



Joint Hearing of the Governor's Office of Budget, Planning and Policy & the Legislative Budget Board

August 30, 2016

Legislative Appropriations Request FY 2018 & 2019

www.tidc.texas.gov

512-936-6994

Who We Are

Thirteen-member governing board administratively attached to the Office of Court Administration. Jim Bethke is the Executive Director. The Commission has eleven full-time staff.

EX OFFICIO MEMBERS:

Honorable Sharon Keller

Chair, Presiding Judge,
Court of Criminal Appeals

Honorable Nathan Hecht

Austin, Chief Justice, Supreme Court of Texas

Honorable Sherry Radack *

Houston, Chief Justice, First Court of Appeals

Honorable Brandon Creighton

Conroe, State Senator

Honorable John Whitmire

Houston, State Senator

Honorable Andrew Murr

Kerrville, State Representative

Honorable Abel Herrero

Robstown, State Representative

Honorable Linda Rodriguez *

Hays County

* Designated by Governor

GOVERNOR APPOINTEES:

Honorable Olen Underwood

Vice Chair, Presiding Judge,
2nd 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

What We Do

Our Purpose

Is to provide financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

Our Grant Program

In FY 2015 over \$29 million was awarded to Texas counties. *Formula grant* awards totaled over \$23 million to 254 counties. *Discretionary grants* totaled over \$6 million to 18 counties.

Our Fiscal and Policy Monitoring Program

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

Our Innocence Program

Since 2005, the Commission has provided up to \$100,000 annually to University of Texas School of Law, the Texas Tech University School of Law, the Thurgood Marshall School of Law at Texas Southern University, and the University of Houston Law Center to operate innocence clinics. This funding has contributed towards 13 exonerations. In 2015 the 84th Legislature expanded funding to include \$100,000 per year for two new public law schools at the University of North Texas Dallas College of Law and the Texas A&M University School of Law in Fort Worth.

EXCEPTIONAL ITEM REQUESTS

- 1) **\$2.87 million – Request Restoration of 4%**
- 2) **\$2.9 million – Support 50/50 State-County Funding for Regional Public Defender for Capital Cases**
- 3) **\$10 million – Support Statewide Funding for Early Identification and Representation of Defendants with Mental Illness**
- 4) **\$212 million – Increase State Support for Texas Counties to Share Indigent Defense Costs More Equally**

Exceptional Item #1 - \$2.87 million

Request: Restoration of 4% reduction

Impact:

- Results in reduction in grants to counties
- Shifts burden of 4,000 felony cases or over 13,000 misdemeanor cases to counties
 - Average cost per felony case \$654
 - Average cost per misdemeanor case \$218

Exceptional Item #3 - \$10 million

Request: Support Statewide Funding for Early Identification and Representation of Defendants with Mental Illness

Impact:



