21,158,780 *
Surety Bond	\$2,096,992	\$2,027,169	\$2,006,419 *
State Bar	\$2,302,085	\$2,339,688	\$2,094,933 *
Tot FD 5073	\$26,979,846	\$25,762,677	\$25,260,132 *
General Rev.	\$0	\$0	\$3,750,000
Total w/GR	\$26,979,846	\$25,762,677	\$29,010,132

* This estimate is based on revenue received as of June 2, 2016

Actual

Sept - Aug.	FY14	FY15	FY16
Court Costs	\$22,580,769	\$21,395,820	\$21,021,684
Surety Bond	\$2,096,992	\$2,027,169	\$2,039,946
State Bar	\$2,302,085	\$2,339,688	\$2,264,363
Tot FD 5073	\$26,979,846	\$25,762,677	\$25,325,993
General Rev.			\$3,750,000
Total w/GR	\$26,979,846	\$25,762,677	\$29,075,993

\$374,136 reduction from FY15 (2%); \$1,559,085 reduction from AY14 (7%)

\$436,684 reduction from FY15 (2%); \$1,653,853 reduction from AY14 (6%)

Texas Indigent Defense Commission
Fiscal Year 2016 Revenue / Budget

FY16	FY16 Budget Adopted as of August 21, 2015	FY16 Revised Estimated Budget as of June 2, 2016	FY16 Actuals as of August 30, 2016	Estimated FY16 Revenue and Budget
Estimated Cash Carryforward - FY15	\$4,756,684	\$4,486,483	\$4,486,483	\$4,486,483
Revenue:				
Court Cost Collection (SB7 - 77th Leg)	\$21,000,000	\$21,158,780	\$21,021,684	\$21,021,684
State Bar (HB 599 - 78th Leg)	\$2,300,000	\$2,094,933	\$2,264,363	\$2,264,363
Surety Bond (HB 1940 - 78th Leg)	\$2,000,000	\$2,006,419	\$2,039,946	\$2,039,946
General Revenue - 84th Leg	\$3,750,000	\$3,750,000	\$3,750,000	\$3,750,000
Juror Pay (FY16) (SB 1704 - 82nd Leg)	\$7,300,000	\$6,600,000		\$6,600,000
Other Funds: Fed./State - CJD/SJI Grant	\$0	\$99,960	\$44,621	\$99,960
Total Cash/Revenue	\$41,106,684	\$40,196,575	\$33,607,097	\$40,262,436

Budget/Expended:	Budget	Budget	Expended	Budget
Formula - Based Grants:	\$24,000,000	\$23,432,400	\$17,444,300	\$23,432,400
Discretionary- Based Grants:				
Single Year	\$179,075	\$439,035	\$116,488	\$411,895
Multi-Year - New	\$998,814	\$998,814	\$580,445	\$998,814
Multi-Year - Continued	\$3,193,921	\$3,193,921	\$578,281	\$3,193,921
Extraordinary Disbursement	\$650,000	\$650,000	\$69,926	\$650,000
Targeted Specific	\$1,100,000	\$1,100,000	\$0	\$996,936
Technical Support	\$200,000	\$439,000	\$8,867	\$439,000
Administration:				
TIDC Administrative	\$949,234	\$949,234	\$613,806	\$949,234
PPRI Contract (Database)	\$100,754	\$100,754	\$67,638	\$100,754
UT Contract (Intern)	\$15,000	\$15,000	\$0	\$15,000
Other:				
PPRI Contract (Research)	\$70,000	\$121,800	\$0	\$121,800
IT Grants Project Manager	\$40,325	\$40,325	\$26,880	\$40,325
Innocence Project - (Rider)	\$600,000	\$600,000	\$214,597	\$600,000
TIDC Employee Benefits	\$229,054	\$266,606	\$211,409	\$266,606
OCFW & Employee Benefits	\$1,577,695	\$1,577,695	\$1,674,661	\$1,674,661
CJD Grant - Attorney Mentoring Pgm		\$99,960	\$44,621	\$99,960
General Revenue:			\$0	
Lubbock Capital:				
RPDO	\$1,300,000	\$1,300,000	\$1,148,799	\$1,300,000
Hidalgo PDO	\$250,000	\$250,000	\$0	\$250,000
Capital Urban	\$1,100,000	\$1,100,002	\$1,100,002	\$1,100,002
Bee	\$406,654	\$406,654	\$271,100	\$406,654
Starr/TRLA		\$113,520		\$113,520
Formula - Based Grants		\$579,824	\$579,824	\$579,824
Total Budgeted/Expended	\$36,960,526	\$37,774,544	\$24,751,644	\$37,741,306

Cash/Revenue vs Budget/Expended	\$4,146,158	\$2,422,031	\$8,855,453	\$2,521,130
--	--------------------	--------------------	--------------------	--------------------

**Texas Indigent Defense Commission
August 30, 2016
FY17 Competitive Discretionary Grant Request Summary**

**Conference of Urban Counties
on behalf of 11 Participating Counties (Bell County)**

**Maintenance and Operation of TechShare Indigent Defense
Web-based Appointment and Compliance Monitoring System**

REVISED Grant Request Summary

	Year 1
Total Program Cost	\$262,215
Proposed County Match	\$0
Grant Request	\$262,215

Staff Recommendation: Award \$262,215 for one year to assist in transition to participant county funding and urge CUC to revisit their budget and cost model and negotiate with participating counties on future operations funding. Consider providing concrete guidance to CUC and participating counties that the Commission does not intend to provide ongoing funding for M&O.

Grants & Reporting Committee Recommendation: On July 12 the Grants & Reporting Committee adopted a motion pursuant to staff recommendation above.

Background

- **The original grant application** submitted in May requested \$575,000 (100%) in FY17, \$387,750 (75%) in FY18, and \$258,000 (50%) in FY19 and continuing in subsequent years. The request covered maintenance and operations of the TechShare Indigent Defense software system that was developed, enhanced and deployed in 11 Texas counties through a series of TIDC discretionary grants.
- **At the June 2, 2016 board meeting staff reviewed several concerns** with the proposal and the budget. These included:
 - The proposed M&O budget was more than double the amount previously requested and funded for M&O for the 11 counties.
 - The request included very high indirect cost allocations.
 - The proposed staffing level was more than necessary for maintenance and operations.

- **The grant review committee** recommended not funding ongoing maintenance and operations of Techshare. Some members of the committee suggested that if any funding is provided toward this request as part of a transition it should be based on an amount commensurate with the M&O levels funded previously, based on direct expenses necessary to maintain and operate the software, and contain a match requirement. The committee recommended not funding the administrative and indirect charges included in the budget.
- Following the June 2 meeting the TechShare Indigent Defense Stakeholder Committee determined that the original project budget included additional services and software improvement work that was deemed non-essential and over and above basic maintenance and operation of the system. The Stakeholder Committee directed that those non-essential items be separated and removed from the grant request budget.
- In addition, the revised budget included indirect costs of approximately 5%, which is much lower than the original request and consistent with our funding practices. The overall budget has been reduced substantially and is very close to the level at which M&O had been funded in the three previous years.

**2017 Discretionary Grant Application Narrative - Amended
(Single-Year Grant)**

Application Form

Counties Represented: **Texas Conference of Urban Counties, on behalf of Anderson, Bell, Brown, Coryell, Medina, Mills, Montgomery, Real, Tarrant, Victoria and Uvalde Counties**

Fiscal Year: **2017**

State Payee Identification Number:

Division To Administer Grant: **TechShare**

Program Title: **Maintenance and Operation of Web-based Indigent Defense Appointment and Compliance Monitoring System known as TechShare Indigent Defense.**

Requested Grant Amount: **\$262,215.00**

Financial Officer: **Don Lee, Executive Director**

Program Director: **Charles Gray, TechShare Program Director**

Mailing Address: **500 W. 13th St., Austin, TX 78701**

A. Introduction (Executive Summary)

The purpose of this grant request is to provide funding for maintenance and operation of TechShare.Indigent Defense for the current participating counties for one year.

B. Problem Statement

Since the creation of the Fair Indigent Defense Online (FIDo) software by Bell County, its move to Urban Counties for further development under the TechShare.Indigent Defense program, and its implementation in ten additional counties, an unresolved issue has been future funding. To maximize the investment in the software – to keep it current and to make it attractive to additional counties – the software must be continually updated to address both technology changes and changes to the indigent defense laws and TIDC administrative rules. To date, the participant counties have not been notified of the need to provide matching funds or to otherwise fund M&O. An immediate requirement to provide funding will likely result in some participant counties opting not to use the software.

When the FIDo system was moved to the Urban Counties under the TechShare.Indigent Defense program, the TIDC established a vision for future state and county collaboration that could result in a statewide system for managing activities under the Fair Defense Act. The TIDC and the Urban Counties envisioned a partnership similar to that established by Urban Counties and the Texas Juvenile Probation Department (now, the Texas Juvenile Justice Department) with the development of the Juvenile Case Management System (JCMS). JCMS has proven that a state and county collaboration could be successful, as today over 6,000 justice and juvenile probation professionals are sharing information in real time regarding over 1.1 million distinct juveniles across 250 counties. The TIDC could accomplish similar results that would benefit all Texas counties, while making it possible for the TIDC to improve oversight of compliance with the Fair Defense Act.

C. Objectives

The primary objective for this grant is to fund the costs of M&O for the TechShare.Indigent Defense system for one year. The current participating counties understand that TIDC is

invested in the future of the software, but the financial commitment required by the participant counties will also help assure TIDC that the participants are invested in the product. These dual commitments will help ensure a stable and sustainable long-term software solution for indigent defense and provide cost-effective state oversight of compliance with the Fair Defense Act.

The specific objectives for this grant include:

- A. Continue improving indigent defense processes by sustaining and propagating “best practices” as reflected in the newly developed TechShare.Indigent Defense system.
- B. Promote full compliance with the Fair Defense Act by providing timely information to both local and state leaders concerned with cost-effective program management and fair representation for indigent defendants in the criminal justice system.
- C. Promote effective attorney representation and practice by identifying qualified attorneys, tracking case assignment and contact with clients, and facilitating prompt payment of attorneys.
- D. Provide access to indigent defense information for all stakeholders.

D. Activities

There are several specific actions that need to be taken to solve the problem described above. First, the complete Production Support Plan for the system in its .NET form must be finalized to ensure it meets the needs of the current participant counties and to accommodate any counties that may join in the future. The Production Support Plan will be completed in collaboration with the participant counties, Urban Counties, and TIDC once the grant has been approved and will be submitted to the TIDC for approval before the transition begins from the current state of operations for the FIDo system and the future state of operations for TechShare.Indigent Defense.

The standard Production Support Plan for Urban Counties software resources includes:

- Hosted operation in a data center managed by the Urban Counties;
- Disaster/recovery services to insure continued operation of the system in the event of a computer outage;
- HelpDesk support for the participant counties and defense attorneys;
- Break/fix programming, testing and deployment to correct defects; and Service Level commitments and metrics to be monitored daily, weekly and monthly.

In addition, the Production Support Plan will include provisions to continue gathering and reporting operational statistics that are useful in measuring Urban Counties' performance against an approved Service Level Agreement, and providing system utilization data to TIDC. M&O is currently provided for the FIDo system, so although the existing model can be used as starting point, the .NET software will require its own Production Support Plan.

The budget included in this application for the discretionary grant is based on the standard Urban Counties Production Support Plans that have been implemented for the juvenile, prosecutor and court systems currently in use in counties participating in the TechShare program, but less the usual apportionment of Urban Counties' indirect costs.

Second, the TIDC cost-sharing structure is acknowledged that will allow both state and county funds to support the ongoing system costs. The cost-sharing structure provided by TIDC includes the following:

1. Standard maintenance and operations for the transition year (FY 2107) whereby the counties move from FIDo to TechShare.Indigent Defense and assume responsibility for ongoing maintenance and operations costs. Note: standard maintenance and operations funding for the transition year will not include “evergreen” expenses related to the ongoing improvement of the software or the implementation of new legislative and/or reporting requirements.
2. TIDC has expressed a current intent to provide incentives for additional counties to join the collaboration through the Urban Counties TechShare program in the way of:
 - a. Grant funding to support fifty percent (50%) of the approved implementation costs for a new participating county; and
 - b. Grant funding to cover the incremental costs of maintenance and operations for a new participating county for two years.

Urban Counties and TIDC will develop a set of metrics to report work related to ongoing M&O. This list may include such items as the number of support calls received, the number of support emails received, the number of tickets created, the number of tickets resolved, the time from ticket creation to resolution, the number of software field/screen changes required by statutory updates, the number of software field/screen changes completed, etc. These should be reported to TIDC and the participating counties on a timeframe agreed upon by all. In addition, Urban Counties will continue to report on the system utilization as specified in the current grant to Tarrant County.

E. Evaluation

This M&O program’s success will be evaluated using the metrics agreed upon and reported to TIDC in the Activities section above, which should include the system use metrics already developed as part of the Tarrant County grant.

The standard M&O metrics that are currently provided as part of the monthly status reports include the following:

- Status Changes regarding deliverables, assumptions and/or scope
- Activities for the month
- Open Issues/Concerns
- Issue Tracking, i.e. number of issues reported, resolved and open by severity level
- System Utilization
- Technical Statistics regarding computer usage

F. Future Funding

Urban Counties anticipates a long-term partnership with the TIDC to expand the use of the TechShare.Indigent Defense system across Texas. Individual counties can continue to apply for grants for financial support to implement the software based on an anticipated cost shared funding model where TIDC provides fifty-percent (50%) of the resources necessary to begin using the software (implementation costs) and the incremental increase in maintenance and operations cost for two years.

Urban Counties understands that TIDC will not provide ongoing funding for maintenance and operations other than as noted above for new participating counties.

G. Budget Narrative and Budget Form (FY 2017 costs)

Personnel: \$140,000

A total of two (2) FTE's will be assigned to M&O including a resource manager, business analysts, programmers (more than one for cross-training and continuity of support) and help desk staff.

Professional Development: \$2,500

Ongoing training for employees assigned to Indigent Defense Maintenance and Operations.

Meetings: \$2,400

Conference calls and meeting expenses.

Printing and Publications: \$2,000

Documentation and briefing materials related to the TechShare.Indigent Defense software.

Supplies: \$1,200

Supplies, shipping and other miscellaneous costs.

Equipment: \$1,800

Computer equipment and software employee needs.

Contract Services: \$58,000

Continued support of FIDo during the transition from FIDo to TechShare.Indigent Defense (estimated at three months funding).

Computer Operations: \$42,000

Outsourced computer operations to provide full system redundancy, backup/recovery and operations to insure high availability and reliability for county staff and defense attorney usage.

Administrative Costs: \$12,315

General Urban Counties administrative costs including executive management, legal support, accounting and finance, shipping and local computer support.

Total FY 2017 Cost: \$262,215

Kaufman County Extraordinary Grant Request Summary

- Charles Brownlow was convicted in 2016 for the murder of 5 people in Kaufman County in October 2013.
- Brownlow was sentenced to death in 2016.
- Brownlow was represented by the RPDO.

Amount Requested and Staff Review

- Total requested amount is \$471,329.33.
- Staff review finds \$471,329.33 in expenditures in eligible categories, mostly expert witness expenses.
 - 31 experts were paid

#1 2,262.50	#2 3,550.00	#3 5,026.25	#4 68,579.74
#5 63,356.25	#6 1,750.00	#7 3,000.00	#8 1,000.00
#9 1,700.00	#10 43,517.98	#11 27,761.29	#12 3,000.00
#13 2,550.00	#14 18,254.30	#15 11,250.00	#16 42,544.34
#17 11,700.00	#18 111,667.09	#19 10,600.00	#20 6,200.00
#21 660.00	#22 6,737.50	#23 12,800.00	#24 3,000.00
#25 6,000.00	#26 294.00	#27 19.90	#28 25.00
#29 23.19	#30 1,500.00	#31 1,000.00	

RPDO Participation

- Kaufman County has consistently participated in the program since it became eligible.

Previous Extraordinary Grants

- FY15 \$93,768
- FY16 \$69,926

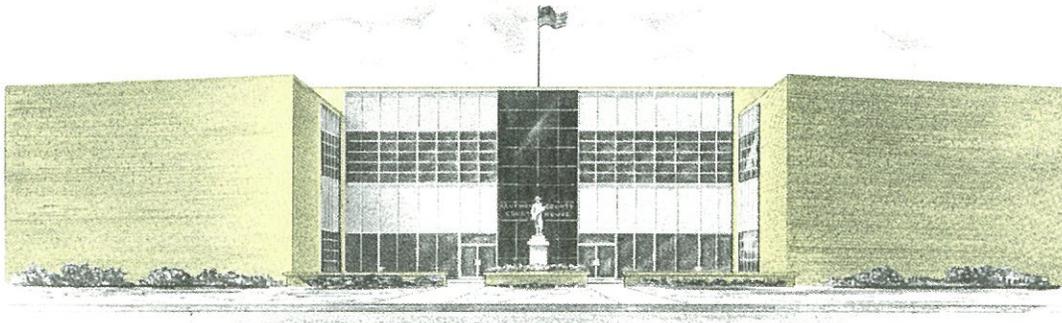
Kaufman County Population: 113,010

Total County Indigent Defense Spending and Grants

Year	Total Defense Expenditures	Formula Grant	Discretionary Grant	Extraordinary Grant
2010	\$880,222	\$48,566	\$63,234	\$0
2011	\$994,341	\$59,182	\$0	\$0
2012	\$931,412	\$51,283	\$0	\$0
2013	\$996,704	\$89,123	\$31,648	\$0
2014	\$1,024,692	\$162,018	\$41,583	\$0
2015	\$1,294,409	\$99,965	\$29,115	\$93,768
2016		\$107,533	\$26,800	\$69,926

Extraordinary Grant Disbursement Policy Guidance

The current policy provides for reimbursing Kaufman County \$50,000 for this request.



Bruce Wood
COUNTY JUDGE
(972)932-0218

KAUFMAN COUNTY
KAUFMAN, TEXAS 75142

July 11, 2016

Texas Indigent Defense Commission
200 W. 14th Street, Room 202
Austin, Texas 78701

Honorable Commission Members,

This letter is to request reimbursement of \$471,329.33 for the cost of the Defenses Expert Witness expenses Kaufman County incurred during the Charles Brownlow Capital Murder Trial. In October of 2013, Mr. Brownlow killed five people which included his mother, his aunt, two friends and a store clerk.

The Brownlow case made the second Capital Murder Trial in Kaufman County within a 3 year period.

Kaufman County hopes that you will approve this request for the reimbursement in the amount of \$471,329.33.

Sincerely,


Kaufman County Judge Bruce Wood



Extraordinary Disbursement Grant Application Form

"Extraordinary Disbursement Grant" means discretionary-based funding to reimburse a county for actual extraordinary expenses for providing indigent defense services in a case or series of cases causing a financial hardship for the county (Texas Administrative Code §173.102(8)).

General Information			
County	Kaufman County	County Payee Number	75-60010 36-9
County Judge	Bruce Wood	Auditor/Treasurer	Karen Cooper
Address	100 W. Mulberry Kaufman, Texas 75142	Address	100 N. Washington Kaufman, Texas 75142
Phone	972-932-0740	Phone	972-932-0240
E-mail	jbwood@kaufmancounty.net	E-mail	kcooper@kaufmancounty.net
Summary of Reimbursement Request: Kaufman County is asking for the TDIC to reimburse the County for the Extraordinary Expenses (Expert Witness Cost) we incurred during the Charles Brownlow Murder Trial.			
RPDO Participation: Is the county eligible to participate in the RPDO for Capital Cases? <input type="checkbox"/> Yes <input type="checkbox"/> No Is the county participating in the RPDO for Capital Cases? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		(Include a justification with the application material if the county is eligible but is not participating in the RPDO.)	

Case Information			
Court	Cause Number	Defendant's Name	Date of Judgment
Kaufman County 422 nd	32512-422	Charles Brownlow	05/20/16

Expense Summary & Total Amount Requested		
Eligible Expense Category	Notes/Description	Expense
Attorney Fees		
Expert Witness Fees		\$ 471,329.33
Investigation Fees		
Mitigation Fees		
Other Eligible Expenses		
Expense Summary Total		\$ 471,329.33
Total Amount Requested		\$471,329.33

I affirm that this reimbursement request is for actual litigation expenses for indigent defendants or indigent juvenile respondents.

Bruce Wood
 Constitutional County Judge's Signature

7-11-16
 Date

Note: In addition to this signed form, counties must submit an itemized list of actual extraordinary expenses organized chronologically including payee information, nature of services provided, and amount of expenditure. Counties must also provide documentary evidence such as invoices, receipts, canceled checks, or pay stubs to support the itemized list of extraordinary expenses. Please refer to the Extraordinary Disbursement Grant Procedures for more information.



REGIONAL PUBLIC DEFENDER FOR CAPITAL CASES

P. O. Box 2097
Lubbock, Texas 79408
Main Phone: (806) 775-1520
Fax: (806) 775-7954

CHIEF PUBLIC DEFENDER
Edward Ray Keith Jr.

Deputy Public Defender

Chief Operating Officer
Amy Sharb

Office Administrator
Elaine Nauert

Assistant Public Defender
William P.H. Boyles
Robert Cowie
James Drummond
Lisa Harris
Anna Maria Jimenez
Brian D. Lacour
Tonya McClary
Keri Mallon
Anthony C. Odiorne
Maxwell C. Peck III
Dennis R. Reeves
Gary Taylor
Thomas J. "Jay" Wooten
John E. Wright

Senior Investigator
Rudy O'Brien

Investigator
Claudia Bretz
Mike Johnson
Isabel De La Rosa
Kirk D. Noaker, Sr.
Andra Whittingslow

Senior Mitigator
Ricardo Jimenez

Mitigator
Safa Ansari-Bayegan
Rachael Etheridge
Robert Graves
Roland Hernandez
Nicole Jackson
Ricardo Jimenez
Patricia Rist
Marina Rodriguez
Seth Starkey
Julie Williams
Jamie Zapata

Legal Assistant
Malerie Bostick
Corrie Brake
Berenice De Leon
Sherri Griffith
Cynthia Hinojosa
Amber Owen
Dana West

July 25, 2016

Texas Indigent Defense Commission
200 W. 14th Street, Room 202
Austin, Texas 78701

Honorable Commission Members,

The Regional Public Defender Office for Capital Cases provided defense services from 2013-2016 as a part of its agreement with Kaufman County, Texas.

The Regional Public Defender for Capital Cases provides representation and other services but each county is still responsible for expenses related to expert witnesses, records collection and miscellaneous expenses (i.e. clothing for defendants).

From March 11, 2014 through May 20, 2016, Kaufman County paid into the RPDO trust account \$494,074.43 to cover expenses described above.

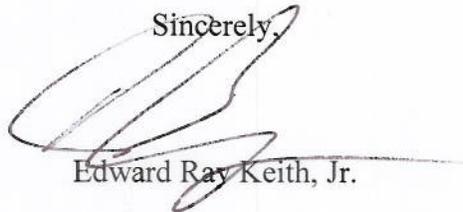
Over the course of representation, the RPDO expended \$471,329.33 of these trust funds. The remaining \$22,745.10 was returned to Kaufman County on June 21, 2016. Please see the attached copy of check number 1876 written to Kaufman County.

The Texas Indigent Defense Commission's grant rules require an itemization of eligible expenses for any extraordinary request a county might make for a case of this nature. The judge presiding over this case ordered all of the records sealed. While we cannot provide a detailed itemization, we certify the following eligible expenditures for this case.

Eligible Expense Category	Amount Expended	RPDO or Other Provider
Expert Witness Fees	\$390,873.01	Neuropsychology/doctor
Expert Witness Fees	\$10,526.25	Prison classification and conditions
Ancillary Fees	1,700.00	Jury
Documents	362.09	Documents
Testing	46,067.98	Testing
Expert Witness Fees	21,800.00	Forensic
Total:	\$471,329.33	

As the Chief Public Defender for the RPDO, I certify that this information is correct.

Sincerely,



Edward Ray Keith, Jr.

Willacy County Extraordinary Grant Request Summary

- Ismael Vallejo and Gustavo Sandoval are charged with shooting a border patrol officer and his father during a robbery. Both defendants were charged with attempted capital murder and capital murder. Mr. Vallejo was also charged with 5 counts of aggravated robbery and tampering with evidence. The defendants are both Mexican nationals.
- The cases have not yet gone to trial.
- The defendants are represented by private assigned counsel, with the exception of Abner Burnet of the Willacy County Public Defender Office, who is second chairing on the Vallejo case. (The Willacy County Public Defender is operated by Texas Rio Grande Legal Aid and is supported by a TIDC discretionary grant).

Amount Requested and Staff Review

- Total request is \$330,875.
- Staff review finds expenditures in eligible categories of \$328,675.
 - Ismael Vallejo Total = \$150,029
 - Gustavo Sandoval Total = \$178,646

RPDO Participation

- Willacy County declined to participate in the RPDO until joining in FY16.

Previous Extraordinary Grants

- FY08 of \$100,059
- FY13 of \$100,000.

Willacy County Population: 21,486

Total County Indigent Defense Spending and Grants

Year	Total Expenditures	Formula Grant	Discretionary Grant	Extraordinary Grant
2010	\$346,629	\$14,364	\$89,832	\$0
2011	\$484,984	\$16,122	\$74,860	\$0
2012	\$539,339	\$14,913	\$0	\$0
2013	\$267,125	\$39,667	\$0	\$0
2014	\$308,975	\$43,291	\$0	\$0
2015	\$438,098	\$30,661	\$0	\$0
2016		\$36,292	\$156,654	

*Willacy County receives discretionary grant funding through the grant to Bee County for TRLA.

Extraordinary Disbursement Grant Policy Guidance

The policy provides for awarding Willacy County \$50,000 per defendant for a total of \$100,000. The policy indicates that historical RPDO participation is a consideration.



Willacy County Judge Aurelio Guerra

*576 West Main Street
Raymondville, Texas 78580*

May 27, 2016

Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, Texas 78701

To whom it may concern,

Due to the extra expenses during the current physical year pertaining to Capital Murder Cases, Willacy County is kindly asking that you consider our County to receive funding through the "Extraordinary Disbursement Grant".

A handwritten signature in black ink, appearing to be "A. Guerra", is written over a horizontal line.

Aurelio Guerra
Willacy County Judge



Extraordinary Disbursement Grant Application Form

"Extraordinary Disbursement Grant" means discretionary-based funding to reimburse a county for actual extraordinary expenses for providing indigent defense services in a case or series of cases causing a financial hardship for the county (Texas Administrative Code §173.102(8)).

General Information			
County	Willacy County	County Payee Number	
County Judge	Aurelio Guerra	Auditor/Treasurer	Ida C. Martinez Co. Auditor; Ruben Cavazos Treasurer
Address	576 W Main Raymondville, TX 78581	Address	576 W Main; Suite 138 Raymondville, TX 78580
Phone	(956) 689-3393	Phone	(956) 689-3422
E-mail	aurelio.guerra@co.willacy.tx.us	E-mail	ida.martinez@co.willacy.tx.us

Summary of Reimbursement Request:

Capital Murder expenses exceed county's 2001 baseline indigent defense expenditures

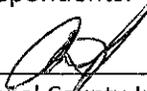
RPDO Participation:

Is the county eligible to participate in the RPDO for Capital Cases? Yes No (Include a justification with the application material if the county is eligible but is not participating in the RPDO.)
 Is the county participating in the RPDO for Capital Cases? Yes No

Case Information			
Court	Cause Number	Defendant's Name	Date of Judgment
197th Judicial District	2014-CR-0121-A	ISMAEL HERNANDEZ VALLEJO	12/11/2014
197th Judicial District	2014-CR-0120-A	GUSTAVO TIJERINA-SANDOVAL	5/29/2015

Expense Summary & Total Amount Requested		
Eligible Expense Category	Notes/Description	Expense
Attorney Fees		20,901.11
Expert Witness Fees		11,400.00
Investigation Fees		4,520.00
Mitigation Fees		37,500.00
Other Eligible Expenses		7,240.00
Expense Summary Total		\$81,561.11
Total Amount Requested		\$81,561.11

I affirm that this reimbursement request is for actual litigation expenses for indigent defendants or indigent juvenile respondents.


 Constitutional County Judge's Signature

5-27-2016
 Date

Note: In addition to this signed form, counties must submit an itemized list of actual extraordinary expenses organized chronologically including payee information, nature of services provided, and amount of expenditure. Counties must also provide documentary evidence such as invoices, receipts, canceled checks, or pay stubs to support the itemized list of extraordinary expenses. Please refer to the Extraordinary Disbursement Grant Procedures for more information.



Extraordinary Disbursement Grant Application Form

"Extraordinary Disbursement Grant" means discretionary-based funding to reimburse a county for actual extraordinary expenses for providing indigent defense services in a case or series of cases causing a financial hardship for the county (Texas Administrative Code §173.102(8)).

General Information			
County	Willacy County	County Payee Number	
County Judge	Aurelio Guerra	Auditor/Treasurer	Ida C. Martinez
Address	546 W Main Raymondville, TX 78581	Address	546 W Main; Suite 138 Raymondville, TX 78580
Phone	(956) 689-2413	Phone	(956) 689-3422
E-mail	aurelio.guerra@co.willacy.tx.us	E-mail	ida.martinez@co.willacy.tx.us
Summary of Reimbursement Request:			
Capital Murder expenses exceed county's 2001 baseline indigent defense expenditures			
RPDO Participation:		(Include a justification with the application material if the county is eligible but is not participating in the RPDO.)	
Is the county eligible to participate in the RPDO for Capital Cases?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Is the county participating in the RPDO for Capital Cases?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Case Information			
Court	Cause Number	Defendant's Name	Date of Judgment
197th Judicial District	2014-CR-0120-A/2015-DCR-2443-C	GUSTAVO TIJERINA-SANDOVAL	9/2015
197th Judicial District	2014-CR-0121-A	ISMAEL HERNANDEZ VALLEJO	9/2015

Expense Summary & Total Amount Requested		
Eligible Expense Category	Notes/Description	Expense
Attorney Fees		\$27,820.00
Expert Witness Fees		80,121.38
Investigation Fees		4,900.00
Mitigation Fees		133,358.10
Other Eligible Expenses		3,115.00
Expense Summary Total		\$249,314.48
Total Amount Requested		\$249,314.48

I affirm that this reimbursement request is for actual litigation expenses for indigent defendants or indigent juvenile respondents.


 Constitutional County Judge's Signature

July 22, 2016
 Date

Note: In addition to this signed form, counties must submit an itemized list of actual extraordinary expenses organized chronologically including payee information, nature of services provided, and amount of expenditure. Counties must also provide documentary evidence such as invoices, receipts, canceled checks, or pay stubs to support the itemized list of extraordinary expenses. Please refer to the Extraordinary Disbursement Grant Procedures for more information.

Historical Extraordinary Payments

County	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15
Austin									\$ 200,000.00	\$ 223,434.00		
Brazoria				\$ 100,000.00			\$ 99,000.00					
Brazos							\$ 99,000.00				\$ 100,000.00	
Brown											\$ 200,000.00	
Burleson								\$ 146,426.00				
Cameron					\$ 142,006.00		\$ 199,000.00					
Cass								\$ 148,113.00				
Collingsworth		\$ 5,000.00										
Concho		\$ 33,974.00										
Delta						\$ 29,126.00						
Dimmit										\$ 100,000.00		
Donley										\$ 12,150.84		
Ector							\$ 99,000.00					
Fannin							\$ 84,795.00					\$ 141,466.00
Galveston			\$ 84,053.91									
Grayson		\$ 100,000.00										
Grimes	\$ 12,780.00											
Harrison								\$ 98,024.00				
Hartley												
Haskell			\$ 7,500.00									
Hill						\$ 37,772.00	\$ 72,490.00					
Houston		\$ 61,026.00										
Hunt		\$ 100,000.00		\$ 100,000.00		\$ 100,000.00			\$ 100,000.00			
Jackson						\$ 271,798.00						
Jefferson						\$ 136,307.00						
Johnson											\$ 100,000.00	
Kaufman												\$ 93,768.00
Kleberg										\$ 104,674.00		
Madison	\$ 66,997.00											
Midland	\$ 100,150.00											
Nueces												\$ 158,450.00
Palo Pinto								\$ 99,589.00				
Polk					\$ 208,500.00							
San Augustine		\$ 16,000.00										
Smith										\$ 100,000.00		
Victoria	\$ 20,073.00											
Ward								\$ 66,662.00				
Wharton							\$ 96,088.00					
Willacy					\$ 100,059.00					\$ 100,000.00		
Wood								\$ 91,185.00				

CURRENT DISCRETIONARY GRANT PROGRAMS

County	Program Name	Program Years	Current Award Amount	Program Update
Bee	Regional Public Defender Office	2015 – 2016	\$813,308	The Bee County Regional Public Defender Office continues to provide representation in felonies, misdemeanors and juvenile cases in Bee, Live Oak, McMullen and Willacy through a contract with TRLA.
Bell (Techshare)	Functional Extensions for the Bell County System	2015	\$742,400	Software development nearing completion.
Bell (Techshare)	Upgraded System Implementation	2017	\$255,900	County agreements are being put into place and work scheduled for fall.
Bexar	Representation of Indigent Accused at Central Magistration Program	2016 - 2019	\$241,903	The Bexar County Public Defender Office continues to represent eligible arrestees at 15.17 hearings with the goal of obtaining mental health PR bonds.
Collin	Mental Health Managed Counsel Program	2013 – 2016	\$66,033	The program's accomplishments were recognized by the Women's Law Section of the State Bar. Alyse Ferguson was honored with the Louise B. Raggio award on June 17th at the State Bar annual meeting.
Collin	e-Management System	2014	\$436,240	Collin County and Tyler Technologies are working with PPRI to finalize software modification specifications for development during FY 17.
Comal	Client Choice Program	2015	\$200,000	County has continued to operate the program after the one-year research period while report is being prepared. Data collection and analysis underway for impact assessment report slated for publication early December and grant term has been extended through December 2, 2016 to allow for completion of the report.
Coryell	Mental Health Contract Defender Program	2014 – 2017	\$51,300	County Judge Firth has sent a letter detailing budget crisis reasons for not continuing the program after FY16.
Dallas	Criminal Law/Immigration Program (<i>Padilla</i> Compliance)	2014 – 2018	\$44,067	The immigration specialist continues to provide consultation on criminal defendants and juvenile respondents regarding collateral consequences relating to immigration.

El Paso	Problem Solving Court Attorney	2013 – 2016	\$18,530	The program attorney continues to advocate for clients in the several Problem Solving Courts in the county.
El Paso	Expansion of the Public Defender Office	2015 – 2017	\$996,936	The program reports that a significant number of cases are going to trial and a large number of cases are being dismissed on the eve of trial. The office continues to be fully utilized by all courts.
Fort Bend	Public Defender Office	2016 - 2019	\$756,911	Staff conducted a site visit in July. According to district judge and program director, initial opposition from the local bar has dissipated as it has become clear that the growing volume of cases has resulted no significant change in appointments. The program’s investigators are now made available for non-PD assigned counsel cases.
Fort Bend	Veteran’s Court Program	2016	\$20,000	Staff visited a Veteran’s Court status hearing in July and met with Judge McMeans. Two contract attorneys provide representation to veterans while they complete a two year deferred adjudication program involving personalized treatment program and special community supervision requirements. The program is serving a very small number of defendants because the prosecutor narrowly limits participation to defendants with a clear connection between the criminal conduct and some aspect of their service. We are expecting a request to extend the term of the grant due to late start.
Harris	DNA Mixture Protocol Change – Appellate Review and Support Services	2016	\$400,000	Through the end of June, 505 requests for review have been received representing 93 counties. A handful of recalculations have been requested, but so far none have been found to be statistically significant. The program anticipates a substantial increase in volume after notices are sent by several urban counties.
Harris	Attorney Voucher Processing System	2015	\$578,000	ViPS is actively being used by around 354 Attorneys, 38 Clerks and 38 Judges plus administrative users. All 38 Criminal Courts (22 District and 16 County) receive fee vouchers electronically including electronic filing with the District Clerk and judges electronic signatures through the eCourts Processing System. ViPS recently received a Best of Texas Award from the Center for Digital Government for “Best Application Serving an Agency’s Business Needs.”