The Meadows
Foundation

Serving the People of Texas

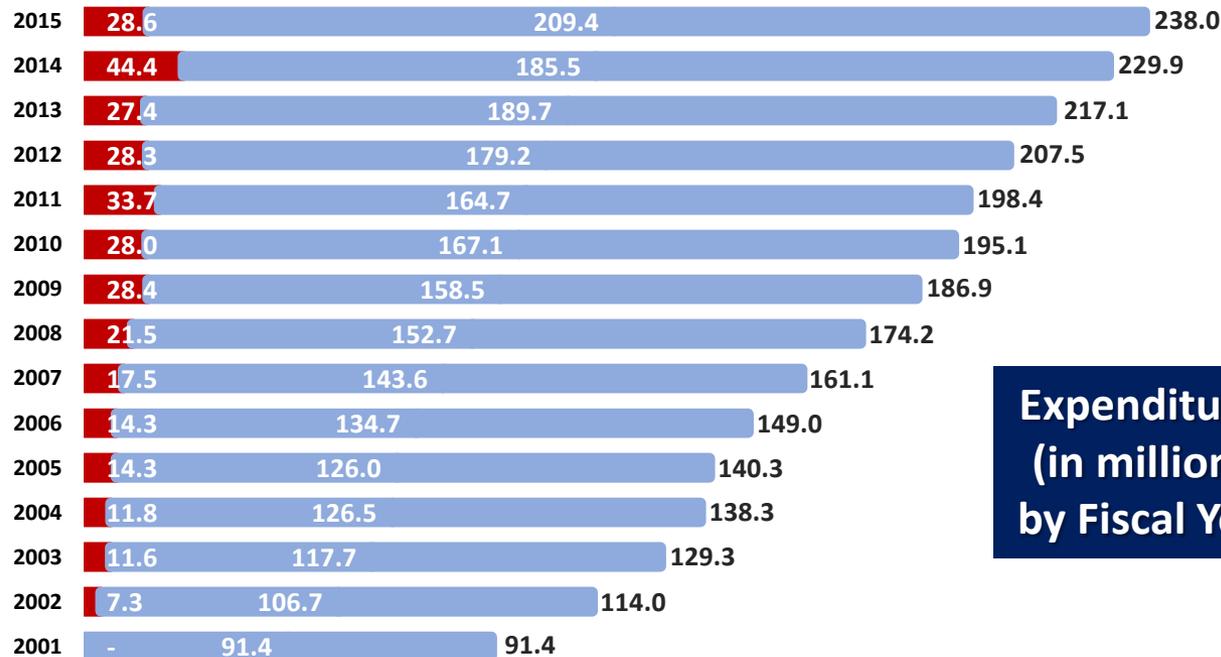
- An estimated 190,000 persons per biennium have serious mental illness and need appointed counsel in Texas.
- FY14/FY15, specialized defender programs handled 12,400 cases at a cost of \$10.3 million.
 - Meets approximately 6.5% of the need to provide specialized counsel to defendants having MH/MR issues.
- Doubling current capacity would provide representation for 24,800 defendants (meeting 13% of the statewide need).

Exceptional Item #4 - \$212 million

Request: Increase State Support for Texas Counties to Share Indigent Defense Costs More Equally

Impact:

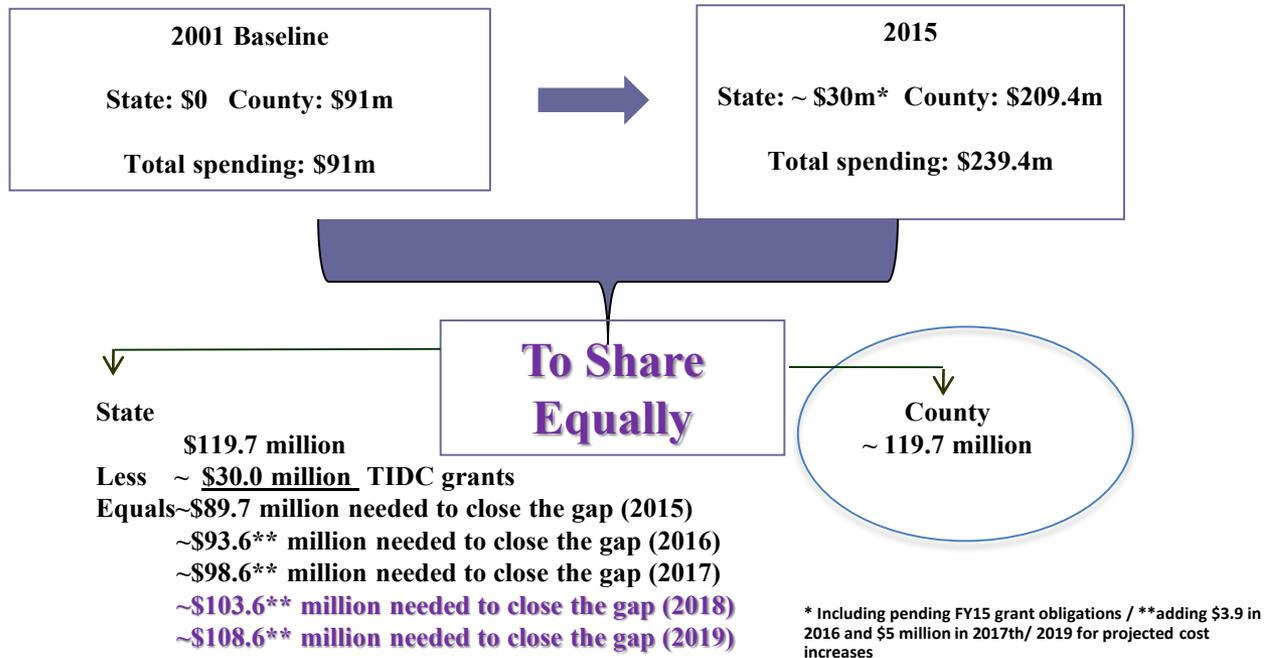
- Counties have covered the majority of the increase in indigent defense costs
- This exceptional item seeks to have the state share equally in the cost of indigent defense



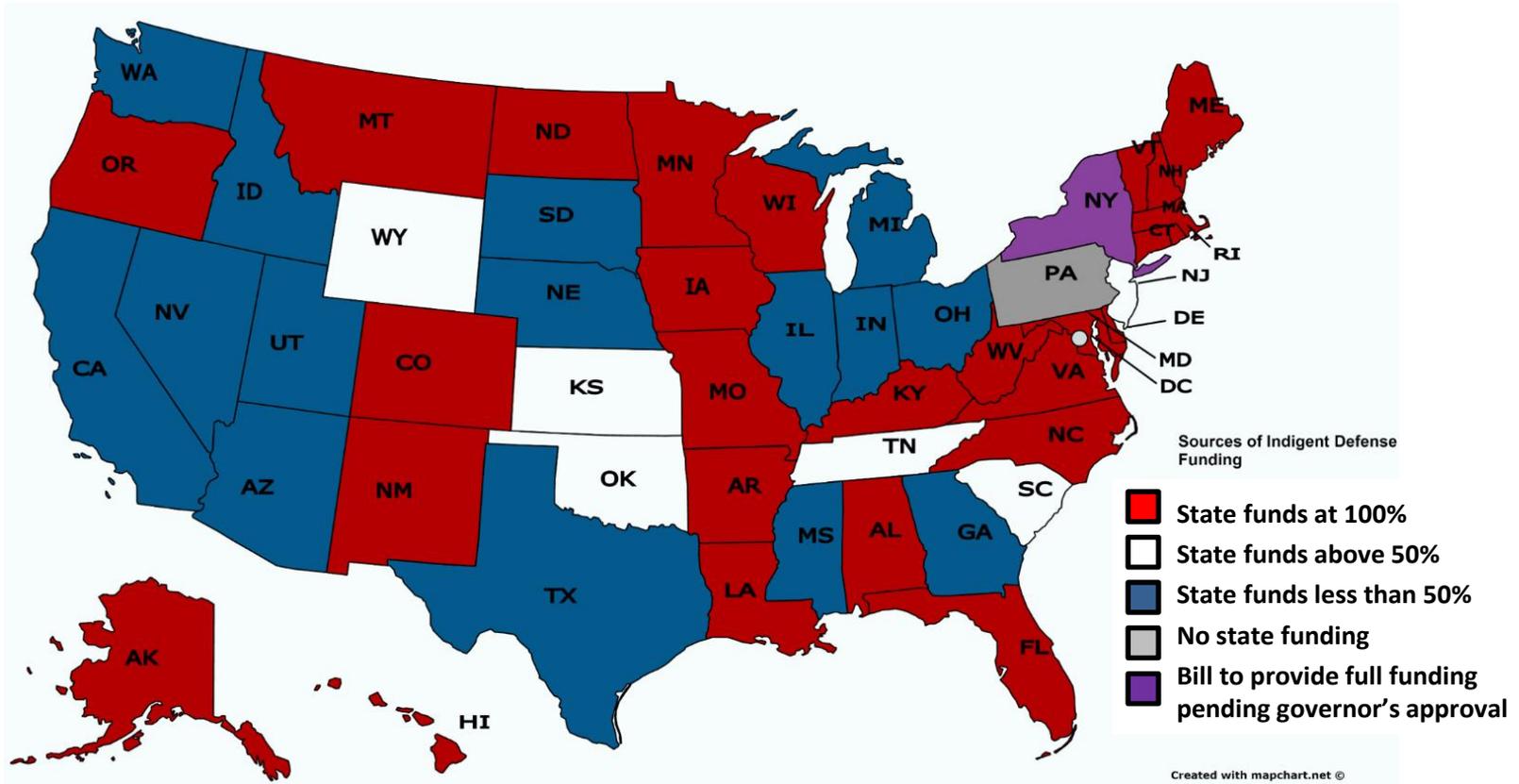
Expenditures
(in millions)
by Fiscal Year