Kaufman	Mental Health Attorney/Advocate Team	2013 – 2016	\$26,800	The program developed a treatment team consisting of representatives from Probation, the DA's Office, the Program Case Worker, and the Program Attorney. A progressive sanction program was implemented for non-compliance in the program; this has greatly reduced the number of missed counseling and probation appointments that have plagued the program.
Lubbock	Regional Public Defender for Capital Cases	2011 – 2017	\$3,530,400	Trials are set in two counties. The office is down several staff positions and is currently hiring attorneys for the Burnet and Corpus Christi offices.
Lubbock	Pre-Trial Indigence Screening Program	2016	\$31,935	The program has consulted with Travis County's MAC program to help address reporting challenges and possible IT system sharing.
Starr	Regional Public Defender	2016 – 2019	\$681,120	Program has hired staff and is now being implemented by TRLA in three participating counties for felonies, misdemeanors and juveniles. Program encountered startup delays related to contracting and inter-local agreements.
Tarrant	Web-based Appointment and Compliance Monitoring System	2013 – 2016	\$2,001,644	This grant, which funded the implementation of the system in 9 additional counties, upgraded the system to a new software platform, and maintained and operated it for 3 years is now complete.
Tarrant	DNA Mixture Case Representation	2016	\$100,000	Program is being implemented after recent award.
Travis	Capital Area Public Defender Service	2015 – 2018	\$717,516	Defendants who have been flagged as having a mental health disorder or intellectual disability will be assigned to an attorney who has received extensive training on mental health issues.
Travis	Indigent Defense Attorney Mentoring	2016	\$39,000	Several multiple day trainings have been conducted. Mentees have prepared arguments for pre-trial hearings, litigated bond hearings, and been immersed in the felony practice through shadowing their mentors. Mentees have also been paired with investigators to work on cases.
Travis	DNA Mixture Case Review	2016	\$148,474	Program is being implemented after recent award.

Wichita	Mental Health Social Worker	2013 – 2017	\$29,750	The social worker with the help of the mental health attorney are currently working on educating the courts about the potential effectiveness of a behavioral health specialty court locally, and considering potential team members. Budget talks continue at this time, but the outlook for continuation of the program after the grant appears favorable.
Texas Tech University	Caprock Regional Public Defender Office	2011 - 2020	\$200,000	Student attorneys met with clients for initial interviews, created correspondence, court documents, negotiated with county attorneys, and closed cases. CRPDO's 3 rd year law student Stephen Chapa was awarded the 2016 Robert J. and Ann Burbridge Award for demonstrating excellence in the art and science of criminal defense advocacy.

Update on Legislatively Directed Capital Case Public Defender Grant for Hidalgo County

- Included in the new general revenue appropriated new to TIDC in the FY2016/2017 budget was \$500,000 over the biennium directed in a budget rider to fund a capital case public defender program for Hidalgo and Cameron Counties.
- Lubbock County officials and RPDO were open to expanding their program, which has a well-established track record and model of representation, to operate the program.
- The minimum budget required to open and staff office is approximately \$685,000, which would exceed the legislative appropriation and require substantial matching funds from the participating counties.
- Cameron County decided not to participate in the program due to required matching funds and new DA policies, however Hidalgo County does want to participate.
- In December 2015 the Commission authorized a grant award to Lubbock County up to \$500,000 through August 31, 2017.
- Program startup in 2017 will allow Hidalgo County to implement a new program with approximate matching contribution of less than \$200,000. The County has expressed a desire to apply for discretionary grant funding in 2018 to phase in the county's costs to operate the program, estimated at around \$385,000/year.
- Staff has planning call scheduled for August 31st with the RPDO and Hidalgo County stakeholders to discuss office space and other logistical planning for the program.



TEXAS INDIGENT DEFENSE COMMISSION

[DATE]

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

The Honorable <FULL NAME>
<COUNTY> County Judge
<ADDRESS>

Vice Chair:
The Honorable Olen Underwood

Re: FY17 Formula Grant Request for Applications

Ex Officio Members:
The Hon. Sharon Keller
The Hon. Nathan Hecht
The Hon. Sherry Radack
The Hon. Linda Rodriguez
The Hon. Brandon Creighton
The Hon. John Whitmire
The Hon. Andrew Murr
The Hon. Abel Herrero

Dear Judge <LASTNAME>:

The Texas Indigent Defense Commission announces the attached FY17 Formula Grant Request for Applications (RFA). **Applications are due November 15, 2016.** The attached packet provides application instructions for FY17 Formula Grant funds.

Members Appointed by Governor:
The Hon. Olen Underwood
The Hon. Jon Burrows
Mr. Anthony Odiorne
Mr. Don Hase

The local administrative judges and chairs of Juvenile Boards were required to submit their biennial indigent defense plans by November 2, 2015 through our on-line system (<https://tidc.tamu.edu>). Commission staff will continue to work with counties to ensure that all of the statutory and Commission required elements are included in each plan. Also, financial officers must submit their Indigent Defense Expense Report by November 1, 2016. Both of these requirements are directed in Texas Government Code §79.036 and are necessary to be eligible for formula grants.

Executive Director:
James D. Bethke

The Commission adopted Texas Administrative Code Chapter 173 in order to implement the grant authority established by the Texas Legislature. These administrative rules and the attached RFA are available at: www.tidc.texas.gov. The rules and the RFA establish the guidelines for the administration of grant funds and application submission process for FY17.

Please contact Edwin Colfax, Grant Program Manager (ecolfax@tidc.texas.gov) toll free in Texas at (866) 499-0656, if you have any questions about the FY17 Formula Grant or the application process.

Sincerely,
Sharon Keller
Chair, Texas Indigent Defense Commission
Presiding Judge, Court of Criminal Appeals

Enclosed: FY17 Formula Grant RFA

Texas Indigent Defense Commission
209 West 14th Street, Room 202 • Austin, Texas 78701 • www.tidc.texas.gov
Phone: 512.936.6994 • Fax: 512.463.5724



TEXAS INDIGENT DEFENSE COMMISSION
209 West 14th Street, Suite 202 Price Daniel, Sr. Building, Phone: 512-936-6994,
Austin, Texas 78701, Fax: 512-463-5724
www.tidc.texas.gov

FY2017 Formula Grant Program Request for Applications (RFA)

Issued September 2016

Formula Grant Program Overview

The Texas Indigent Defense Commission (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. Formula Grants are awarded to eligible Texas counties to help counties meet constitutional and statutory requirements for indigent defense and to promote compliance with standards adopted by the Commission.

Application Due Date

Formula grant applications for Fiscal Year 2016 must be submitted on-line **by November 15, 2016**. The grant period is October 1, 2016 through September 30, 2017.

Total FY 2016 Formula Grant Amount Budgeted: [TBD – FY2016 =\$24,000,000]

Eligibility for Formula Grants

Only Texas counties may apply. Counties must meet the following requirements:

- 1) Indigent Defense Expenditure Report** — All counties are statutorily required (Texas Government Code Sec. 79.036 (e)) to submit an Indigent Defense Expenditure Report each year on November 1 in the form and manner prescribed by the Commission. Counties that do not complete the Indigent Defense Expense Report on or before November 1, 2016 may have payments temporarily suspended by Commission staff until the report is submitted and reconciled by staff.
- 2) Indigent Defense Plan Requirements** — The Local Administrative District Judges, the Local Statutory County Court Judges (or County Judge as applicable) and the Chairman of the Juvenile Board for each county must submit a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure (Countywide Plans) to the Commission as required in Government Code §79.036. The Countywide Plans submitted must be in compliance with applicable statutes and rules and must meet the minimum requirements for each plan section as outlined in the Biennial Indigent Defense Countywide Plan Instructions. Plans must be submitted by November 1, 2015. Formula grant payments during the year may be withheld until plans are submitted or meet the minimum requirements for each plan section set by Commission.

- 3) **Compliance with Monitoring Reports** — A county must respond within the required time, take corrective action for findings of non-compliance, and satisfactorily address all recommendations in a Commission fiscal or policy monitoring report. Failure to comply with any of these requirements could result in the Commission imposing a remedy under TAC 173.307 or Texas Government Code §79.037.
- 4) **Office of Court Administration Reporting Requirements** — The applicants' county and district clerks must be in compliance with monthly court activity reporting requirements promulgated by the Texas Judicial Council as of August 31, 2016—reports for September 2015 through August 2016 are due not later than September 2016. The reports must be submitted to OCA electronically unless OCA grants a temporary waiver for good cause.

How Formula Grants are Calculated

Every county is eligible to receive a grant of \$5,000 plus its share of the remaining funds budgeted by the Commission for the Formula Grant Program calculated by:

- 50 percent on the County's percent of state population; and
- 50 percent on the County's percent of statewide direct indigent defense expenditures for the previous year (as defined in Title 1, Part 8, Texas Administrative Code Sec. 173.202(1)-(3)):
 - less discretionary funds provided by the Commission for expenditures defined in Title 1, Part 8, Texas Administrative Code Sec. 173.202(1)-(3)
 - less the reimbursed costs of operating a regional program
 - The baseline requirements below do not apply to counties with a 2000 Census population of less than 10,000.

The County shall not receive more in funds than what was actually spent by the county in the prior year.

Baseline — The baseline is the minimum amount counties must spend in indigent defense before they qualify for formula grants. To meet the requirements under Texas Government Code §79.037(d), the Commission has adopted as an expenditure baseline based on each county's FY01 indigent defense expenditures. Attorney fees, investigator expenses, expert witness expenses, and other litigation expenses paid by the county on behalf of indigent criminal defendants / juvenile respondents are allowable expenses. This information remains a static baseline. The baseline requirement does not apply to counties with a 2000 Census population of less than 10,000.

How to Apply for Formula Grant

Applications are submitted online at <http://tidc.tamu.edu>. All county judges have been assigned a unique user name and password. The application requires a commissioner's court resolution to be scanned and e-mailed or uploaded on the application page of the website. The resolution is generated by the on-line system and must be printed from the on-line application page.

If a person other than the recipient of this letter needs to obtain a user name and password for the online application system, contact the Public Policy Research Institute (PPRI) at Texas A&M University. PPRI manages the collection, storage and retrieval of data for the Commission. County officials may contact PPRI through e-mail, (hcaspers@ppri.tamu.edu) or phone (979) 845-6754. PPRI will not provide user names and passwords over the phone. Individuals using personal e-mail accounts may be asked to provide additional information.

Application Steps

- a. Go to the PPRI Commission website at <https://tidc.tamu.edu>.
 - b. Sign in and enter the User ID and Password or contact PPRI (Follow on-line page instructions).
 - c. Select “FY2017” and your county in the upper left part of the screen.
 - d. Select “Apply for Formula Grant” from the column on the left side of the screen.
 - e. Review the eligibility requirements. The screen will display the County’s compliance status regarding indigent defense plans. Counties that have outstanding requirements will not be able to receive funds until they meet all grant program eligibility requirements. If indigent defense plans are not marked “Complete” counties should still submit the application and then contact the Commission for instructions to resolve plan compliance issues.
 - f. Identify the individuals in the following grant positions as required in Texas Administrative Code Rule 173.301.
 - i. Authorized official - This person must be authorized to apply for, accept, decline, modify, or cancel the grant for the applicant county. A county judge or a designee authorized by the governing body in its resolution may serve as the authorized official
 - ii. Fiscal Officer - This person must be the county auditor or county treasurer if the county does not have a county auditor.
- Use the “**Change**” button make changes as needed to officials or contact information.
- g. Click the “**Submit**” button at the bottom of the screen. You should be taken to a confirmation page at that point.
 - h. Maintain confirmation – When the system provides a confirmation page to the grant officials confirming that the application has been completed and informing them that the resolution must be adopted by the commissioner’s court and then faxed to the Commission. **PLEASE PRINT THE CONFIRMATION PAGE.**
 - i. Select the “Resolution” link in the confirmation page to create your county’s resolution form.
 - j. Print or download resolution. The system will allow the user to download a resolution as a Microsoft Word document or provide an opportunity to print the document. Please use the resolution printed from the website. The resolution must be adopted by the commissioners court.
 - k. Please scan the resolution adopted by commissioners court and then upload it in the application page of the website **on or before the DUE DATE November 15, 2016**. Alternatively, you may email the resolution to Heather Caspers (hcaspers@ppri.tamu.edu) or fax it to 888-351-3485.

Contact Edwin Colfax, Grants Administrator, ecolfax@tidc.texas.gov or 512-463-2508 for questions.

Notice of Funding

- **Statement of Grant Award** — Statements of Grant Awards will be prepared as authorized by the Commission. These may include special conditions. The e-mail with the attached Statements of Grant Award will be directed to the official designated in the resolution adopted by the commissioners’ court. The County will have thirty days to notify the grant administrator of errors or cancelation after receipt of the award.
- **Special Conditions** — The Commission may determine special conditions or authorize staff to apply the conditions on criteria set by the Commission (TAC 173.201). The Commission may develop special conditions that relate to expenditures, compliance with statutory requirements or standards adopted by the Commission.
- **Denial of Grant** — Counties not completing the grant application process or those not meeting minimum eligibility requirements will be notified by mail within 30 days following the Commission award meeting.

Use of Funds

Funds must be used to improve indigent defense systems. Attorney fees, investigator expenses, expert witness expenses, and other direct litigation costs that a county spends on behalf of a criminal defendant or juvenile respondent in a criminal matter that has been determined by a court of competent jurisdiction to be indigent are allowable expenses. All funds must be spent in compliance with the following: Texas Administrative Code, Title 1 Administration, Part 8 Texas Judicial Council, Chapter 173 Indigent Defense Grants; and Texas Uniform Grant Management Standards.

Payments

Funds will be distributed in four (4) equal quarterly disbursements. Counties must have met all eligibility, spending, and grant condition requirements before receiving payments. Payments will be made quarterly for most counties. Some counties may have a special conditions related to meeting minimum spending requirements. These counties will receive funds only after a supplemental expenditure report establishes that they have spent the predetermined minimum amount stated in the special condition.

No payment shall be made from grant funds to a county until all special conditions have been met unless the special condition adopted by the Commission provides an alternative payment schedule or instructions for payment. Commission staff shall maintain documentation through electronic/paper files or correspondence to the county stating how the special condition was met.

Maintain contact information

All counties must maintain the grant and plan officials contact information on counties' web page set up at <http://tidc.tamu.edu>. Counties must advise the Commission of changes in the authorized official, program director, financial officer, local administrative district judge, local administrative statutory county judge, chairman of the juvenile board and constitutional county judge by updating this website contact information. This information will be used to provide notices for grant or plan submission information. The Commission staff will use e-mail whenever possible to notify counties of required reports and funding opportunities.

Impact of Multi-year Discretionary Regional or Sustainability Grants

Counties that receive discretionary grants from the Commission are encouraged to continue to apply for the Formula Grant. Such counties may use their formula grant payments to maintain the discretionary grant program.

Notification of Availability

This FY17 Formula Grant - Request for Applications (RFA) is sent to all 254 Texas Constitutional County Judges. A courtesy notice is sent to all local administrative district judges, local administrative statutory county judges, chairman of juvenile board and each county auditor (or treasurer).

Authorization to Fund, Applicable Authority and Rules

Texas Government Code Sec. 79.037. TECHNICAL SUPPORT; GRANTS.

- (a) The commission shall:
 - (1) provide technical support to:
 - (A) assist counties in improving their indigent defense systems; and
 - (B) promote compliance by counties with the requirements of state law relating to indigent defense;
 - (2) to assist counties in providing indigent defense services in the county, distribute in the form of grants any funds appropriated for the purposes of this section; and
 - (3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by:
 - (A) withdrawing grant funds; or
 - (B) requiring reimbursement of grant funds by the county.
- (b) The commission shall distribute funds as required by Subsection (a)(2) based on a county's compliance with standards adopted by the board and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.
- (c) The board shall adopt policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a fair manner.
- (d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the commission under this section.

Texas Administrative Code Chapter 173

Uniform Grant Management Standards (UGMS)



<DATE>

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

Dear Judge <NAME>:
Via Email: <EMAIL>

Vice Chair:
The Honorable Olen Underwood

Dear Judge <LASTNAME>:

Ex Officio Members:
The Hon. Sharon Keller
The Hon. Nathan Hecht
The Hon. Sherry Radack
The Hon. Linda Rodriguez
The Hon. Brandon Creighton
The Hon. John Whitmire
The Hon. Andrew Murr
The Hon. Abel Herrero

I am pleased to inform you that the Texas Indigent Defense Commission has awarded <COUNTY> County a formula grant in the amount of <GRANTAMOUNT>. The *FY17 Formula Grant Statement of Grant Award* is attached. The Statement of Grant Award may include special conditions. Please make note that we cannot disburse funds until these conditions have been met. The Resolution adopted by the Commissioners Court submitted with the application is considered your county's acceptance of the grant terms.

Members Appointed by Governor:
The Hon. Olen Underwood
The Hon. Jon Burrows
Mr. Anthony Odiorne
Mr. Don Hase

The Commission works together with counties to promote innovation and improvement in indigent defense systems statewide. On behalf of the Commission, I commend <COUNTY> County for its efforts in these areas. If you have any questions or need clarification about the Commission's grant programs, please call Edwin Colfax, Grant Program Manager, at (512) 463-2508.

Executive Director:
James D. Bethke

Sincerely,

Sharon Keller
Chair, Texas Indigent Defense Commission
Presiding Judge, Court of Criminal Appeals

Texas Indigent Defense Commission
205 West 14th Street, Suite 700 • Austin, Texas 78701 • www.tidc.texas.gov
Mail: P.O. Box 12066, Austin, TX 78711-2066 • Phone: 512.936.6994 • Fax: 512. 463.5724



TIDC
TEXAS INDIGENT DEFENSE COMMISSION
Statement of Grant Award
FY17 Formula Grant

Date Issued: <DATE>
Grant Number: <GRANT NUMBER>
Grantee Name: <COUNTY> County
Program Title: Formula Grant Program
Grant Period: 10/01/2016-9/30/2017
Estimated Annual Grant Award Amount: \$<GRANTAMOUNT>

The Texas Indigent Defense Commission (Commission) has awarded the above-referenced grant for indigent defense services. Formula Grants are provided by the Commission to meet its statutory mandates and to promote Texas counties' compliance with standards adopted by the Commission.