■ State Expenditures ■ County Expenditures

To Close the Funding Gap & Share Costs Equally



State Variation in Funding: Representation at High and Low End of Spectrum



15%
Average state
funding in states
funding below
50 percent

Around the Nation – State of New York

*State Legislature unanimously passed SB 8114 in June 2016 to address **disparities** in New York's justice system.*

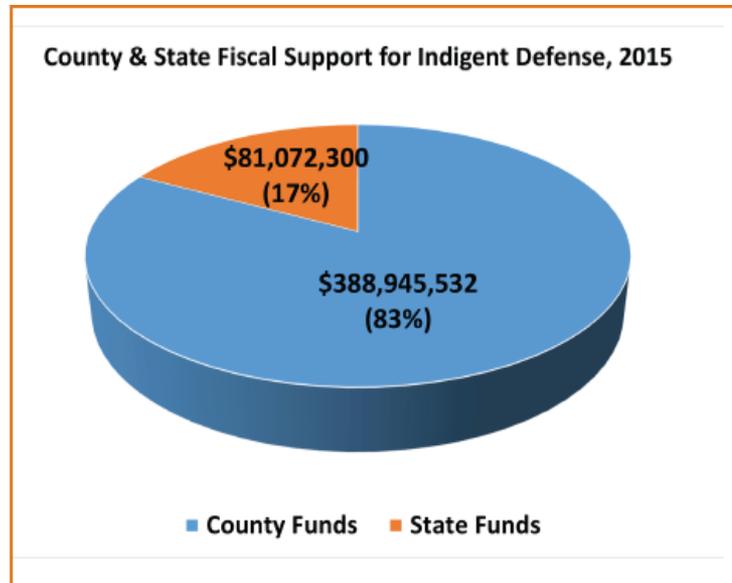


June 2016

Hon. William Cherry, President
Stephen J. Acquario, Executive Director



**INDIGENT LEGAL DEFENSE SERVICES
BALANCED JUSTICE AND MANDATE RELIEF**



STATE OF NEW YORK

8114

IN SENATE

June 13, 2016

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the county law, the executive law and the state finance law, in relation to indigent defense services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and declaration. It is a fundamental
2 right of all persons in the United States to be represented by counsel
3 in all criminal prosecutions. In the case of Gideon v. Wainwright, 372
4 U.S. 335, the United States Supreme Court ruled that indigent persons
5 accused in state felony cases who were unable to afford counsel had a
6 constitutional right to be defended by an appointed attorney paid by the
7 state. Subsequently, the Supreme Court determined that indigent persons
8 accused of any criminal charge that could result in imprisonment, wheth-
9 er a felony or misdemeanor, are entitled to counsel at the expense of
10 the state.