Grant Calculation

- The sum of \$5,000 plus;
- A calculation applied to the funds budgeted for FY2016 formula grants by the Commission based:
 - 50 percent on the County's percent of state population; and
 - 50 percent on the County's percent of statewide FY2015 direct indigent defense expenditures (as defined in Title 1, Part 8, Texas Administrative Code Sec. 173.202(1)-(3)):
 - less discretionary funds provided by the Commission for expenditures defined in Title 1, Part 8, Texas Administrative Code Sec. 173.202(1)-(3)
 - less the reimbursed costs of operating a regional program
 - The baseline requirements contained in the Request for Applications do not apply to counties with a 2000 Census population of less than 10,000 but do apply to all other counties.
- The County shall not receive more in funds than what was actually spent by the county in the prior year.

Standard Grant Conditions:

- The authorized official for the grantee accepts the grant award.
- The authorized official, financial officer, and program director, referred to below as grant officials, agree to the terms of the grant as written in the FY16 Formula Grant Program Request for Applications issued on September 15, 2015, including the rules and documents adopted by reference in the Commission on Indigent Defense's Grant Rules in Title 1, Part 8, Chapter 173, Texas Administrative Code.
- The grant officials understand that a violation of any term of the grant may result in the Commission placing a temporary hold on grant funds, permanently deobligating all or part of

the grant funds, requiring reimbursement for funds already spent, or barring the organization from receiving future grants.

- Disbursement of funds is always subject to the availability of funds.
- Any plan documents submitted to the Commission must continue to meet all grant eligibility requirements.

Special Grant Conditions:

The grant officials understand that they must satisfy all special conditions placed on this grant if indicated below before receiving any funds:

- The County must mail or fax to the Commission the Resolution/Internet Submission Form authorizing the county to apply for the grant. The resolution must have been adopted by the commissioners' court of the county.
- The County's ___ county clerk and/or ___ district clerk(s) must submit the reports to obtain compliance as of August 31, 2016 with reporting requirements promulgated by the Texas Judicial Council.
- The County must complete all sections of the Indigent Defense Expenditure Report as required by Government Code §79.036(a-1).
- The judges hearing criminal matters and the juvenile board in the county shall amend their indigent defense plan(s) to meet all requirements of the 2015 Biennial Indigent Defense Plan Submission process as required by Government Code §79.036. The following plan(s) level marked by an "X" do not currently meet all plan requirements:

- ___ District Court Plan
- ___ County Court Plan
- ___ Juvenile Board Plan.



FY2017 Supplemental Capital Defense Formula Grant Policy

August 2016

Total Grant Amount Budgeted in FY16 for Eligible Counties: \$1.1 million

Eligibility

To be eligible for this supplemental formula funding, a county:

1. Must have had a population greater than 300,000 as of January 1, 2008;

And

2. Will **NOT** participate in the Regional Public Defender Office for Capital Cases under special legislative funding provisions in FY2016/2017.

In addition, a county must meet all requirements for the Commission's regular FY17 Formula Grant program, including compliance with indigent defense expenditure reporting obligations and updated biennial indigent defense plans which meet current requirements as directed in Texas Government Code §79.036.

Supplemental Capital Defense Formula Grant Program Overview

The Texas Indigent Defense Commission (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. Standard Formula Grants are awarded to eligible Texas counties to help counties meet constitutional and statutory requirements for indigent defense and to promote compliance with standards adopted by the Commission.

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

How Supplemental Capital Defense Formula Grants are Calculated

An eligible county's share of the funds budgeted by the Commission for the Supplemental Capital Defense Formula Grant will be calculated as follows:

- 50 percent based on the County's percent of total population of counties eligible for this program; and
- 50 percent on the County's percentage of total capital case indigent defense expenditures¹ of counties eligible for this program for the previous fiscal year.

No Additional Application Required

Counties that have applied for the standard FY17 Formula Grant and which meet the eligibility criteria for this program will be considered for this supplemental formula funding. Consistent with the standard FY17 Formula Grant, the grant period for this funding is October 1, 2016 through September 30, 2017.

Requirements of Funding

Counties must meet all requirements of the standard FY17 Formula Grant Program RFA, including the following:

- 1) Indigent Defense Expenditure Report Requirements**
- 2) Indigent Defense Plan Requirements**
- 3) Compliance with Monitoring Reports**
- 4) Office of Court Administration Reporting Requirements**

Notice of Funding

- **Statement of Grant Award** — Statements of Grant Awards will be prepared exactly as authorized by the Commission. These may include special conditions.
- **Special Conditions** — The Commission may determine special conditions or authorize staff to apply the conditions on criteria set by the Commission (TAC 173.201). The Commission may develop special conditions that relate to expenditures, compliance with statutory requirements or standards adopted by the Commission.

Payments

Funds will be distributed in one disbursement before March 31, 2017. Payments will be made separately and payment notice will reference the program and funding source. Counties must have met all eligibility, spending, and grant condition requirements of the standard FY17 Formula Grant RFA before receiving payment. No payment shall be made from grant funds to a county until all special conditions have been met. Commission staff shall maintain documentation through electronic/paper files or correspondence to the county stating how the special condition was met.

Contact Edwin Colfax, Grants Administrator, ecolfax@tidc.texas.gov or 512-463-2508 for questions.

¹ For assigned counsel, contract counsel, and managed assigned counsel cases, capital case indigent defense expenditures include all direct expenses incurred in capital murder defense. For public defender cases, total capital case indigent defense expenditures include all direct expenditures allocated for capital cases for the following categories: attorney salary and fringe benefits; investigator salaries and fringe benefits; mitigation salaries and fringe benefits; mental health professionals salaries and fringe benefits; and administrative support salaries and fringe benefits.



CHAIR:
The Honorable Sharon Keller
Presiding Judge
Court of Criminal Appeals

VICE CHAIR:
The Honorable Olen Underwood

EX OFFICIO MEMBERS:
The Honorable Sharon Keller
The Honorable Nathan Hecht
The Honorable Sherry Radack
The Honorable John Whitmire
The Honorable Abel Herrero
The Honorable Andrew Murr
The Honorable Linda Rodriguez

MEMBERS APPOINTED BY GOVERNOR:
The Honorable Olen Underwood
The Honorable Jon Burrows
The Honorable Brandon Creighton
Mr. Anthony Odierne
Mr. Don Hase

EXECUTIVE DIRECTOR:
James D. Bethke

[DATE]

The Honorable «County_Judge»
Via Email: «County_Judge_Email»

Dear Judge «County_Judge_Last_Name»:

I am pleased to inform you that the Texas Indigent Defense Commission has awarded «F2» County a Supplemental Formula Grant for Capital Case Indigent Defense in the amount of «Supplemental_Capital_FG». The *FY17 Supplemental Capital Defense Formula Grant Statement of Grant Award* is attached.

Since 2008 the Commission has supported Texas counties in capital case indigent defense through support of the Regional Public Defender for Capital Cases (RPDO). Because Texas's largest counties are not eligible to participate in the RPDO, the Commission has allocated funds to provide supplemental formula grants to those counties to support indigent defense in capital cases. This funding is provided out of a new appropriation of general revenue provided to the Commission by the Texas Legislature in 2015.

On behalf of the Commission, I thank «F2» County for its efforts to ensure a fair and effective indigent defense system. If you have any questions or need clarification about the Commission's grant programs, please call Edwin Colfax, Grant Program Manager, at 1-866-499-0656.

Sincerely,

Sharon Keller
Chair, Texas Indigent Defense Commission
Presiding Judge, Court of Criminal Appeals

Texas Indigent Defense Commission
209 West 14th Street, Room 202 · Austin, Texas 78701 · www.tidc.texas.gov
Phone: 512.936.6994 · Fax: 512.463.5724



**Statement of Grant Award
FY17 Supplemental Capital Defense Formula Grant**

Date Issued: DATE
Grant Number: 212-16-«ID»SC
Grantee Name: «F2»County
Program Title: Supplemental Capital Defense Formula Grant Program
Grant Period: 10/01/2016-9/30/2017
Estimated TOTAL Grant Award Amount: «Supplemental_Capital_FG»

The Texas Indigent Defense Commission (Commission) has awarded the above-referenced grant for indigent defense services. Formula Grants are provided by the Commission to meet its statutory mandates and to promote Texas counties' compliance with standards adopted by the Commission.

FY 16 Supplemental Capital Defense Formula Grant Calculation

An eligible county's share of the funds budgeted by the Commission for the Supplemental Capital Defense Formula Grant will be calculated as follows:

- 50 percent based on the County's percent of total population of counties eligible for this program; and
- 50 percent on the County's percentage of total capital case indigent defense expenditures¹ of counties eligible for this program for the previous fiscal year.

Standard Grant Conditions

- The authorized official for the grantee accepts the grant award.
- The authorized official, financial officer, and program director, referred to below as grant officials, agree to the terms of the grant as written in the FY16 Formula Grant Program Request for Applications issued September 2016, including the rules and documents adopted by reference in the Commission's Grant Rules in Title 1, Part 8, Chapter 173, Texas Administrative Code.
- The grant officials understand that a violation of any term of the grant may result in the Commission placing a temporary hold on grant funds, permanently deobligating all or part of the grant funds, requiring reimbursement for funds already spent, or barring the organization from receiving future grants.
- Disbursement of funds is always subject to the availability of funds.
- All indigent defense plan documents submitted to the Commission must continue to meet all grant eligibility requirements.

¹ For assigned counsel, contract counsel, and managed assigned counsel cases, capital case indigent defense expenditures include all direct expenses incurred in capital murder defense. For public defender cases, total capital case indigent defense expenditures include all direct expenditures allocated for capital cases for the following categories: attorney salary and fringe benefits; investigator salaries and fringe benefits; mitigation salaries and fringe benefits; mental health professionals salaries and fringe benefits; and administrative support salaries and fringe benefits.

Texas Indigent Defense Commission
Fiscal Year 2017 Revenue / Budget

FY16		Estimated FY16 Revenue and Budget	FY17 Budget Proposed as of August 30, 2016		AY17 Budget Worksheet
Estimated Cash Carryforward - FY15		\$4,486,483	Estimated Cash Carryforward - FY16		
Revenue:			Revenue:		
Court Cost Collection (SB7 - 77th Leg)		\$21,021,684	Court Cost Collection (SB7 - 77th Leg)		
State Bar (HB 599 - 78th Leg)		\$2,264,363	State Bar (HB 599 - 78th Leg)		
Surety Bond (HB 1940 - 78th Leg)		\$2,039,946	Surety Bond (HB 1940 - 78th Leg)		
General Revenue - 84th Leg		\$3,750,000	General Revenue - 84th Leg		
Juror Pay (FY16) (SB 1704 - 82nd Leg)		\$6,600,000	Juror Pay (FY16) (SB 1704 - 82nd Leg)		
Other Funds: Fed./State - CJD/SJI Grant		\$99,960	Other Funds: Fed./State - CJD/SJI Grant		
Total Cash/Revenue		\$40,262,436	Total Cash/Revenue		\$0
Budget/Expended:		Budget	Budget/Expended:		Budget
Formula - Based Grants:		\$23,432,400	Formula - Based Grants:		
Discretionary- Based Grants:			Standard Formula Grants		\$24,000,000
Single Year		\$411,895	Supplemental Urban Capital Formula		\$1,100,000
Multi-Year - New		\$998,814	Discretionary- Based Grants:		
Multi-Year - Continued		\$3,193,921	Single Year		\$262,215 *
Extraordinary Disbursement		\$650,000	Multi-Year - New		\$249,410
Targeted Specific		\$996,936	Multi-Year - Continued		\$3,738,086
Technical Support		\$439,000	Extraordinary Disbursement		\$650,000
Administration:			Targeted Specific		\$200,000
TIDC Administrative		\$949,234	Technical Support		\$200,000
PPRI Contract (Database)		\$100,754	Administration:		
UT Contract (Intern)		\$15,000	TIDC Administrative		\$949,234
Other:			PPRI Contract (Database)		\$100,754
PPRI Contract (Research)		\$121,800	UT Contract (Intern)		\$15,000
IT Grants Project Manager		\$40,325	Other:		
Innocence Project - (Rider)		\$600,000	PPRI Contract (Research)		\$70,000
TIDC Employee Benefits		\$266,606	IT Grants Project Manager		\$40,325
OFCW & Employee Benefits		\$1,674,661	Innocence Project - (Rider)		\$600,000
CJD Grant - Attorney Mentoring Pgm		\$99,960	MOU with OCA		\$51,000
General Revenue:			TIDC Employee Benefits		\$266,606
Lubbock Capital RPDO:		\$1,300,000	OCFW & Employee Benefits		\$1,674,661
Hidalgo PDO		\$250,000	Program Specific General Revenue:		
Capital Urban		\$1,100,002	Lubbock Capital RPDO:		\$1,300,000
Bee		\$406,654	Hidalgo Capital Defense / RPDO		\$250,000
Starr/TRLA		\$113,520			
Formula - Based Grants		\$579,824			
Total Budgeted/Expended		\$37,741,306	Total Budgeted/Expended		\$35,717,291
Cash/Revenue vs Budget/Expended		\$2,521,130	Cash/Revenue vs Budget/Expended		\$2,059,398
					\$0

* Pending discretionary grant request

Publication of FY2016 Indigent Defense Expenditure Report Manual

- Each year the commission publishes a manual with instructions for completing the Indigent Defense Expenditure Report.
- The IDER Manual has been updated for FY16 to reflect the due date of November 1, 2016 and the reporting period of October 1, 2015-September 2016.
- One area of clarification was added regarding the eligibility of expenditures for psychological evaluations. (This issue was discussed at the Commission Meeting on June 2nd, 2016.) The following is the new language in the manual addressing the issue:

Eligibility of Mental Health Evaluation Expert Fees

Generally speaking, experts requested and hired by the defense to conduct a psychological evaluation are considered eligible indigent defense expenditures and should be included in the Expert Witness sections of the IDER. 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.

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.

- No other substantive or policy changes were made to the manual.
- The draft manual can be reviewed at this link: <http://tidc.texas.gov/media/48311/fy16-ider-manual-draft.pdf>
- **Recommended motion:** Adopt and direct staff to publish the FY16 Indigent Defense Expenditure Report Manual pending review and non-substantive editing for clarity and organization.

Texas Indigent Defense Commission
August 30, 2016
Summary of Fiscal Monitoring

Since the June 2, 2016 TIDC Board meeting, the fiscal analyst conducted 1 on-site fiscal monitoring visit and began additional 2 desk reviews. A final report was issued on 1 county and 2 initial reports were issued. The fiscal analyst has reviewed 7 additional CAFR's/Single Audits since the June 2, 2016 Commission meeting. The Commission provided fiscal monitoring and technical assistance to counties as specified in Title 1, Chapter 173.401(b), Texas Administrative Code. The counties were monitored based on the risk assessment scores and geographical area. The Uniform Grant Management Standards (UGMS) and grant rules set monitoring priorities for the counties.

County	Site Visit Date	Visit	Summary of Review	Status
Ochiltree	Engagement letter dated April 27, 2015	Desk Review	Chosen for desk review as the county is under 20,000 in population and its proximity to Lipscomb. Does not appear to have attorneys submit fee vouchers to request payments.	Final report Issued Jan. 22, 2016
Wheeler	Engagement letter dated May 7, 2015	Desk Review	Chosen for desk review as the county is under 20,000 in population and its proximity to Lipscomb and share the Judicial District. Some attorney fee vouchers were not itemized, judges written explanation for variances was not evident, payments were made that did not appear to be in accordance to fee schedule, and CLE hours are not verified by judges.	Final report Issued March 28, 2016
Madison	Engagement letter dated April 27, 2015	Desk Review	One of two counties that did NOT complete the new attorney detail report. No Findings	Jan 4, 2016

Texas Indigent Defense Commission
August 30, 2016
Summary of Fiscal Monitoring

County	Site Visit Date	Visit	Summary of Review	Status
Hansford	Engagement letter dated July 14, 2015	Desk Review	<p>Chosen for desk review as the county is under 20,000 in population and its proximity to Lipscomb.</p> <p>Does not appear to have attorney submit fee vouchers for payments. The payment for a defense attorney acting in the role of prosecuting attorney was found to be included in IDER, thereby overstating expenses.</p>	Final Report Issued Feb. 11, 2016
Hutchinson	August 3-4, 2015	On-Site Fiscal Review	<p>One of two counties that did NOT complete the new attorney detail report for FY14.</p> <p>Auditor appears to have reported 100% of General Ledger totals for appointed attorney cost in each court but these costs included civil cases.</p> <p>The County Judge attempted to report the attorney level detail report as the County Auditor refused to do so and this report appears to have underreported both case number and attorney fees for criminal cases.</p> <p>Does not appear to have attorneys submit fee vouchers for payments.</p>	<p>Final report Issued January 22, 2016</p> <p>Financial Finding – IDER overstated by \$96,466.24. Effect on formula grant - \$5,002.00</p>
Gray	August 5-6, 2015	On-Site Fiscal Review	<p>Chosen for On-site review due to proximity to Hutchinson County.</p> <p>CLE hours are not verified by judges, attorney fee vouchers were not always itemized, written explanations for variances was not evident, payments were made that did not appear to be in accordance to fee schedule, and reporting errors on IDER were identified.</p>	Final report Issued Jan. 21, 2016

Texas Indigent Defense Commission
August 30, 2016
Summary of Fiscal Monitoring

County	Site Visit Date	Visit	Summary of Review	Status
Harris	September 8-11, 2015	On-Site Fiscal Review	<p>Fiscal review conducted in conjunction with Policy Monitoring review.</p> <p>Pending issue involves fees reported for object codes, Pro Tem attorney and Pro Tem Investigation. Pro Tem attorney object codes relates to defense attorneys acting in the role of a prosecuting attorney. Pro Tem Investigation is the request of the Pro Tem attorneys requesting investigation</p>	<p>Joint Review – Draft Report Pending</p> <p>Financial Finding</p>
Andrews	Engagement letter dated Jan. 15, 2016	Desk Review	<p>The FY 2015 Indigent Defense Expense Report (IDER) submitted in accordance with Texas Government Code Section 79.036(e) was not supported by financial data provided.</p> <p>Civil case expenditures were included on the IDER.</p> <p>Attorney Fee Vouchers did not contain the itemization that is needed to comply with Article 26.05(c) of the Texas Code of Criminal Procedure.</p>	<p>Final report Issued 07/05/2016</p> <p>Technical Assistance letter issued 05/17/2016</p> <p>Financial finding - IDER overstated by \$28,078.50. Effect on formula grant - \$1,406.00</p>
Concho	Engagement letter dated Jan. 29, 2016	Desk Review	Chosen for desk review as the county is under 20,000 in population and high risk points - 50	In Progress
Reagan	Engagement letter dated February 1, 2016	Desk Review	Chosen for desk review as the county is under 20,000 in population and high risk points - 53	In Progress
Kenedy	Engagement letter dated Mar. 8, 2016	Desk Review	Chosen for desk review as the county is under 20,000 in population and high risk points - 53	In Progress

Texas Indigent Defense Commission
August 30, 2016
Summary of Fiscal Monitoring

County	Site Visit Date	Visit	Summary of Review	Status
Travis	February 17-19, 2016	On – Site Fiscal Review	Chosen for on-site review as the county is over 250,000 in population. Issue regarding competency evaluation requested by judge vs defense attorney. Reimbursements included as attorney fees	Initial Report Issued
Waller	March 21-24, 2016	On-site Joint Fiscal & Policy Review	Request for review by Senator Ellis Issue regarding competency evaluation requested by judge vs defense attorney.	Joint Report Pending
Williamson	May 18-20, 2016	On-site Fiscal Review	Chosen for on-site review as the county is over 250,000 in population. Issue regarding competency evaluation requested by judge vs defense attorney.	Initial Report Issued
Bell	July 26-28, 2016	On-site Fiscal Review	Chosen for on-site review as the county is over 250,000 in population	In Progress
Motley	Engagement letter date July 18, 2016	Desk Review	Chosen for desk review as the county is under 20,000 in population and high risk points - 51	In Progress
Kent	Engagement letter date July 18, 2016	Desk Review	Chosen for desk review as the county is under 20,000 in population and high risk points - 56	In Progress

Texas Indigent Defense Commission
August 30, 2016
Summary of Fiscal Monitoring

County	Date Submitted	Financial Statement Opinion	Single Audit Opinion	TIDC Funds - Major Program	TIDC Findings	Financial Statement Findings	Compliance Findings Noted
San Jacinto	08/15/2015	Unmodified	Unmodified	No	No	No	No
Harris	08/20/2015	Unmodified	Unmodified	Yes	No	No	Yes
Brazoria	4/5/2016	Unmodified	Unmodified	N	NA	No	No
Denton	3/29/2016	Unmodified	Unmodified	Y	No	No	No
Ector	3/28/2016	Unmodified	Unmodified	Not listed		No	No
Hays	3/30/2016	Unmodified	Unmodified	N	No	No	No
Montgomery	3/21/2016	Unmodified	Unmodified	Y	No	No	No
Randall	3/3/2016	Unmodified	NA	NA	NA	No	NA
Burnet	4/1/2016	Unmodified	Unmodified	Y	No	No	No
Lubbock	3/15/2016	Unmodified	Unmodified	Not listed		No	No
Travis	3/22/2016	Unmodified	Unmodified	Y	No	No	No
McLennan	4/18/2016	Unmodified	NA	NA	NA	No	NA
Bell	4/18/2016	Unmodified	NA	NA	NA	No	NA
Williamson	4/20/2016	Unmodified	Unmodified	Y	Yes	No	Yes
Tarrant	4/21/2016	Unmodified	Unmodified	N	NA	Yes	Yes
Bexar	4/28/2016	Unmodified	Unmodified	Y	No	No	No
Hill	5/12/2016	Unmodified	Unmodified	NA	NA	No	No
Dallas	05/19/2016	Unmodified	Unmodified	No	NA	Yes	Yes
Midland	06/13/2016	Unmodified	NA	NA	NA	No	NA
Harrison	06/27/2016	Unmodified	NA	NA	NA	No	NA
Matagorda	06/13/2016	Unmodified	NA	NA	NA	No	NA
El Paso	04/19/2016	Unmodified	Unmodified	No	NA	No	No
Fort Bend	04/21/2016	Unmodified	Unmodified	No	NA	No	No
San Jacinto	08/22/2016	Unmodified	Unmodified	No	NA	Yes	No

Ector County failed to list TIDC grant funds on their Single Audit Schedule of State Awards. Apparently this was an oversight.

Lubbock County failed to list TIDC grant funds on their Single Audit Schedule of State Awards. Discussed with Independent Auditor.

Williamson County had TIDC funds selected as major program on state single audit and the independent auditor reported a finding. This finding was in regards to CLE hours. They found one attorney that was not reporting CLE hours as he was exempt from State Bar reporting due to his age.

Texas Indigent Defense Commission 2016 Legislative Workgroup

Meetings: The Commission's legislative workgroup met on June 23rd and July 15th to review and discuss the 18 proposals submitted for consideration. There were also a number of intervening communications to further develop some of the proposals.

Process: Under the Commission's Legislative Policy, the proposals are to be presented to the Policies and Standards Committee for consideration at the August 17th meeting. All proposals recommended for approval by the committee would then be considered by the full Commission at its August 30th meeting.

Members: Approximately 20-25 people attended each of the meetings with some others providing input on proposals by email or phone. The following list of invitees includes a broad range of stakeholders:

District and Statutory County Judges

Mark Atkinson or designee, Executive Director, Texas Center for the Judiciary
Justice Pat Pirtle or designee, Chair, Judicial Section of the State Bar of Texas
Albert M. McCaig, Jr., Presiding Judge, 506th District Court, Waller County

County / Court Representatives

Jim Allison, County Judges and Commissioners Association of Texas
John Dahill / Michael Vasquez, Texas Conference of Urban Counties
Laura Garcia, Deputy Legislative Director, Texas Association of Counties
Laura Angelini, Juvenile Court Manager, Bexar County
Melissa Barlow-Fischer, Criminal District Court Administrator, Bexar County
Debra Hale or designee, Director of Criminal Court Administration, Travis County
Peyton Peebles, Staff Attorney, Harris County Criminal Courts
Ron Stretcher, Director, Dallas County Department of Criminal Justice
Lisa Teachey, Staff Attorney, Harris County District Courts

Defense Attorneys / Prosecutor

Alex Bunin / Ted Wood, Harris County Public Defender's Office
Buck Files, Criminal defense attorney, Tyler
Bruce Fox, Criminal defense attorney, Austin
David Hall, Texas RioGrande Legal Aid, Weslaco (Bee, Willacy, Starr Public Defenders)
Bradley Hargis, Capital Area Private Defender Service, Austin
Kameron Johnson, Travis County Juvenile Public Defender
Andrea Keilen, General Counsel, Texas Criminal Defense Lawyers Association
Ray Keith, Regional Public Defender for Capital Cases
Melissa Shearer, Travis County Mental Health Public Defender

Warren Wolf, Criminal Defense Attorney, San Antonio
Donnie Yandell, Caprock Regional Public Defender, Lubbock
Michael Young, Bexar County Public Defender
Shannon Edmonds, Texas District and County Attorneys Association

Public Interest

Rebecca Bernhardt / Susanne Pringle / Andrea Marsh, Texas Fair Defense Project
Elizabeth Henneke, Policy Attorney, Texas Criminal Justice Coalition
Kathryn Kase / Amanda Marzullo, Texas Defender Service
Dr. Sandra Thompson, Professor, University of Houston Law Center

Legislative/Governor/Executive Branch Staff Members

Desiree Castro, Policy Analyst, Office of Senator Chuy Hinojosa
Larance Coleman or designee, Senate Committee on Criminal Justice
David Edmonson, Office of Senator Rodney Ellis
Krista Heiden / Nathan McDaniel, Office of Senator Donna Campbell
Mike Goldman, Office of the Governor
Jeremy Kitchen, Office of State Representative Dustin Burrows
Miguel Liscano, House Committee on Criminal Jurisprudence
Robin M. MacEwan, Office of State Representative John M. Frullo
Zachary Stephenson / Chase Fruge, Office of Senator Brandon Creighton
Lauren Welch, Office of Senator Don Huffines

Office of Court Administration

David Slayton, Administrative Director
Margie Johnson, Assistant General Counsel

Texas Indigent Defense Commission Legislative Policy

General. Legislative actions to be undertaken by the Texas Indigent Defense Commission (Commission) shall be limited to those that conform to the Commission legislative policy and applicable law. The Commission provides recommendations for legislative and other changes to the indigent defense system under authority of Section 71.061, Government Code, which provides in part:

§ 79.035. COUNTY REPORTING PLAN; COMMISSION REPORTS.

...

(b) The commission shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and council and shall publish in written and electronic form a report:

(1) containing the information submitted under Section 79.036; and

(2) regarding:

(A) the quality of legal representation provided by counsel appointed to represent indigent defendants;

(B) current indigent defense practices in the state as compared to state and national standards;

(C) efforts made by the commission to improve indigent defense practices in the state; and

(D) recommendations made by the commission for improving indigent defense practices in the state; and

(E) the findings of a report submitted to the commission under Section 79.039.

The terms "legislation" or "legislative proposal," when used in this policy, shall be construed to mean any existing or proposed statute, rule, or regulation of the State of Texas or the United States or of any department or agency of the United States or the State of Texas. The terms "legislative position" or "legislative action" shall mean the legislative action taken or proposed to be taken by the Commission with respect to legislative proposals.

Criteria. The Commission, when acting within the scope of its authority under this policy in deciding whether to recommend, support, remain neutral, or oppose proposed legislation or to initiate any legislative action in either house of the Texas Legislature, in the United States Congress, or before any department or agency of the United States or the State of Texas shall, in addition to the policy considerations set forth in this Section, determine that the proposed legislation or legislative action conforms in all material respects to the following criteria:

- A. The proposed legislation or legislative action falls within the purposes, expressed or implied, of the Commission as provided in the Fair Defense Act.
- B. Adequate notice and opportunity has been afforded for the presentation of opposing opinions and views.
- C. The proposed legislation or legislative action is in the public interest.
- D. The proposed legislation or legislative action is not designed to promote or impede the political candidacy of any person or party or to promote a partisan political purpose.

Policies and Standards Committee.

- A. The Policies and Standards Committee of the Commission will meet as often as necessary to develop recommendations to the Commission for the Commission to initiate legislative action in accordance with this policy.
- B. The Policies and Standards Committee may create a workgroup to assist it in developing legislative proposals.
- C. The Policies and Standards Committee shall include in its recommendations to the Commission legislative positions approved by a majority vote of the Policies and Standards Committee members present and voting.
- D. The Policies and Standards Committee shall also have the authority to draft and submit to the Commission proposed legislation that it recommends to the Commission.

Approval of Legislative Proposals by Commission.

- A. The Commission shall consider all legislative proposals recommended by the Policies and Standards Committee. The Commission shall also consider any legislative proposals submitted by any member of the Commission.
- B. The Commission may not propose legislation unless it has been approved by a two-thirds vote of the Commission members present and voting at the meeting at which it is considered.
- C. The Commission may also by two-thirds vote of the Commission members present and voting take positions supporting, opposing, or remaining neutral on pending legislation. Failure to receive the necessary majority vote to support or remain neutral on the proposed legislation shall not be construed as adoption of a position to oppose that legislation. Legislative positions may be altered, amended, or withdrawn by a majority vote of the Commission present at a meeting.

Legislative Action by Commission.

- A. Legislative proposals and legislative action approved by the Commission shall be published in the Commission's *Annual Report*.
- B. The Director shall, in cooperation with the Commission, seek legislative sponsors for all approved legislative proposals. The Director or designee

shall also appear or find an appropriate representative to appear before the Texas Legislature to explain each legislative proposal approved by the Commission and to conduct such related activities and provide such additional information as may be required; however, no representative of the Commission or any section thereof shall appear before the Legislature or any committee or member of the Legislature in the pursuit of any legislative action authorized by the Commission without complying with all applicable laws of the State of Texas.

Director to Administer Legislative Program.

- A. The Director shall coordinate and administer the legislative programs and activities of the Commission and shall, together with the Special Counsel, monitor the Commission's legislative program as well as pending legislation that may have an impact on the Commission.
- B. The Director shall monitor the time frame in which the Commission's legislative program is to be developed and shall make recommendations concerning the legislative timetable to the Commission.
- C. The Director shall assist and advise the Commission in the development of the Commission's legislative program.
- D. The Director shall have a copy of each item of proposed legislation prepared and forwarded to each member of the Policies and Standards Committee in the meeting packet prior to its next meeting.
- E. The Director or designee shall assist the Policies and Standards Committee in the submission of its written report or recommendations to the Commission. A copy of the Policies and Standards Committee's report shall be forwarded to each member of the Commission in the meeting packet prior to the meeting at which the Commission is to consider the Policies and Standards Committee recommendations. The report shall contain a copy of each legislative proposal and the rationale for the Policies and Standards Committee's recommendation, as well as the rationale of any known objections.
- F. The Director shall provide copies of all legislative proposals approved by the Commission to the Executive Director of the Texas Judicial Council and the Texas Judicial Council at its next regularly scheduled meeting.

TIDC Legislative Workgroup Proposals

#	Description	Actions Taken	Issues Raised at Workgroup	Sub Workgroup Members
1.	<p>Background and Purpose: Repeal the requirement that public defender attorneys must inform the court of the results of any investigation into a defendant’s financial circumstances.</p> <p>There is a requirement that attorneys in public defender offices must report to the presiding judge in a case the results of any investigation of the client’s financial circumstances. This requirement appears to violate the attorney-client privilege, particularly since Texas has a stronger version than most, located in Texas Rules of Evidence 503 (b)(2), which provides:</p> <p style="padding-left: 40px;">Special Rule in a Criminal Case. In a criminal case, a client has a privilege to prevent a lawyer or lawyer’s representative from disclosing any other fact that came to the knowledge of the lawyer or the lawyer’s representative by reason of the attorney–client relationship.</p> <p>This might also subject the client to a prosecution for perjury. Additionally, there is no similar provision under Art. 26.04 for private assigned counsel, nor in Art. 26.047 for managed assigned counsel. Why are public defenders the only ones designated to be snitches?</p> <p>Proposal: Amend Art. 26.044, Code of Criminal Procedure, by deleting Subsection (l) and renumbering Subsections (m) and (n) as (l) and (m) as follows:</p> <p>(l) A public defender's office may investigate the financial condition of any person the public defender's office is appointed to represent. The</p>	Approved		<p>Jim Allison Alex Bunin David Hall Ted Wood</p>

<p>public defender's office shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this article.</p> <p>(m) If it is necessary that an attorney who is not employed by a public defender's office be appointed, the attorney is entitled to the compensation provided by Article 26.05 of this code.</p> <p>(mn) An attorney employed by a public defender's office may be appointed with respect to an application for a writ of habeas corpus only if:</p> <ul style="list-style-type: none"> (1) an attorney employed by the office of capital writs is not appointed in the case; and (2) the attorney employed by the public defender's office is on the list of competent counsel maintained under Section 78.056, Government Code. 			
<p>Person Proposing/Other Parties: Alex Bunin/Ted Wood, Harris County Public Defender's Office</p>	<p>84th Bill/ Sponsor:</p>	<p>Status:</p>	

#	Description	Proposal Status	Issues Raised at Workgroup
2.	<p>Background and Purpose: Require local indigent defense plans to establish attorney caseload limits.</p> <p>Although managed assigned counsel programs and public defender programs are required to have caseload limits, county plans are not currently required to have a per attorney caseload limit. With publication of the Guidelines for Indigent Defense Caseload Standards in 2015, Texas now has current, state-specific guidance on maximum caseloads for appointed defense counsel in misdemeanor and felony adult criminal cases. Texas law is incomplete in its requirement that programs have caseload limits. Public defender programs are required by statute to have caseload limits. The Texas Indigent Defense Commission has developed, pursuant to its policy-making authority, caseload guidelines.</p>	Approved	<p>Original proposal included provisions requiring the judges to ensure an appointment to a case would not cause the attorney to exceed the maximum caseload.</p> <p>Workgroup discussion showed</p>

Yet the county indigent defense plans are not required to set caseload limits for defense attorneys on a systematic county and statewide basis.

Proposal: Amend the Texas Fair Defense Act to require the local indigent defense plans to include caseload limits for individual attorneys.

Proposed Language: Articles 26.04(e) and (j), Code of Criminal Procedure, are amended to read as follows:

(e) In a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; ~~and~~

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(iii) establish a maximum allowable caseload for a qualified attorney that, when the attorney's total caseload including appointments made under this article and other work is considered, ensures that the defendant will be diligently represented; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense, the attorneys' qualifications, and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(2) the judges of the district courts trying felony cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; ~~and~~

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(iii) establish a maximum allowable caseload for a qualified attorney that, when the attorney's total caseload including appointments made under this

consensus on the need for caseload caps but much concern about how to implement such caps effectively in assigned counsel systems where attorneys have appointed cases in many counties, as well as retained criminal and other civil work in their practices.

Consensus was reached to require caps be included in the plans but not require a specific process to contemporaneously implement them in making each new case appointment.

<p>article and other work is considered, ensures that the defendant will be diligently represented; and</p> <p>(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense, the attorneys' qualifications, and whether representation will be provided in trial court proceedings, appellate proceedings, or both.</p>				
<p>Person Proposing/Other Parties: Rebecca Bernhardt, Texas Fair Defense Project</p>	<p>83rd Bill/Sponsor: SB 592 / Sen. Rodney Ellis</p>	<p>Status: Parts of SB 592 passed as part of HB 1318 including caseload reports, attorney practice time reports, and requiring TIDC to conduct a caseload study. The proposed requirement of establishing caseload caps in local plans did not.</p>		

#	Description	Proposal Status	Issues Raised at Workgroup	Sub Workgroup Members
3.	<p>Background and Purpose: Permit courts and counties to withhold payments for indigent defense services to attorneys who have failed to report their required indigent defense representation caseload percentage. Require these reports to be made directly to the Texas Indigent Defense Commission, rather than to the counties that must then forward these to the Commission.</p> <p>A large percentage of defense attorneys who represent indigent defendants in criminal cases are failing to report the percentage of their caseload dedicated to indigent defense representation as required by Article 26.04, of the Code of Criminal Procedure. This undermines the usefulness of the caseload data being collected by the TIDC in assessing whether attorneys accepting appointments are</p>	<p>Approved in concept.</p> <p>Final bill language developed since July 15th meeting and provided to workgroup members for review and comment.</p>	<p>Jim Bethke noted that the number of attorneys reporting their practice time declined from FY14 to FY15.</p> <p>The original proposal to enforce compliance with the attorney practice time reporting was to</p>	<p>Jim Allison</p> <p>Rebecca Bernhardt</p> <p>Elizabeth Henneke</p>

<p>overloaded based upon the Texas Guidelines for Indigent Defense Caseloads.</p> <p>Indigent defense attorneys already report their practice time figures directly to TIDC rather than to the counties using the web attorney reporting portal developed with partners at Texas A&M/PPRI. It is more efficient since the county does not have to collect, collate, and report the information on to TIDC. It is also easier for the attorneys who may complete the report to all counties in which they provided representation to indigent clients with one report, rather than to each of the counties separately.</p> <p>Proposal: Permit courts and counties to withhold payments for indigent defense services to attorneys who have failed to report their required indigent defense representation caseload percentage. Require these reports to be made directly to the Texas Indigent Defense Commission, rather than to the counties that must then forward these to the Commission.</p> <p>Proposed Language:</p> <p>Part 1: Article 26.05(c), Code of Criminal Procedure, is amended to read as follows:</p> <p>(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. <u>The judge presiding over the proceedings, or if the county operates a managed assigned counsel program under</u></p>	<p>remove an attorney from the appointment list if they did not complete the report but was rejected after concerns were raised by Jim Allison and David Hall that this requirement could drive attorneys to leave appointment lists in rural counties.</p> <p>Shannon Edmonds suggested enforce reporting requirements by withholding payments from attorneys who fail to report. This concept was approved by the workgroup and forms the basis of the proposed draft legislation at left.</p> <p>Discussion between TIDC</p>	
--	---	--

<p><u>Article 26.047, the director of the program, may withhold payment until the appointed counsel has provided the information required by Subsection (j)(4) of Article 26.04.</u> If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county. <u>However, the commissioners court may withhold payment to the appointed counsel until appointed counsel has provided the information required by Subsection (j)(4) of Article 26.04.</u></p> <p>See the original proposed language below:</p> <p>(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:</p> <ol style="list-style-type: none"> (1) applies to be included on the list; (2) meets the objective qualifications specified by the judges under Subsection (e); (3) meets any applicable qualifications specified by the Texas Indigent Defense Commission; and (4) is approved by a majority of the judges who established the appointment list under Subsection (e); <u>and</u> <u>(5) provides information required Subsection (j)(4).</u> 		<p>and TCDLA staff also focused on importance of getting information out to defense attorneys about the requirement through as many avenues as possible. TCDLA offered their assistance to do so.</p>	
--	--	---	--

Part 2: Article 26.04(j), Code of Criminal Procedure, is amended to read as follows:

(j) An attorney appointed under this article shall:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed;

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record; and

(3) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:

(A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;

(B) if the defendant wishes to pursue either or both remedies described by Paragraph (A), assist the defendant in requesting the prompt appointment of replacement counsel; and

(C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal; and

(4) not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the ~~county~~ Texas Indigent Defense Commission information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code.

Amend Section 79.036(a-1), Government Code, as follows:

(a-1) Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j)(4), Code of Criminal Procedure.				
Person Proposing/Other Parties: Rebecca Bernhardt, Texas Fair Defense Project	84th Bill/ Sponsor:	Status:		

#	Description	Proposal Status	Issues Raised at Workgroup	Sub Workgroup Members
4.	<p>Background and Purpose: Revise Article 15.17, Code of Criminal Procedure, to clarify its provisions.</p> <p>Article 15.17 is extremely convoluted, written piecemeal, with outdated language and leaves a lot of questions for the judges. We have discussed in the past that some of my judges just take the written requests for attorney or waivers of attorneys and place them in their desk or in a filing cabinet in their office. It would be nice to add some language requiring these documents to be filed with the clerk. Also, in my opinion these documents should be kept with the casefile so they can be reviewed by the defense attorney or appellate attorney in the future, especially those that are denied attorneys and are forced to proceed pro se. Additionally, there should be some requirement that once a request for court appointed attorney is made, there is some way to confirm that the paperwork is actually delivered to the judge and ruled upon. I constantly have clients that tell me they had to request a court</p>	<p>Consensus to: 1. Reorganize warnings required to be given into a list with a logical flow, using subsections to improve readability; and 2. Group the provisions related to holding such hearings via an Electronic Broadcast System.</p>	<p>Consensus that the statute is convoluted and difficult to follow and agreement to reorganize the warnings in current Subsection (a) into a more reader-friendly format, as well as the combining of</p>	<p>Donnie Yandell</p> <p>Rebecca Bernhardt</p> <p>John Dahill</p> <p>Shannon Edmonds</p> <p>Elizabeth Henneke</p> <p>Andrea Keilen</p>

<p>appointed attorney several times because the paperwork was lost. Finally, there should be some requirement that if the hearing is conducted digitally, that digital file is filed with the clerk and kept in the client's court shuck or at least accessible until the case is resolved.</p> <p>Proposal: Amend Article 15.17, Code of Criminal Procedure, as follows:</p> <p>Article 15.17. Duties of Arresting Officer and Magistrate.</p> <p>(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state.</p> <p>(b) The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of an electronic broadcast system. The magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system:;</p> <p style="padding-left: 40px;">(1) of the accusation against him and of any affidavit filed therewith,</p> <p style="padding-left: 40px;">(2) of his right to retain counsel,</p> <p style="padding-left: 40px;">(3) of his right to remain silent,</p> <p style="padding-left: 40px;">(4) <u>that he is not required to make a statement and that any statement made by him may be used against him,</u></p> <p style="padding-left: 40px;">(5) of his right to have an attorney present during any</p>	<p>Draft includes retaining the recordings for 10 years, rather than 91 or 120 days in current law to ensure its availability while case is pending. The shorter time-frames were set in 1989 when VHS tapes were the state of the art that required significant physical storage space. The 10 year retention time-frame was discussed although not formally agreed workgroup.</p>	<p>all the provisions related to hearings held via electronic broadcast systems into one subsection.</p> <p>No consensus was reached to establish a new requirement for the filing with the district/county clerks of magistration records such as requests for counsel, warrants, and summons be filed with clerk (if a criminal case is ultimately filed by the prosecutor) and recordings of 15.17 hearings held via electronic</p>	<p>Amanda Marzullo</p> <p>Ted Wood</p>
---	---	--	--

	<p>interview with peace officers or attorneys representing the state,</p> <p>(6) of his right to terminate the interview at any time, and</p> <p>(7) of his right to have an examining trial.,- —</p> <p>(8) The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel.,-</p> <p>(9) The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel.,- <u>and</u></p> <p>(10) If if the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate.,-</p> <p>(c) The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is:</p> <p>(1) authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051; <u>or</u>,</p> <p>(2) If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting</p>		<p>broadcast systems.</p> <p>Concerns were raised by Jim Allison, court clerks, and others on the difficulty of filing of magistrate records with the case file.</p>	
--	--	--	--	--

the appointment of counsel.

~~(d)~~ The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law.

~~(e)~~ A recording of the communication between the arrested person and the magistrate shall be made when using an electronic broadcast system and may be made for a hearing held in person. The recording shall be preserved until ~~the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day 10 years~~ after the date on which the recording is made ~~if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony.~~ The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction. For purposes of this article, “electronic broadcast system” means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure internet videoconferencing.

~~(b)~~(f) After an accused charged with a misdemeanor punishable by fine only is taken before a magistrate under Subsection (a) and the magistrate has identified the accused with certainty, the magistrate may release the accused without bond and order the accused to appear at a later date for arraignment in the applicable justice court or municipal court. The order must state in writing the time, date, and place of the arraignment, and the magistrate must sign the order. The accused shall receive a copy of the order on release. If an accused fails to appear as required by the order, the judge of the court in which the accused is required to appear

<p>shall issue a warrant for the arrest of the accused. If the accused is arrested and brought before the judge, the judge may admit the accused to bail, and in admitting the accused to bail, the judge should set as the amount of bail an amount double that generally set for the offense for which the accused was arrested. This subsection does not apply to an accused who has previously been convicted of a felony or a misdemeanor other than a misdemeanor punishable by fine only.</p> <p>(e)(g) When a deaf accused is taken before a magistrate under this article or Article 14.06 of this Code, an interpreter appointed by the magistrate qualified and sworn as provided in Article 38.31 of this Code shall interpret the warning required by those articles in a language that the accused can understand, including but not limited to sign language.</p> <p>(d)(h) If a magistrate determines that a person brought before the magistrate after an arrest authorized by Article 14.051 of this code was arrested unlawfully, the magistrate shall release the person from custody. If the magistrate determines that the arrest was lawful, the person arrested is considered a fugitive from justice for the purposes of Article 51.13 of this code, and the disposition of the person is controlled by that article.</p> <p>(e)(i) In each case in which a person arrested is taken before a magistrate as required by Subsection (a) or Article 15.18(a), a record shall be made of:</p> <ul style="list-style-type: none">(1) the magistrate informing the person of the person's right to request appointment of counsel;(2) the magistrate asking the person whether the person wants to request appointment of counsel; and(3) whether the person requested appointment of counsel. <p>(f)(j) A record required under Subsection (e) (i) may consist of written forms, electronic recordings, or other documentation as</p>			
---	--	--	--

<p>authorized by procedures adopted in the county under Article 26.04(a).</p> <p>(g)(k) If a person charged with an offense punishable as a misdemeanor appears before a magistrate in compliance with a citation issued under Article 14.06(b) or (c), the magistrate shall perform the duties imposed by this article in the same manner as if the person had been arrested and brought before the magistrate by a peace officer. After the magistrate performs the duties imposed by this article, the magistrate except for good cause shown may release the person on personal bond. If a person who was issued a citation under Article 14.06(c) fails to appear as required by that citation, the magistrate before which the person is required to appear shall issue a warrant for the arrest of the accused.</p>			
<p>Person Proposing/Other Parties: Donnie Yandell, Caprock Public Defender</p>	<p>84th Bill/ Sponsor:</p>	<p>Status:</p>	

#	Description	Consensus	Issues Raised at Workgroup	Sub Workgroup Members
5.	<p>Background and Purpose: Require counsel be appointed to represent indigent defendants at Art. 15.17 hearings</p> <p>Currently, appointed counsel is not typically provided in Art. 15.17 hearings, although Bexar and Cameron Counties do now provide counsel at such hearings. Provision of counsel at these hearings is desirable and provides these benefits:</p> <ol style="list-style-type: none"> 1. Avoid filing unnecessary cases by providing for a probable cause review by defense counsel 	<p>Consensus not reached.</p> <p>Vote in room at first workgroup meeting showed about 80% of attendees agreed with</p>	<p>Judge McCaig, Jim Allison, and Donnie Yandell are concerned about the impact on rural counties and their ability to find and appoint counsel in time for Art. 15.17 hearings.</p> <p>Judge McCaig suggested a</p>	<p>Alex Bunin John Dahill Regan Ellmer Bradley Hargis Andrea Keilen Andrea Marsh Judge McCaig Michael Young</p>

<p>2. Increased use of personal bonds to reduce incarceration of poor because they lack resources to pay bail</p> <p>3. Defendants are better advised about the criminal courts process at the outset of the case ultimately leading to better outcomes for them and the system.</p> <p>Proposal: Amend Texas Code of Criminal Procedure Art. 1.051 to require counsel be appointed to represent indigent defendants at their initial hearing when the magistrate makes a decision on bond under Art. 15.17.</p> <p>Proposed Language: Amend Art. 1.051, Code of Criminal Procedure, by amending Subsections (c) and (c-1) and adding Subsection (c-2), as follows:</p> <p>(a) A defendant in a criminal matter is entitled to be represented by counsel in an adversarial judicial proceeding. The right to be represented by counsel includes the right to consult in private with counsel sufficiently in advance of a proceeding to allow adequate preparation for the proceeding.</p> <p>(b) For the purposes of this article and Articles 26.04 and 26.05 of this code, "indigent" means a person who is not financially able to employ counsel.</p> <p>(c) An indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. Subject to Subsection (c-2), if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county in which the defendant is arrested shall appoint counsel as soon as possible, but not later than:</p>	<p>idea in principle.</p>	<p>population bracket to require appointment for 15.17 hearings only in more populous counties.</p> <p>Bradley Hargis and Judge McCaig raised concerns about continuity of representation after appointment for these hearings.</p> <p>Some counties already provide representation at these hearings (Willacy Public Defender, Bexar Public Defender – mental health clients, Cameron County-assigned counsel via attorney for day). Bradley Hargis indicated guidance in statute for how a county could provide representation at 15.17 hearings, if it chose to do so, would be helpful.</p> <p>Some argue that Art. 15.17 hearing is a</p>	
---	----------------------------------	--	--

<p>(1) the end of the third working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel, if the defendant is arrested in a county with a population of less than 250,000; or</p> <p>(2) the end of the first working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel, if the defendant is arrested in a county with a population of 250,000 or more.</p> <p><u>(c-1) An indigent defendant is entitled to representation at a hearing under Article 15.17.</u></p> <p>(c-21) If an indigent defendant is arrested under a warrant issued in a county other than the county in which the arrest was made and the defendant is entitled to and requests appointed counsel, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county that issued the warrant shall appoint counsel within the periods prescribed by Subsection (c), regardless of whether the defendant is present within the county issuing the warrant and even if adversarial judicial proceedings have not yet been initiated against the defendant in the county issuing the warrant. However, if the defendant has not been transferred or released into the custody of the county issuing the warrant before the 11th day after the date of the arrest and if counsel has not otherwise been appointed for the defendant in the arresting county under this article, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the arresting county immediately shall appoint counsel to represent the defendant in any matter under Chapter 11 or 17, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county. If counsel is appointed for the defendant in the arresting county as required by this subsection, the arresting county may seek from the county that issued the warrant reimbursement for the actual costs paid by</p>		<p>critical stage and therefore counsel is required to be appointed under the U.S. Constitution. Alex Bunin noted his current article in the American Bar Associations Criminal Justice Magazine: <i>The Constitutional Right to Counsel at Bail Hearings.</i></p> <p>Jim Allison would not support unless state funds an expansion of the right to counsel at these hearings.</p> <p>Shannon Edmonds noted that if defense counsel will be appointed and present at 15.17 hearings, then prosecutors will also want to appear at such hearings. This will add to the costs and may be part of move away from bond schedules towards more individualized determinations of bond amounts.</p>	
---	--	--	--

	the arresting county for the appointed counsel.			
	Person Proposing/Other Parties: Michael Young, Bexar County Public Defender	84th Bill/ Sponsor:	Status:	

#	Description	Proposal Status	Issues Raised at Workgroup	Sub Workgroup Members
6.	<p>Background and Purpose: Create a statutory framework for client choice programs.</p> <p>Comal County, with assistance from grant funds from the Texas Indigent Defense Commission, has established and operated a program whereby indigent defendants may choose the attorney they wish to represent them from the list of attorneys qualified to provide representation. The program has been in operation since January of 2015 and an evaluation of the program is currently underway. The program currently operates as an alternative program under Article 26.04, Code of Criminal Procedure, where the judges agree to appoint the attorney selected by the indigent defendant to represent them.</p> <p>Proposal: Establish in the Code of Criminal Procedure a new article that sets out the main parameters for a local jurisdiction to operate a client choice program for providing indigent defense services. The language could be modeled in part on the statutes authorizing public defender (Art. 26.044) and managed assigned counsel (Art. 26.047) programs.</p> <p>Proposed Language: Defer.</p>	<p>Premature to draft legislation until the evaluation of the Comal County program has been completed. Potential legislation could then be contemplated, if needed.</p>	<p>Lawyers need to be qualified by judges to be eligible for appointment.</p> <p>Jim Allison supports concept of statutory framework for client choice programs so long as they are not mandated.</p> <p>Judge McCaig recommends client choice be optional, not mandatory.</p> <p>Andrea Marsh would like to include client choice option with managed assigned counsel programs; also require caseload controls for client choice programs and provision for attorneys to temporarily suspend themselves from the list (if they get overloaded for instance). Ms. Marsh would</p>	<p>Jim Allison Alex Bunin Andrea Keilen Andrea Marsh</p>

				also like to clearly identify any problems with operating a client choice program under the alternative appointment program in Article 26.04 before going forward with legislation.	
	Person Proposing/Other Parties: Judge Dib Waldrip, Comal County District Court & TIDC Staff	84th Bill/Sponsor:	Status:		

Other Pending and Potential Proposals

1. Statutory framework for the operation of the Regional Public Defender Office for Capital Cases (RPDO), which is operated by Lubbock County and serving 179 counties. The concept was discussed at the strategic planning meeting of the TIDC board. The proposal will likely include a succession process to transfer the coordinating county role to another county or the Commission should Lubbock County decide at some future point to withdraw from this role, as well as a request for the state to fund Lubbock County's long-term unfunded liabilities such as pensions, retirement, and health care.
2. Change the terms of Commission board members to six years from two years. The proposal was suggested by the Office of the Governor as a means to provide greater stability and to alleviate the need to make appointments so frequently. It was also briefly discussed at strategic planning.

Summary of Proposed Model Forms

Following discussion at strategic planning in April regarding challenges to ruling on requests for counsel, staff was asked to develop materials to educate and ultimately train on the front end processes necessary to have an effective appointment of counsel system. Staff developed six new/revised forms. Some forms (Magistrate's Warning Form, Juvenile Intake Form, and Affidavits of Indigence) are based on forms currently in use to streamline and simplify procedures for counties. Others were created (Limited Scope Appointment, Waiver to Plea, Waiver to Speak with the Prosecutor) based on direction from the Board and issues encountered during policy monitoring.

Draft model forms were sent to stakeholders (Jim Allison at the County Judges and Commissioners Association of Texas, Laura Garcia at the Texas Association of Counties, Shannon Edmonds at the Texas District and County Attorneys Association, Melissa Barlow-Fischer and Laura Angelini with Bexar County, Rebecca Bernhardt and Susanne Pringle at the Texas Fair Defense Project, Andrea Marsh at the William Wayne Justice Center for Public Interest Law, Amanda Marzullo at the Texas Defender Service, Ryan Turner with the Texas Municipal Courts Education Center, and Thea Whalen with the Texas Justice Court Training Center). Feedback was incorporated into the proposed forms.

Staff solicited and referenced bench books from the Texas Municipal Courts Education Center, Texas Center for the Judiciary, and Texas Justice Court Training Center. Because local judges and magistrates use their respective training center's bench book, staff's recommendation is to provide feedback on resources currently in use instead of developing a new bench book.

Revised Forms

1. Magistrate Warning Form

There are now two revised magistrate warning forms. One form contains a probable cause determination. The second form refers to the probable cause affidavit, which includes the magistrate's probable cause finding. Both forms include a place to mark a PR bond and a box indicating whether the required financial paperwork was promptly transmitted to the appointing authority. Consular Notification information has been updated based on Harris County's form and includes language to advise defendants that they do not have to answer the consular notification questions before speaking with a lawyer.

2. Affidavit of Indigence for Adults

We currently have four separate model adult criminal affidavits of indigence, which vary in length between two and seven pages. The proposed new model form is based on the financial affidavit used by Bee County. The new affidavit is two pages long and includes notice to the attorney as to whether the defendant is still in jail.

3. Affidavit of Indigence for Juveniles

We currently have four separate model juvenile affidavits of indigence. We propose reducing this to two separate forms, one completed through intake at juvenile probation offices and the other completed through the courts. The first page of the affidavit for juvenile probation offices is modeled on Travis County's juvenile intake form.

Under Section 51.101 of the Family Code, the court must determine indigence on the filing of a petition and must appoint counsel for those deemed indigent within five working days of the juvenile having been served with a copy of the petition. Courts have difficulty meeting these requirements if affidavits of indigence are not completed through juvenile probation offices.

New Forms

4. Appointment of Counsel for Out-of-County Warrants

Article 1.051(c-1) now requires an appointment of counsel to address matters under Chapter 11 or Chapter 17 if a person has been arrested on an out-of-county warrant, remains in custody 11 days after arrest, and counsel has not yet been appointed in the arresting county.

5. Waiver to Speak with the Prosecutor

The proposed new model form is based on the waiver form used in Fort Bend County. Article 1.051(f-1) and (f-2) require a defendant to waive the right to retain counsel before speaking with the prosecutor. The proposed form lists the defendant's choice as to whether the defendant wants to request counsel, waive counsel, or retain counsel.

6. Waiver to Enter a Guilty Plea or Proceed to Trial without Assistance of Counsel

Article 1.051(g) requires a defendant sign a waiver that substantially conforms to its waiver language before a defendant enters a pro se guilty plea or proceeds to trial without counsel. Article 1.051(g) also requires the court to determine the waiver is voluntarily and intelligently made. This proposed new model waiver form includes the language from Article 1.051(g) and has a signature line indicating the court has determined the waiver was voluntarily and intelligently made.

No. _____

SPN: _____

THE STATE OF TEXAS

Date/Time Of Arrest: _____

COUNTY OF _____

MAGISTRATE WARNING

Before me, the undersigned, magistrate of the State of Texas on this day personally appeared _____, who was given the following warning:

- You are charged with the offense of _____, a felony a misdemeanor.
- You have a right to hire an attorney to represent you.
- You have the right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- You have the right to remain silent.
- You are not required to make a statement, and any statement you make can and may be used against you in court.
- You have the right to stop any interview or questioning at any time.
- You have the right to have an examining trial (felonies only).
- You have the right to request appointment of counsel if you cannot afford counsel.

Would you like to request the appointment of counsel? Yes No

I explained the local procedures for requesting appointment of counsel in a manner the accused could understand. I provided reasonable assistance in completing necessary paperwork for the appointment of counsel and forwarded the paperwork to the appropriate authority within 24 hours.

Consular Notification

You have the right to speak with your lawyer before answering any questions.

If you are not a United States citizen, you may be entitled to have us notify your country's consular representative here in the United States.

Do you want us to notify your country's consular officials? Yes No

What Country? _____

If you are a citizen of a country that requires us to notify your country's consular representative, we shall notify them as soon as possible.

Mandatory Notification Clerk, notify: _____

The State Department's list of foreign consulates can be found at: <http://www.state.gov/s/cpr/rls/fco/>

1. Accused was arrested as a result of a warrant. County: _____
Proceed to bail section below.

2. Accused was arrested without a warrant.
Does the Court find probable cause exists for further detention? Yes No
If **NO**, accused shall be immediately released. If **YES**, proceed to bail section below.

Bail is set at \$ _____ Bond: Personal Cash/Surety

Bond Conditions _____

Time: _____ Date: _____ Magistrate: _____

I acknowledge that I was given the above warning and that I understand my rights as explained to me.

Person Warned: _____ Hearing Interpreted by: _____

No. _____

SPN: _____

THE STATE OF TEXAS

Date/Time Of Arrest: _____

COUNTY OF _____

MAGISTRATE WARNING

Before me, the undersigned, magistrate of the State of Texas on this day personally appeared _____, who was given the following warning:

- You are charged with the offense of _____, a felony a misdemeanor.
- You have a right to hire an attorney to represent you.
- You have the right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- You have the right to remain silent.
- You are not required to make a statement, and any statement you make can and may be used against you in court.
- You have the right to stop any interview or questioning at any time.
- You have the right to have an examining trial (felonies only).
- You have the right to request appointment of counsel if you cannot afford counsel.

Would you like to request the appointment of counsel? Yes No

I explained the local procedures for requesting appointment of counsel in a manner the accused could understand. I provided reasonable assistance in completing necessary paperwork for the appointment of counsel and forwarded the paperwork to the appropriate authority within 24 hours.

Consular Notification

You have the right to speak with your lawyer before answering any questions.

If you are not a United States citizen, you may be entitled to have us notify your country's consular representative here in the United States.

Do you want us to notify your country's consular officials? Yes No

What Country? _____

If you are a citizen of a country that requires us to notify your country's consular representative, we shall notify them as soon as possible.

Mandatory Notification Clerk, notify: _____

The State Department's list of foreign consulates can be found at: <http://www.state.gov/s/cpr/rls/fco/>

1. Accused was arrested as a result of a warrant. County: _____

2. Probable Cause Affidavit Attached.

Bail is set at \$ _____ Bond: Personal Cash/Surety

Bond Conditions _____

Time: _____ Date: _____ Magistrate: _____

I acknowledge that I was given the above warning and that I understand my rights as explained to me.

Person Warned: _____ Hearing Interpreted by: _____

CONSULAR NOTIFICATION FAX SHEET

SUBJECT: ARREST / DETENTION OF A NATIONAL OF YOUR COUNTRY

DATE: _____

TO:

Embassy/Consulate of _____ in _____, _____
(COUNTRY) (CITY) (STATE)

FROM:

Name/Office _____

Address _____

City/State/Zip _____

Telephone (_____) - _____ Fax (_____) - _____

On _____, we arrested/detained the following foreign national, who we understand is a national of your country:

Name: _____

Date of Birth/Place of Birth: _____

Nationality/Country: _____

Passport Issuing Nation: _____

Passport Number: _____

This person has been or may be charged with the following offense(s):

For more information, please call _____ between the hours of _____.

Please refer to case number _____ when you call.

ADDITIONAL INFORMATION:

AFFIDAVIT OF INDIGENCE

THIS PORTION TO BE COMPLETED BY OFFICE PERSONNEL ONLY

The State of Texas _____ County Court
 vs. _____ District Court

Offense: Felony/Misd: Interpreter required? Yes No

Offense: Felony/Misd: If yes, language required:

Offense: Felony/Misd:

Defendant Currently In: Correctional Facility Mental Health Facility

THIS PORTION TO BE COMPLETED BY OR WITH DEFENDANT

Name _____ Date of Birth ____/____/____
 First Name MI Last Name

Address _____
 Street Apt No. City State Zip Code

Phone Numbers _____
 Home Cell Work Family Member

I receive: Medicaid SSI SNAP TANF Public Housing

Are you Employed? Yes No If yes, where? _____ Type of Work _____

Number of Hours per Week: _____ How long have you worked at this job? _____

Marital Status : Single Married Divorced Widowed Separated

Name of Spouse _____
 First MI Last

Name of Dependent Child(ren) (0-18 yrs.)	Age	Name of Dependent Child(ren) (0-18 yrs.)	Age

RESIDENCE INFORMATION

Rent: yes or no	Own: yes or no	Reside with family: yes or no	Homeless: yes or no
-----------------	----------------	-------------------------------	---------------------

MONTHLY INCOME AND ASSETS		MONTHLY EXPENSES	
My take home pay	\$	Rent/Mortgage	\$
Spouse's take home pay	\$	Utilities (Elec., Gas, Water)	\$
Child Support (Received)	\$	Total Child Expenses (Including Child Support Paid)	\$
SNAP (Food Stamps)	\$	Total Food Expenses	\$
Social Security/Disability	\$	Transportation Costs	\$
Other Government Check	\$	Cell/home phone	\$
Other Income	\$	Probation fees	\$
Assets (car, house, etc.)	\$	Medical Expenses / Health Insurance	\$
TOTAL MONTHLY INCOME AND ASSETS	\$	Minimum Monthly Credit Card Payment	\$
		TOTAL MONTHLY EXPENSES	\$

Defendant's Oath

On this _____ day of _____, 20____, I have been advised of my right to representation by counsel in connection with the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me.

Defendant's Signature

Date

SUBSCRIBED and SWORN to before me, the undersigned authority, this _____ day of _____, 20____.

Clerk/Notary Public Signature

Date

Defendant Currently Meets Eligibility Requirements?

YES

NO

Date _____

ORDER APPOINTING COUNSEL

_____ is appointed to represent defendant _____
on the following charge(s): _____

_____.

Approved: _____
Appointing Authority

Date: _____

Attorney's Information

Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____

Defendant's Location

Bond Amount: _____ Bond: Personal Cash/Surety

Bonding Company: _____

On Bond

Address: _____
City, State, Zip: _____
Telephone Number: _____

Jailed

County _____
Facility _____

Was the defendant arrested on an out of county warrant? Yes No

If yes, warrant-issuing county: _____

Necessary forms have been transmitted to the appointing authority in the warrant issuing county within 24 hours.

JUVENILE INTAKE FORM

PID# _____ JV# _____

Juvenile Name: _____

DOB: _____

Alleged Offense: _____

Level of Offense: _____

Bilingual Attorney Requested Yes No

Child in Detention? Yes No

Language: _____

Juvenile lives with: Parents Mother Father Legal Guardian Other Adult Person Foster Care

THIS PORTION TO BE COMPLETED BY OR WITH JUVENILE'S PARENT OR GUARDIAN

I intend to retain counsel for the juvenile.

I have completed the attached financial affidavit to see if the juvenile qualifies for appointed counsel.

If I do not qualify pursuant to this document, I request a hearing before the judge to present evidence of my inability to hire a lawyer to represent my child.

On this _____ day of _____, 20__, I have been advised that my child must be represented by an attorney pursuant to Sec. 51.10 of the Texas Family Code. I have been informed that I may have an attorney appointed to represent my child if I qualify as indigent under Juvenile Board guidelines. I further understand that if I do not qualify as indigent, then I am responsible for hiring an attorney to represent my child.

I understand that this affidavit is being made under oath, and that it will become part of an official proceeding, and that it is a criminal offense for me to make any false statement in this affidavit and financial statement/questionnaire. By my signature below, I swear that the information I have provided in this application is accurate, true and correct and I will immediately notify the court of any changes in my financial situation. I am unable to hire an attorney and request that an attorney be appointed to represent my child.

SIGNATURE

PRINTED NAME

Address:

Home Phone:

Work Phone:

City / State / Zip

(Area Code) Number

SUBSCRIBED and SWORN to before me, the undersigned authority, this _____ day of _____, 20__.

Clerk/Notary Public Signature Date

JUVENILE AFFIDAVIT OF INDIGENCE

THIS PORTION TO BE COMPLETED BY OFFICE PERSONNEL ONLY

The State of Texas vs. _____	_____ County Court _____ District Court
Offense:	Interpreter required? <input type="checkbox"/> Yes <input type="checkbox"/> No
Offense:	If yes, language required: _____
Juvenile Currently Residing In: <input type="checkbox"/> Correctional Facility <input type="checkbox"/> Mental Health Facility	

THIS PORTION TO BE COMPLETED BY JUVENILE'S PARENT OR GUARDIAN

Name _____ Date of Birth _____ / _____ / _____
 First Name MI Last Name

Address _____
 Street Apt No. City State Zip Code

Phone Numbers _____
 Home Cell Work Family Member

I receive: Medicaid SSI SNAP TANF Public Housing

Are you Employed? Yes No If yes, where? _____ Type of Work _____

Number of Hours per Week: _____ How long have you worked at this job? _____

Marital Status : Single Married Divorced Widowed Separated

Name of Spouse _____
 First MI Last

Name of Dependent Child(ren) (0-18 yrs.)	Age	Name of Dependent Child(ren) (0-18 yrs.)	Age

RESIDENCE INFORMATION

Rent: yes or no	Own: yes or no	Reside with family: yes or no	Homeless: yes or no
-----------------	----------------	-------------------------------	---------------------

<u>MONTHLY INCOME AND ASSETS</u>		<u>MONTHLY EXPENSES</u>	
My take home pay	\$	Rent/Mortgage	\$
Spouse's take home pay	\$	Utilities (Elec., Gas, Water)	\$
Child Support (Received)	\$	Total Child Expenses (Including Child Support Paid)	\$
Food Stamps	\$	Total Food Expenses	\$
Social Security/Disability	\$	Transportation Costs	\$
Other Government Check	\$	Cell/home phone	\$
Other Income	\$	Probation fees	\$
Assets (car, house, etc.)	\$	Medical Expenses / Health Insurance	\$
TOTAL MONTHLY INCOME AND ASSETS	\$	Minimum Monthly Credit Card Payment	\$
		TOTAL MONTHLY EXPENSES	\$

Parent or Guardian’s Oath

On this _____ day of _____, 20____, I have been advised of my child’s right to representation by counsel in connection with the charge pending against him/her. I certify that I am without means to employ counsel of my own choosing for my child, and I hereby request the court to appoint counsel for my child.

Parent or Guardian’s Signature

Date

SUBSCRIBED and SWORN to before me, the undersigned authority, this _____ day of _____, 20____.

Clerk/Notary Public Signature

Date

Juvenile Currently Meets Eligibility Requirements?

YES

NO

Date _____

ORDER APPOINTING COUNSEL

_____ is appointed to represent juvenile _____ on
the following charge(s): _____

_____.

Approved: _____
Appointing Authority

Date: _____

Attorney's Information

Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____

Juvenile's Location

Released

In Detention

Address: _____
City, State, Zip: _____
Telephone Number: _____

County _____
Facility _____

THE STATE OF TEXAS

Date Of Arrest: _____

COUNTY OF _____

Time Of Arrest: _____

Appointment of Counsel for Out-of-County Warrants

Defendant _____ was arrested on a warrant from _____ County and remains incarcerated in this county for more than ten days without the appointment of counsel in this county. Defendant is not being held on any pending charges in this county. In accordance with Article 1.051(c-1), Code of Criminal Procedure, and the county’s indigent defense plan, _____ is appointed to represent the accused on pending charges in any matter under Chapter 11 or 17, Texas Code of Criminal Procedure. Representation continues until matters under these statutes are resolved.

Approved: _____

Date: _____

Appointing Authority

Attorney’s Information

Name: _____

Address: _____

City, State, Zip: _____

Telephone Number: _____

Cause Number: _____

**IN THE [INSERT COURT]
[INSERT COUNTY] COUNTY, TEXAS**

Judge's Explanation of Rights to Defendants Without Attorney

As a defendant in a criminal case, you have three options:

1. You may hire an attorney;
2. If you do not have enough money to hire an attorney, you may request an attorney be appointed to represent you;
3. You may represent yourself.

If you want an attorney to represent you and have enough money to hire an attorney, the case will be reset to give you time to do so.

If you want an attorney and do not have the money to hire one, you will need to fill out a financial questionnaire so that the proper person can determine whether or not to appoint an attorney to represent you.

You may not speak to the prosecutor about your case unless you sign a written waiver of your right to be represented by an attorney.

Be aware that there are dangers to self-representation. Waiving your right to an attorney and representing yourself may result in a worse outcome for you and your case, including the loss of significant legal rights and opportunities relating to military service, possession of a firearm, housing and public benefits, child custody, immigration status for non-citizens, and employment.

If you choose to proceed without an attorney, you may change your mind at any time and may request counsel from the Court.

Judge Presiding

DEFENDANT'S CHOICE [mark initials next to only **ONE** choice]

_____ I want to reset this case to hire my own attorney.

_____ I have hired an attorney, whose name is: _____

_____ I want to apply for court-appointed counsel.

_____ I have a court-appointed attorney, whose name is: _____

_____ I want to waive my right to an attorney and represent myself.

Defendant: _____ Date: _____

Cause Number: _____

**IN THE [INSERT COURT]
[INSERT COUNTY] COUNTY, TEXAS**

Waiver of Counsel for Purposes of Entering a Guilty Plea or Proceeding to Trial

I have been advised of the nature of the charges against me and the dangers and disadvantages of self-representation. My waiver is voluntarily and intelligently made. Furthermore,

I have been advised this _____ day of _____, 20 ____, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel.

Defendant

Date: _____

I have determined that this waiver is voluntarily and intelligently made.

Judge Presiding

Date: _____

REQUEST FOR COUNSEL CHECKLIST

1. MAGISTRATION REQUIREMENTS UNDER ARTICLE 15.17, CCP

<input type="checkbox"/>	Arrestees must be taken before a magistrate within 48 hours of arrest and informed of their rights, including their right to request counsel.
<input type="checkbox"/>	The magistrate must inform the person arrested of the procedures for requesting appointment of counsel and ensure reasonable assistance in completing the necessary forms for requesting counsel.
<input type="checkbox"/>	The magistrate must make a record of: <ol style="list-style-type: none"> (1) informing the person of the right to counsel; (2) asking the person if they want to request counsel; and (3) whether the person requested counsel or not.
<input type="checkbox"/>	If the magistrate is authorized to appoint counsel, the magistrate shall appoint counsel or determine that the person is not indigent.
<input type="checkbox"/>	Otherwise, the magistrate must transmit the request to the appointing authority within 24 hours.

2. APPOINTMENT OF COUNSEL UNDER ARTICLE 1.051 AND 26.04, CCP

<input type="checkbox"/>	Upon receipt of the request for counsel, the appointing authority has 3 working days (for counties under 250,000) or 1 working day (for counties larger than 250,000) to rule upon the request and either appoint counsel or determine that the person is not indigent.
<input type="checkbox"/>	The appointing authority must appoint counsel or determine that the person is not indigent in accordance with the county's financial standard, as set in the local indigent defense plan.
<input type="checkbox"/>	Once appointed, counsel must make every reasonable effort to contact the client within 1 working day and interview the client as soon practicable.

3. INITIAL APPEARANCE REQUIREMENTS UNDER ARTICLE 1.051, CCP

<input type="checkbox"/>	The court must advise the defendant of the right to counsel and the procedure for requesting appointed counsel. The court must give the defendant a reasonable opportunity to request appointed counsel before directing or encouraging the defendant to speak with the prosecuting attorney.
<input type="checkbox"/>	Any waiver of counsel by a defendant who has requested appointed counsel must occur after the court has determined the defendant is not indigent, and the defendant: 1) has been given a reasonable opportunity to retain counsel; or 2) has waived the opportunity to retain counsel.
<input type="checkbox"/>	A prosecutor may speak to a defendant who has requested appointed counsel only if the court has determined the defendant is not indigent, and the defendant: 1) has been given a reasonable opportunity to retain counsel; or 2) has waived the opportunity to retain counsel.
	Any waiver obtained from a defendant in violation of the above provisions is presumed invalid.
<input type="checkbox"/>	If a defendant wishes to waive the right to counsel in order to enter a guilty plea, the court must advise the defendant of the nature of the charges against him and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation.
<input type="checkbox"/>	If a defendant pleads guilty without counsel, the court must determine that the waiver is voluntarily and intelligently made and must provide the defendant with a statement in substantially the following form: <i>"I have been advised this __ day of __ 2 __, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)."</i>

Summary of Recent Policy Monitoring Activity

County	Dates Visited	Status	Issues / Recent Activity
Harris	Initial Adult Review/ Follow-up Juvenile Review: 9/8 – 9/18/2015; 11/4/2015	Report not yet Issued-Expected August / September 2016	On September 8, Jim Bethke presented to the felony and misdemeanor courts in Harris County on items to be covered in our monitoring review. A monitoring team consisting of Wesley Shackelford, Debra Stewart, Joel Lieurance, Jamie Dickson, and Aurora Zamora (from OCA) made on-site visits to Harris County.
Waller	Full Monitoring Review: 3/21 – 3/24/2016; 5/3 – 5/6/2016	Report not yet Issued-Expected August 2016	Waller County Commissioner Jeron Barnett requested staff conduct a monitoring review and make an assessment of the feasibility of a public defender office. On February 10, Jim Bethke presented to the Waller County Commissioner Court on items to be covered in our monitoring review. Staff submitted the public defender feasibility analysis on February 26. A monitoring team consisting of Debra Stewart, Joel Lieurance, and Brandon Bellows made on-site visits to Waller County.
Milam	Drop-in Review: 6/15/2016	Letter sent June 30, 2016	Jamie Dickson and Joel Lieurance made an informal visit to Milam County where we reviewed 30 misdemeanor case files, observed a misdemeanor docket, and spoke with relevant staff and officials. Staff sent the county judge a follow-up letter addressing matters concerning methods for taking and ruling on counsel requests.
Fort Bend	Follow-Up Monitoring Review: 8/24 – 8/25/2015; 7/19/2016	Report not yet Issued-Expected August 2016	Joel Lieurance and Jamie Dickson conducted a follow-up monitoring review. The initial review found issues with timeliness of appointments, use of an attorney-of-the-day in which representation did not continue for the duration of the case, and a policy of not providing counsel for initial juvenile detention hearings.

Upcoming activity:

Galveston County (9/19 – 9/21): Limited scope review covering misdemeanor appointment procedures and accuracy of IDER reports.

Hidalgo County – Update on Recent Attorney Appointments

- The Indigent Defense Services Office worked with Tyler Technologies to send wheel appointment reports to TIDC staff on a periodic basis.
- The County has submitted initial adult and juvenile appointments (by wheel).
 - **Juvenile**
 - 34 attorneys on list for March 24, May 17 and, August 2 (3 additional attorneys were on a list for some of those dates)
 - The top 10% of recipient attorneys (on the list for all dates) received 1.9 times their representative share of appointments. This is an indication that the appointment wheel is generally followed.
 - The public defender office continues to receive numerous juvenile appointments.
 - **Misdemeanor**
 - 165 attorneys on list on May 17 and on August 2 (10 additional attorneys were on a list for only one of those two dates)
 - The top 10% of recipient attorneys (on the list for both dates) received 2.0 times their representative share of appointments. This is an indication that the appointment wheel is generally followed.
 - The public defender office continues to receive numerous misdemeanor appointments.

Felony Lists

- **First Degree Cases**
 - 57 attorneys on list on May 17 and on August 2
 - The top 10% of recipient attorneys (on the list for both dates) received 2.0 times their representative share of appointments. This is an indication that the appointment wheel is generally followed.
- **Combined Second and Third Degree Cases**
 - 93 attorneys on list on May 17 and on August 2 (4 additional attorneys were on a list for only one of those two dates)
 - The top 10% of recipient attorneys (on the list for both dates) received 1.7 times their representative share of appointments. This is an indication that the appointment wheel is generally followed.
- **State Jail Cases**
 - 101 attorneys on list on May 17 and on August 2 (5 additional attorneys were on a list for only one of those two dates)
 - The top 10% of recipient attorneys (on the list for both dates) received 1.8 times their representative share of appointments. This is an indication that the appointment wheel is generally followed.



Hidalgo County Public Defender's Office

100 N. Closner – 5th Floor
Edinburg, Texas 78539
956.292.7040 (p) 956.292.7049 (f)
www.co.hidalgo.tx.us

JAIME E. GONZÁLEZ – *CHIEF PUBLIC DEFENDER*
JOSE L. BRAVO – *1st ASSISTANT PUBLIC DEFENDER*
JENNIFER A. NARVAEZ – *DEPUTY DEFENDER*
SOFIA KAMAL – *PUBLIC DEFENDER*
GINA VELA – *PUBLIC DEFENDER*
LAWERANCE ESPARZA – *PUBLIC DEFENDER*
CRISTINA CONWAY – *PUBLIC DEFENDER*

MICHAEL PARSON – *PUBLIC DEFENDER*
NEREIDA SINGLETERRY – *PUBLIC DEFENDER*
VANESSA FLORES – *PUBLIC DEFENDER*

July 25, 2016

TO: Jim Bethke, Executive Director, Texas Indigent Defense Commission

FROM: Jimmy Gonzalez, Hidalgo County Public Defender's Office

RE: **449th District Court Juvenile Appointments to the Hidalgo County Public Defender's Office (MAY 2016 and JUNE 2016)**

The following is a breakdown of the number of cases appointed to the Public Defender's Office (May and June 2016):

WEEK	CASES RECEIVED	CASES EXPECTED
May 1, 2016 – May 31, 2016	(43) new filings (0) negative review cases (66) Detention Hearings	(20) new and/or negative review cases

May (4) Week Total: (43) cases
May Expected (4) Week Total: (20) cases

WEEK	CASES RECEIVED	CASES EXPECTED
June 1, 2016 – June 30, 2016	(40) new filings (0) negative review cases (80) Detention Hearings	(20) new and/or negative review cases

(4) Week Total: (40) cases
Expected (4) Week Total: (20) cases

The (83) cases appointed to the Public Defender's Office from May 1, 2016 to June 30, 2016, are lower than the previous (6) months. However, overall case filings for May and June have been lower because of the summer months. Appointed cases are still higher than the expected cases over this time period.

The Public Defender's Office continues to handle ALL Detention Hearing Cases for the 449th District Court.

2016 Indigent Defense Plan Submission Process

- Staff and UT law clerk, Carmen Tellez, have reviewed all local indigent defense plans for compliance with each of the plan requirements established by the Commission in the plan submission instructions.
- As of August 22nd, 2016, only one county has NOT fully completed the submission/approval process:
 - Zapata
- Many plans are missing one or more elements with the most common items being:
 - New magistration requirement for persons arrested on an out-of-county warrants;
 - New appointment requirements for persons arrested in other counties on local warrants and persons arrested on out-of-county warrants;
 - New procedures for defendants to obtain and submit forms to request counsel prior to initial appearance;
 - Many counties only included the word-for-word statutory requirement without elaborating on its procedures.
 - Previous plan requirements where an amendment was made that inadvertently removed the language needed for compliance; and
 - Previous plan requirements that were initially in the plan, but later removed.
- Staff is in the process of contacting local officials if there are required elements not addressed in their plan and is offering to assist them in making needed corrections.
- Current status of plans as of August 22nd, 2016:
 - 164 District Court Plans are “Complete,” meaning it has been reviewed and meets all requirements;
 - 166 County Court Plans are complete;
 - 238 Juvenile Plans are complete;
 - 150 counties have all plans complete; and
 - 6 counties are “In Progress,” meaning at least one of its plans is currently in the process of being revised.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2016

The Honorable Harold V. Dutton, Jr.
Chair, Committee on Juvenile Justice
and Family Issues
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0071

Re: Constitutionality of Senate Bill 1876,
relating to the appointment of attorneys
ad litem, guardians ad litem, mediators, and
guardians (RQ-0060-KP)

Dear Representative Dutton:

On behalf of Honorable Rory Olsen, Judge of Probate Court No. 3 in Harris County, you ask whether Senate Bill 1876 (the "Bill") from the Eighty-fourth Legislative Session is unconstitutional.¹ The Bill amended the law regarding the court appointment of attorneys ad litem, guardians ad litem, mediators, and guardians.² Pursuant to the Bill, subsection 37.004(a) of the Government Code now requires, "in each case in which the appointment of an attorney ad litem, guardian ad litem, or guardian is necessary," that a court using a rotation system "appoint the person whose name appears first on the applicable list maintained by the court as required by Section 37.003."³ TEX. GOV'T CODE § 37.004(a); *see also id.* § 37.003 (requiring a court to establish and maintain lists). Only a narrow set of appointments are exempt from this requirement.⁴ In addition, a court may appoint a person on the applicable list whose name does not appear first, or a person qualified to serve but whose name is not on the list, in two instances:

¹See Letter from Honorable Harold V. Dutton, Chair, House Comm. on Juv. Justice & Fam. Issues, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Sept. 21, 2015), <https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter").

²Prior law required local administrative judges to maintain a list of those qualified to serve as attorneys ad litem. When such an appointment was required, the court had to appoint the attorney whose name appeared first on the list. However, appointments made under the Family Code, Health and Safety Code, Human Resources Code, Texas Trust Code (Subtitle B, Title 9, Property Code), and the former Texas Probate Code were exempt from this requirement. The Bill repealed this broad exemption.

³Subsection 37.004(b) similarly requires a court to appoint the first person on the mediator list when the appointment of a mediator is necessary. TEX. GOV'T CODE § 37.004(b).

⁴See *id.* § 37.002 (exempting appointments only under specific provisions of the Civil Practice and Remedies Code, the Family Code, and the Estates Code).

The first is “if the appointment of that person as attorney ad litem, guardian ad litem, or guardian is agreed on by the parties and approved by the court.” *Id.* § 37.004(c). The second instance is when required on a complex matter if the court finds good cause because of a person’s special expertise, prior involvement with the parties or the case, or geographic location. *Id.* § 37.004(d).⁵ You assert that the Bill “deprives judges of discretion in the appointment process.” Request Letter at 1.

Your first concern is whether the Bill violates article II, section 1 of the Texas Constitution. *Id.* at 1. This provision divides the powers of state government into the legislative, executive, and judicial branches, none of which “shall exercise any power properly attached” to either of the other branches, except as permitted by the constitution. TEX. CONST. art. II, § 1. The Court of Criminal Appeals has held that this provision may be violated either “when one branch of government assumes, or is delegated, to whatever degree, a power that is more ‘properly attached’ to another branch” or when “one branch unduly interferes with another branch so that the other branch cannot effectively exercise its constitutionally assigned powers.” *Safety Nat’l Cas. Corp. v. State*, 273 S.W.3d 157, 162 (Tex. Crim. App. 2008).

In analyzing the constitutionality of the statute, we begin “with a presumption of validity.” *In re Commitment of Fisher*, 164 S.W.3d 637, 645 (Tex. 2005). The judicial power of the state is vested in the courts. TEX. CONST. art. V, § 1. This judicial power encompasses certain “core” functions, namely, the power to (1) hear evidence; (2) decide the issues of fact raised by the pleadings; (3) decide the relevant questions of law; (4) enter a final judgment on the facts and the law; and (5) execute the final judgment or sentence. *Safety Nat’l Cas. Corp.*, 273 S.W.3d at 159, 162. At the same time, the constitution provides that rules of administration in the various courts must be “not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice.” TEX. CONST. art. V, § 31(a). The Court of Criminal Appeals has explained that “this express grant exempts legislative enactments regarding judicial administration from the proscriptions” of the separation of powers clause. *State v. Williams*, 938 S.W.2d 456, 459 (Tex. Crim. App. 1997); *see also Armadillo Bail Bonds v. State*, 802 S.W.2d 237, 240 (Tex. Crim. App. 1990) (acknowledging the Legislature’s “ultimate authority over judicial administration”). But although the Legislature has authority over judicial administration, the Legislature may not “infringe upon the substantive power” of the judiciary “under the guise of establishing ‘rules of court.’” *Armadillo Bail Bonds*, 802 S.W.2d at 240 (quoting *Meshell v. State*, 739 S.W.2d 246, 255 (Tex. Crim. App. 1987)). Thus, the dispositive inquiry is whether judicial appointments of attorneys ad litem, guardians ad litem, mediators, and guardians constitute an exercise of a substantive, core judicial power and, if so, whether section 37.004 of the Government Code infringes on that power.

Briefing received by this office claims that these appointments constitute a “zone of judicial power” that may not be infringed upon because, in criminal cases, judges are entitled to judicial immunity for the act of including attorneys on a rotation list and for appointing counsel on

⁵Subsection 37.004(d) is also applicable to the appointment of a mediator. *Id.* § 37.004(d).

particular cases.⁶ See *Davis v. Tarrant Cty.*, 565 F.3d 214, 225–26 (5th Cir. 2009). However, defining a judicial act for purposes of immunity is not the same as identifying substantive core judicial powers under the constitution.⁷ We find no other case law, nor do you bring any to our attention, that suggests that making court appointments of attorneys ad litem, guardians ad litem, mediators, and guardians is an exercise of a core judicial power. See *Peraza v. State*, 467 S.W.3d 508, 514 (Tex. Crim. App. 2015) (noting that “[t]he burden rests upon the individual who challenges a statute to establish its unconstitutionality”). We note that the Bill amended section 74.092(11) of the Government Code to authorize a local administrative judge to “establish and maintain” the appointment lists required by section 37.003 if requested by a court he or she serves, adding to the list of administrative functions performed by the local administrative judge. TEX. GOV’T CODE § 74.092(11). That these functions can be delegated in such a manner suggests that they are more properly characterized as administrative functions “necessary for the efficient and uniform administration of justice” and not core judicial functions. TEX. CONST. art. V, § 31(a); see also SEN. COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. S.B. 1876, 84th Leg., R.S. (2015) at 1 (stating that the prior broad rotation list exemptions resulted in abuse or the appearance of abuse of the appointment system and that the Bill “would ensure a more fair, efficient, and equitable system for the appointment of attorneys and guardians ad litem, guardians, and mediators”). Thus, a court is unlikely to conclude that making court appointments of attorneys ad litem, guardians ad litem, mediators, and guardians is a core judicial power or that section 37.004 of the Government Code violates article II, section 1 of the Texas Constitution.

You also ask whether the Bill “is unconstitutionally vague.” Request Letter at 1. As previously mentioned, prior law required local administrative judges to maintain a list of those qualified to serve as attorneys ad litem. The Bill added certain other positions to the group of persons whose names a court must maintain on lists for appointment. See generally TEX. GOV’T CODE § 37.003. In addition, in adopting local rules of administration, district and statutory county court judges may adopt rules for the establishment of the lists required by section 37.003 that “provide for . . . the person’s qualifications.” *Id.* § 74.093(c-1). You maintain that the Bill is unconstitutionally vague because it “fails to define what attributes are necessary to be considered ‘qualified’” for inclusion on the various lists. Request Letter at 1, 4.

You draw our attention to *Proctor v. Andrews*, in which the Texas Supreme Court reviewed a delegation of legislative power whereby a private entity and a federal agency would provide the names of qualified, neutral arbitrators who could serve as hearing examiners. *Proctor v. Andrews*, 972 S.W.2d 729 (Tex. 1998). At issue was whether the terms “qualified” and “neutral” in the delegating statute provided sufficient standards to guide the entities in selecting potential hearing examiners. See *id.* at 734. The court’s analysis centered on the application of an eight-factor test used to determine whether a private entity has been impermissibly granted legislative power. See

⁶See Letter from Honorable Carl Ginsberg, 193d Jud. Dist. Ct. (Nov. 4, 2015) and attached 193d Dist. Ct. Standing Order 000017, In re: Appointment of Att’ys & Guardians Ad Litem and Mediators – TEX. GOV’T CODE ch. 37 (Aug. 31, 2015) at 3 (on file with the Op. Comm.).

⁷In any event, the Court in *Davis* acknowledged that “judges have very limited discretion in deciding which attorney to appoint in a specific case” because “they may only deviate from the rotation system for good cause.” *Davis*, 565 F.3d at 226.

id. at 735. The judiciary is not a private entity, and thus the specific analysis is likely not applicable to the situation posed here. *See id.* (noting that legislative delegations to private entities are “subject to more searching scrutiny than delegations to their public counterparts”). However, the court stated that the policy and standards declared in a statute “may be broad or general, so long as the idea embodied is reasonably clear and the standards are capable of reasonable application.” *Id.* at 738. The court observed that the term “qualified” had a commonly understood meaning referring to someone “competent to understand the issues and render decisions,” which provided the entities with sufficient guidance in selecting arbitrators. *Id.* at 737. If the term “qualified” can be reasonably applied by a private entity delegated legislative power without running afoul of the constitution, we are not persuaded that the term cannot also be reasonably applied by the judiciary. Thus, a court is unlikely to conclude that the Bill is unconstitutionally vague.

S U M M A R Y

A court is unlikely to conclude that Senate Bill 1876 from the Eighty-fourth Legislature is unconstitutional under article II, section 1 of the Texas Constitution or is unconstitutionally vague.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

BECKY P. CASARES
Assistant Attorney General, Opinion Committee