11 New York state has chosen to fulfill its obligation to provide repre-
12 sentation to indigent persons accused of a crime by requiring each coun-
13 ty outside New York city and New York city to implement and fund a plan
14 to provide such representation. In 2006 the Commission on the Future of
15 Indigent Legal Services concluded that a system of county operated and
16 funded indigent defense services failed to satisfy the constitutional
17 obligation to protect the rights of indigent persons accused of a crime.
18 Such Commission recommended that funding for indigent legal services
19 come from the state's general fund rather than from the counties.

20 New York state has entered into an agreement to settle a class action
21 lawsuit that alleged deprivation of the right to counsel in five coun-
22 ties. The agreement acknowledges that the Office of Indigent Legal
23 Services and the Indigent Legal Services Board are authorized "to moni-
24 tor and study indigent legal services in the state, to recommend meas-
25 ures to improve those services, to award grant monies to counties to
26 support their indigent representation capability, and to establish
27 criteria for the distribution of such funds." While the settlement

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD15873-01-6

S. 8114

2

1 agreement pertains to only five counties, its criteria establish a stan-
2 dard for providing indigent legal services that should apply statewide.
3 The legislature finds and declares that in all criminal proceedings
4 against people unable to afford counsel, New York state is constitu-
5 tionally required to provide public defense services. The legislature
6 further finds that the state is obligated to undertake initiatives to
7 improve the quality of indigent defense, ensure representation at
8 arraignment, implement caseload standards for providers of indigent
9 legal services, and implement statewide standards for determining eligi-
10 bility for mandated representation. Mandating counties to finance the
11 state's obligation to provide indigent legal services imposes a signif-
12 icant uncontrollable financial burden on counties dependent on real
13 property taxes to fund needed services, and subject to a state imposed
14 tax cap.

15 The legislature finds and declares that in order to fulfill its
16 constitutional obligation to provide indigent legal services, the state
17 shall pay counties the full amount necessary to ensure the delivery of
18 quality legal services for indigent criminal defendants in a consistent
19 manner throughout the state.

20 § 2. Section 722-e of the county law, as added by chapter 878 of the
21 laws of 1965, is amended to read as follows:
22 § 722-e. Expenses. All expenses for providing counsel and services
23 other than counsel hereunder shall be a county charge or in the case of
24 a county wholly located within a city a city charge to be paid out of an
25 appropriation for such purposes and shall be reimbursed by the state to
26 the county or city providing such services provided, however, that in
27 the state fiscal year beginning:

28 (a) April first, two thousand seventeen, the state shall provide
29 reimbursement for not less than twenty-five percent of such expenses;
30 and
31 (b) April first, two thousand eighteen, the state shall provide
32 reimbursement for not less than thirty-five percent of such expenses;
33 and
34 (c) April first, two thousand nineteen, the state shall provide
35 reimbursement for not less than forty-five percent of such expenses; and
36 (d) April first, two thousand twenty, the state shall provide
37 reimbursement for not less than fifty-five percent of such expenses; and
38 (e) April first, two thousand twenty-one, the state shall provide
39 reimbursement for not less than sixty-five percent of such expenses; and
40 (f) April first, two thousand twenty-two, the state shall provide
41 reimbursement for not less than seventy-five percent of such expenses;
42 and
43 (g) every year thereafter, the state shall provide reimbursement for
44 the full amount of such expenses.

45 § 3. Subdivision 3 of section 832 of the executive law is amended by
46 adding a new paragraph (n) to read as follows:
47 (n) to adopt, promulgate, amend or rescind rules and regulations to
48 carry out the provisions of this section, including to (i) ensure the
49 presence of counsel at the first appearance of any eligible defendant
50 charged with a crime, (ii) establish caseload/workload regulations for
51 attorneys providing mandated representation, and (iii) improve the qual-
52 ity of mandated representation.

53 § 4. Subdivision 3 of section 98-b of the state finance law, as
54 amended by section 2 of part E of chapter 56 of the laws of 2010, is
55 amended to read as follows: