



**TEXAS INDIGENT DEFENSE COMMISSION  
MEETING NOTEBOOK  
DECEMBER 13, 2019**

**FULL BOARD – 1:30 P.M.**

Tom C. Clark Building, 1<sup>st</sup> Floor Conf. Room  
205 W. 14<sup>th</sup> Street, Austin, TX 78701





209 W. 14<sup>th</sup> Street, Room 202  
Austin, Texas 78701  
Phone: 512-936-6994; Fax: 512-463-5724  
[www.tidc.texas.gov](http://www.tidc.texas.gov)

**Chair:**

Honorable Sharon Keller

Chair – Presiding Judge, Court of Criminal Appeals

**Ex Officio Members:**

Honorable Nathan L. Hecht

Austin, Chief Justice, Supreme Court of Texas

Honorable John Whitmire

Houston, State Senator

Honorable Brandon Creighton

Conroe, State Senator

Honorable Nicole Collier

Fort Worth, State Representative

Honorable Andrew Murr

Junction, State Representative

Honorable Sherry Radack

Houston, Chief Justice, First Court of Appeals

Honorable Vivian Torres

Rio Medina, Judge, Medina County Court at Law

**Members Appointed by the Governor:**

Mr. Alex Bunin

Houston, Chief Public Defender, Harris County Public Defender Office

Honorable Richard Evans

Bandera, Bandera County Judge

Mr. Gonzalo Rios, Jr.

San Angelo, Attorney, Gonzalo P Rios Jr Law Office

Honorable Missy Medary

Corpus Christi, Presiding Judge, 5<sup>th</sup> Administrative Judicial Region of Texas

Honorable Valerie Covey

Georgetown, Commissioner Precinct 3

**Staff:**

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Sharon Whitfield	Budget & Accounting Analyst	512-936-6998	Swhitfield@tidc.texas.gov



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

**DATE: Friday, December 13, 2019—1:30 p.m.**  
**Tom C. Clark Building, 1<sup>st</sup> Floor Conference Room**  
**205 West 14<sup>th</sup> St, Austin, TX 78701**

**AGENDA**

**The Commission may discuss or act on any of the following items:**

1. Commencement – *Presiding Judge Sharon Keller*
2. Attendance
3. Approval of August 29, 2019 Minutes
4. Chair’s Report – *Presiding Judge Sharon Keller*
5. Director’s Report – *Mr. Geoffrey Burkhardt*
6. Grants and Reporting – *Presiding Judge Missy Medary*
  - a. Report on FY19 Indigent Defense Expenditure Reports (IDER)
  - b. Report on Fair Defense Account (Fund 5073)
  - c. Report on FY19 and FY20 budgets
  - d. Formula Grants
    - i. Consider FY20 Formula Grant awards
    - ii. Consider FY20 Supplemental Capital Formula Grant awards
    - iii. Report on preliminary special conditions
  - e. Improvement Grants
    - i. Consider adoption and issuance of FY20 Improvement Grant Request for Application (RFA)
    - ii. Consider supplemental mental health public defender grant applications
    - iii. Consider grant modification requests
  - f. Consider technical support grant applications
  - g. Consider extraordinary disbursement grant requests
7. Fiscal Monitoring Report
8. Policies and Standards – *Mr. Alex Bunin*
  - a. Report on 2019 indigent defense plan submission status
  - b. Report on appointed counsel statistics, attorney caseloads, and attorney practice time reports
  - c. Consider publication of proposed amendments to policy monitoring rules in Texas Administrative Code Title 1, Part 8, Chapter 174, Subchapter C
  - d. Policy monitoring report
  - e. Review of policy monitoring processes and piloting new measures
  - f. Complaints
9. Improvement Team Report
10. Next meeting
11. New business
12. Public comment
13. Adjournment

**TEXAS INDIGENT DEFENSE COMMISSION**

Roll Call  
COMMISSION MEMBERS

	<b>MEMBER</b>	<b>PRESENT / ABSENT</b>
1	THE HONORABLE SHARON KELLER	
2	MR. ALEX BUNIN	
3	THE HONORABLE VALERIE COVEY	
4	THE HONORABLE BRANDON CREIGHTON	
5	THE HONORABLE RICHARD EVANS	
6	MR. GONZALO RIOS	
7	THE HONORABLE NATHAN HECHT	
8	THE HONORABLE MISSY MEDARY	
9	THE HONORABLE NICOLE COLLIER	
10	THE HONORABLE ANDREW MURR	
11	THE HONORABLE SHERRY RADACK	
12	THE HONORABLE VIVIAN TORRES	
13	THE HONORABLE JOHN WHITMIRE	

Texas Indigent Defense Commission  
Minutes of meeting

Thursday, August 29<sup>th</sup>, 2019 —10:00 a.m.  
Tom C. Clark Building, 1<sup>st</sup> Floor Conference Room  
205 West 14<sup>th</sup> St, Austin, TX 78701

Judge Keller called the meeting to order at 10:03 a.m. Roll was called. Members present: Judge Sharon Keller, Mr. Alex Bunin, Judge Richard Evans, Mr. Gonzalo Rios, Commissioner Valerie Covey and Judge Vivian Torres. TIDC staff present: Ms. Megan Bradburry, Ms. Claire Buetow, Mr. Geoff Burkhart, Ms. Kathleen Casey, Mr. Edwin Colfax, Mr. Joel Lieurance, Mr. Wesley Shackelford, Ms. Doriana Torres and Ms. Sharon Whitfield.

Mr. Bunin motioned to approve the minutes from the June 6<sup>th</sup>, 2019 commission meeting. Judge Evans seconded. Judge Torres opposed; motion passes.

Judge Keller began her opening remarks with a farewell to board member Judge Chris Hill and welcoming new board member, Commissioner Valerie Covey.

Mr. Burkhart presented the results of TIDC's Legislative Appropriations Request and recent activities update.

*Budget*

Ms. Whitfield reported on Fair Defense Account's fund and cash balance for FY19, comparison of revenue flows from FY18 and FY19 and the FY20 budget.

*Grants & Reporting*

Mr. Colfax reported on the FY20 Formula Grant Program Request for Applications. Formula Grant amount is budgeted at \$25,000,000 for FY20. Judge Torres moved to direct staff to issue the FY20 formula grant request for applications. Mr. Bunin seconded; motion passed unanimously.

Mr. Colfax reported on the supplemental Mental Health Public Defender Request for Applications. Only public defender programs existing as of September 1<sup>st</sup>, 2019 are eligible for this funding. Commissioner Covey moved to direct staff to issue the supplemental mental health public defender request for applications. Mr. Bunin seconded; motion passed unanimously.

Mr. Colfax reported on the FY19 Indigent Defense Expenditure Report (IDER) Manual. Judge Evans moved to direct staff to issue the FY19 Indigent Defense Expenditure Report manual. Mr. Rios seconded; motion passed unanimously.

Mr. Colfax discussed a technical support grant for Bexar County to conduct an indigent defense system evaluation, the County has contracted with PPRI to conduct this study so the FY20 multi-year request has not been recommended for funding.

Mr. Colfax discussed the FY20 improvement grant for Travis County to build a public defender office and Managed Assigned Counsel (MAC) improvements. Judge Sarah Eckhardt, and Mr. Robert Jefferies testified on behalf of Travis County. Judge Keller spoke about the benefits of the award. There was a discussion about the amount and structure of the grant that should be awarded. Commissioner Covey moved to award a FY20 four-year indirect improvement grant of \$868,402 to

Travis County for a public defender office and managed assigned counsel improvements. Mr. Bunin seconded. Judge Evans opposed; motion passes.

Mr. Colfax discussed the FY20 improvement grant for Harris County for a Managed Assigned Counsel (MAC) Program. Judge Hilary Unger, Ms. Lisa Teachey, Mr. Ed Wells, Mr. Benjamin Giannantonio, and Judge Darrel Jordan testified on behalf of Harris County. Judge Evans moved to award an FY20 improvement grant of \$2,172,855 to Harris County for a managed assigned counsel program. Judge Torres seconded. Mr. Bunin abstained; motion passes.

Mr. Colfax discussed the FY20 improvement grant for Hays County for an Indigent Defense Coordinator. Judge Evans moved to waive the application deadline and award an FY20 improvement grant of \$61,341 to Hays County for an indigent defense coordinator. Mr. Rios seconded; motion passed unanimously.

Mr. Colfax discussed the FY20 improvement grant for Navarro County for an Indigent Defense Coordinator. Commissioner Covey moved to award an FY20 continuing improvement grant of \$33,978 to Navarro County for an indigent defense coordinator. Mr. Bunin seconded; motion passed unanimously.

Mr. Colfax discussed the FY20 improvement grant for Navarro County for TechShare Indigent Defense Implementation. Judge Torres moved to award FY20 improvement grant of \$12,600 to Navarro County for TechShare indigent defense implementation. Judge Evans seconded; motion passed unanimously.

Mr. Colfax discussed the FY20 improvement grant for Burnet County for Indigent Defense Videoconferencing. Judge Evans moved to award an FY20 improvement grant of \$16,835 to Burnet County for indigent defense videoconferencing. Mr. Bunin seconded; motion passed unanimously.

Mr. Colfax discussed a Grant Modification Request for Williamson County for a multi-disciplinary approach to indigent defense for young adults in Williamson County. Mr. Bunin moved to extend the FY19 improvement grant to Williamson County to May 31<sup>st</sup>, 2020. Judge Torres seconded. Commissioner Covey abstained; motion passes.

Mr. Colfax discussed a Grant Modification Request for Dallas County for a multi-disciplinary approach to indigent defense for young adults in Dallas County. Mr. Bunin moved to extend the FY19 improvement grant to Dallas County to May 31<sup>st</sup>, 2020. Judge Torres seconded; motion passed unanimously.

Mr. Colfax discussed Grant Budget Adjustment Request for Bee County Regional Public Defender Office five counties. Commissioner Covey moved to increase the FY20 improvement grant to Bee County by \$137,792 to \$856,315. Mr. Bunin seconded; motion passed unanimously.

Mr. Colfax discussed Grant Budget Adjustment Request for Starr County Regional Public Defender Office three counties. Commissioner Covey moved to increase the FY20 improvement grant to Starr County by \$89,649 to \$645,249. Mr. Bunin seconded; motion passed unanimously.

Mr. Burkhart discussed the Technical Support Grant Request for Lubbock County for a Defense Counsel at 15.17 Magistration Randomized Control Trial (RCT) Pilot Project. Judge Torres moved

to award a Technical Support Grant of \$127,400 to Lubbock County for defense counsel at Article 15.17 hearings. Mr. Bunin seconded; motion passed unanimously.

Mr. Burkhart discussed the Technical Support Grant Request for Hays County for a Regional Padilla Compliance Pilot Project. Ms. Julie Wimmer, Judge Billy Ray Stubblefield, and Commissioner Lon Shell spoke on behalf of the project. Judge Evans moved to award a Technical Support Grant of \$342,720 to Hays County to support the regional *Padilla* compliance pilot program for one year and designate as a cost containment grant. Judge Torres seconded; motion passed unanimously.

Mr. Burkhart discussed the Technical Support Grant Request for Harris County for a Statewide Future Indigent Defense Leaders Program (FIDL). Ms. Carly Jo spoke on behalf of the FIDL program. Mr. Rios moved to award a Technical Support Grant of \$496,125 to Harris County for the Texas Statewide Indigent Defense Mentoring, Training, and Leadership Program. Judge Evans seconded. Mr. Bunin abstained; motion passes.

Mr. Burkhart discussed the Technical Support Grant Request Lubbock County for Automatic Text Reminders, Texting System for clients and Attorneys. Ms. Shannon Cavazos spoke on behalf of Lubbock County. Judge Torres moved to award a Technical Support Grant of \$36,578 to Lubbock County for an Automatic text reminder system for clients and attorney and designate as a cost containment grant. Judge Evans seconded; motion passed unanimously.

Mr. Colfax discussed Willacy County Extraordinary Grant Supplemental Request Summary. Judge Torres moved to award an Extraordinary Grant of an additional \$22,603 to Willacy County. Judge Evans seconded; motion passed unanimously.

Mr. Colfax discussed TIDC FY19 Budget for improvement grants and technical support grants. Mr. Bunin moved to amend the FY19 budget to apply any unobligated funds to the improvement grants and technical support grants lines to reflect awards approved by the board today (August 29<sup>th</sup>, 2019). Judge Evans seconded; motion passed unanimously.

Mr. Shackelford reported on Contract Renewals FY20-FY21. Judge Torres moved to approve proposal to evaluate the impact of rural regional public defender offices. Mr. Bunin seconded; motion passed unanimously.

Mr. Colfax discussed proposed TIDC FY20 revenue and budget. Mr. Bunin moved to adopt FY20 TIDC budget. Judge Evans seconded; motion passed unanimously.

#### *Fiscal Monitoring*

Ms. Colfax reported on the Fiscal Monitoring Program. Since the June 2019 meeting, the fiscal monitor has conducted three on-site fiscal monitoring visits. Seven final report and two initial reports have been issued. There are one final report and three initial reports pending issuance. Comprehensive Annual Financial Reports (CAFR)'s and single audit reports for one county were reviewed.

#### *Policies and Standards*

Mr. Shackelford discussed the TIDC Indigent Defense Plan Submission Process and the priority appointment of public defender's office. Mr. Bunin moved to require indigent defense plans to include priority appointment for any public defender's office in the county. Judge Evans seconded; motion passed unanimously.

Mr. Shackelford discussed Attorney Selection Process for Adults (Rotation and Public Defender). Judge Evans moved to publish revised Attorney Selection Process plan templates including the priority appointment for any public defender's office in the county. Mr. Bunin seconded; motion passed unanimously.

Mr. Shackelford discussed the 2019 Biennial Indigent Defense Countywide Plan Instructions. Judge Evans moved to publish the 2019 Biennial Indigent Defense Countywide Plan Instructions. Judge Torres seconded; motion passed unanimously.

Mr. Lieurance provided an update on the Policy Monitoring Program and outstanding issues for Dallas County misdemeanor appointments. For the period between October 2018 and June 2019, the top 10% of recipient attorneys received 2.8 times their representative share of appointments. This is within TIDC threshold and is the most even that Dallas County has reported since quarterly reports in 2017. Judge Evans moved to close out the Dallas County policy monitoring review. Judge Keller seconded; motion passed unanimously.

Ms. Buetow provided details on a summary attorney appointment report and the tentative schedule for the TIDC policy team. There are currently 32 counties under review and 20 counties were visited.

Ms. Casey reported on a summary of recent complaints. Since the June 6<sup>th</sup>, 2019 meeting there have been 11 new complaints, 3 complaints remain open, pending further investigation, and 8 complaints were resolved.

No new business was discussed.

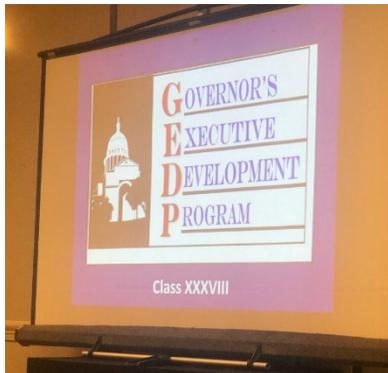
The next meeting will take place in December 13<sup>th</sup>, 2019.  
Meeting adjourned at 12:15 p.m.



**Chair's Report**  
**December 13, 2019**  
**News**

**Governor's Executive Development Program (GEDP)**

Earlier this year, Geoff Burkhart was nominated to join the [GEDP— Class XXXVIII](#). He's attended 4 week-long sessions in Arlington, Galveston, and Austin over the last two months.





## Director's Report

December 13, 2019

This is a summary of TIDC's activities from September 2019 through November 2019. If you would like additional information, please contact Executive Director Geoffrey Burkhardt: [gburkhart@tidc.texas.gov](mailto:gburkhart@tidc.texas.gov) or (512) 936-6999.

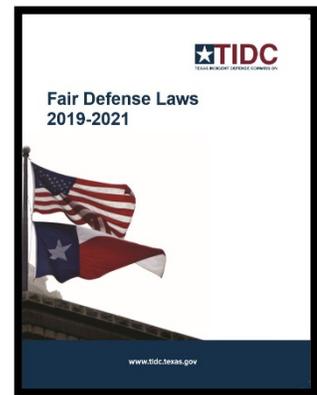
### People

TIDC will be joined by Policy Analyst Lindsay Bellinger and Extern Hailey Hanners this spring.

### Publications

#### Fair Defense Laws 2019-2021

After each legislative session, TIDC updates, provides commentary on, and publishes the *Fair Defense Laws*.



### Staff Activities

As a part of TIDC's core work—monitoring, funding, and improving Texas indigent defense—staff participated in many activities in September, October, and November. One of the highlights was TIDC co-hosting the [National Association for Public Defense's Executive Leadership Institute](#) at the Texas Capitol, October 14-17.



Here are other activities of note:

Final fiscal monitoring reports for [Upton](#), [Cass](#), [Houston](#), [Fort Bend](#), and [Freestone](#) Counties have been issued and are available on the TIDC website.

Staff has traveled to Collin, Starr, and Tarrant Counties for policy or fiscal monitoring visits.

Staff has attended and presented at multiple conferences and training sessions, including the [2<sup>nd</sup> Annual Rural Association for Court Administration Education Conference](#), WorkQuest's 31<sup>st</sup> Annual Product and Services Expo, the [Texas Tribune Festival](#), the [97<sup>th</sup> Annual County Judges and Commissioners Association of Texas Conference](#), [The Texas Law Public Services Expo](#) at the UT School of Law, the [74<sup>th</sup> Annual Texas Association of County Auditors Fall Conference](#), the [Judicial Summit on Mental Health](#) in San Marcos, [MyPadilla](#) in San Marcos, CAPPS Requisition Training, the JCMH Summit on Mental Health Facilitator Training in Austin, and the IAAP Austin Area Branch Importance of Leadership for Executive and Administrative Assistants.



Geoff attended the Investiture of Justice Brett Busby on September 6, 2019 and the Investiture of Justice Jane Bland on November 7, 2019.

Debra Steward held IDER training sessions in Edinburg and Colorado County.

Geoff presented on “Reducing Incarceration: Pretrial Diversion/Cash Bail Reform/Wrongful Convictions/Drug Prosecutions, and Indigent Defense” at [Transforming Texas’ Criminal Justice System: A Symposium for Journalists on CJ Reform in Texas](#) at UT.

On October 23<sup>rd</sup>, staff toured [Austin’s Sobering Center](#).

At the end of October, Kathleen Casey-Gamez met with representatives from Thurgood Marshall School of Law to discuss collaborating with the law school on the Future Indigent Defense Leaders (FIDL) mentorship and training program.

Staff held the [3<sup>rd</sup> Texas Roundtable on Representation of Defendants with Mental Illness](#) on November 19 in San Marcos.



TIDC was recently awarded a grant to bring the nationally-recognized [Juvenile Training Immersion Program](#) (JTIP) to Texas, created by the National Juvenile Defender Center. Funding is provided by the Office of the Governor from the Department of Justice Edward Byrne Memorial Justice Assistance Grant and is the first time TIDC has received such funding.

## Texas Indigent Defense Commission FY2019 Indigent Defense Expense Report Preliminary Results

As of December 6, 2019:

- 253 Counties submitted a Report
- 180 Counties have been Certified Complete after a desk review by staff

### Statewide Summary

- Preliminary reports indicate that in FY2019 total indigent defense spending (net spending) was **\$300.1 million** compared to FY2018 total of \$273.3 million. This represents a **9.8% increase** over FY2018 or a total **increase in costs by \$26.8 million**.
- Counties reported collecting about **\$10.3 million from defendants** in attorney fee recoupment and received about \$957,000 from other state and federal sources.
- Counties were required to submit both a court report and an attorney report.
  - Counties reported paying 5,636 attorneys for indigent defense services.

### Expenditure Distribution

The breakdown of **direct court-related** (assigned and contract) and **other** (public defender, regional, and administrative) expenses is:

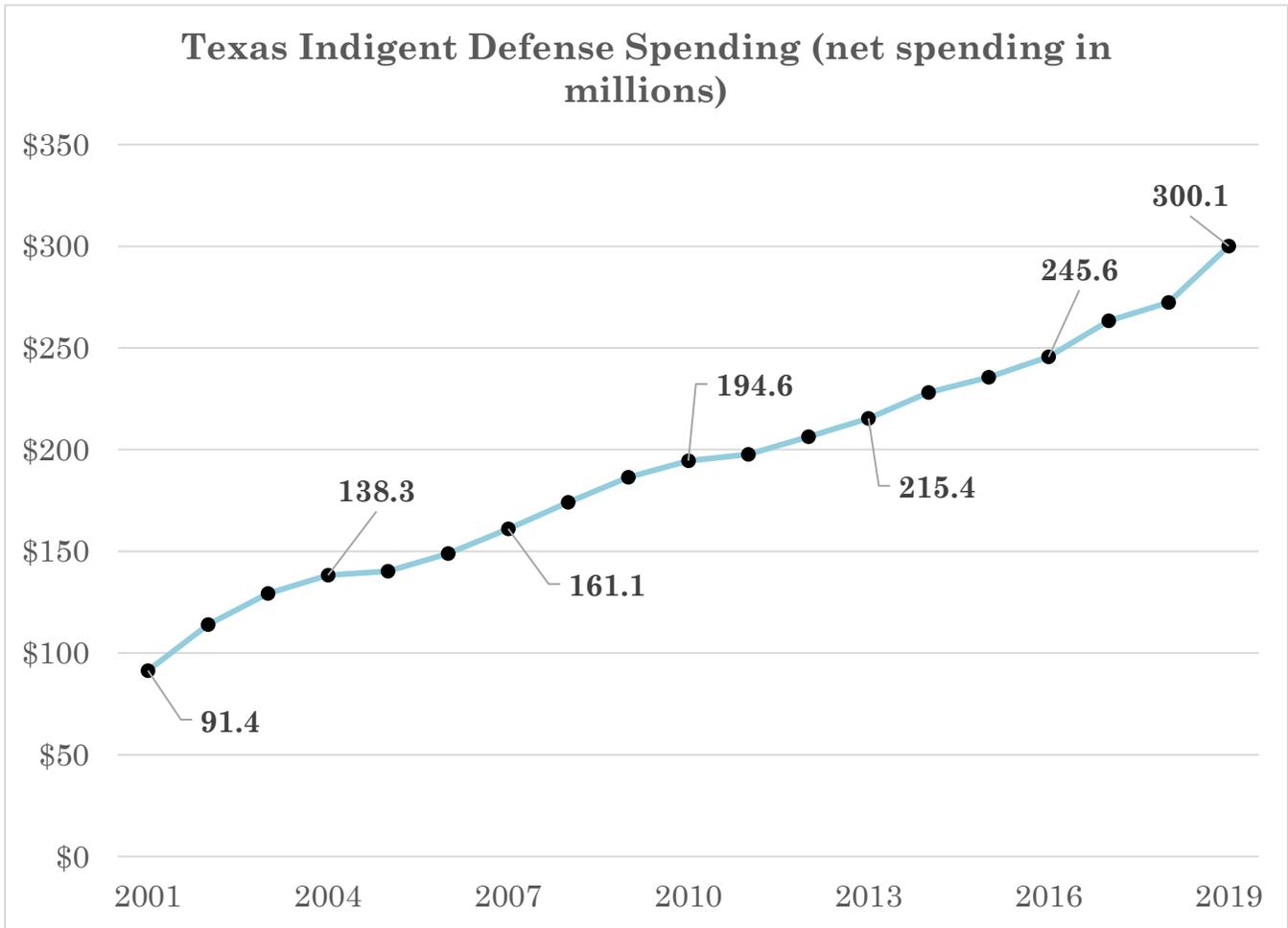
Direct Court-Related Costs				
Attorney Fees	Licensed Investigators	Expert Witness	Other Direct Litigation Costs	Total of Direct ID Costs
\$206,606,279	\$7,174,336	\$8,722,240	\$5,288,612	\$227,791,467
90.7%	3.1%	3.8%	2.3%	
Other Costs				
18 Counties reported Public Defender Office expenses				\$66,651,087
3 counties reported Managed Assigned Counsel Service Expenses				\$1,851,375
Net County payments for Regional Programs				\$266,175
28 Counties claimed increased Administrative Costs (over 2001)				\$3,347,071
TIDC grants to non-county entities				\$144,484
<b>Total</b>				<b>\$300,051,659</b>

### Common Errors Detected

- Some counties submitted attorney reports that did not closely match their court reports.
- Some counties did not report their payments to regional programs.
- Counties incorrectly placed cases/expenses in the wrong category (e.g. misdemeanor cases and expenses may have been entered as felony cases and expenses).
- Some counties cannot separate trial-level cases from appeals cases.

**\*Preliminary totals may change significantly when all desk reviews are complete.**

## Historical Statewide Indigent Defense Spending



Spending increases came primarily in large counties. → \$20.2 million of \$26.8 million spending increase came from 6 counties

- Harris      \$9.6 million increase
- Dallas      \$4.6 million increase
- Tarrant     \$2.1 million increase
- Bexar      \$2.0 million increase
- El Paso     \$1.0 million increase
- Travis      \$1.0 million increase

**Texas Indigent Defense Commission  
Fund and Revenue Balance for FY18 - 19**

**FUND 5073:**

**FY18:**

Fund Balance by Year	FY18 Actuals as of August 29, 2019	FY18 Actuals as of December 13, 2019	Total funds available as of December 13, 2019
Revenue in Fund	\$1,654,180	\$476,786	\$476,786
Obligations/ Obligations Paid	(\$476,786)	(\$431,058)	(\$431,058)
<b>Move Revenue/Remaining Revenue</b>	<b>\$1,177,394</b>	<b>\$45,728</b>	<b>\$45,728</b>

**FY18:**

<b>Revenue Remaining in FY18 Ledger - FD5073</b>	<b>\$1,654,180</b>	<b>\$476,786</b>
<b>Obligations:</b>		
Competitive Improv Grant - Single (Dallas)	\$9,112	\$0
Technical Support Grants	\$467,674	\$431,058
<b>Total Obligations for FY18</b>	<b>\$476,786</b>	<b>\$431,058</b>
<b>Remaining Revenue in FY18</b>	<b>1,177,394</b>	<b>45,728</b>

**FY19:**

Fund Balance by Year	FY19 Actuals as of August 29, 2019	FY19 Actuals as of December 13, 2019	Total funds available as of December 13, 2019
Revenue in Fund		3,602,660	3,602,660
Obligations/ Obligations Paid		(3,486,340)	(3,486,340)
<b>Move Revenue/Remaining Revenue</b>		<b>116,320</b>	<b>116,320</b>

**FY19:**

<b>Revenue Remaining in FY19 Ledger - FD5073</b>	<b>3,602,660</b>
<b>Obligations:</b>	
Competitive Improv Grant - Cont (Smith)	\$47,850
Competitive Improv Grant - New (Dallas)	\$324,170
Competitive Improv Grant - New (Williamson)	\$308,728
Competitive Improv Grant - Single (Harris)	\$1,374,571
Competitive Improv Grant - Single (Grimes)	\$50,000
Sustainability Grant - (Culberson)	\$59,465
Technical Support Grant - 6 counties	\$1,121,556
Innocence Project	\$200,000
<b>Total Obligations for FY19</b>	<b>\$3,486,340</b>
<b>Remaining Revenue in FY19</b>	<b>\$116,320</b>

Texas Indigent Defense Commission  
Comparison of Revenue Flow (FY18 - FY20)

Revenue Received

	FY18					FY19					FY20			
	Court Costs (3704)	Surety Bond (3858)	State Bar (3195)	General Revenue	Total	Court Costs (3704)	Surety Bond (3858)	State Bar (3195)	General Revenue	Total	Court Costs (3704)	Surety Bond (3858)	State Bar (3195)	Total
September	29,665	2,732	93,763	3,750,000	3,876,160	32,689	185	104,195	3,750,000	3,887,068	25,093	423	118,885	144,401
October	383,637	803	17,290		401,730	214,471	853	24,408		239,731	380,266	1,373	22,198	403,837
November	7,803,772	458,210	66,340		8,328,322	8,476,423	471,217	55,218		9,002,857	7,663,791	449,101	32,565	8,145,457
December	154,862	11,679	23,985		190,526	60,035	0	9,685		69,720				0
January	312,300	1,090	5,810		319,199	335,259	9,166	7,313		351,738				0
February	7,469,984	475,264	5,460		7,950,707	7,142,934	468,889	4,290		7,616,113				0
March	74,721	1,005	2,568		78,294	289,518	3,835	2,340		295,693				0
April	43,132	49	45,403		88,584	658,666	2,174	115,180		776,020				0
May	8,847,126	455,229	652,567		9,954,923	8,614,274	498,638	1,065,090		10,178,002				0
June	492,189	53,233	829,270		1,374,692	17,633	181	591,630		609,443				0
July	326,653	180	458,333		785,166	309,246	0	353,113		662,358				0
August	8,925,976	482,994	194,138		9,603,108	8,203,509	474,421	62,108		8,740,037				0
Total Revenue Collected	34,864,019	1,942,468	2,394,925	3,750,000	42,951,411	34,354,656	1,929,558	2,394,568	3,750,000	42,428,782	8,069,150	450,897	173,648	8,693,694
Revenue Appropriated	25,743,124	2,000,000	2,300,000	3,750,000	33,793,124	24,692,588	1,900,000	2,300,000	3,750,000	32,642,588	38,142,000	1,835,000	2,403,000	42,380,000
Collected vs Appropriated	9,120,895	(57,532)	94,925	0	9,158,287	9,662,068	29,558	94,568	0	9,786,194	(30,072,850)	(1,384,103)	(2,229,353)	(33,686,306)

Juror Pay

FY15	\$6,697,267
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FY16	\$6,474,113
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FY17	\$6,127,585
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\* A reduction of \$474,113 from FY17 estimate of \$6,600,000

FY18	\$6,634,193
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\*\* An increase of \$434,193 from FY18 estimate of \$6,200,000

FY19	\$5,947,699
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\*\*\* A reduction of \$252,301 from FY19 estimate of \$6.2 mil; reduction of \$686,494 from amount received in FY18

Sept - Nov	FY18	FY19	FY20
Court Costs	\$8,217,074	\$8,723,582	\$8,069,150
Surety Bond	\$461,745	\$472,255	\$450,897
State Bar	\$177,393	\$183,820	\$173,648
<b>Tot FD 5073</b>	<b>\$8,856,212</b>	<b>\$9,379,657</b>	<b>\$8,693,694</b>
General Rev.	\$3,750,000	\$3,750,000	\$0
<b>Total w/GR</b>	<b>\$12,606,212</b>	<b>\$13,129,657</b>	<b>\$8,693,694</b>

Sept - Aug	FY18	FY19
Court Costs	\$34,864,019	\$34,354,656
Surety Bond	\$1,942,468	\$1,929,558
State Bar	\$2,394,925	\$2,394,568
<b>Tot FD 5073</b>	<b>\$39,201,411</b>	<b>\$38,678,782</b>
General Rev.	\$3,750,000	\$3,750,000
<b>Total w/GR</b>	<b>\$42,951,411</b>	<b>\$42,428,782</b>

Texas Indigent Defense Commission  
Fiscal Year 2020 Revenue / Budget

	FY20 Budget Adopted as of August 29, 2019	FY20 Adjusted Budget as of December 13, 2019	FY20 Actuals as of December 13, 2019
Cash Carryforward	\$730,000	\$730,000	\$730,000
<b>Revenue:</b>			
Court Cost Collection (SB7 - 77th Leg)	\$39,000,000	\$39,000,000	\$8,069,150
State Bar (HB 599 - 78th Leg)	\$2,300,000	\$2,300,000	\$173,648
Surety Bond (HB 1940 - 78th Leg)	\$1,900,000	\$1,900,000	\$450,897
Juror Pay (SB 1704 - 82nd Leg)	\$6,100,000	\$6,100,000	\$0
Other Funds: Fed./State - CJD/SJI Grant		\$144,035	\$0
<b>Projected Revenue/Received Revenue</b>	<b>\$50,030,000</b>	<b>\$50,174,035</b>	<b>\$9,423,695</b>
<b>Capped Spending Authority - FD 5073</b>	<b>\$49,717,856</b>	<b>\$49,717,856</b>	<b>\$49,717,856</b>
Projected Revenue over Spending Auth.	\$312,144	\$456,179	(\$40,294,161)
<b>Budget/Expended:</b>	<b>Budget</b>	<b>Budget</b>	<b>Expended</b>
<b>Formula - Based Grants:</b>			
Standard Formula Grants	\$25,000,000	\$25,000,000	\$0
Supplemental Urban Capital Formula	\$1,000,000	\$1,000,000	\$0
<b>Competitive Improvement Grants:</b>			
Single Year	\$131,833	\$131,833	\$0
Multi-Year - New	\$4,903,400	\$4,903,400	\$0
Multi-Year - Continued	\$1,038,462	\$1,038,462	\$0
<b>Sustainability Grants:</b>			
Lubbock Capital RPDO	\$4,221,036	\$4,221,036	\$0
Other Regional PDs (non-capital)	\$2,197,235	\$2,197,235	\$0
Mental Health Public Denfer Grants	\$2,500,000	\$2,500,000	\$0
Extraordinary Disbursement Grants	\$500,000	\$500,000	\$0
Compliance Assistance Grants	\$100,000	\$100,000	\$0
Technical Support Grants	\$500,000	\$500,000	\$0
New Improvement Grants (unawarded)	\$5,062,274	\$5,062,274	\$0
<b>Administrative:</b>			
TIDC Administration	\$1,640,534	\$1,640,534	\$169,301
PPRI Contract (Database)	\$100,754	\$100,754	\$0
UT Contract (Interns)	\$15,000	\$15,000	\$0
<b>Other:</b>			
PPRI Contract (Research)	\$93,328	\$93,328	\$0
Innocence Project - Rider	\$600,000	\$600,000	\$0
Administrative Support from OCA	\$114,000	\$114,000	\$114,000
CJD Grant - Juv. Def. Training for Appt Counsel		\$144,035	\$0
<b>Total Budgeted/Expended</b>	<b>\$49,717,856</b>	<b>\$49,861,891</b>	<b>\$283,301</b>
<b>Total Revenue vs Expended</b>			<b>\$9,140,394</b>
<b>Spending Authority vs Budget/Expended</b>	<b>\$0</b>	<b>(\$144,035)</b>	<b>\$49,434,555</b>
<b>* Not counted against appropriation cap</b>			
TIDC Employee Benefits	\$270,000	\$270,000	\$40,785
OCFW & Employee Benefits	\$2,146,790	\$2,146,790	\$280,000
<b>Total - Adtl Expenses Against the Fund</b>	<b>\$2,416,790</b>	<b>\$2,416,790</b>	<b>\$320,785</b>

## FY 2020 Formula Grant Awards

The Commission approved the FY2020 Formula Grant RFA at the August 2019 meeting and adopted a preliminary budget of \$25 million for these awards. This represents a 12% increase over FY2019.

Below is a summary of the adopted policy and method of calculation included in the adopted FY2020 Formula Grant RFA.

### Formula Grant Calculation

- The sum of \$15,000 plus;
- A calculation applied to the funds budgeted for FY18 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 FY2017 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.
- A county's baseline is the amount the county reported spending in FY2001. A county must spend more than this amount each year in indigent defense costs before it may qualify for grant funds unless the county had a 2000 census population of less than 10,000.
- The County shall not receive more in formula grant funds than what was spent by the county in the prior year.
- County administrative costs unrelated to public defender or managed assigned counsel programs are not considered for formula grant calculation.
- County expenditures for managed assigned counsel programs where counties contract for program operation and pay in advance of disposition of cases will be treated on a cash basis.

**Staff recommendation:** Award \$25 million in FY20 Formula Grants to counties according to the policy published in the FY2020 Formula Grant RFA .

A table of estimated awards by county will be distributed at the Commission meeting.



INSERT DATE, 2019

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

EX OFFICIO MEMBERS:  
Honorable Sharon Keller  
Honorable Nathan Hecht  
Honorable John Whitmire  
Honorable Brandon Creighton  
Honorable Nicole Collier  
Honorable Andrew Murr  
Honorable Sherry Radack  
Honorable Vivian Torres

MEMBERS APPOINTED BY GOVERNOR:  
Mr. Alex Bunin  
Honorable Richard Evans  
Mr. Gonzalo Rios  
Honorable Missy Medary  
Honorable Valerie Covey

EXECUTIVE DIRECTOR:  
Geoffrey Burkhardt

The Honorable «  
» County Judge  
Via Email: «  
»

Dear Judge «  
»:

I am pleased to inform you that the Texas Indigent Defense Commission has awarded «  
» County a formula grant in the amount of \$«  
». The **FY20 Formula Grant Statement of Grant Award** is attached. The Statement of Grant Award may include special conditions. Please note that we cannot disburse funds until these conditions have been met. The resolution adopted by the Commissioners Court and submitted with the application is considered your county's acceptance of the grant terms.

The Commission works together with counties to promote innovation and improvement in indigent defense systems statewide. On behalf of the Commission, I commend «  
» 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 1-866-499-0656.

Sincerely,

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



**TIDC**  
TEXAS INDIGENT DEFENSE COMMISSION  
**Statement of Grant Award**  
FY19 Formula Grant

Date Issued: INSERT DATE, 2019  
Grant Number: « \_\_\_\_\_ »  
Grantee Name: « \_\_\_\_\_ » County  
Program Title: Formula Grant Program  
Grant Period: 10/01/2019-9/30/2020  
Grant Award Amount: \$« \_\_\_\_\_ »

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 \$15,000 plus;
- A calculation applied to the funds budgeted for FY2019 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 FY 2018 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 FY19 Formula Grant Program Request for Applications issued in September 2019, 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 de-obligating 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 submit to the Commission the Resolution 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 necessary to be in compliance as of August 31, 2019 with reporting requirements promulgated by the Texas Judicial Council and reports required under Chapter 36 of the Texas Government Code.
- 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 must submit their indigent defense plan(s) to meet all requirements of the 2019 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.



## **FY2020 Supplemental Capital Defense Formula Grant Policy**

**Adopted December 2019**

**Total Grant Amount Budgeted in FY20 for Eligible Counties: \$1,000,000**

### **Eligibility**

To be eligible for this supplemental formula funding, a county must have had a population greater than 300,000 as of July 1, 2007.

In addition, a county must meet all requirements for the Commission's regular FY20 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.

### **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 expenditures<sup>1</sup> of counties eligible for this program for the previous fiscal year.

<sup>1</sup> 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.

## **No Additional Application Required**

Counties that have applied for the standard FY20 Formula Grant and which meet the eligibility criteria for this program will be considered for this supplemental formula funding. Consistent with the standard FY20 Formula Grant, the grant period for this funding is October 1, 2019 through September 30, 2020.

## **Requirements of Funding**

Counties must meet all requirements of the standard FY20 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, 2020. 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 FY20 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](mailto:ecolfax@tidc.texas.gov) or 512-463-2508 for questions.

## **FY 2020 Supplemental Capital Defense Formula Grant Awards**

At the August 2019 meeting the Commission budgeted \$1,000,000 for FY20 Supplemental Capital Defense Formula Grants, which maintains the FY19 funding level for this program.

### **Staff recommendation**

Award \$1,000,000 in FY20 Supplemental Capital Defense Formula Grants to eligible counties. A table of estimated awards by county will be distributed at the Commission meeting.



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

EX OFFICIO MEMBERS:  
Honorable Sharon Keller  
Honorable Nathan Hecht  
Honorable John Whitmire  
Honorable Brandon Creighton  
Honorable Nicole Collier  
Honorable Andrew Murr  
Honorable Sherry Radaack  
Honorable Vivian Torres

MEMBERS APPOINTED BY GOVERNOR:  
Mr. Alex Bunin  
Honorable Richard Evans  
Mr. Gonzalo Rios  
Honorable Missy Medary  
Honorable Valerie Covey

EXECUTIVE DIRECTOR:  
Geoffrey Burkhart

Via Email: « \_\_\_\_\_ »

Dear Judge « \_\_\_\_\_ »:

I am pleased to inform you that the Texas Indigent Defense Commission has awarded « \_\_\_\_\_ » County a Supplemental Formula Grant for Capital Case Indigent Defense in the amount of « \_\_\_\_\_ ». The FY19 Supplemental Capital Defense Formula Grant Statement of Grant Award is attached. **Please note that this award is in addition to your regular FY19 Formula Grant award** and will be disbursed separately in a single payment.

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.

On behalf of the Commission, I thank « \_\_\_\_\_ » 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



**Statement of Grant Award  
FY20 Supplemental Capital Defense Formula Grant**

Date Issued:	DATE
Grant Number:	212-19-« »SC
Grantee Name:	« »County
Program Title:	Supplemental Capital Defense Formula Grant Program
Grant Period:	10/01/2019-9/30/2020
Grant Award Amount:	« »

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 20 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 expenditures<sup>1</sup> 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 FY19 Formula Grant Program Request for Applications issued September 2019, 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 de-obligating 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.

---

<sup>1</sup> 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.

**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 submit to the Commission the Resolution 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 necessary to be in compliance as of August 31, 2019 with reporting requirements promulgated by the Texas Judicial Council and reports required under Chapter 36 of the Texas Government Code.
- 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 must submit their indigent defense plan(s) to meet all requirements of the 2019 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

## FY2021 Improvement Grant Request for Applications

Each year TIDC issues a Request for Applications (RFA) for the Improvement Grant Program containing rules and procedures for grant requests.

The RFA has been updated with dates for the FY2021 application cycle. Based on policy approved at the March 2019 meeting, the Intent to Submit step has been made optional. The full draft RFA for FY2021 may be viewed [here](#).

In addition to edits for dates and clarity, staff recommends the following substantive changes from the FY2020 RFA:

- **Change the hard deadline in May to a “priority consideration” deadline, allowing applications that are received after the deadline to be considered if funds remain available.**

Sometimes counties contact TIDC with promising grant ideas shortly after the application deadline. With a rigid annual cycle, this can mean that counties must wait for as long as 17 months to begin a grant program. A priority deadline will allow us to efficiently review most applications in the same pool while not precluding the ability to consider a grant application that comes in later if funds are available.

- **Eliminate the abbreviated “Menu-Option” Grant Applications for Indigent Defense Coordinators (IDC) and Videoconferencing Technology and require that all sections of the application be completed for these program types.**

The menu option application was intended to streamline consideration and approval of several standardized grant requests. In both IDC and videoconferencing cases, staff needs more information than that required by the menu option form to make an informed recommendation to the board. The commission recently changed the indigent defense coordinator program to a four-year step down grant. This increased grant eligibility should require a more detailed and developed plan in the application. The full application is not lengthy or complicated and will ensure that the staff and the commission are provided with sufficient information to make funding decisions.

## Mental Health Public Defender Improvement Grant Requests

### Background

The Legislature’s appropriation to TIDC for the FY20-21 biennium includes \$5 million in restricted funds that may only be used “to provide grants to public defender offices to expand the capacity of existing mental health defender programs and to establish mental health defender programs in public defender offices currently without these programs.” If funds are not awarded to eligible programs, the appropriation will lapse at the end of the biennium.

These programs employ specially trained attorneys who work with social workers or case workers and other support staff to represent indigent clients with mental health disorders. They collect, analyze, and present relevant information to prosecutors and courts to represent clients in the context of their mental illness and advocate for appropriate case outcomes.

Because this restricted appropriation was not expected, and because our regular annual grant application schedule would likely not provide sufficient opportunity to award these funds, the Commission authorized a supplemental Request for Applications at the August 2019 board meeting. Because the issuance of this supplemental RFA came after counties have adopted their budgets, the RFA invited alternative matching proposals.

### Current Eligible Grant Obligations

Three of TIDC’s current improvement grants support mental health public defender activities that are eligible uses of these restricted funds. Projected eligible amounts from current grant obligations are below:

Grant	FY20 Eligible Amount	FY21 Eligible Amount (estimated)	Total
El Paso Mental Health Litigation and Advocacy Unit	\$459,229	\$234,207	\$693,436
Travis MHPD Limited Felony Expansion	\$112,504	\$112,504	\$225,008
Webb Public Defender (MH SW component)	\$42,427	\$28,285	\$70,712
<b>Total Current Eligible Grant Obligations</b>			<b>\$989,156</b>
<b>Unawarded MHPD Restricted Funds</b>			<b>\$4,010,844</b>

**Current Application Summary**

<b>Grant Application</b>	<b>Annual Budget</b>	<b>Program Cost FY20/21 January 2020- September 2021</b>
Dallas County Public Defender Mental Health Division Expansion	\$343,601	\$587,784
Harris County Public Defender Mental Health Division Expansion	\$672,136	\$1,166,863
Bexar County Public Defender Mental Health Division Expansion	\$396,012	\$699,821
Far West Texas Regional Public Defender Office (5 Counties) Mental Health Social Worker	\$80,899	\$139,623
Lavaca County Regional Public Defender (TRLA) Mental Health Social Worker	\$77,581	\$135,767
<b>Total Project Costs</b>		<b>\$2,729,858</b>

**Program Summaries**

**Harris County** -- The program expands the Harris County Public Defender Mental Health Division to add three additional attorneys and two social workers.

**Dallas County** – The program expands the Dallas County Public Defender Mental Health Division to add three social workers and a legal secretary supporting the Mental Health Division.

**Bexar County** – The program expands the Bexar County Public Defender Mental Health Division to add three additional attorneys and a legal secretary specializing in representation of defendants with mental health disorders charged with domestic violence.

**Far West Texas Regional Public Defender Office** (Culberson, Brewster, Presidio, Jeff Davis and Hudspeth) – The program adds a social worker to support representation and advocacy of mentally ill defendants.

**Lavaca County Regional Public Defender (TRLA)** – The program adds a social worker to support representation and advocacy of mentally ill defendants.

**Staff Recommendation**

Each applicant is a long-term, trusted partner operating a program started with TIDC improvement grants. In order to deploy these restricted funds before they lapse, staff recommends full funding of the program costs for FY20-21. For Bexar, Dallas and Harris Counties, staff recommends stepping down to 50% in FY22, and 25% in FY23. For Lavaca and Far West Texas, the new MH component will be absorbed into the current sustainability grant for rural regional public defenders beginning in FY2022. Staff will continue outreach to eligible public defender programs to recruit eligible applications for the remaining restricted funds.

## 2020 Dallas County Discretionary Grant Application Narrative

### a. Application Form

Counties Represented: **Dallas**

Fiscal Year: **2020**

State Payee Identification Number: **3-00000-2320-7**

Division To Administer Grant: **Public Defender's Office**

Program Title: **Dallas Mental Health Public Defender Program Expansion and Improvement**

Requested Grant Amount: **\$274,880.51**

Financial Officer: **Darryl D Thomas**

Program Director: **Lynn Pride Richardson**

Mailing Address: **1201 Elm Street; Suite 2400; Dallas, TX 75270**

### b. Introduction (Executive Summary)

The Dallas County Public Defender's Office is requesting funding from TIDC to expand and improve legal representation and mental health linkage and services for our mentally ill clients. We propose the addition of a Social Worker Supervisor, two Social Workers and a Senior Legal Secretary to aid in early identification and prompt attention to the needs of our mentally ill clients.

### c. Problem Statement

In February 2005, TIDC awarded the Dallas County Public Defender's Office (DCPD) a multi-year grant for the creation of a Mental Health Division (MHD), the first of its kind in the state of Texas. The grant provided funding for one attorney and two caseworkers. Within the first six months, the MHD provided specialized legal assistance to 200 clients, collaborated with and provided training for the PDs in the adult criminal courts, the private bar, judges, mental health advocates and treatment providers in the community. MHD gradually began to additionally provide support for all 65 attorneys in the office, which included public defenders assigned to the juvenile and family courts. The MHD has grown substantially over the last 14 years and are now actually assisting and training the 95 attorneys in the office. With the creation of a mental health unit in the Dallas County District Attorney's Office 10 years ago and the assignment of specially trained prosecutors whose primary focus is limited to cases involving mental illness, the MHD of the DCPD has seen a significant increase in the demand for case management services. These services are primarily related to securing support, such as housing and treatment, for our justice-involved defendants in the Dallas County Criminal Courts.

The MHD's expanded operation now includes eleven attorneys and five caseworkers. MHD represents clients in the felony and misdemeanor courts, which include competency, mental health diversion and post adjudication programs, specialty court diversion and post adjudication programs that address substance use disorder with co-occurring mental health diagnoses, mental health personal recognizance bond hearings, bail review hearings for clients with mental health issues and civil commitment hearings.

Our office handles 47% of the indigent defense cases in this county. Despite growth within the MHD and its members' tireless work, we simply cannot handle all cases involving mental illness within the MHD. We have worked, however, to train our trial division attorneys to handle those cases involving mental illness that the MHD does not have the capacity to handle, but we still need additional social workers and administrative support staff to further those efforts. Many clients have barriers to success that cannot be adequately addressed at our current staffing ratio of case managers to attorneys. Some of these barriers are a lack of supportive housing and connections to resources in the community, such as mental health service providers, benefits, and identification, to name a few. Without these connections, clients are more likely to cycle back into the criminal justice system; for those clients in jail, they are less likely to be released on bond and face longer jail stays with devastating results.

To ensure caseloads are manageable and comply with best practices, it is clear that additional staff are needed. This includes the need for additional administrative staff that would support the MHD, allowing attorneys and social workers to focus on direct client services, reducing their time spent on purely administrative functions.

### d. Objectives

1. To increase meaningful client contact, which cannot be supported at our current staffing ratio of case managers to attorneys
2. To increase communication with service providers in the community
3. To strengthen partnerships with current providers and make connections with new housing resources for indigent clients
4. To make social workers available on-call to misdemeanor and felony trial division attorneys during daily docket from 8:00 a.m. to 12:00 p.m. to quickly address mental health and social service needs
5. To facilitate housing referrals for mentally ill clients to be presented in support at Bond Reduction Hearings and Mental Health Personal Recognizance Bond hearings, resulting in fewer days in jail and a reduction in recidivism
6. To facilitate warm hand-offs to community mental health and other social service providers so that clients are more likely to be released on bond and less likely to cycle back into the criminal justice system
7. To employ social workers to be the mental health and social services liaison for misdemeanor and felony trial division attorneys who has a representing clients with mental illness
8. To bolster service packages that do not fully address all client needs, filling in service gaps
9. To provide administrative support to the MHD, allowing attorneys, social workers and case managers to spend more time on direct client services rather than purely administrative functions
10. To compile statistical data utilized for performance evaluation of unit and staff, and generate monthly statistical and ad hoc reports as requested

**e. Activities**

1. Upon notification that the County has been awarded a grant for the purpose of hiring a Social Worker Supervisor (Clinician I/II), two Social Workers (Social Worker II) and a Senior Legal Secretary for the Public Defender's Office, the Program Director will work with the County's Human Resources Department, the Commissioner's Court and the Civil Service Board to create the positions. The Program Director will work with Human Resources to draft and publish the requirements of the positions, including all duties and responsibilities.
2. The Social Worker Supervisor, Social Workers and Senior Legal Secretary shall be hired no later than January 1, 2020, or as soon as possible after the positions has been approved by the Dallas County Commissioners and the County's Civil Service Board.
3. Office space will be assigned for the Social Worker Supervisor, Social Workers and Senior Legal Secretary in the Dallas County Public Defender's Office, including furniture, a phone, computer, computer software, printer and printer cartridges, and office supplies. The Social Worker Supervisor and Social Workers will also have cell phones for use to discharge the duties and responsibilities of the position.
4. The Social Workers shall utilize a software database and spreadsheet for tracking, sharing data and case management. The Social Workers shall maintain and submit monthly statistics, including the number of referrals received and the type of assistance provided, to the Program Director and the County's Office of Budget and Evaluation. The Social Workers shall additionally submit reports to the Grantor in a manner and time to be determined by the Texas Indigent Defense Commission.
5. The Social Workers shall develop and maintain a list of resources for supporting housing, mental health and other social services to be available to all employees of the Public Defender's Office. They will actively engage the community to expand the resources available to our clients.

**f. Evaluation**

The Program Director will work with the Social Workers to develop an evaluation tool with measures to aid in the assessment of the Social Workers' performance. The performance measures will identify outcomes, addresses challenges, highlight achievements and the overall success of having Social Workers on staff. Based upon information received, data collected and the assessment of the Social Workers' performance, comprehensive reports will be submitted to the Texas Indigent Defense Commission. The Dallas County Public Defender's Office will institute and evaluate the following measures as indicators of success related to the program's activities:

Task	Definition	Report
Draft Job Descriptions	Program Director works with Human Resources to draft a comprehensive job descriptions to be posted on the Dallas County Employment website	Report the date completed and email a copy to the TIDC
Positions briefed to	Positions to be briefed to the Dallas	Copy of briefing emailed to

Dallas County Commissioners	County Commissioners for approval	TIDC
Positions approved by Commissioners and reviewed by Civil Service Board	Positions approved by Dallas County Commissioners and Civil Service Board in order to be posted	Court's Order and Civil Service briefing emailed to TIDC
Social Workers and Senior Legal Secretary hired	Documentation of dates hired and start dates	Report sent to TIDC
Office setup	Office space assigned. County will purchase with grant and county funds furniture, supplies, computer, printer, software, and cell phone	Report date office set up is complete - supplies and equipment received
Software setup	Software installed within 30 days of start dates or as soon as practical	Report date software installed
Draft policies, procedures and a printed or electronic referral form	Program Director or designee will draft procedures to facilitate the referral process	Copy of procedures emailed to TIDC
Social workers start representation by accepting and processing referrals	Social workers receive and review referrals and meet with clients, submit recommendations, service connections or steps taken with clients in writing to the referring attorney	Information to be included in monthly reports to Program Director and Budget Director. Quarterly Reports to grantor (TIDC)
Enter information and data into spreadsheet and database	Social Workers will enter information and data on the following: 1. Number of referrals received 2. Biographical and case-identifying data on each client 3. Housing, mental health treatment or other needs 4. Actions taken to address client needs 6. Date of case disposition and outcome	Portions of this information to be included in statistical report to the Program Director and Budget Office monthly and to the Grantor quarterly with information required by TIDC
Social Workers shall document recommendations, including for supportive housing, mental health treatment, or other social services needs	Social worker submits written report on each case reviewed to the referring attorney	Written report included in the client's file
Referring Attorney records case disposition	Referring Attorney documents case disposition and forwards the information to the Social Worker to be recorded in the database	Social Worker documents case disposition in database and includes information in monthly and quarterly reports
Monthly report on statistics	Social Worker compiles, reviews and submits monthly statistical data to the Program Director and Budget Office	Social Worker submits monthly report including cases referred, services needed and cases closed
Quarterly Reports	Social Worker Supervisor submits a detailed quarterly report to Program Director and Grantor (TIDC)	Report to TIDC includes data and information collected in a manner required by Grantor. The information included will be determined by the Grantor but should include: 1. Number of cases referred 2. Number of referrals completed 3. Number of cases closed 4. Outcomes and dispositions 5. Services needed/referred
Summary of work and issues	Provide a summary of accomplishments quarterly	Send to Grantor (TIDC) quarterly

Problem areas and resolutions	Identify problems encountered and proposed solutions	Send to Grantor (TIDC) quarterly
Evaluation and conclusions based on information and data collected	At the end of the first year, review data and draw conclusions. Create an action plan for the following year	Include information in a written report at the end of the first year
Evaluation and conclusions based on information and data collected	At the end of the four-year grant, review data and draw conclusions; create an action plan for the future	Include information in a written report at the end of the four years

### g. Future Funding

At the end of the four-year grant period, it is anticipated that the office will be in a position to show the Dallas County Commissioners that continued funding is needed to maintain the Social Worker Supervisor (Clinician II), Social Worker and Senior Legal Secretary positions. This can be accomplished by publishing data, performance outcomes and information showing efficiency and effectiveness in operation. We anticipate showing that the program is responsible for more robust and effective representation of clients with mental illness measured by an increased number of social worker/case manager service contacts, the early identification of clients needing mental health services, fewer days of incarceration for clients needing housing/treatment connections, and less recidivism. This project complies with the Dallas County strategic plan and objectives, which include: Dallas County is a healthy community, a key result of which is promoting health and wellness by furthering partnerships with various organizations in the community to communicate public health and promotion; and provides for an exceptional criminal justice system with a key result being accessing the impact and effectiveness of jail diversion strategies.

### h. Budget Narrative and Budget Form

#### **PERSONNEL COSTS** (Recurring yearly)

Social Worker Supervisor:  
Salary \$73,299.48  
Fringe Benefits \$24,418.54  
Estimated Total \$97,718.02

Social Worker  
Salary \$54,780.96  
Fringe Benefits \$20,700.01  
Estimated Total \$75,480.97

Social Worker  
Salary \$54,780.96  
Fringe Benefits \$20,700.01  
Estimated Total \$75,480.97

Senior Legal Secretary  
Salary \$47,049.60  
Fringe Benefits \$19,147.56  
Estimated Total \$66,197.16

#### ***Estimated Total for all positions \$314,877.12***

One Social Worker Supervisor, two Social Workers and one Senior Legal Secretary will be employed through this grant proposal. The proposed salary for the Social Worker Supervisor is based on Dallas County's salary schedule for a Clinician I/II position (Grade GM). The estimated total cost of this position, including required fringe benefits is \$97,718.02. The proposed salary for each Social Worker is based on Dallas County's salary schedule for a Social Worker I/II position (Grade EE). The estimated total cost of this position, including required fringe benefits is \$ 75,480.97.

The proposed salary for the Senior Legal Secretary is based on Dallas County's salary schedule for a Senior Legal Secretary position (Grade 09). The estimated total cost of this position, including required fringe benefits is \$66,197.16. The estimated total cost of all positions, including required fringe benefits, is \$314,877.12.

**TRAVEL & TRAINING** (Recurring yearly)

CLE and travel \$2000 x 3  
 Publications and professional subscriptions \$500  
***Estimated Total \$6500***

\$6,500 yearly is budgeted to cover required continuing education and travel expenses, publications and professional subscriptions which are necessary for research and to keep abreast of current developments for the Social Worker Supervisor and Social Workers.

**EQUIPMENT** (Start up)

Laptops, docking stations and monitors (four) \$6695.52  
 Software (four licenses) \$1200  
 Multifunction printer (four) \$1376  
 Furniture (four sets of desk, bookcase, desk chair; conference table and eight chairs) \$7252  
 Cellular phone (three) \$1500  
***Estimated Total \$18,023.52***

Each employee will be provided with a laptop with a docking station and dual monitors. The purchase of cellular phones will be necessary to ensure the social workers are available to attorneys and clients and have immediate access to files, research and county intranet programs.

**SUPPLIES** (Recurring yearly)

Standard office supplies \$2000  
 Printer cartridges \$400  
 Cellular phone service charges \$1800 (\$50 per month for three lines)  
***Estimated Total \$4200***

\$4200 is requested yearly for basic office supplies, which includes, but is not limited to, file folders, pens, labels, paper, staplers, portable flash drives for discovery and medical record review, with \$400 of that amount allotted for printer cartridges and \$1800 for cellular phone service charges.

Personnel Costs		\$314,877.12
FTE's	4.00	
Salary	\$229,911.00	
Fringe Benefits	\$84,966.12	
Travel and Training		\$6,500.00
Equipment		\$18,023.52
Supplies		\$4,200.00
Contract Services		
Indirect		
Total		\$343,600.64
Required County Match		\$68,720.13
Total less County Match		\$274,880.51



## 2020 Harris County Discretionary Grant Application Narrative

### a. Application Form

Counties Represented: **Harris**

Fiscal Year: **2020**

State Payee Identification Number: **17604545149**

Division To Administer Grant: **Harris County Public Defender's Office**

Program Title: **Harris Mental Health Public Defender Program**

Requested Grant Amount: **\$602,022.40**

Financial Officer: **Michael D. Post**

Program Director: **Alexander Bunin**

Mailing Address: **1201 Franklin Street, 13th Floor; Houston, TX 77002**

### b. Introduction (Executive Summary)

The purpose of this request is to increase the capacity of an existing effective program representing mentally ill and intellectually disabled criminal defendants. Harris County, Texas is the largest county in the State and the third largest in the United States. The County established its public defender office in 2011, funded by the largest grant ever awarded by the Texas Indigent Defense Commission (TIDC). In the years since, Harris County has assumed all general funding of the Public Defender's Office (PDO). The PDO's annual budget was \$21M in 2019-20. During the years since its initial grant, the PDO has both increased size and added new functions. One of the functions, the PDO has maintained from the start is representing mental ill and intellectually disabled clients. The PDO represents the most acute of those clients in all 16 misdemeanor courts. Recent data shows PDO lawyers get about 40 percent of those cases dismissed, often to obtain placement or other services. The PDO also represents clients in two felony mental health courts. There is room to increase caseloads for mentally ill clients in both felony and misdemeanor courts, and this grant will add attorneys and social workers to meet that demand.

### c. Problem Statement

The Harris County Public Defender's Office (PDO), began taking cases in 2011. At that time, the misdemeanor division took only cases involving significantly mentally ill or intellectually disabled criminal defendants. PDO lawyers were appointed in all of the 16 misdemeanor courts based upon a computer algorithm, maintained by the courts, taken from the criminal history and mental health history of newly arrested misdemeanor defendants. PDO lawyers received the most acute cases and were given lists of their new clients at the same time as each new docket was created for the courts. Appointments were based on objective criteria. Although the algorithm was not screened by the courts, judges were free to add additional appointments when the special skills of the PDO lawyers warranted their appointment. The algorithm has grown over the years and can be further expanded to include a larger class of persons with mental health histories. The addition of more lawyers and social workers means that we expand caseloads and reduce coverage across courts. Our clients tend to be repeat offenders of the crimes associated with homelessness and mental illness, such as trespass, petty theft and prostitution --- crimes to provide basic sustenance, not criminal enterprises. Breaking this cycle is best addressed with lawyers and social workers who have more time to encourage clients to participate in placement and social services. Case dismissal rates have increased from 30 percent in 2013 to 40 percent in 2019, indicating institutional success.

The PDO also supports two felony mental health courts. These are longer term programs of supervision in which continued relationships with counsel, the court and mental health personnel can lead to pretrial diversion or early termination of community supervision without a final conviction. Two PDO attorneys assist those courts on a part-time basis. Adding lawyers will increase our participation. Only a handful of private lawyers have the experience and willingness to sign up for these cases.

Investment in experienced counsel to represent mentally ill persons is clearly a good investment. The grant will help expand an already successful set of programs.

### d. Objectives

The objectives will be for three attorneys to handle a number of appointments for mentally ill clients that do not exceed the "Guidelines for Indigent Caseloads -- A Report to the Texas Indigent Defense Commission (2015)," during the next four years. These will be cases in which clients have been determined to be mentally ill or intellectually disabled by the algorithm for the Harris County Criminal Courts at Law, the Harris County "Special Needs Sheets," admission into a Criminal District Mental Health Court, or any diagnosis of bipolar disorder, schizophrenia, major depressive disorder or intellectual disability. The quality of those representations and the grant's progress will be measured by the number of cases within criteria, hourly timekeeping, case outcomes, use of social workers, placements, and attachment to services.

**e. Activities**

The Harris County Public Defender's Office will advertise and employ three (3) lawyers and (2) social workers for the purpose of representing mentally ill and intellectually disabled clients. Those lawyers will have previous criminal defense experience and be willing and able to work with lawyers and social workers in the mental health division to learn to represent clients with the special needs of mental illness or intellectual disability. After training, followed by continued mentoring, the lawyers will gradually develop a caseload under TIDC guidelines. They will work with the social workers and other psycho-social providers to achieve outcomes like a dismissal of criminal charges in lieu of placement and treatment. This will be an expansion of an ongoing program by increasing the total caseload of cases within the grant criteria. Beside training, startup tasks will be adding computer equipment for the new lawyers and social workers and tracking their work. Existing case managers will gather the data within the office's case management software for reporting and progress. Previous work in this area, documented by the 2013 Council of State Governments Justice Center report, document the value of this work. Simply by resolving cases more quickly and effectively frees up the most expensive beds in the jail -- those for acutely mentally ill.

**f. Evaluation**

Quarterly reports will document the number of cases, hours spent per case, use of social workers, investigators, experts, translators, outcomes and comparisons to more experienced lawyers in the office doing similar work. Reports will come from case management databases and exported to TIDC. The records will be created by entries into case management by the grant attorneys and social workers as part of their normal duties on a daily basis. Evaluations of the program will be statistical, fiscal and anecdotal.

**g. Future Funding**

As the grant decreases and ends, the county will pick up and match those costs. The positions will become permanent within the PDO. There will be a continuing need to serve mentally ill and intellectually disabled clients and the PDO is best suited for this role.

**h. Budget Narrative and Budget Form**

The grant budget requires hiring five (5) new employees. Three (3) are attorneys and two (2) are social workers. The bulk of the costs are the recurring costs of their salaries and benefits, which are consistent with PDO salaries and benefits for similar positions. Harris County benefits are calculated at 23.68% + \$13,800 per employee. Equipment is a one-time cost based upon the costs of computer hardware and software costs per employee (e.g., desktop, monitor, keyboard, mouse). Supplies are recurring costs based upon an average per employee. Contract services are generally the use of experts, translators and other case-related costs on an average annual basis.

Personnel Costs		\$723,528.00
FTE's	5.00	
Salary	\$585,000.00	
Fringe Benefits	\$138,528.00	
Travel and Training		\$3,000.00
Equipment		\$12,500.00
Supplies		\$3,000.00
Contract Services		\$10,500.00
Indirect		
Total		\$752,528.00
Required County Match		\$150,505.60
Total less County Match		\$602,022.40



## 2020 Bexar County Discretionary Grant Application Narrative

### a. Application Form

Counties Represented: **Bexar**

Fiscal Year: **2020**

State Payee Identification Number: **746002039**

Division To Administer Grant: **Bexar County Public Defender's Office**

Program Title: **Bexar County Mental Health Public Defender Expansion**

Requested Grant Amount: **\$1,217,867.20**

Financial Officer: **Leo S. Caldera**

Program Director: **Michael Young**

Mailing Address: **101 W. Nueva St., Suite 370; San Antonio, TX 78205**

### b. Introduction (Executive Summary)

This application solicits a grant to expand the existing Misdemeanor Mental Health Division of the Bexar County Public Defender's Office to provide representation to arrested persons who have been identified as having a mental health issue and who are currently charged with an offense involving domestic violence. The attorneys would be assigned to the two County Courts at Law to whom all misdemeanor offenses involving domestic violence are heard. The attorneys in these courts would have specialized training and knowledge of programs to address the specific needs of these defendants. The intent is to utilize these programs to identify best practices in domestic violence cases, improve case outcomes and reduce recidivism for clients served.

### c. Problem Statement

Domestic Violence is an issue of great concern in our criminal justice system. At both a state and local level, the criminal justice system in Texas has been examining this issue to determine the best way to deal with the instances of alleged domestic violence. In response to the issue of domestic violence, the law has evolved to provide enhanced punishments, protective orders, constitutional confrontation issues and conditions of probation which distinguish these cases from other misdemeanor offenses. In short, law enforcement, pretrial services, probation officers, judges and attorneys involved in cases involving domestic violence require specialized training on the law and procedures related to these cases. There has been a general move towards criminal justice reform across this state and the nation. However, domestic violence has been exempted from these reforms and in fact; the general response to domestic violence has been harsher penalties, greater incidence of pretrial detention and a focus on punishment as opposed to rehabilitation. Mental Health in the criminal justice system is also a topic that garnered much attention. The incidence of individuals in the criminal justice system suffering from a mental health issue is likewise well documented. Like many other counties, Bexar County established a mental health specialty court and mental health public defender's office to address this need. It is unfortunate that until now the intersection of these two crises in criminal justice; mental health and domestic violence, has remained unaddressed.

Currently, Bexar County has responded to the issue of domestic violence by assigning two misdemeanor courts to hear all cases involving domestic violence. County Court 7 and County Court 13, presided over by Judge Michael DeLeon and Judge Rosie Speedlin Gonzalez respectively, hear all misdemeanor cases involving domestic violence. Each of the judges took office in 2018 with the intention of addressing the issue of domestic violence using new and innovative approaches to reduce the incidence of domestic violence in Bexar County and reducing recidivism. Despite the commitment of each of these judges, at the time they took office each of these courts were inundated with a large backlog of cases. At the time they took office, the two misdemeanor domestic violence courts had about 2,900 cases on their dockets while the other courts average about 1,100 cases each. This high volume of cases is reflected in the population of the Bexar County Jail.

The large of number of inmates is a reflection of the concerns of the court for public safety, the restrictions on bonds for individuals charged with domestic violence offenses and the concerns for public safety. Because many individuals charged with domestic violence are in pretrial detention, the prompt and efficient resolution of their case is of even greater importance. In addition, for the third quarter of FY 2018-19, County Court 7 and County Court 13 were two of the highest utilizers of jail beds.

Because of the complexity of domestic violence cases, the stigma of conviction and the collateral consequences of these cases, it often takes longer to resolve these types of cases. The District Attorney's Office is dealing with a crime in which there is great public interest. In addition, there is a

concern for the safety of the alleged victim and other family members. Because so many of the accused in these types of cases are incarcerated pretrial for the reasons related above, it is particularly important that counsel appointed to these cases be prepared to proceed immediately. Because court-appointed counsel carry a case load that is spread across all county and district courts and do not specialize in domestic violence cases only, it is difficult to focus attention to these cases and bring about a prompt resolution. The factors cited above contribute to the case dispositions in County Court 7 and County Court 13 having below average clearance rates.

Bexar County established a Mental Health Public Defender's Office in 2007. This office was charged with representing individuals accused of a misdemeanor charge and suffering from a co-occurring mental health issue. In 2017, the judges who previously presided over County Court 7 and County Court 13 did not allow the mental health public defenders to practice in cases involving family violence. This did not allow the specially trained mental health public defenders to provide representation to the mentally ill who were charged with a domestic violence offense. The newly elected judges of County Court 7 and County Court 13 recognize the need to address the issues of mental illness of those defendants appearing in their court and intent to remove this exclusion. The prevalence of mental health issues among those in the criminal justice system is well established. Sixty-four percent of people in local jails suffer from mental illness. In addition, the intersection of mental health issues and domestic violence is equally well established. The prevalence of intimate partner violence was found to be 45.6% among patients suffering from depressive disorders, 27.6% in anxiety disorders, and 61% for PTSD. Currently, County Court 7 and County Court 13 utilize only the court appointed wheel system to appoint attorneys to clients charged with a domestic violence offense. Despite the likelihood that an accused may be suffering from a mental illness at the time of the appointment, the current system randomly appoints an attorney who may or may not have experience dealing with the mentally ill.

The high number of jail bed days being utilized and the time to resolve these cases is a function of many variables. Certainly, the complexity of these cases and the difficulty in resolving them is exacerbated when the accused has a co-occurring mental health condition. The variables that are related to the subject matter of this grant include under-utilization of pretrial release and special treatment programs, lack of utilization of mental health services and attorney preparedness.

#### **d. Objectives**

This grant requests funding to provide three new Assistant Mental Health Public Defenders who would be assigned full-time to County Court 7 and County Court 13. These Assistant Mental Health Public Defenders would be assigned to represent defendants who are charged with a domestic violence offense and have a co-occurring mental health diagnosis.

The objectives of the program would be the following:

- 1) Increase utilization of pretrial diversion and treatment programs for defendants charged with domestic violence and suffering from a mental illness.
- 2) Decrease jail bed utilization for each of the domestic violence courts by 5% per year for 5 years.
- 3) Increase case clearance rates for County Court 7 and 13 by 2% per year for 5 years.
- 4) A reduction in recidivism among the clients represented by the Bexar County Public Defender's Office in the domestic violence courts.

#### **e. Activities**

Upon award of the grant in January 2020, the public defender's office would begin advertising for applicants for the positions approved. Specifically, the position would be filled by applicants with experience in domestic violence cases. Immediately upon hiring the attorneys, appointments of these attorneys to cases would begin.

Currently, the Bexar County Public Defender's Office is being appointed to misdemeanor cases for defendants with a co-occurring mental health diagnosis. The current mechanism of identifying clients with a mental health condition would remain the same. Since 2015, the Bexar County Public Defender's Office has been providing representation to individuals at magistration who are deemed to suffer from a mental illness. For those individuals charged with a misdemeanor offense, pretrial services will appoint the Bexar County Public Defender's Office. The same mechanism of appointment would be used for domestic violence cases. There currently exists sufficient volume of cases to fully utilize the requested attorney positions. A review of all cases represented by the Bexar County Public Defender's Office at magistration revealed the following information relevant to this grant application.

	Jun	Jul	Aug	Sep	TOTAL
Clients represented	2,482	2,955	2,790	2,690	10,917
Domestic Violence:	336	355	381	277	1,349
MH co-occurring	75	88	78	42	283

For the period from June 2019 to September 2019 a total of 10,917 arrested persons were represented by the Bexar County Public Defender's Office at magistration. Of that number, 1,349 were charged with a domestic violence offense. Of the 1,349 persons represented by our office who were charged with a domestic violence offense, 283 were determined to have a co-occurring mental health diagnosis. Through the funding of this grant, those 283 domestic violence cases with a co-occurring mental health diagnosis would be appointed to Bexar County Public Defender's Office. At magistration, the public defender's office would identify those arrested person identified in the program and request that pretrial services appoint these individuals to our office. In addition, the public defender on duty would request that these individuals be evaluated by the clinician for diversion into mental health treatment in lieu of incarceration. The budget for this grant proposes that more experienced attorneys be hired to provide representation for defendants with charges of domestic violence and a co-occurring mental health diagnosis. The attorney positions requested includes an Assistant Public Defender III and two Assistant Public Defender II's. To be considered for an Assistant Public Defender III position, an attorney must have at least seven (7) years' experience in criminal litigation experience and an Assistant Public Defender II must have at least five (5) years' experience in criminal litigation. The rationale for hiring more experienced attorneys is a function of the complexity of domestic violence cases, especially when they involve issues of mental health.

Based on the observations of our representation at magistration referenced above, there should be approximately 840 clients annually who are charged with domestic violence and have a co-occurring mental health condition. The Bexar County Public Defender's Office is aware of the Guidelines for Indigent Defense Caseloads published in January 2015 and has adopted those standards for our office. This proposal requests three new attorney positions to handle this specialized caseload of defendants charged with domestic violence and having a co-occurring mental health condition. The 840 cases handled by three attorneys would insure that the caseload limits of the office are well within the recommended level.

Once the notice of appointment is received by our office, the current protocols in place for our representation of clients would be followed. This protocol requires that for those individuals who are not released at the time of appointment, a personal jail interview must be scheduled and take place between the attorney and the client within 3 business days of our appointment. This initial client visit is crucial to begin early intervention on the case and is designed to identify client needs and expectations in the case. If release from detention is appropriate, the attorney will coordinate with the social worker in our office to seek out programs or services that meet the specific needs of the client so that immediately the court can be approached with a release plan to secure release of the client pretrial. It is also the policy of our office to immediately request all discovery in the case and begin early discussions with the District Attorney's Office on the case. Prior to the first court appearance, the attorney will be fully prepared to proceed to the resolution of the case, which includes being ready for trial, if necessary. This early preparation decreases pretrial delay regardless of the custody status of the client. In addition to having a full-time social worker staffed to assist on cases, our office was approved to hire a full-time investigator in the 2019-20 budget. This investigator would be available to assist the attorney in early preparation of the case, greatly reducing pretrial delays.

As the program develops, it is anticipated that the attorneys will work closely with the pretrial services department of Bexar County, the Mental Health Department of Bexar County and service providers throughout the county to deal with this population of clients. The object is to develop the best practices for counsel representing clients charged with domestic violence and suffering from a mental illness. These "best practices" would be shared with court appointed counsel representing similar clients through presentations and information sharing by our office.

#### **f. Evaluation**

Data driven analysis is critical the evaluation this program. As stated in the objective section of this grant proposal, there are numerous clear and defined objectives that have been established as measurable goals of this program. There will also be the opportunity to reassess the program and establish additional goals as the program progresses.

The specific goals presented in the objectives section of this proposal are discussed below.

1) Increase utilization of pretrial diversion and treatment programs for defendants charged with domestic violence and suffering from a mental illness

Currently, there are no policies that prohibit defendants charged with a domestic violence offense and suffering from a mental illness participating in the diversion programs that currently exist in Bexar County. There are also no policies in place which limit the ability of Bexar County Pretrial Services from supervising the identified population on a PR bond. However, these programs are often underutilized by the current attorneys practicing in the domestic violence courts. The chart below shows the number of persons who were placed under pretrial supervision with their "Special Needs Unit" (SNU). The SNU unit supervises person who were released on a PR bond for whom mental health treatment was a condition of the bond. The data shows as follows:

	Jun	Jul	Aug	Sep	TOTAL
Defendants assigned to SNU out of CC 7 and CC13	2	4	8	7	21

The data reveals that despite 283 persons being magistrates who were charged with domestic violence with a co-occurring mental health diagnosis, only 21 were released on a PR bond with mental health treatment as a condition. While the public defender at magistration, will in virtually all such cases, request a PR bond with SNU supervision, the magistrates generally prefer to allow the judges of the domestic violence courts to make the determination to release or not on this type of bond. The information above shows that the court-appointed attorneys currently providing representation in these cases are not requesting this type of relief for their clients. Because the Bexar County Public Defender's Office has a great deal of experience working with the mental health PR bond, the SNU unit of pretrial and the mental health service providers, the attorneys funded by this grant will be much more aggressive is utilizing this program to secure the pretrial release of their clients.

2) Decrease jail bed utilization for each of the domestic violence courts by 5% per year for 5 years. As discussed in the problem statement of this grant proposal, defendants charged with a domestic violence offense represent a disproportionate number of pretrial detainees in the Bexar County Jail. The goal of the Bexar County Public Defender's Office in regards to domestic violence cases is to reduce pretrial incarceration by diverting clients to programs in lieu of pretrial incarceration. In addition, the attorneys with our office will engage in zealous advocacy to secure pretrial release when possible or prompt resolution of the case when the court does not see pretrial release as appropriate in a given case. This is intended to directly reduce the jail bed utilization of each of the domestic violence courts. Bexar County currently publishes a quarterly judicial management report. These reports summarize judicial activity using various metrics. One metric is the "jail bed utilization" report for each court. Because jail bed utilization has been tracked by the county for each of the domestic violence courts for a substantial period of time, this will provide a baseline against which reductions of jail bed utilization by the domestic violence courts before and after the introduction of Mental Health Public Defenders into these courts can be compared. As stated in the objectives, this program has established a target of a 5% annual reduction in jail bed utilization annually for 5 years. This information is currently tracked and the findings published by the Bexar County Manager's Office. The baseline would be established prior to the full implementation of the program and a comparison with subsequent quarters will be made to determine if the goals are being met.

3) Increase case clearance rates for County Court 7 and 13 by 2% per year for 5 years. Also contained in the quarterly judicial management report is the "case clearance rates" for each of the courts, including the two domestic violence court impacted by this grant. The case clearance rate is a numerical representation of number of cases disposed of by a court as a percentage of the number of new incoming cases by the court. In other words, if a particular court were assigned 500 new cases in a given quarter and resolved 500 cases in a given quarter, the clearance rate would be 100%. To prevent a backlog of cases and to reduce existing backlogs, the courts all strive to have a clearance rate greater than 100%.

Currently the average clearance rate among all misdemeanor courts for the 3rd quarter of 2019-20 was 116% and the clearance rates for County Court 7 and 13 were 95.1% and 110% respectively. Like the jail bed utilization data, clearance rates have been tracked for a substantial period of time and the data is publically available. The baseline clearance rate will be determined prior to program implementation and future results will be compared to that baseline to determine effectiveness of the program.

4) A reduction in recidivism among the clients represented by the Bexar County Public Defender's Office in the domestic violence courts.

In addition to the efficiency measures outline above, the Bexar County Public Defender's Office proposes to track the effectiveness of the program by tracking the recidivism rates for clients represented by our program. Currently, because of the volume of overall cases filed annually, tracking individual recidivism rates is not practicable. However, because the Bexar County Public Defender's Office will be

representing a smaller population of defendants and the office will maintain substantial information on these clients, it will be possible to determine the recidivism rate for clients represented by our department through this program. The Bexar County Public Defender's Office will coordinate with the Bexar County Office of Judicial Management to establish a working definition of "recidivism" and conduct an analysis to determine recidivism rate for our clients.

The broad efficiency and effectiveness measure that will be tracked by this program must be viewed in the context of the volume of cases that the program will be handling. Per the 3rd Quarter 2018-19 Bexar County Judicial Management Report, County Court 7 and County Court 13 were assigned 669 and 608 cases respectively. Through our operations at magistration, the Bexar County Public Defender's Office identified 238 defendants with a charge of domestic violence and a co-occurring mental health condition. Therefore, if all identified defendants were appointed to the Bexar County Public Defender's Office under this program, that would represent approximately 16% of the total cases assigned to the two domestic violence courts during the same period. The efficiency goals of reduced jail bed day utilization and increased case clearance rates are ambitious. However, it is presented that the magnitude of the positive changes will be so great that the goals will be met despite the small percentage of the overall population that is served.

#### **g. Future Funding**

Bexar County has committed to the improvement of indigent defense and has committed significant resources and programs toward that goal. Funding beyond the grant period is consistent with county's goal of improved indigent defense. In addition, if the proposed objectives of the program are met, the fiscal savings to the county will insure future funding by the county.

#### **h. Budget Narrative and Budget Form**

##### Budget Narrative

Bexar County Mental Health Public Defender Program FY20 through FY23

(4-Year Request)

##### I. Personnel

Personnel for this grant request includes three full-time Assistant Public Defenders and one full-time Office Assistant. Year one, reflects nine-months salary and fringe. Year one personnel costs are estimated at \$287,369. Fringe are calculated at 21.585%, Medical at \$13,200; and worker's comp at \$400 annually. Years two through four include annual salary and fringe with a three percent increase for COLA; an eight percent increase in health benefits.

The three Public Defenders would be assigned to the County Courts at Law to whom all misdemeanor offenses involving domestic violence are heard, currently County Court 7 and County Court 13; they will represent defendants charged with a domestic violence offense and suffering from a co-occurring mental health issue. The Office Assistant will provide administrative support to the three Public Defenders.

##### II. Equipment

Computer Equipment for four staff will include a computer and printer, estimated at \$1,250 per computer, and \$350 per printer, for total cost of \$1,600. ( $\$1,600 \times 4 = \$6,400$ ). These are start-up costs.

##### III. Furniture

Office furniture four staff will include a desk and chair, estimated at \$1500 per desk and \$400 per chair, for a total cost of \$1,900. ( $\$1,900 \times 4 = \$7,600$ ). Years two through four include \$500 annually to replace chairs or desks. These are start-up costs.

##### IV. Training

Costs include \$235 for annual dues to the Texas State Bar Association for each Attorney for the four-year period at \$705 annually for three attorneys  $\times 4$  years = \$2,820. In addition to the dues, the grant request includes registration costs to attend conferences for professional development. Year 1, includes registration costs at \$150 for each Attorney ( $\$150 \times 3 = \$450$ ) to attend Mental Health Seminar in Austin, Texas presented by the Texas Criminal Defense Lawyers Association on February 21, 2020; and attendance to the Advanced Criminal Law Seminar, San Antonio, Texas to include registration costs at \$695 for each Attorney ( $\$695 \times 3 = \$2,085$ ). Total training costs for Year 1 are:  $\$705 + \$450 + \$2,085 = \$3,250$ . Conference training for Years 3-4 will be similar.

##### V. Contracted services

The Public Defenders Office uses Justice Works for their case management, and the contracted services includes \$2.00 per case opening in the case management system. Estimated cases to be opened annually is 1,050 cases  $\times \$2$  per case = \$2,100.  $\$2,100 \times 4 = \$8,400$

##### VI. Supplies

General office supplies to include pens, paper, file folders, highlighters and toner at \$875 per staff person (\$875 X 4 = \$3,500)

Personnel Costs		\$1,471,474.00
FTE's	4.00	
Salary	\$1,004,962.00	
Fringe Benefits	\$466,512.00	
Travel and Training		\$12,960.00
Equipment		\$15,500.00
Supplies		\$14,000.00
Contract Services		\$8,400.00
Indirect		\$0.00
Total		\$1,522,334.00
Required County Match		\$304,466.80
Total less County Match		\$1,217,867.20



Bexar submitted budget based on costs over four years. Annual program budget for year 1 is \$396,012.

## 2020 Culberson County Discretionary Grant Application Narrative

### a. Application Form

Counties Represented: **Brewster, Culberson, Hudspeth, Jeff Davis, Presidio**

Fiscal Year: **2020**

State Payee Identification Number: **746002433**

Division To Administer Grant: **County Judge's Office**

Program Title: **Culberson Mental Health Public Defender Program**

Requested Grant Amount: **\$64,719.47**

Financial Officer: **Mark A. Cabezuela**

Program Director: **Roy B. Ferguson**

Mailing Address: **PO Box 927; 300 LaCaverna; Van Horn, TX 79855**

### b. Introduction (Executive Summary)

The Far West Texas Regional Public Defender requests funding for a Mental Health Social Worker. This MSW-level employee will monitor compliance with Article 16.22, screen new clients for mental health, connect clients with and advocate for them with community-based services and entitlements, develop mitigation for their criminal cases, and accompany clients on probation to aid in successful completion of community supervision. The goals are to understand the role that mental health plays in criminal cases, to advocate for lower punishment or for alternate resolution, and to decrease recidivism through better access to supportive services.

### c. Problem Statement

The Far West Texas Regional Public Defender was created in October 2017 and covers an area of over 20,000 square miles and the following counties: Culberson and Hudspeth in the west, and Brewster, Jeff Davis, and Presidio in the east. The largest city is Alpine, with a population 5967. The county populations range from Brewster, the largest, at 9173 to Jeff Davis, the smallest, at 2204. The five counties include some of the highest poverty rates in Texas.

Mental health is a significant factor in much of the current caseload of the Public Defender. Without a dedicated staff member to coordinate, an objective percentage is unknown. Staff estimate over 75% of drug related cases to have a mental-health component, with the same for almost all cases related to methamphetamine. Of our clients currently in jail (24 persons across the 5 counties), staff could articulate a mental-health concern for 15 of them, many of which seem obvious to a layperson but are undiagnosed. Mental health factors into many non-drug cases. Upon a review of currently open cases (395 felonies and misdemeanors) staff identified about 50% for which they would currently ask a social worker to screen for mental health.

The five counties are served by one statutory MHMR provider: Permiacare, which has one physical office in four of the counties, and no office in Jeff Davis County. Given the large geographic size of the area, the office may be a two-hour drive from the consumer's residence. Basic issues, such as even securing an intake appointment, remain a challenge for consumers. Collecting and tracking records from previous service providers is difficult or impossible for some consumers, not to mention working with the local service provider to get proper documentation that would be relevant in a criminal case. Neither hospital in the region (Big Bend Regional Medical Center or Culberson Hospital) has a social worker on staff, nor do the local Permiacare offices.

In addition, Permiacare is currently the subject of a lawsuit, alleging a denial of services in this region. See *Permiacare v. L.R.H.*, 08-19-00144-CV (Tex. App.-El Paso). Our experience has been that 16.22 hearings have not been performed in a timely or consistent manner by Permiacare in any of our jails, leading to a lack of basic, verifiable data.

Because of the weather, geography, a busy railroad line, and Interstate 10, the Public Defender represents many people who do not live within the area but were travelling through or living in the area temporarily. The problems listed above are only heightened when service providers and records, as well as supportive personal relationships, are half a continent away.

In October 2018, the Texas Indigent Defense Commission funded an investigator position for the Public Defender. Up to 50% of his time has been consumed with mental-health related work, which necessarily limits the time he can spend on traditional investigatory work. As well, the investigator's work does not include such social-work related tasks as researching and coordinating substance-abuse rehabilitation

options, connecting consumers to appropriate housing and opportunities for income, and coordinating other supportive services. Addressing such basic needs not only will help Public Defender clients in the short term but should address deeper causes of recidivism in this population.

Compliance with the terms and conditions of probation poses a significant challenge for persons with mental-health issues. Three of the counties in the service area are served by one probation officer, and the other two also has one officer, from a different jurisdiction. It is not possible for those officers to regularly meet the needs of people with mental-health issues to aid them in successful completion of their probation terms.

#### **d. Objectives**

The desired outcome is to enhance the delivery of services to appointed indigent clients by a mental health social worker by identifying clients with mental-health issues and referring these clients to the appropriate services. The social worker will develop a formal procedure to both will better advise and assess clients with mental-health needs, both for those already consumers in the system and those not yet connected to mental-health services. Proposed targets and goals for the program include

1. Hiring a social worker or caseworker within 90 days of funding.
2. Providing services to at least 100 clients with mental health issues (one quarter of current office caseload) in the first year.
3. Receiving training in Article 16.22 evaluations and coordinating with the jails and the local MHMR provider to ensure proper services are provided.
4. Receiving training in the Chapter 46B standards and procedures, aiding in early identification and advocacy for potentially incompetent clients, and coordinating services with evaluators, treatment providers, the courts, and other interested parties.
5. Developing relationships with the local service provider, managers of housing options, faith communities, substance-abuse recovery groups, and veterans' services, among others, to provide a range of referrals and options.
6. Accompanying clients to intake and screening appointments to aid in navigating service providers' requirements.
7. Assessing clients for mental-health issues, using established tools with the objective of providing early intervention.
8. Assisting in the mitigation and advocacy aspect of client's criminal case.
9. Providing ongoing support to aid in the successful completion of probation.

#### **e. Activities**

This position does not currently exist at the Public Defender, and no comparable position exists at any organization in the five-county service area. Any portion of the work currently performed at the Public Defender is done so by staff untrained in social work with only a work-acquired knowledge of mental-health issues and no social-work training.

1. Hiring process for mental health social worker: Job description for social worker will be posted with Texas universities with social work schools and other appropriate sites. Personal contact will be made with appropriate career-services personnel to help recruit potential candidates.

2. Start-up tasks. The Public Defender is unaware of any social worker practicing in the geographic area. Start-up tasks involve a blank slate and include a range of activities.

- a. In office.

Modifying case management system. Creating internal procedures. Ordering necessary supplies. Creating outreach and informational materials. Reviewing current caseload. Training of current staff on identification, referral, and support needs.

- b. In the community

Meeting stakeholders and local criminal-justice offices, such as prosecutors, county and district judges, magistrates, jail staff, and probation officers. Meeting local employees in Permiancare, the MHMR regional provider, as well as their administration. Meeting other local low-income legal services providers (Legal Aid, Federal Public Defender). Meeting local social services providers, including hospitals, food banks, faith-based organizations. Identifying substance-abuse recovery options. Meet community leaders and advocates.

3. Ongoing program activities

- a. Early intervention to identify clients with mental health issues.

Social worker will work with magistrates to identify new arrestees with mental health issues, and work at appointment to identify those assigned and the relation between their mental health and the criminal charges.

Social worker will work closely with staff at each jail to be made aware of any clients that have mental issues that are appointed to our office shortly after their arrest.

Social worker will visit clients that are in custody, complete intake forms, and begin assessment of clients.

b. Identifying and assessing clients with mental-health issues at the office

Attorneys will provide list of clients with mental-health issues to social worker.

Social worker will set up appointments and meet with clients at the office or over the phone to assess mental health needs.

Social worker may conduct home visits to assess supportive needs, support structure, and other relevant issues.

Social worker will provide referrals to appropriate service providers and accompany to intake appointments.

Social worker will prepare memo regarding client mental-health assessment, review of records, and referrals, if any.

c. Litigation support

Social worker will obtain, review, and audit client medical and mental-health records, school records, developmental growth records, and employment records, if available and as needed, for mitigation and advocacy purposes.

Social worker will coordinate document transfer and scheduling with experts and service providers for Article 46B hearings and procedures.

Social worker will explore community-based options for competency restoration under Article 46B.

Social worker will consult with attorney and assist with a mitigation and advocacy plan as needed.

Social worker will create mitigation packets for use in negotiation, including mental health records, social histories, letters from people in support networks, and treatment and social goals.

Social worker will testify at bond hearings if necessary.

Social worker will testify at trial as needed.

d. Ongoing care

To aid in the successful completion of probation, social worker will provide follow-up services to clients placed on community supervision to aid:

Medication compliance.

Continuing access and utilization of community services during the term of probation.

Successful compliance with the terms of probation.

**f. Evaluation**

We are starting from zero, not only for the Public Defender but for the regional community. We will document and measure as follows:

1. Documentation of date social worker was hired and date service plan began.
2. Quarterly data reports. This report will document the number of clients visited while in custody, the number of clients who are receiving services, the number of referrals to service providers, the number of accompaniment services provided, and the number and types of litigation support.
3. Quarterly narrative report. This report will document the recommendations made in litigation support and include narrative of case outcomes for each client. Full report for internal use only, redacted versions to be made available to oversight board and TIDC as requested.
4. Intake forms and any referrals, if issued, will be kept for every client in the client's file.

5. Chief Public Defender will oversee performance and evaluate and review case management files to ensure that the social worker service plan is being implemented correctly.

**g. Future Funding**

The Far West Texas Regional Public Defender is on a sustainable funding model for rural programs with TIDC. The poverty of the 5 counties is overwhelming, and the tax base for county governments is low.

The counties request TIDC to deviate from the published funding schedule and fund this position at 100% for first two years and 80% each of years 3 and 4. After year 4, the counties will request the position to be absorbed into the ongoing sustainable grant at the rate set for the remainder of the program. The counties will modify their interlocal agreement to reflect the increased costs after year 2.

**h. Budget Narrative and Budget Form**

Estimated first-year costs at \$80,899.34, with annual costs thereafter at \$78,299.34.

1. Salary: \$50,000. After consulting with career-services personnel at the social-work schools at the University of Houston and Texas Tech University, this job description fits most closely for a person with a Masters in Social Work. According to those same sources, average starting salaries for that level of qualification for recent graduates is almost \$49,000, and ranges from around \$40,000 to over \$70,000.

Although the region covered is rural, living expenses run high. The office is located in Alpine, in Brewster County, and the area is highly touristed relative to the resident population, resulting in high housing costs. In addition, recruiting for a rural office continues to be a challenge. Without a competitive salary, the position would be difficult or impossible to fill, a problem already experienced with attorney recruitment.

2. Fringe benefits: 14,999.34, according to the Culberson County Auditor.

3. LCSW supervision: \$5,000. According to career-services personnel at the social-work schools at the University of Houston, University of Texas-El Paso, and Texas Tech University, most entry-level MSW employees receive outside supervision from an LCSW. Large organizations with LCSW employees on staff absorb that cost into the salary of the LCSW staffperson. Though not required for performing work duties, it is required for career development and advancement. Most candidates will be looking for this benefit, and not offering it would negatively impact recruitment in a significant way.

4. Cost of work-related travel: \$5,000. Travel is a regular and expensive part of daily work in this region. Under-estimating travel needs for the office has been a problem in previous fiscal years. For FY2018-19, the case-related travel for the office was over \$10,000 for three attorneys and an investigator. Significant savings were made by combining tasks, such as court appearances and investigations. The office expects travel expenses for the investigator to increase this year, as the use of his position increases the independent work demands. The social worker position will be even more difficult to coordinate and will require more independent travel.

5. Cost of training with related travel: \$2,000. The most expensive cost for training for our current employees is travel to training. This proposal budgets \$500 for training and \$1,500 for travel related to training.

6. One-time equipment: \$2,600. Computer: \$1,600. Furniture and related supplies: \$1,000.

7. Supplies: \$1,300. Includes software licenses.

8. Cost of rental space currently is \$0. Brewster County provides office space in county property, including utilities and cleaning services.

Personnel Costs		\$64,999.34
FTE's	1.00	
Salary	\$50,000.00	
Fringe Benefits	\$14,999.34	
Travel and Training		\$12,000.00
Equipment		\$2,600.00
Supplies		\$1,300.00
Contract Services		

Indirect	
Total	\$80,899.34
Required County Match	\$16,179.87
Total less County Match	\$64,719.47

Done

## 2020 Lavaca County Discretionary Grant Application Narrative

### a. Application Form

Counties Represented: **Lavaca**

Fiscal Year: **2020**

State Payee Identification Number: **1746001030**

Division To Administer Grant: **County Judge**

Program Title: **Lavaca County Mental Health Social Worker Program**

Requested Grant Amount: **\$62,064.80**

Financial Officer: **Shana R. Opela**

Program Director: **Tramer J. Woytek**

Mailing Address: **PO Box 243; 109 N. LaGrange, 1st Floor; Hallettsville, TX 77964**

### b. Introduction (Executive Summary)

Lavaca County is a rural county with a sustained population between 19,500-20,500. For the past several years we have struggled to provide adequate defense for our indigent population accused of crimes in Lavaca County who suffer from mental illness. Since implementing the public defender program in 2018, Lavaca County has moved cases through the court system more efficiently, however, the increase in mentally ill defendants continues to steadily grow. Lavaca County seeks help from the Texas Indigent Defense Commission to improve the quality and reliability to meet the needs of the mentally ill indigent defendants.

### c. Problem Statement

The increase in defendants and many who are detained in local jails who suffer from mental illness continues to steadily grow. Many of the inmates detained in county jail live with co-occurring mental health illness and substance use issues. Their untreated and undiagnosed needs can lead to a behavior that results in their repeated re-entrance into the criminal justice system. Jails are legally mandated to provide health services to inmates; however, the quality and availability of mental health services can vary widely between facilities. As a rural county, there are fewer resources for those defendants with mental illness. Therefore, they may experience a faster deterioration of their mental health status due to the untimely response for their need of mental health services. For the defendants who remain in county jail, the deterioration may even be faster due to the lack of necessary resources needed to meet the needs of the detainees with mental health conditions. The implementation of a mental health public defender social worker would greatly reduce the amount of time in identifying those defendants with mental health issues. Studies estimate that over half of all adults who are in jail have at least one mental health condition. County jails are overrun with individuals with untreated serious mental illness whose crimes are often a product of their failure to have been treated. Criminal cases involving people with mental health conditions often present unique legal issues that require specialized knowledge and skills. Public defender programs can train attorneys and social workers on mental health-related issues in order to better serve defendants with mental illness. Many mental health disorders may be present before arrest, but they may be further exacerbated by the stress of confinement. Identifying this early on is imperative to those mental health needs.

Jails are often difficult and demanding working environments. The presence of inmates with untreated mental disorders can further complicate and negatively affect the jail environment and place an even greater demand on the jail staff. The detection, prevention and proper treatment of mental illness is imperative not only for the defendant but jail staff as well. Social workers have become essential mental health providers in correctional settings by getting to know the defendant and trying to understand what led to the behavior and address the problem or concern rather than punish the individual.

As of this date, the Public Defender's Office has 83 clients. Of those, 30 have been diagnosed/reported to have a variety of mental health issues. These issues include: depression, anxiety, anger disorder, oppositional defiant disorder, bipolar, seizures, speech disorder, PTSD, schizophrenia, learning disability, ADD, ADHD, Alzheimer's, Parkinson's, borderline personality disorder, traumatic brain injury, hallucinations, auditory hallucinations and suicidal thoughts.

The grant would be a great boost to make a positive improvement to meeting the needs of mentally ill indigent defendants in our small county with a population of less than 50,000.

### d. Objectives

The Mental Health Public Defender Program will be a managed program able to assess and apply

resources for the purpose of identifying the needs of indigent defendants with mental health illness. They will work closely with a regional mental health program identifying and diverting mentally ill defendants who would possibly slip through the system without those needs being treated and managed. This newly created position will work hand in hand with the Lavaca County Public Defenders Office.

The objectives of adding a mental health social worker to the public defender's program are:

- \* To provide early identification and specialized representation of indigent defendants with mental illness;
- \* To ensure those defendants needs are met quickly and efficiently in order to begin a treatment plan;
- \* To work with regional mental health authorities for evaluation, treatment and/or recommendations for services needed by the defendant;
- \* To assist with a cohesive transition from criminal prosecution to post conviction treatment which can reduce the recidivism rates of those defendants.
- \* To divert indigent defendants with mental illness who commit low level offenses away from county jail and into treatment facilities.
- \* To improve mental health screenings, safety and suicide prevention procedures in jail.
- \* To minimize the number of days that indigent defendants with mental illness spend in jail.
- \* To reduce recidivism by proving specialized case management services.
- \* To enhance legal representation by providing information from staff with specialized knowledge needed to assist in defending persons with mental illness.

**e. Activities**

Office space, equipment and supplies will be secured for the new position. Texas RioGrande Legal Aid (TRLA) will add the full-time position to the Public Defender's Office. The Public Defender's Office currently employs two full-time attorneys and one full-time assistant/investigator. The mental health social worker along with TRLA will interview detainees in the Lavaca County Jail, screen them for mental health problems and work with jail staff identifying any special needs for those that need assistance. In doing so, this will allow for immediate filings to divert mentally ill defendants out of jail and into the correct care stream. The responsiveness will tremendously improve the mentally ill defendants being identified in a timely manner allowing them to receive due process in a manner better suited for their needs.

In turn, this will also allow for accurate tracking of mental health patients in the criminal justice system of Lavaca County. This information is vital not only to provide proper care for the patient/defendant but provide important information to the county jail, the prosecutors office, as well as the court.

**f. Evaluation**

A reliable set of systems are and will be in place to gauge the success of this program. TRLA will provide a monthly report on the program. The jail who reports monthly to the court will be able to show a reduction in the amount of over incarcerated indigent mentally ill inmates. Less time and effort will be spent in court with defendants who need mental health services because those needs will be identified prior to reaching that step in the system. Early detection of mentally ill defendants and assisting or overseeing those defendants receive proper treatment should result in successful compliance with terms of release and lower recidivism rates.

**g. Future Funding**

Lavaca County requests 80% funding for the first year of the program, 60% for the second year, 40% for the third year and 20% for the fourth year. Lavaca County is committed to the proposed funding model.

**h. Budget Narrative and Budget Form**

Lavaca County currently contracts indigent defense services to Texas RioGrande Legal Aid, Inc. The implementation of the Mental Health Social Worker would be contracted through the public defenders office and work directly with Texas RioGrande Legal Aid, Inc. The budget amount is for the total of contract services for one full-time social worker's salary, benefits and all other expenses.

Personnel Costs	\$0.00
FTE's	

Salary	
Fringe Benefits	
Travel and Training	
Equipment	
Supplies	
Contract Services	\$77,581.00
Indirect	
Total	\$77,581.00
Required County Match	\$15,516.20
Total less County Match	\$62,064.80



## Grant Budget Adjustment Request

### El Paso County

#### Mental Health Litigation and Advocacy Unit

#### FY2020 Continued Improvement Grant (Year 3 of 4)

When submitting the continuing improvement grant request for the third year of the four year award, the county inadvertently left salary and fringe costs for one investigator position out of their budget. This position was included and approved in the original grant application and second year funding. Given the 60% county match, the increase in the TIDC award would be \$32,501.

The following table outlines the requested budget adjustment:

	Approved FY20	Proposed FY20
Personnel - Salaries (Total number of FTEs:11)	\$ 790,815	\$ 847,710
Fringe Benefits	\$ 255,359	\$ 279,717
Travel and Training	\$ 15,000	\$ 15,000
Supplies	\$ 5,645	\$ 5,645
Total Budget	\$ 1,066,819	\$ 1,148,072
Less County Match	\$ 640,091	\$ 688,843
Total Amount Funded by Commission	\$ 426,728	\$ 459,229

#### Staff Recommendation

Approve budget adjustment and increase the FY2020 Improvement Grant Award to El Paso County by \$32,501, from \$426,728 to **\$459,229** and amend the FY2020 budget to reflect the increase.

## Grant Budget Adjustment Request

### Hays County

#### FY2020 Indigent Defense Coordinator Grant

TIDC approved a grant request to Hays County for a new Indigent Defense Coordinator program in August 2019. After receiving the statement of grant award, the county notified TIDC that the approved budget submitted with the original request omitted some program costs they intended to include.

	Approved FY20	Proposed FY20	Difference	Recommended
Personnel - Salaries (Total number of FTEs:1)	\$49,913	\$49,913	--	\$49,913
Fringe Benefits	\$10,217	\$22,279	\$12,062	\$22,279
Travel and Training	\$1,700	\$2,000	\$300	\$2,000
Equipment and Start-Up	\$11,846	\$7,556	(\$4,290)	\$7,016
Supplies	\$3,000	\$10,300	\$7,300	\$3,100
Total Budget	\$76,676	\$92,048	\$15,372	\$84,308
Less County Match	\$15,335	\$18,410	\$3,075	\$16,862
Total Amount Funded by Commission	\$61,341	\$73,638	\$12,297	\$67,446

The main difference in figures owes to the county omitting the cost of insurance in the original requested fringe amount.

**Staff Recommendation** Approve a budget adjustment to increase the FY2020 Improvement Grant Award to Hays County by \$6,105, from \$61,341 to **\$67,446**. Some ineligible costs were excluded from the recommendation, including a \$3,200 annual copier lease, \$2,000 in postage costs, and \$2,000 for forms printing. The need for copier, postage, and forms is routine and exists independent of the IDC program. A desktop computer that was requested in addition to a laptop/docking station/double monitor setup was also excluded from the recommendation.

# Budget Adjustment Request

Culberson County (Also serving Hudspeth, Brewster, Presidio and Jeff Davis)

## Far West Texas Regional Public Defender Program

### FY2020 Sustainability Grant

#### Background

- The Far West Texas Regional Public Defender Office was created in partnership with 5 rural counties through a TIDC grant in 2018.
- Participating counties include some of the poorest in Texas. The district also includes a federal highway checkpoint that generates a disproportionate number of indigent cases per capita.
- The program currently operates with 5 staff: a chief defender who carries a substantial caseload, two assistant public defenders, an investigator and a legal assistant.
- The program has successfully addressed a critical shortage of competent counsel in the region in both felony and misdemeanor courts.
- FY2019 was the first full year of the program's operation.
- The current approved budget for the program is \$408,000 for the 5-county region.
- Developing the budget for this program was challenging. Cost estimates were uncertain, largely because of the challenges of covering a remote region that encompasses some of the geographically largest counties in the United States.

#### Part I of Budget Adjustment Request

- Non-personnel expenses in FY2019 were \$24,620 (6%) over budgeted amounts in FY19.
- The difference is based mostly on actual travel costs being higher than budgeted. Additionally, training and other ongoing operating expense actuals were also higher than estimated.
- Part of the overage was offset by a brief vacant misdemeanor attorney staff position. The overage nets out to **\$13,915 for the FY19**, or approximately 3.5% of the total budgeted amount.
- **Staff Recommendation:** Increase the FY20 Culberson County Sustainability Grant Award by \$13,915, from \$408,800 to **\$422,715**.

#### Part II of Budget Amendment Request

The program has submitted a detailed budget adjustment request with narrative explanation on the following pages.

- Adjust the operating budget to align with actual costs for travel, training, and operations.
- Adjust salary budgets based on comparable DA salaries.
- Total requested program budget increase is \$106,669.
- Based on the program's sustainability grant match, \$27,757 would be covered by participating counties and \$78,912 by the requested increase in the TIDC grant.
- **Staff Recommendation:** Increase the FY20 Culberson County Sustainability Grant Award by \$78,912 to **\$487,712**.

(If both requests are approved, revised FY20 award would be \$501,627, shifting to \$487,712 in FY21.)

CARLOS G. URIAS  
CULBERSON COUNTY JUDGE

P.O. Box 927  
Van Horn, Texas 79855



(432) 283-2059 | Fax (432) 283-9234  
carlos.urias@co.culberson.tx.us

December 5, 2019

Texas Indigent Defense Commission  
209 West 14th Street, Room 202  
Austin, Texas 78701  
*via email to [ecolfax@tidc.texas.gov](mailto:ecolfax@tidc.texas.gov)*

My name is Judge Carlos Urias, and I am the elected County Judge of Culberson County. As the fiscal agent and grant recipient for the Far West Texas Regional Public Defender, **I am writing to request a modification of the grant from the Texas Indigent Defense Commission for this project in the amount of \$78,912.41, increasing the total budget currently funded from \$408,800 to \$515,469.20.** The five participating counties will be responsible for the difference.

Through your help, the Far West Texas Regional Public Defender has changed the system of justice in our region. The Constitution is better protected because of the work that they do, and defendants receive the rigorous and zealous representation they deserve.

As county judge, I see the work the office performs at each of my dockets. My sheriff has come to rely on the office to monitor defendants in jail and to keep their cases moving, not only saving the county money but also improving the justice system. I have also watched the office in court in felony jury trials. I am confident that the quality of work they provided could not be matched anywhere in this region.

More quickly than I imagined, this office has become a relied-upon part of system of justice in our region. Yet, the current budget does not ensure stability or sustainability. Some things simply cost more than anticipated, especially the travel portions. And the salaries are so significantly under parity that retention and recruitment of the attorneys is looming as a real issue. We now need to bring this program to a place of sustainability and stability.

Thank you for the support and resources you have given to this region already. With your help, we want to ensure that the Far West Texas Regional Public Defender continues to help us improve and perfect our system of justice.

Sincerely,

A handwritten signature in black ink that reads "Carlos Urias". The signature is written in a cursive style with a large, looping initial "C".

**FAR WEST TEXAS REGIONAL PUBLIC DEFENDER'S OFFICE**  
**PROPOSED BUDGET**  
 Prepared November 2019

Salaries	Current	Proposed	Difference
Chief Public Defender	\$ 90,000	\$120,000	\$ 30,000
First Assistant	\$ 72,500	\$100,000	\$ 27,500
Misdemeanor	\$ 60,000	\$ 60,000	\$ 0
Investigator	\$ 40,000	\$ 45,000	\$ 5,000
Administrative Assistant	\$ 35,000	\$ 40,000	\$ 5,000
<b>Total</b>	<b>\$297,500</b>	<b>\$365,000</b>	<b>\$ 67,500</b>
Benefits			
Health Insurance	\$ 38,496.70	\$ 38,496.70	\$ 0
Retirement	\$ 20,825	\$ 25,550	\$ 4,725
Taxes	\$ 22,758.75	\$ 27,922.50	\$ 5,163.75
<b>Total</b>	<b>\$ 82,080.45</b>	<b>\$ 91,969.20</b>	<b>\$ 9,888.75</b>
	(actual)		
Travel & Training			
Case-related travel	\$ ****	\$ 15,000	\$ 15,000
Investigator related travel	\$ 4,000	\$ 4,000	\$ 0
Training costs	\$ ****	\$ 5,000	\$ 5,000
Travel related to training	\$ ****	\$ 10,000	\$ 10,000
Original atty travel and training budget	\$ 6,000	\$ ****	-\$ 6,000
<b>Total</b>	<b>\$ 10,000</b>	<b>\$ 34,000</b>	<b>\$ 24,000</b>
Equipment & Supplies			
Office equipment contracts	\$ ****	\$ 8,000	\$ 8,000
Office subscription services	\$ ****	\$ 10,000	\$ 10,000
Office supplies	\$ ****	\$ 3,500	\$ 3,500
Original total budget	\$ 18,000	\$ ****	-\$ 18,000
<b>Total</b>	<b>\$ 18,000</b>	<b>\$ 21,500</b>	<b>\$ 3,500</b>
Rent, utilities, cleaning service (annual estimated value of \$20,000,, provided by Brewster County)	\$ 0	\$ 0	\$ 0
Discretionary			
	<b>\$ 0</b>	<b>\$ 3,000</b>	<b>\$ 3,000</b>

Total	\$408,800.00	\$515,469.20	<b>\$106,669.20</b>
TIDC portion	\$280,831.00	\$359,743.41	<b>\$ 78,912.41</b>
Counties' portion	\$127,969.00	\$155,725.79	<b>\$ 27,756.79</b>

**County contributions by County, according to current percentage allocation defined in the interlocal agreements**

	<b>Current</b>	<b>Proposed</b>	<b>Difference</b>
<b>Brewster</b> (45.32%)	\$ 58,000	\$ 79,580.34	<b>\$ 12,580.34</b>
<b>Culberson</b> (11.72%)	\$ 15,000	\$ 18,253.54	<b>\$ 3,253.54</b>
<b>Jeff Davis</b> (7.95%)	\$ 10,179.25	\$ 12,387.15	<b>\$ 2,207.90</b>
<b>Hudspeth</b> (18.76%)	\$ 24,000	\$ 29,205.66	<b>\$ 5,205.66</b>
<b>Presidio</b> (16.25%)	\$ 20,789.75	\$ 25,299.10	<b>\$ 4,509.35</b>

**FAR WEST TEXAS REGIONAL PUBLIC DEFENDER’S OFFICE**  
**PROPOSED BUDGET NARRATIVE**  
 Prepared November 2019

<b>SALARIES</b>	Current	Proposed	Difference
Chief Public Defender	\$ 90,000	\$120,000	\$ 30,000
First Assistant	\$ 72,500	\$100,000	\$ 27,500
Misdemeanor	\$ 60,000	\$ 60,000	\$ 0
Investigator	\$ 40,000	\$ 45,000	\$ 5,000
Administrative Assistant	\$ 35,000	\$ 40,000	\$ 5,000
<b>Total</b>	<b>\$297,500</b>	<b>\$365,000</b>	<b>\$ 67,500</b>

The current salary levels are not set at a level to encourage long-term stability or sustainability.

**Chief.** The local elected DA (83rd District Attorney) makes **\$140,000**. She covers **3.5 counties**—three are Brewster, Jeff Davis, and Presidio. In Pecos County, she covers half the cases, the other half being covered by the 112th District Attorney. She does not handle any misdemeanors. By contrast, the FWTRPD covers **5 counties**, including misdemeanors. Though the misdemeanor burden is small, it is growing through our efforts, and those cases and court dockets consume a disproportionate amount of time.

Surveys of other public defender offices, both in Texas and elsewhere, such as Colorado and Maryland, indicate a salary of \$120,000 to be appropriate, based on the number of employees, the management plus caseload duties, and the area covered. In addition, should the position become open, recruitment of a qualified lawyer at a salary of \$90,000 would be incredibly difficult. It will not be competitive enough to encourage applicants to move to the area, and the one non-retired attorney in the area who would qualify is focusing his practice in federal court—and making more money with a significantly smaller time commitment than the chief position requires.

**First Assistant.** The DA’s first assistant makes **\$100,000**. He lives in Pecos County and mainly handles the cases there—only half of the felonies of that county. Given the caseload carried by the FWTRPD First Assistant, a salary of \$100,000 would be well justified. For long-term planning, the original salary is not sufficient for three reasons. It is not enough for recruitment or retention issues. And, caseload requirements make difficult maintaining a profitable outside practice, contrary to what was expected before the office was funded.

**Recruitment.** The position currently prefers seven years’ experience with ten jury trials. This person would need to be able to handle as first chair any serious first-degree felony, including murder or continuous sexual abuse of a child. An attorney with that kind of experience does not practice in the area, save the one

person mentioned above. Recruiting to fill the position, both initially and when it opened the second time, led to almost no qualified applicants. The current employee was recruited locally.

**Retention.** As law school tuition has increased, so has the student loan burden of younger lawyers. Although many of the very top law schools offer loan repayment assistance, many of those lawyers, if they are looking for public defender jobs, will sift themselves into the federal system, with the higher salaries, benefits, and perceived status. As a result, many younger lawyers are saddled with excessive student-loan debt. Because of his debt, the current first assistant believes he can only afford to remain in this job at this salary for another year. (As a side note, we recently lost our misdemeanor lawyer to a job with a slightly lower salary but generous loan repayment assistance; she simply could not decline that option for financial reasons). Thus, this retention problem cycles back into a recruiting problem.

**Outside practice.** The plan has been that this employee could supplement with the salary by maintaining a small civil practice. Yet, this position requires full-time work. Each attorney in the office is currently carrying close to the TIDC caseload standards, in a jurisdiction with regular four-hour round-trip commutes to court. Between dockets and trials, jail visits and case prep, the time available does not allow for a profitable side practice. Purely on the caseload numbers, for example, a full criminal caseload under TIDC standards supplemented with outside civil cases, and the practice management required to maintain that practice, risks creating problems the caseload standards were meant to solve. With this new salary, the employee would still be able to take private civil cases, but on a much smaller scale as he currently needs to break even.

**Misdemeanor lawyer.** This budget does not request an increase in this salary. It seems competitive with urban entry-level prosecutor salaries. Our current employee has been with us for three months. For long-term planning, student-debt burdens will be a real problem for recruiting and retention. The current employee does not have student loans, having attended Texas Tech Law School under the GI Bill, and he currently supplements his salary with benefits he receives as a disabled veteran. The salary will need to be adjusted in about two years.

**Investigator.** TIDC funded this position just over a year ago. It does not actually need an increase at this time, but the Administrative Assistant does, as noted below, and it does not make sense to pay them the same.

**Administrative Assistant.** This position is underpaid in this market. Around the courthouse complex in Brewster County, similar positions are paying \$37,500 to \$42,500.

## BENEFITS

Health Insurance	\$ 38,496.70	\$ 38,496.70	\$ 0
Retirement	\$ 20,825	\$ 25,550	\$ 4,725
Taxes	\$ 22,758.75	\$ 27,922.50	\$ 5,163.75
<b>Total</b>	<b>\$ 82,080.45</b>	<b>\$ 91,969.20</b>	<b>\$ 9,888.75</b>

(actual)

Taxes and retirement are purely a percentage of salary, and so those numbers increase with increased salaries. Health insurance is a constant per employee. The actual cost of health insurance was slightly lower than was originally budgeted.

## TRAVEL & TRAINING

Case-related travel	\$ ****	\$ 15,000	\$ 15,000
Investigator related travel	\$ 4,000	\$ 4,000	\$ 0
Training costs	\$ ****	\$ 5,000	\$ 5,000
Travel related to training	\$ ****	\$ 10,000	\$ 10,000
Original atty travel and training budget	\$ 6,000	\$ ****	-\$ 6,000
<b>Total</b>	<b>\$ 10,000</b>	<b>\$ 34,000</b>	<b>\$ 24,000</b>

**Case-related travel.** We spent almost \$11,000 on case-related travel last year. In general, all travel not related to attending court dates received advance approval from the Chief. We expect this cost to increase. Our open caseload is approximately twice what it was a year ago. In addition, some cases require in-person viewing of discovery in El Paso (the DA in El Paso covers Hudspeth and Culberson Counties), and half a day spent in El Paso requires an overnight stay. Any oral argument granted on appeals, trials, and other hearings will increase the travel costs. An increase of \$4,000 will be workable but will not leave much room for unanticipated costs.

**Investigator-related travel.** In the first year of the investigator, we have tried to tie investigator travel as much as possible to other case-related travel. We can no longer do that as much. The cases that have announced for trial or require out-of-office investigation have increased. As well, law enforcement in some of the more remote areas of the counties has increased cases generated from those regions. All traditional investigation work in remote areas will increase this fiscal year. We should keep this budget, though it will be monitored throughout the year.

**Training.** This seems an adequate amount to pay for training costs.



**CONCLUSION**

Total	\$408,800.00	\$515,469.20	<b>\$106,669.20</b>
TIDC portion	\$280,831.00	\$359,743.41	<b>\$ 78,912.41</b>
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<b>Presidio</b> (16.25%)	\$ 20,789.75	\$ 25,299.10	<b>\$ 4,509.35</b>

The goal of this budget is to fund the Far West Texas Regional Public Defender in a way that is sustainable and focused on long-term stability, based on actual data and not conjecture. The original budget was inadequate to perform the tasks required of this office, and salaries were set at a level that could only hinder recruitment and retention. Both problems were a result of estimates based on inadequate and non-existent data. This budget attempts to remedy those problems.

## Technical Support Grant Request

**County:** Hays

**Project:** Defense Counsel at 15.17 Magistration Randomized Control Trial (RCT) Pilot Project

**Request:** \$136,500

### Summary

Persons arrested in Texas are generally not provided counsel at magistration. Yet many significant decisions—including pretrial release—are decided at magistration. While courts continue to split regarding whether counsel at magistration is required under the Sixth Amendment, Texas A&M and Harvard seek to measure the positive effect of counsel at magistration on case outcomes, public safety, and cost. The four Texas counties that currently have counsel at magistration have provided anecdotal evidence that all three of these are improved by counsel’s presence. However, the issue has not been studied with any rigor.

Hays County has agreed to participate in a randomized control trial (RCT) to provide defense counsel for some arrestees at magistration in order to evaluate the impact of such representation. The study will be the first of its kind in the nation, and an RCT study is considered the “gold standard” for evaluating the impact of new programs or interventions. Arnold Ventures (formerly Arnold Foundation) has provided a grant to the Public Policy Research Institute at Texas A&M (PPRI) to conduct the research component of this project. Hays County is requesting grant assistance from TIDC to fund the cost of providing representation, which will be provided by private attorneys from the Hays County appointment list during the pilot project. The results of the study will help inform jurisdictions across the state and nation about the impact of counsel at first appearance.

TIDC approved a parallel grant to Lubbock County at the August 2019 meeting for the same project.

### Staff Recommendation

Award a Technical Support Grant of \$136,500 to Hays County to support the representation costs of the one-year pilot project that will be the subject of the RCT research.



## Technical Support Application Form

<b>County Requesting Support:</b>		<b>Date of Request:</b>
Hays County		11/26/2019
<b>Address:</b>	<b>Contact Information</b>	
712 S. Stagecoach Trail	Name:	Lon Shell
San Marcos, TX 78666	Title:	Commissioner Pct. 3
	E-mail:	lon.shell@co.hays.tx.us
	Phone:	(512) 847-3159
	Fax:	(512) 847-7352 (fax)

<b>Project Name:</b>	<b>Time Period:</b>
Counsel at First Appearance – Randomized Controlled Trial	March 1, 2020 – February 29, 2021
<b>Brief Description:</b>	
<p>The bail hearing – the “first appearance” of a defendant in front of a judge or magistrate – constitutes an important moment where a defendant’s ability to secure their freedom is in jeopardy. Currently, counsel is not present at this juncture, which presents several problems for defendants, who are ill-suited to navigate this stage alone. Although preliminary studies have been conducted elsewhere, it is unclear how these defense services might benefit defendants and county stakeholders in Hays.</p>	
<b>Issue to Be Addressed:</b>	
<p>The provision of counsel may improve case outcomes by 1) right-sizing pretrial release conditions, and 2) reducing failure to appear because defendants understand their pretrial release conditions. The study will seek to answer the following questions:</p> <ol style="list-style-type: none"> <li>1. Does counsel at first appearance have an impact on bail and pretrial release conditions decisions?</li> <li>2. For those who are released pre-trial, do defendants with counsel at first appearance exhibit lower FTA rates than those without such representation?</li> <li>3. Does counsel at first appearance impact case disposition, sentencing, or pre- or post-trial recidivism?</li> <li>4. Does counsel at first appearance have an effect on arrestees’ attitudes toward the legal system?</li> <li>5. What is the cost-benefit ratio for jurisdictions interested in piloting this program?</li> </ol>	

**Proposed Project to Address Problem:**

In partnership with the Public Policy Research Institute's (PPRI) randomized controlled trial (RCT) to study counsel at first appearance (CAFA), we seek grant funding to temporarily fund this counsel. It is our belief that the provision of CAFA should primarily reduce FTEs and unnecessary jail days, which are both poor outcomes for our jurisdiction. We believe that this grant support is vital to justifying the longer-term provision of these defense services.

Specifically, attorneys will gather very basic information from defendants using a protocol developed by the National Association of Criminal Defense Lawyers. This protocol involves collecting basic demographic information, including employment, residence, family dependencies, health issues, and access to financial resources for bail prior to magistration. The attorneys will use this information to provide a narrative background for the client at magistration and should be able to provide a measure of advocacy for the defendant that they could not, alone, produce.

**Specific Assistance Needed from the Commission, Including Amount Requested:**

The introduction of counsel at first appearance requires additional hours of attorney time. At present, we service approximately 22 new cases each day (~154/week). Given that the randomization feature of the RCT involves assigning roughly 50% of new cases to attorneys at first appearance, there will be 182 days where counsel is present over the course of a full year. Between defendant interviews (1 hour per attorney) and magistration (budgeted 4 hours), this is about 5 hours of attorney time per day.

Counsel will involve 2-person teams x 5 hours of attorney time per day x 182 days. That results in 1,820 hours of attorney time. At \$75/hour, the total cost of attorney services is estimated at \$136,500 to run the pilot program for a full year.

Thus, we request \$136,500 in funding for this program.

**Report**

- Deliverable 1: After the first study year, researchers from PPRI will submit a technical report to the participating counties describing the ongoing project, as well as conveying the descriptive statistics associated with service utilization. After the conclusion of the study, they will submit a follow-up report to the counties describing the empirical results. A cost-benefit analysis will be included to provide information to the Commissioner's Courts about the long-term sustainability of the project. These documents will *also* be sent to TIDC.
  
- Deliverable 2: Given the investment in project protocol, the systematic study of counsel at first appearance will allow researchers to validate the materials used by counsel. The checklist that guides attorney interactions will be available for other jurisdictions in Texas – and, we hope, nationally – to adopt.

**Additional Documentation if Applicable (describe here and attach to this Application)**

Cost estimate calculator (attached)

Hays County requests the above Technical Support from the Texas Indigent Defense Commission (Commission). We understand that:

1. The above requested technical support is subject to approval by the Commission.
2. This application does not constitute an agreement until approved and accepted by all parties.
3. Commission reimbursement will only be made for expenses incurred during the period indicated in this request but in no case may it be for expenses prior to the beginning of this agreement or after the end date agreed in writing with the Commission.
4. The county may not obligate Commission funds or staff without a specific written agreement.
5. Disbursement of funds is always subject to the availability of funds.

  
\_\_\_\_\_  
Signature

Ruben Becerra  
\_\_\_\_\_  
Printed Name

12/2/19  
\_\_\_\_\_  
Date

Hays County Judge  
\_\_\_\_\_  
Title

Table 1. Costs for attorney services in participating counties, assuming two-attorney teams

		Hays
[1]	Cases	22 / day
[2]	Interview time	5 min.
[3]	Total interview time (Row 1 × Row 2)	~2 hours
[4]	Total interview time per attorney (Row 3 ÷ 2)	1 hour / attorney
[5]	Magistratıon	4 hours
[6]	Total time per attorney per day (Row 4 + Row 5)	5 hours
[7]	Number of treatment days	182 days
[8]	Total billable hours (2 attorneys × Row 6 × Row 7)	1,820 hours
[9]	Total cost at billing rate of \$75/ hour (Row 8 × \$75)	\$136,500

Since the August 2019 TIDC Board meeting, the fiscal analyst has conducted one on-site fiscal review and began two limited scope desk review. These reviews are currently on-going. The reviews for the three counties in process at the time of the August meeting were completed. Three final reports, a follow-up report, and four initial reports have been issued. The Comprehensive Annual Financial Reports (CAFR)'s and single Audit reports for one county was reviewed.

Additionally, the monitor presented at the Texas Association of County Auditors conference and conducted two IDER training workshops. November has been dedicated to IDER desk reviews.

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.

**New Reviews**

<b>County</b>	<b>Engagement Letter Date</b>	<b>Type of Review</b>	<b>Summary of Review</b>	<b>Status</b>
Jasper	August 23, 2019	Limited Scope Desk Review	Data provided does not support the IDER submitted.	Review in process
Camp	September 24, 2019	Limited Scope Desk Review	Selected from Risk Assessment	Review in process
Tarrant	October 4, 2019	On site Review November 18-20, 2019	Joint review with policy team	Review in process

**Status of on-going reviews:**

<b>County</b>	<b>Site Visit Date</b>	<b>Visit</b>	<b>Summary of Review</b>	<b>Status</b>
Goliad	Engagement Letter dated January 29, 2019	On-site review February 19-20, 2019	The FY 2018 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not prepared in the manner required.	Final report issued December 6, 2019  Financial Finding
Fort Bend	Engagement Letter dated January 30, 2019	On-site Review February 21-22, 2019	General court expenditures were included with the criminal indigent defense expenses in the FY 2018 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section §79.036 (e).  Some attorney payments do not appear to be made in accordance with the published fee schedule as required by Article 26.05(b) of Texas Code of Criminal Procedure (CCP).	Final report issued October 25, 2019  Financial Finding
Waller	Follow-up email dated January 30, 2019	On site February 28, 2019	Fiscal issue regarding competency to stand trial from first review is resolved.	Follow-up report issued September 2019
Jefferson	Engagement Letter dated March 7, 2019	On-site Review April 1-3, 2019	General court expenditures were included with the criminal indigent defense expenses in the FY 2018 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section §79.036 (e).	Initial Report pending issue with Policy report
Hopkins	Engagement Letter dated April 16, 2019	Limited Scope Desk Review	Hopkins County prepared and submitted the FY 2018 IDER in accordance with Texas Government Code Section §79.036(e) however, the reported amounts were not fully supported by the financial data provided.	Final report issued October 30, 2019
Jim Wells	Engagement Letter dated April 18, 2019	On-site Review May 13-16, 2019	Chosen for review per risk assessment. Joint review with policy team.  The FY 2018 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not supported by financial data provided nor prepared in the manner required.  <ul style="list-style-type: none"> <li>▪ Civil case expenditures were included with the criminal indigent defense expenses;</li> <li>▪ General court expenditures were included with the criminal indigent defense expenses; and</li> <li>▪ Some attorney fee payments on criminal cases were not included.</li> </ul>	Initial Report issued with Policy report on November 8, 2019

County	Site Visit Date	Visit	Summary of Review	Status
San Patricio	Engagement Letter dated April 25, 2019	On-site Review May 15-16, 2019	<p>Chosen for review due to proximity to Jim Wells County.</p> <ul style="list-style-type: none"> <li>One attorney fee voucher of the 65 vouchers reviewed was not an attorney-submitted voucher as required by Code of Criminal Procedure (CCP) Article 26.05 (c).</li> </ul>	<p>Initial report issued August 23, 2019</p> <p>Final report pending</p>
Rusk	Engagement Letter dated June 4, 2019	On-site review June 24-25, 2019	<p>The FY 2018 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) was not supported by financial data provided nor prepared in the manner required.</p> <ul style="list-style-type: none"> <li>General court expenditures were included with the criminal indigent defense expenses; and</li> <li>Attorney payments for drug court representation were not classified correctly.</li> </ul> <p>Rusk County uses a contract defender system for a drug courts; however, the program does not comply with the contract defender rules outlined in the Texas Administrative Code (TAC), Chapter 174, Subchapter B.</p> <p>Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present on vouchers as required by Article 26.05(c) of the Texas Code of Criminal Procedure.</p>	Initial report issued September 16, 2019
Harrison	Engagement Letter dated June 17, 2019	On-site review June 26-27, 2019	<p>Chosen for review due to proximity to Rusk County</p> <p>The FY 2018 Indigent Defense Expenditure Report (IDER) submitted in accordance with Texas Government Code Section §79.036(e) included unallowable general court expenses.</p> <p>Written explanations from judges for variance in amounts requested and amounts approved on attorney fee vouchers were not present on vouchers as required by Article 26.05(c) of the Texas Code of Criminal Procedure.</p>	Initial report issued December 3, 2019
Collin	Engagement Letter dated June 21, 2019	On-site review July 30-31, 2019	<p>Joint review with Policy team.</p> <p>No issues noted</p>	Initial/Final report pending issue

## CAFR's/ Single Audit

County	Date Submitted	Financial Statement Opinion	Single Audit Opinion	TIDC Funds - Major Program	TIDC Findings	Financial Statement Findings	Compliance Findings Noted
Harris	9/20/2019	Unmodified	Unmodified	No	NA	Yes	Yes

## IDER Training Sessions

1<sup>st</sup> training session was hosted by Hidalgo County on Friday October 18, 2019. Auditors from five counties were in attendance.

Cameron	Mariana Rodriguez	Yarim Enriquez		
Hidalgo	Leticia Chavez	Linda Fong	Celina Rios	Corina Martinez
Jim Wells	Leticia Garcia	Diana Flores		
Webb	Karina Neira	Mabel Gonzales		
Willacy	Rebeca Saenz			

2<sup>nd</sup> training session was hosted by Colorado County on Tuesday October 22, 2019. Auditors from six counties were in attendance.

Colorado	Raymie Kana	Tammy Woolls		
DeWitt	Neomi Williams			
Gonzales	Shawna Lehnert	Liz Longoria		
Lavaca	Shana R Opela			
Washington	Sherri Roese			
Wharton	Steve Chelotti			

County	Financial Finding	Amount of Finding	Total Expenditures	Award Amount	Overpayment on Formula Grant	Staff Recommendation
Fort Bend	General court expenditures Mental Health <ul style="list-style-type: none"> <li>• Competency to stand trial</li> </ul>	\$77,925	\$8,059,833	\$592,145	\$3,042	Reduce future formula grant payment by \$3,042
Goliad	Civil case expenditures were included on IDER	\$21,853	\$81,191	\$11,174	\$878	Reduce future formula grant payment by \$878

## **2019 Indigent Defense Plan Submission & Review Process**

- On November 1, 2019, all indigent defense plans were required to be submitted to the Commission. As of December 6<sup>th</sup>:
  - 198 Counties had fully completed the approval process
  - 56 Counties had not fully completed the approval process
  
- Plan submission instructions were mailed out on September 23, 2019 to the local administrative judge and juvenile board chairman in each county.
  - Courtesy emails were also sent to each of the other local officials in each county such as county financial officers, county judges, indigent defense coordinators, and any other administrative contacts designated by a county.
  
- Local administrative judges and juvenile board chairman were also sent emails with links to review and approve their plans online to facilitate the process. Staff has recently learned that some portion of these did not go through due to local systems blocking emails from the Public Policy Research Institute by spam filters.
  - TIDC staff is working with the Public Policy Research Institute to send individualized emails to the local officials in each county that has not yet completed the approval/submission process.
  
- The remaining counties will receive additional notice via a special condition on the FY20 Formula Grant, Statement of Grant Award, if they have not submitted their plans prior to issuance of the award statements typically in January.
  
- Staff will soon begin reviewing the indigent defense plans to assure that they follow the Fair Defense Laws and requirements established by the TIDC board. Key areas for review:
  - New statute requiring indigent defense plans specifically provide for the priority appointment of an available public defender's office.
  - Contracts for defense services are current and meet the requirements of TIDC's contract defender program rules.

## Attorney Caseload and Practice Time Reports

### Attorney Caseload Reports (as of November 22, 2019):

- A total of 5,635 attorneys were reported to have received payment for indigent defense services during FY2019.
- The median indigent defense caseload was 29% of the Weighted Caseload Guidelines (WCG).<sup>1</sup>
- 837 of these attorneys had caseloads in excess of the WCG. This amounts to 15% of attorneys receiving payment for indigent defense cases.
- As to extreme caseloads:
  - Seven attorneys had caseloads **greater than 5 times** recommended by WCG
  - 45 attorneys had caseloads **greater than 3 times** recommended by WCG

### Attorney Practice Time Reports (as of November 22, 2019):

- A total of 3,899 attorneys completed practice time reports (approx. 69% of attorneys receiving payment for indigent defense services).
  - Attorney reporting increased significantly from 3,460 attorneys completing report by November 22, 2018
- 3,618 attorneys reported taking adult cases and 1,281 reported taking juvenile cases.
- Excluding public defenders, the median percent of practice time devoted to indigent defense was 61% of the attorney's time.
- TIDC made multiple attempts to notify attorneys of the need to enter statutorily required practice time reports
  - Instructions for indigent defense plan submissions included encouragement to remind attorneys of the reporting requirement (sent to administrative judges with courtesy letters to all other officials and administrators)
  - Coordinated with TCDLA to send notice to members
  - PPRI sent emails to all administrative judges and persons listed as indigent defense coordinators with reminder of the report
  - PPRI emailed reminders to attorneys who had received payments in 2019 but who had not entered practice time reports
- Several counties made significant efforts to ensure attorneys entered reports

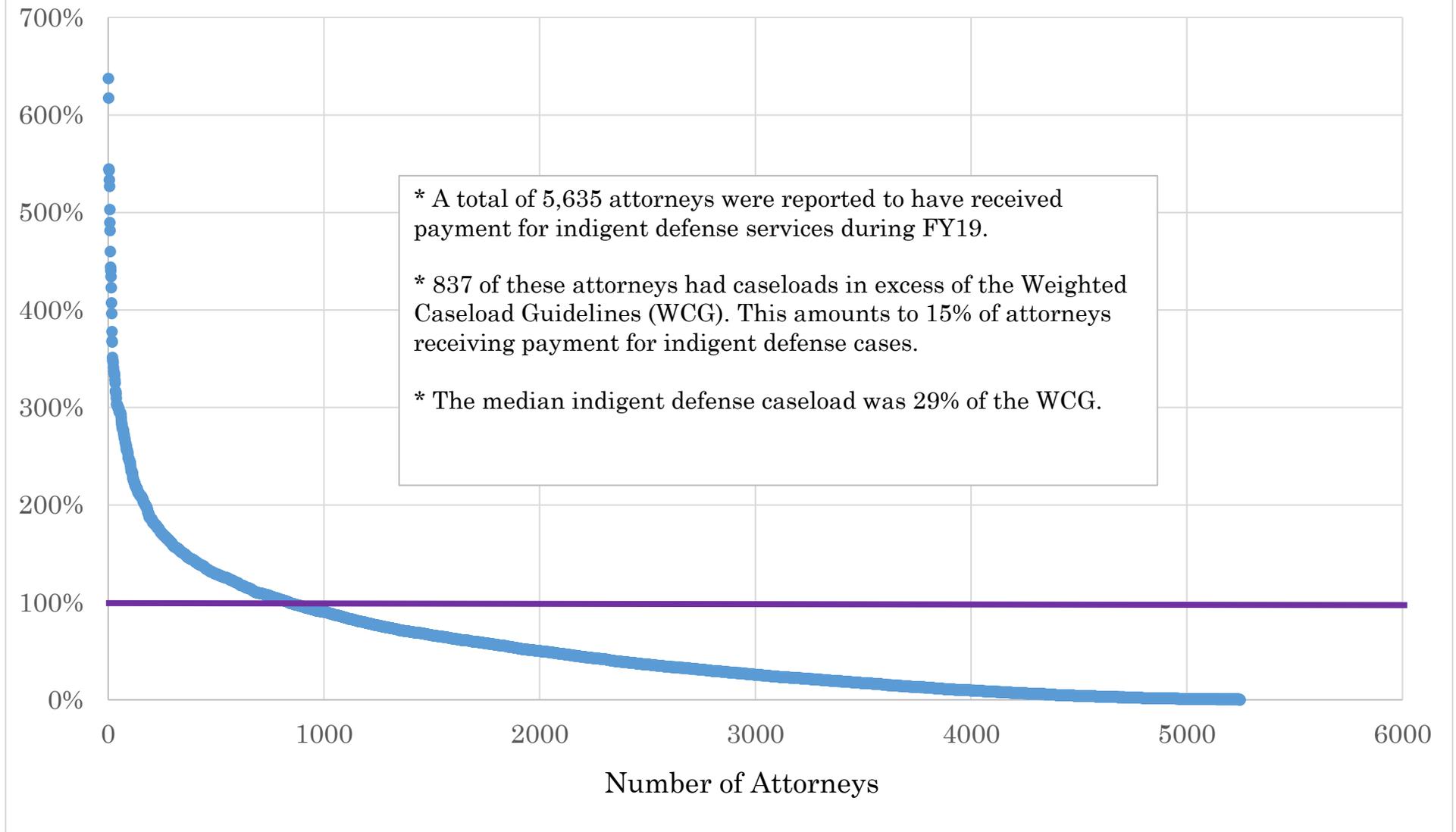
### Attorney Payments (as of November 22, 2019)

Excluding public defenders:

- The median amount received by attorneys was \$22,553.
- 21 attorneys received more than \$300,000 for indigent defense services

<sup>1</sup> The Weighted Caseload Guidelines found the maximum number of cases an attorney could reasonably expect to proficiently handle within one year was: 128 felony cases, 226 misdemeanor cases, or 31.2 appeals cases. This analysis excluded juvenile cases.

## Attorney Caseloads as Percentage of Weighted Caseload Guidelines



\*Note 1 – assumes the maximum reasonable caseload for attorneys to be 128 felony cases, 226 misdemeanor cases, or 31.2 appeals cases. This excludes juvenile cases.

\*Note 2 – as of November 22, 2019.

### FY2019 Top Paid Attorneys

Attorney Name	Appointing Counties	Juv. Paid	Cap. Murd. Paid	Felony Paid	Misd. Paid	App. Paid	Total Cases Paid	Total Paid	% ID Practice Time
Bourque, Gerald	Harris, Montgomery, Washington		13				13	\$554,042	55
Gonzalez, Ricardo N.	Harris			541			541	\$517,376	90
Nunnery, A. E.	Harris		6	56			62	\$494,315	
Ortiz, Jimmy Joe	Harris			294			294	\$470,373	100
Osso, Anthony	Harris		8	7			15	\$450,688	60
Godinich, Jerome	Harris		14	429		4	447	\$440,265	95
Gill, Robert K.	Tarrant, McLennan		3	181	80	2	266	\$395,808	52
Moncriffe, Tyrone	Harris, Ft. Bend, Galveston		8	1			9	\$387,394	80
Scardino, Robert Albert	Harris		7				7	\$372,208	
Muldrow, Loretta Johnson	Harris		5	29			34	\$369,960	100
Keirnan, John Patrick	Harris		9				9	\$366,965	60
Ortiz, Jeanie	Harris			562	144		706	\$356,859	
Johnson, Paul James	Dallas	0	6	151	11	0	168	\$351,425	
St. John, James Warren	Tarrant, McLennan		10	139	104	10	263	\$334,184	100
Castro, Ray	Harris			233			233	\$328,827	90
Ray, William	Tarrant, Wise, Jack		3	234	84	7	328	\$324,740	100
Scardino, Joseph	Harris		8				8	\$316,925	
Cornelius, R. P.	Harris		1	189			190	\$308,849	100
Shannon, Hattie Sewell	Harris			393		3	396	\$308,550	95
Nielsen, Hans T.	Harris	193	1	233			427	\$307,857	80
Dupont, Thomas B.	Harris			345			345	\$301,824	75

### FY2018 Top Paid Attorneys

Attorney Name	Appointing Counties	Juv. Paid	Cap. Murd. Paid	Felony Paid	Misd. Paid	App. Paid	Total Cases Paid	Total Paid	% ID Practice Time
TANNER, ALLEN MARK	Harris	0	4	4	0	0	8	\$472,939	100
GONZALEZ, RICARDO N.	Harris	0	0	476	0	0	476	\$436,728	90
FRATTER, MARC JOSEPH	Collin	111	0	42	62	12	227	\$431,723	
KEENE, JOETTA L.	Tarrant	0	11	48	9	0	68	\$428,039	100
GODINICH, JEROME	Harris, Montgomery	0	15	583	1	6	605	\$411,565	100
ORTIZ, JIMMY JOE	Harris	0	3	279	0	0	282	\$395,597	60
ST. JOHN, JAMES WARREN	Tarrant	0	12	134	77	8	231	\$354,179	100
TURNBULL, EDWARD R.	Brazos, Harris, Montgomery	0	0	325	17	1	343	\$338,004	75
GORDON, STEPHEN E.	Tarrant	0	4	89	72	0	165	\$334,171	85
NUNNERY, A. E.	Harris	0	6	137	0	0	143	\$318,695	90
SALINAS, ROSE ANNA	Parker, Tarrant	0	7	48	1	0	56	\$310,643	90
SALVANT, BRIAN WAYNE	Dallas, Denton, Tarrant	0	2	154	51	9	216	\$305,038	70

### FY2019 Top Appointed Caseloads

Attorney Name	Appointing Counties	Juv. Paid	Cap. Murd. Paid	Felony Paid	Misd. Paid	App. Paid	Total Cases Paid	Total Paid	% ID Practice Time	(# FTEs) per WCG
Asante, Adwoa	Dallas	0	0	0	1440	0	1440	Pub. Def.	100	6.4
Gunn, Amanda	Bowie				1395		1395	Pub. Def.	100	6.2
Polk, Lia	Dallas	0	0	697	0	0	697	Pub. Def.	100	5.4
Chen, Linda	Dallas	0	0	0	1227	0	1227	Pub. Def.	100	5.4
Cunningham, Jade	Dallas	0	0	0	1205	0	1205	Pub. Def.	100	5.3
Privin, Gerald	Dallas	0	0	0	1190	0	1190	Pub. Def.	100	5.3
Ortiz, Jeanie	Harris			562	144		706	\$356,859		5.0
Lea, Jemila	Dallas	0	0	0	1106	0	1106	Pub. Def.	100	4.9
Hilton, Chase	Dallas	0	0	0	1088	0	1088	Pub. Def.	100	4.8
Hale, Tracy	Dallas	0	0	0	1039	0	1039	Pub. Def.	100	4.6
Ellis, Sarah	Dallas	0	0	0	1003	0	1003	Pub. Def.	100	4.4
Espersen, Ray. M.	Travis, Williamson	0	4	444	211	0	659	\$235,565	100	4.4
Wasonga, Henry	Dallas	0	0	0	981	0	981	Pub. Def.	100	4.3
Gonzalez, Ricardo N.	Harris			541			541	\$517,376	90	4.2
Fleming, Marcus	Harris, Galveston			439	123	3	565	\$207,562	95	4.1

### FY2018 Top Appointed Caseloads

Attorney Name	Appointing Counties	Juv. Paid	Cap. Murd. Paid	Felony Paid	Misd. Paid	App. Paid	Total Cases Paid	Total Paid	% ID Practice Time	(# FTEs) per WCG
BARRETT, CAITLIN H.	Dallas	0	0	0	1,669	0	1,669	Pub. Def.		7.4
JOLLY, FALLON A.	Dallas	0	0	0	1,481	0	1,481	Pub. Def.		6.6
HAAS, CLAYTON A.	Bowie	0	0	140	1,183	0	1,323	Pub. Def.		6.3
LEA, JEMILA MARIE	Dallas	0	0	0	1,258	0	1,258	Pub. Def.		5.6
BOYLAN, AMANDA A.	Dallas	0	0	0	1,194	0	1,194	Pub. Def.		5.3
CHEN, LINDA	Dallas	0	0	0	1,176	0	1,176	Pub. Def.	100	5.2
SINGLETON, CARRIE L.	Dallas	0	0	0	1,162	0	1,162	Pub. Def.		5.1
ASANTE, ADWOA D.	Dallas	0	0	0	1,116	0	1,116	Pub. Def.		4.9
PRIVIN, GERALD P.	Dallas	0	0	0	1,110	0	1,110	Pub. Def.		4.9
GODINICH, JEROME	Harris, Montgomery	0	15	583	1	6	605	\$411,565	100	4.8
HALE, TRACY A.	Dallas	0	0	0	1,064	0	1,064	Pub. Def.		4.7
SHAW, DARICE N. W.	Dallas	0	0	0	1,023	0	1,023	Pub. Def.		4.5
CUNNINGHAM, JADE S.	Dallas	0	0	0	1,020	0	1,020	Pub. Def.		4.5
GARCIA, SALVADOR S.	Cameron, Dallas	0	0	406	243	0	649	\$82,066		4.2
SHANNON, HATTIE S.	Harris	0	0	526	0	3	529	\$249,225	90	4.2
RAFIEE, PARIA	Harris	0	0	308	397	0	705	\$222,585	98	4.2

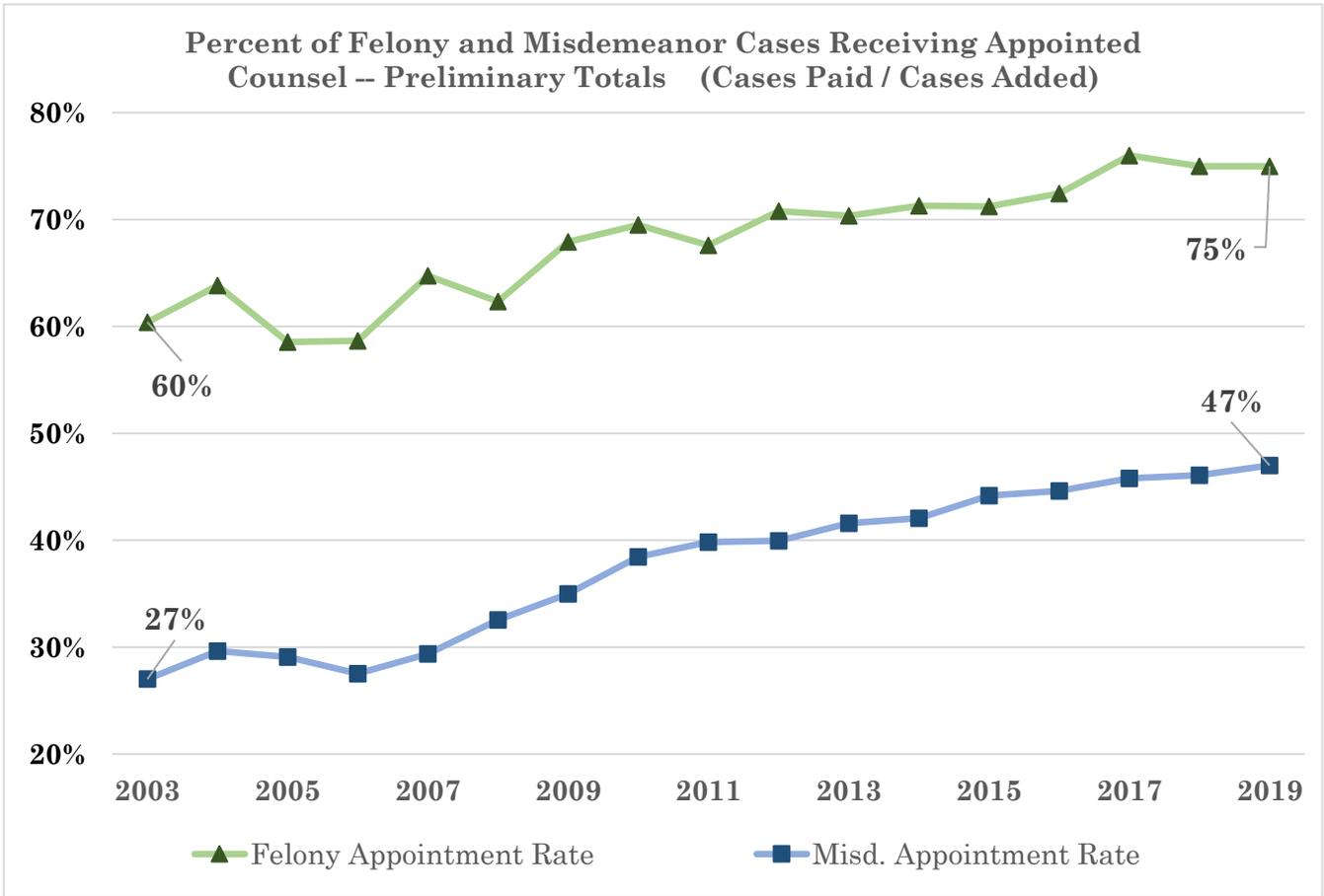
**Estimate of Pro Se Misdemeanor Cases** (12/3/19 query)

- Since 2011, when OCA began tracking the number of retained cases, the percentage of pro se misdemeanor cases has decreased
- The number of pro se dispositions can be estimated by the following formula:  

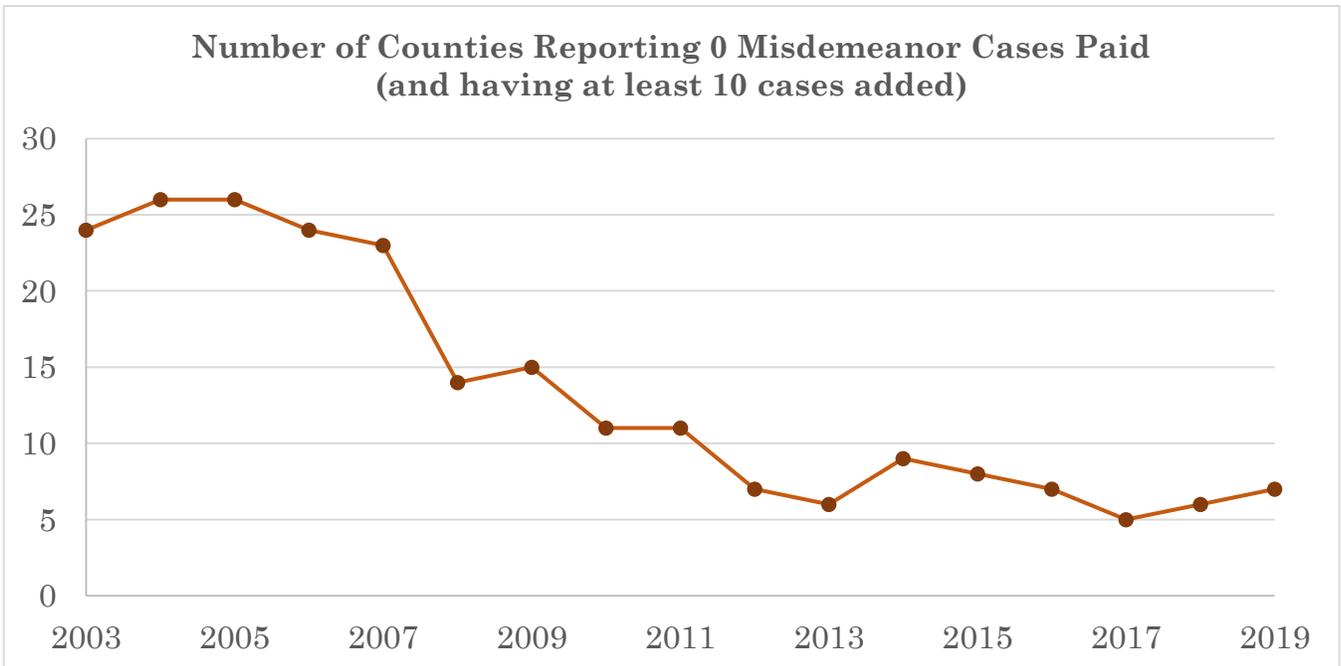
$$\text{Pro Se Dispositions} = \text{Total Dispositions} - \text{Total Retained Cases} - \text{Total Cases in Which Attorneys were Paid}$$
- Estimates are limited according to data reported by clerks and auditors / treasurers.

<b>% of Pro Se Misd. Dispositions</b>	<b>FY 11</b>	<b>FY 12</b>	<b>FY 13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
Statewide	33.2%	28.8%	27.5%	25.4%	23.8%	24.1%	21.3%	21.6%	22.9%
Counties Under 50k Pop.	68.7%	66.3%	66.4%	63.5%	61.7%	58.3%	56.7%	55.7%	53.9%
Counties Between 50k & 250k Pop.	56.9%	50.8%	48.4%	46.6%	42.5%	39.4%	41.7%	39.5%	35.8%
Counties Over 250k Pop.	19.6%	15.2%	13.3%	11.6%	11.3%	13.0%	8.8%	9.6%	12.8%

## Update on Case Statistics from FY19 IDER



## History of Counties Reporting Zero Misdemeanor Appointments



# **Policy Monitoring Rules Review and Proposed Amendments**

## **Background**

Government Code Chapter 2001 requires state agencies, including the courts, to review and consider for re-adoption each of its rules every four years. The agency shall readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section. The agency must publish the Texas Administrative Code citation for each rule under review. The agency's review of a rule must include an assessment of whether the reasons for initially adopting the rule continue to exist.

All of TIDC's policy monitoring rules are due for review under Chapter 2001. Staff reviewed the rules in the context of our review of the policy monitoring process discussed elsewhere in the meeting. Staff are recommending changes to the rules to simplify and clarify descriptions of current practice.

## **Publication Time-Line and Comment Review Process**

The Policies and Standards Committee will first review the rules at their meeting the morning of December 13<sup>th</sup> and the full Commission may at the meeting on the afternoon of December 13<sup>th</sup> approve publication of the rules in the Texas Register for public comment. If approved, the rules will be submitted to the Secretary of State's office for publication. Proposed rules would be eligible for adoption at least 30 days after publication. The Commission must review any comments received and may consider adoption of the rules at its first meeting following the 30-day publication requirement. Review of any comments received, and adoption of the rules are likely to occur at the next board meeting in March 2020.

## **Proposed amendments to rules by Section**

Section 174.26:

- Change the period of review from the prior 12 months to the prior fiscal year or other reasonable time period. Since reporting to TIDC is done on a fiscal year basis, this time period makes the most sense. Alternative time periods may be used when significant changes to local practice occur during the last fiscal year.
- Add definitions of full reviews, limited scope reviews and drop-in visits. These types of visits have been conducted by staff but have not been clearly defined in the rules.

Section 174.27:

- Non-substantive revisions to the factors considered as part of the risk assessment to streamline the definitions. The risk assessment process helps determine where to conduct policy monitoring visits each year.
- Expands list of factors that may lead to a policy monitoring visit to include findings from a previous visit, a complaint, and media reports. These factors are in addition to the risk assessment and requests from a state or local official currently provided for in the rules.

Section 174.28:

- Clarifies the rule related to determining whether a jurisdiction meets the prompt appointment of counsel requirements to measure the time to when an appointment is made or when a denial of indigence determination is made, rather than when an indigence determination is made.
- Clarifies the rule related to assessing the distribution of appointments to provide that only attorneys who were on the appointment list for the entire time period under review will be included in the distribution analysis.
- Changes the section heading from “Payment Process” to “Data Reporting” to more accurately describe the processes under review.
- Clarifies that TIDC will, for full and limited scope reviews, issue a report and require a response to noncompliance findings from local officials and, for drop-in visits, may write a letter with recommendations and without requiring a response.
- Non-substantive revisions to reflect that a report may or may be not issued, and that a county must respond only to noncompliance findings in a report.

**SUBCHAPTER C. POLICY MONITORING REQUIREMENTS**

**DIVISION 1. DEFINITIONS.**

**Sec. 174.26. SUBCHAPTER DEFINITIONS.**

The following words and terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Executive Director – The executive director of the Commission.
- (2) Authorized Official – The county judge or other designee authorized to apply for, accept, decline, modify, or cancel a grant designated under §173.301 of this title.

(3) Period of review – The fiscal year 12 months—preceding the date of the monitoring visit or other reasonable time period.

(4) Policies and Standards Committee – A committee of the Commission charged with developing policies and standards related to improving indigent defense services.

(5) Policy Monitor – The employee of the Commission who monitors the effectiveness of a county's indigent defense policies, standards, and procedures.

(6) Risk Assessment – A tool to rank each county's potential risk of not being in compliance with indigent defense laws.

(7) Commission – Commission means the Texas Indigent Defense Commission.

(8) Full review – An on-site policy monitoring review covering all the core requirements in Section 174.28(c).

(9) Limited scope review – An on-site policy monitoring review covering fewer than all of the core requirements in Section 174.28(c).

(10) Drop-in visit – An informal, on-site visit to assess indigent defense processes of a county.

## **DIVISION 2. POLICY MONITORING PROCESS AND BENCHMARKS.**

### **Sec. 174.27. RISK ASSESSMENT.**

(a) A risk assessment of each county shall be conducted by the policy monitoring team each fiscal year as the primary means of determining which counties will be selected for on-site policy monitoring. On-site monitoring visits to counties shall then be apportioned by administrative judicial region, county size, risk assessment scores, past visits, and other documented factors. The risk assessment shall use a variety of factors related to the provision of indigent defense services, including but not limited to the following:

~~(1) Whether a county reported I~~  
Investigation and expert witness expenses;

~~(2) Whether a county reported r~~  
Reimbursements for attorney fees;

~~(3) Amount of p~~  
Per capita indigent defense expenses;

~~(4) Felony, misdemeanor, and juvenile~~  
attorney appointment rates;

~~(5) County P~~  
population of a county;

~~(6) Whether e~~  
Complaints about a county have been received by the Commission;

~~(7) Whether a county received Receipt of a multi year discretionary TIDC improvement grant;~~

~~(8) Whether the justices of the peace or municipal judges reported r~~  
Requests for counsel at during magistrate warnings under; and Article 15.17, Code of Criminal Procedure in their Texas Judicial Council Monthly Court Activity Reports;

~~(9) the ratio of misdemeanor requests for counsel from Article 15.17 hearings as reported in Texas Judicial Council Monthly Activity Reports to the number of misdemeanor cases paid reported by the county; and~~

~~(10) Whether a county reported appeals~~  
Appellate cases.

(b) Counties may receive monitoring visits as a result of factors outside of the risk assessment, including findings from a previous visit, a complaint, media reports, or a request from An-an elected state or local official ~~may request a monitoring visit~~. If Commission staff make a drop-in visit, fiscal monitoring review, or grant program review, and determines that violations of the Fair Defense Act or Commission rules may be present in a county, the monitor may conduct a ~~limited scope review~~ monitoring visit of the county's procedures.

### **Sec. 174.28. ON-SITE MONITORING PROCESS.**

(a) Purpose. The process promotes local compliance with the requirements of the Fair Defense Act and Commission rules and provides technical assistance to improve processes where needed.

(b) Monitoring Process. The policy monitor examines the local indigent defense plans and local procedures and processes to determine if the jurisdiction meets the statutory requirements and rules adopted by the Commission. The policy monitor also attempts

to randomly select samples of actual cases from the period of review by using a 15% confidence interval for a population at a 95% confidence level.

(c) Core Requirements. On-site policy monitoring focuses on the six core requirements of the Fair Defense Act and related rules. Policy monitoring may also include a review of statutorily required reports to the Office of Court Administration and Commission. This rule establishes the process for evaluating policy compliance with a requirement and sets benchmarks for determining whether a county is in substantial policy compliance with the requirement. For each of these elements, the policy monitor shall review the local indigent defense plans and determine if the plans are in compliance with each element.

(1) Prompt and Accurate Magistration.

(A) The policy monitor shall check for documentation indicating that the magistrate or county has:

- (i) Informed and explained to an arrestee the rights listed in Article 15.17(a), Code of Criminal Procedure, including the right to counsel;
- (ii) Maintained a process to magistrate arrestees within 48 hours of arrest;
- (iii) Maintained a process for magistrates not authorized to appoint counsel to transmit requests for counsel to the appointing authority within 24 hours of the request; and
- (iv) Maintained magistrate processing records required by Article 15.17(a), (e), and (f), Code of Criminal Procedure, and records documenting the time of arrest, time of magistration, whether the

person requested counsel, and time for transferring requests for counsel to the appointing authority.

(B) A county is presumed to be in substantial compliance with the prompt magistration requirement if magistration in at least 98% of the policy monitor's sample is conducted within 48 hours of arrest.

(2) Indigence Determination. The policy monitor checks to see if procedures are in place that comply with the indigent defense plan and the Fair Defense Act.

(3) Minimum Attorney Qualifications. The policy monitor shall check that attorney appointment lists are maintained according to the requirements set in the indigent defense plans. Only attorneys approved for an appointment list are eligible to receive appointments.

(4) Prompt Appointment of Counsel.

(A) The policy monitor shall check for documentation of timely appointment of counsel in criminal and juvenile cases.

(i) Criminal Cases. The policy monitor shall determine if counsel was appointed or denied for arrestees within one working day of receipt of the request for counsel in counties with a population of 250,000 or more, or three working days in other counties. If the policy monitor cannot determine the date the appointing authority received a request for counsel, then the timeliness of appointment will be based upon the date the request for counsel was made plus 24 hours for the transmittal of the request to the appointing authority plus the time allowed to make the appointment of counsel.

(ii) Juvenile Cases. The policy monitor shall determine if counsel was appointed prior to the initial detention hearing for eligible in-custody juveniles. If counsel was not appointed, the policy monitor shall determine if the court made a finding that appointment of counsel was not feasible due to exigent circumstances. If exigent circumstances were found by the court and the court made a determination to detain the child, then the policy monitor shall determine if counsel was appointed for eligible juveniles immediately upon making this determination. For out-of-custody juveniles, the policy monitor shall determine if counsel was appointed within five working days of service of the petition on the juvenile.

(B) A county is presumed to be in substantial compliance with the prompt appointment of counsel requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), at least 90% of appointments of counsel and denials of indigence determinations in the policy monitor's sample are timely.

(5) Attorney Selection Process. The policy monitor shall check for documentation indicating:

(A) In the case of a contract defender program, that all requirements of §§174.10 – 174.25 of this title are met;

(B) In the case of a managed assigned counsel program, that counsel is appointed according to the entity's plan of operation;

(C) That attorney selection process actually used matches what is stated in the indigent defense plans; and

(D) For assigned counsel and managed assigned counsel systems, the number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review and the percentage share of appointments represented by the top 10% of attorneys accepting appointments. A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list. For this analysis, the monitor will include only attorneys ~~who may have been temporarily unavailable for part of the year but will~~ ~~exclude attorneys~~ who were ~~not~~ on an appointment list for ~~any part of the~~ entire time period under review.

~~(6) Payment Process Data Reporting.~~ The policy monitor shall check for documentation indicating that the county has established a process for collecting and reporting itemized indigent defense expense and case information.

(d) Report.

(1) Report Issuance. For full and limited-scope reviews, ~~The~~ the policy monitor shall issue a report to the authorized official within 60 days of the on-site monitoring visit to a county, unless a documented exception is provided by the director, with an alternative deadline provided, not later than 120 days from the on-site monitoring visit. The report shall contain recommendations to address ~~areas~~ findings of noncompliance. For drop-in

visits, the policy monitor may issue a letter with recommendations.

(2) County Response. Within 60 days of the date ~~the a~~ report is issued by the policy monitor, the authorized official shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 60 days.

(3) Follow-up Reviews. The policy monitor shall conduct follow-up reviews of counties where ~~the a~~ report included noncompliance findings. The follow-up review shall occur within a reasonable time but not more than two years following receipt of a county's response to ~~the a~~ report. The policy monitor shall review a county's implementation of corrective actions and shall report to the county and to the Commission any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the policy monitor, the authorized official shall respond in writing to each recommendation, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 30 days.

(4) Failure to Respond to Report. If a county fails to respond to a monitoring report or follow-up report within the required time, then a certified letter will be sent to the authorized official, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that all further payments will be withheld if no response to ~~the a~~ report is received by the Commission within 10 days of receipt of the letter. If funds are withheld under this section, then the funds will not be reinstated until the Commission or the

Policies and Standards Committee approves the release of the funds.

(5) Noncompliance. If a county fails to correct any noncompliance findings, the Commission may impose a remedy under §173.307 of this title.

#### **SUBCHAPTER D. INDIGENT DEFENSE PROCEDURE REQUIREMENTS**

##### **Sec. 174.51. INDIGENT DEFENSE PLAN REQUIREMENTS.**

The countywide procedures adopted under Art. 26.04(a), Code of Criminal Procedure, must provide a method to allow defendants to obtain the necessary forms for requesting appointment of counsel and to submit completed forms for requesting appointment of counsel at any time after the initiation of adversary judicial proceedings.

## Summary of Recent Policy Monitoring Activity

<b>County</b>	<b>Dates Visited</b>	<b>Status</b>	<b>Issues / Recent Activity</b>
Childress	2 <sup>nd</sup> Follow-up Review: 8/20/19	Draft Pending	Kathleen Casey-Gamez and Scott Ehlers conducted a second follow-up review to address issues raised in the 2017 report.
Collin	2 <sup>nd</sup> Follow-up Review: 7/30 – 7/31/19	Draft Pending	Kathleen Casey-Gamez and Scott Ehlers conducted a second follow-up review to address issues raised in the 2016 report.
Deaf Smith	2 <sup>nd</sup> Follow-up Review: 8/21/19	Draft Pending	Kathleen Casey-Gamez and Scott Ehlers conducted a second follow-up review to address issues raised in the 2017 report.
Fisher	Limited Scope Review: 7/16/19	Report issued: 11/8/19 Response due: 1/10/20	Claire Buetow and Joel Lieurance conducted a limited scope review. The report found issues with the ability of arrestees to request counsel at the Article 15.17 hearing and with rulings on later counsel requests.
Fort Bend	2 <sup>nd</sup> Follow-up Review: 2/21 – 2/22/19	Report issued: 6/18/19 Response rec'd: 10/18/19	Claire Buetow and Joel Lieurance conducted a second follow-up review. The report made a finding regarding the attorney-of-the-day appointment system. Fort Bend County responded by stating the attorney-of-the-day for administrative purposes only.
Jefferson	Follow-up Review: 4/1 – 4/3/19	Draft Pending	Scott Ehlers, Kathleen Casey-Gamez, and Joel Lieurance conducted a follow-up review to address issues raised in the 2014 report.
Jim Wells	Initial Review: 5/13 – 5/16/19	Report issued: 11/8/19 Response due: 1/10/20	Kathleen Casey-Gamez and Joel Lieurance conducted an initial policy monitoring review. The report made findings regarding the transmittal of counsel requests from the magistrate to the court of dispositive jurisdiction and regarding the timeliness of counsel appointments.
Kleberg	Follow-up Review: 7/22 – 7/23/19	Draft Pending	Claire Buetow and Joel Lieurance conducted a follow-up review to address issues raised in the 2016 report.

<b>County</b>	<b>Dates Visited</b>	<b>Status</b>	<b>Issues / Recent Activity</b>
Randall	2 <sup>nd</sup> Follow-up Review: 12/12 – 12/14/18	Report issued: 5/30/19 Response rec'd: 9/24/19	Scott Ehlers and Joel Lieurance conducted a follow-up review to address issues raised in the 2016 report. The current report made findings regarding magistrate duties and the timeliness of juvenile appointments. Randall County's response clarified that magistrates have now been trained in how to handle out-of-county arrestees. As to the timeliness of juvenile appointments, the County is making additional efforts to promptly bring families to court for indigence determinations.
Rusk	Initial Review: 6/24 – 6/27/19; 7/19/19	Report issued: 9/16/19 Response due: 1/21/20	Claire Buetow and Joel Lieurance conducted an initial policy monitoring review. The report found issues with the ability of arrestees to request counsel at the Article 15.17.
Scurry	Limited Scope Review: 7/15/19	Report issued: 11/8/19 Response due: 1/10/20	Claire Buetow and Joel Lieurance conducted a limited scope review to examine procedures for appointing counsel in misdemeanor cases. The report made findings regarding the transmittal of counsel requests from the magistrate to the court of dispositive jurisdiction, the timeliness of counsel appointments, and with rulings on counsel requests.
Tarrant	Initial Review: 11/18 – 11/20/19;	Draft Pending	TIDC began a review of Tarrant County. All policy team staff are involved. Geoff Burkhart and Joel Lieurance conducted a kick-off session for stakeholders on November 14.
Waller	Follow-up Review: 2/28 – 3/1/2019; 5/6 – 5/7/19	Report issued: 9/9/19 Response rec'd: 11/6/19	Claire Buetow and Joel Lieurance conducted a follow-up review to address issues raised in the 2016 report. The current report found issues regarding the transmittal of counsel requests from the magistrate to the court of dispositive jurisdiction and regarding the timeliness of counsel appointments. Waller County's response addressed most of the report's findings. However, as to the timeliness of counsel appointments, the district judge took issue with our findings.

### **Upcoming Reviews**

Harris County follow-up review to occur this coming spring.

## Harris County Monitoring

- In October 2016, TIDC issued its Harris County policy monitoring review. Separate reports were issued to the felony courts, misdemeanor courts, and juvenile courts.
- At the time, the felony and misdemeanor courts operated a term assignment system in which attorneys were appointed for specific courts over extended periods of time, but in which there was no written contract in place. Recommendation 7 of the felony report stated:

**RECOMMENDATION 7:** The district courts must implement a system meeting the Commission’s Contract Defender Rules for all term assignments exceeding one week. A notification for application is currently used, but the courts need to formalize contracts with defense attorneys.
- On December 9, 2016, the Harris County felony courts responded:

The Felony Courts plan to re-write the Alternative Plan to include the Commission’s Contract Defender Rules for term assignments exceeding one week. The Board of Judges Trying Felony Cases has a committee working on this project, as well as other updates to the Harris County Alternative Plan, as quickly as possible.
- In October and November of this year, several Harris County district courts solicited attorneys for one-year term assignments in 2020. Term assignments longer than one week must comply with TIDC’s contract defender program requirements contained in Title 1, Texas Administrative Code §§174.10–.25.
- A corresponding recommendation was issued with the misdemeanor report. The misdemeanor courts have worked with TIDC to create a managed assigned counsel program to replace the non-compliant term assignment system.
- TIDC is scheduled to conduct a follow-up review in the Spring of 2020.

## History of Policy Monitoring in Waller County

### Initial Policy Review (2016)

In August 2016, TIDC issued its initial policy monitoring report for Waller County. In the wake of the Sandra Bland tragedy, the review came at the request of Senator Rodney Ellis, Representative Senfronia Thompson, Representative Ron Reynolds, and Waller County Commissioner Jeron Barnett.

The initial report made eight findings, two of which dealt with the timeliness of counsel appointments in felony and misdemeanor cases. At the time of the initial review, the County had great difficulty transmitting counsel requests from the jail to the courts. The County's response attempted to fill those gaps.

### Follow-up Review (2019)

TIDC issued a follow-up monitoring report on September 9, 2019. The report found that the County still had issues with making timely felony and misdemeanor appointments. The relevant finding for felony cases stated:

**August 2016 Finding 4 (felony cases):** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. The monitor's sample of attorney appointments in felony cases fell below the Commission's 90% timely threshold for presuming a jurisdiction's system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in felony cases. *Issue Pending.*

Upon receiving the report, Judge Albert McCaig, the 506<sup>th</sup> District Court Judge, requested our felony case sample. I promptly sent Judge McCaig the sample.

### Follow-up response

Judge McCaig reviewed the sample, and found that late sample appointments occurred in drug cases and DWI cases. Judge McCaig noted that in these cases, the District Attorney often does not receive lab reports for six months. Judge McCaig went through the sample cases with late appointments, and gave his reasoning for not making timely appointments. Judge McCaig stated:

On drug cases, it often takes in excess of six months to get lab results back. Lab results can confirm a charge, but often also result in either dismissal, reduction of charges, or in some cases, an elevation of charges. Therefore, until legal action and dispositive jurisdiction is determined, it is premature to appoint counsel. Further, no legal action is taken against drug and alcohol defendants during the interim between release and first court appearance

unless another offense is committed while they are on bond, or some other legal provocation occurs.

DWI cases have similar issues with taking six to eight months, or more in some cases, to get lab results back on blood draws. It is rare that a felony DWI defendant agrees to a breath test after arrest. Therefore, the vast majority of DWI cases will be delayed while awaiting lab results. Again, no legal action is taken against defendants during the interim between release and first court appearance.

Ability to make bond is not to be considered as proof that a defendant is not indigent. However, when a defendant bonds out on the day of or the day after the 15.17 hearing, the questions regarding indigency may not have been raised or adequately determined. Until indigency is determined it would be premature to appoint counsel.

....

With the exception of four cases, all of the sample cases are either drug or alcohol cases. In two of the four other cases, drug cases were ancillary to the primary cases reviewed. As a matter of necessity, drug and alcohol cases must be handled differently than other non-lab cases due to the indefinable nature of getting laboratory results, and the time lapse in getting them. In no case was any defendant held in jail without counsel after a request was made to the court.

There is an appearance that, due to political pressure, a predetermined outcome has been determined and date is mined to support that outcome. There does not appear to be a practical understanding of the difference between the actual protection of a person's constitutional rights and the Commission's determination that some arbitrary time line has not been met. Texas Code of Criminal Procedure, Article 1.051 provides that counsel shall be provided not later than the end of the third working day after the defendant's request is received by the court. In fact, all time requirements of the Texas Code of Criminal Procedure and the U.S. and Texas Constitutions have been met in every case selected for review by TIDC. Further, all time requirements set out in the Waller County Indigent Defense Plan have been met as well.

I see no reason to change any policies or procedures dealing with the appointment of counsel based on the findings of the follow-up monitoring visit.

TIDC asked Judge McCaig to clarify whether counsel will be appointed within three working days. The letter to Judge McCaig stated:

TIDC's report noted that the three-day timeline begins when a defendant requests counsel at the Article 15.17 hearing; this requirement was clarified by the U.S. Supreme Court in *Rothgery v. Gillespie County*. This timeline applies regardless of the case type or whether the defendant has made bond. Please respond as to whether counsel will be appointed or denied within three working days in the types of cases described in the response's Annex.

Judge McCaig replied by noting that he will appoint within three working days in "appropriate cases" He stated:

Mr. Lieurance:

I have reviewed the responses to findings 4 and 5 and believe them to fully address the issue. It has been the policy of Waller County, and continues to be, that in appropriate cases defendants will receive appointed counsel within three days of their request.

Albert M. McCaig, Jr.  
Judge, 506th Judicial District Court  
[www.court506.com](http://www.court506.com)  
979.921.0921

## **Waller County Next Steps**

### **Administrative Rule for Monitoring Timely Appointment of Counsel**

#### **Rule 174.28(c)(4) Prompt Appointment of Counsel.**

(A) The policy monitor shall check for documentation of timely appointment of counsel in criminal and juvenile cases.

(i) Criminal Cases. The policy monitor shall determine if counsel was appointed or denied for arrestees within one working day of receipt of the request for counsel in counties with a population of 250,000 or more, or three working days in other counties. If the policy monitor cannot determine the date the appointing authority received a request for counsel, then the timeliness of appointment will be based upon the date the request for counsel was made plus 24 hours for the transmittal of the request to the appointing authority plus the time allowed to make the appointment of counsel.

### **Administrative Rule for Noncompliance Remedies**

#### **Rule 173.307. REMEDIES FOR NONCOMPLIANCE.**

(a) If a grantee fails to comply with any term or condition of a grant or rule, the Commission may take one or more of the following actions:

- (1) disallow all or part of the cost of the activity or action that is not in compliance and seek a return of the funds;
- (2) impose administrative sanctions, other than fines, on the grantee;
- (3) temporarily withhold all payments pending correction of the deficiency by the grantee;
- (4) withhold future grant payments from the program or grantee; or
- (5) terminate the grant in whole or in part.

(b) The Commission shall provide reasonable notice prior to imposing a remedy under subsection (a) of this section. If a grantee disputes the finding, the authorized official may request that one or more representatives of the grantee appear before the Commission. If the Commission receives such a request, it will consider the grantee's presentation at the Commission's next scheduled meeting. The administrative determination rendered by the Commission is final.

## **Policy Monitoring Risk Assessment Factors and Selection of On-Site Reviews**

### **Goal of Policy Monitoring**

The goal of policy monitoring is to promote local compliance and accountability with the requirements of the Fair Defense Act (FDA) through evidence-based practices and to provide technical assistance to improve processes where needed. The review is intended to assist the local jurisdiction in developing procedures to monitor its own compliance with its indigent defense plan and the FDA.

### **Types of Monitoring Reviews**

The policy monitor may conduct full policy monitoring reviews, follow-up reviews, drop-in reviews, and limited scope reviews.

- A full policy monitoring review covers all items listed in the policy monitoring rules.
- A follow-up review focuses on issues identified in a previous monitoring review.
- A drop-in review is typically informal. The items covered in a drop-in review may vary. This review may or may not involve an examination of records. Drop-in reviews may be made for any reason.
- A limited scope review follows the policy monitoring rules with respect to a particular core requirement(s), but does not cover all of the core requirements for felony, misdemeanor, and juvenile cases. A limited scope review may be made if:
  - a drop-in visit identifies a specific issue(s);
  - if a grant review or a fiscal monitoring review identifies specific issues; or
  - if credible evidence (e.g. from a complaint) indicates that FDA requirements are not being met.

### **Purpose of Risk Assessment**

The risk assessment is a tool to rank each jurisdiction's potential risk of not being in compliance with the FDA. From this risk assessment, counties can be fairly chosen for site visits.

Counties can receive monitoring visits as a result of factors outside of the risk assessment. For instance, a county or legislative official can request a monitoring visit. If TIDC staff receive evidence indicating FDA requirements are not being met, staff may request additional information. If the information becomes credible, staff may conduct a limited scope review.

### **Policy Monitoring Risk Assessment Model**

Counties are given a score with the higher scores indicating higher risk. Visits are then apportioned to administrative judicial region and county size. This model measures various factors to determine whether a county is at risk for not meeting the expectations of the Fair Defense Act. **Risk factors are indicators and are**

**not determinates of indigent defense systems.** Risk points are assigned to each county.

The risk matrix is as follows:

- No investigation expenses reported – 2 pts if none reported  
Attorneys are under a duty to investigate their respective cases. Sometimes this investigation may require expenses beyond the attorney's time. Counties not reporting any investigation expenses could be at risk for not providing adequate defense services. These expenses include in-house public defender investigator expenses. If a regional public defender has an in-house investigator, the investigation expense counts for all counties that are part of the regional program.
- No expert witness expenses reported – 1 pt if none reported  
Expert witnesses are often a necessary part of a defendant's case. Counties not reporting any expert witness expenses could be at risk for not providing adequate defense services.
- Per capita indigent expenses totaling less than 1/2 the State's per capita average – 4 pts  
If per capita indigent defense spending is low, the county may not be providing adequate indigent defense services.
- Greater than 100% felony or misdemeanor appointment rate – 4 pts  
Felony or misdemeanor appointment rates over 100% could be a sign of poor record keeping. This will only cover counties whose clerks made all reports to OCA.
- Felony appointment rate rank (if 100 or more felony cases added) – 1 pt per octal  
Counties with 100 or more felony cases are ranked by felony appointment rate and then grouped by octal. The top appointing group receives 0 points and each succeeding octal receive an additional point, so that the bottom octal receives 7 points. This will only cover counties whose district clerk made all reports to OCA.
- Misdemeanor appointment rate rank (if 100 or more misdemeanor cases added) – 1 pt per octal  
Counties with 100 or more misdemeanor cases are ranked by misdemeanor appointment rate and then grouped by octal. The top appointing group receives 0 points and each succeeding octal receives an additional point, so that the bottom octal receives 7 points. This will only cover counties whose county clerk made all reports to OCA.
- Greater than 250,000 population - 1 pt per each 250,000 population  
Counties with a 2010 population estimate of at least 250,000 received 1 point per each 250,000 population.
- Less than 50% juvenile appointment rate (with at least 25 juvenile cases added) – 4 pts  
Many juvenile matters receive appointed counsel but the juvenile is not formally charged (e.g. with a detention hearing). Appointment of counsel under the Texas Family Code is not dependant upon a counsel request but

upon the time from when the juvenile was served. If matters are often handled informally, many jurisdictions will even have appointment rates well over 100%. Low juvenile appointment rates can be a sign that appointments are often late and possibly being denied to indigent defendants.

- No reimbursements for court-appointed fees – 1 pt  
No reported reimbursements are a sign of disorganization and bad record keeping.
- Three or more complaints logged in the TIDC intake log within the past 3 years – 4 pts  
Counties with at least 3 indigent defense complaints logged into the TIDC database could be at risk for not meeting the Fair Defense Act requirements.
- No appeals (if population estimate over 50,000) – 5 pts  
One would expect medium and large population counties to have some appeals. Not reporting any appeals could be a sign of bad record keeping or of poor processes for allowing indigent persons to receive appellate representation.
- Recipient of multi-year discretionary grant funds in current year (host county receives all risk points) – 4 pts  
TIDC has a definite interest in ensuring that its multi-year discretionary grant programs improve local indigent defense services.
- A clerk's office did not make all felony or misd reports to OCA – 7 pts for dist clerk and 7 pts for county clerk
- The combined justices-of-the-peace in a county did not report any requests for counsel in reports to OCA but did report at least five magistrate warnings – 3 points  
If magistrates do not report requests for counsel to OCA, there is a possibility that arrestees are not given the opportunity to request counsel.
- The combined municipal courts in a county did not report any requests for counsel in reports to OCA but did report at least five magistrate warnings – 3 points  
If magistrates do not report requests for counsel to OCA, there is a possibility that arrestees are not given the opportunity to request counsel.
- The ratio of misdemeanor requests for counsel from Article 15.17 hearings as reported in Texas Judicial Council Monthly Activity Reports to the number of misdemeanor cases paid reported by the county. (at least 10 Article 15.17 requests) - 1 pt per octal  
If the number of cases paid is far less than the number of requests, there is a risk that requests for counsel are not being processed according to Article 15.17 or Article 1.051.

## **Selection of Site Visits from Risk Score**

The policy monitor attempts to select counties for site visits in a broad, diversified manner. As the Commission has limited resources, site visit distribution is based on the expected number of visits that could be made.

To determine which counties receive a visit, counties are divided into four groups: large counties (those counties whose 2010 census population was at least 250,000 persons); medium-sized counties (those counties whose 2010 census population was between 50,000 and 250,000 persons); small counties (those counties whose 2010 census population was between 15,000 and 50,000 persons); and very small counties (those counties whose 2010 census population was less than 15,000 persons). The policy monitor is to give priority to small, medium, and large counties (very small counties are given lower priority).

The policy monitor selects site visits from eligible counties in each administrative judicial region (those counties in each region whose risk scores are highest for small, medium, and large counties).

If a judicial district comprises multiple counties, counties with a population under 15,000 may be selected as part of a review for multiple counties.

Counties who have received a full monitoring review since 2010 should not receive a full monitoring review until all counties with a population over 15,000 have received a monitoring review.

Voluntary visits may be made at any time at the request of the county. Such visits count as a formal site visit, and if possible, will be factored into determining which counties in a region receive a visit for a given year.

# Review of Policy Monitoring Processes

## Background

In 2001, the Fair Defense Act established basic requirements for counties' indigent defense systems and charged TIDC with overseeing them. Since then, counties have had written plans for meeting six core requirements:

1. Prompt Magistration
2. Indigence Determination
3. Minimum Qualifications
4. Prompt Appointment
5. Appointment Distribution
6. Data Reporting

Policy monitoring reviews audit whether local court practices conform to plans. The reviews include remote data collection and onsite visits, where monitors review case files, observe hearings, and interview officials and staff.

## Monitoring Process Review

Historically, TIDC has had one policy monitor conducting about a dozen reviews a year. It is now adding four monitors. To help its team be as effective as possible, TIDC has undertaken a year-and-a-half-long review of its policy monitoring process, with three goals:

1. Documenting Processes
2. Removing Inefficiencies
3. Assessing Quality

To meet these goals, TIDC has:

- Reviewed indigent defense plans and monitoring reports;
- Reviewed TIDC data collection;
- Received two external evaluations;
- Interviewed other justice system auditors and stakeholders; and
- Workshopped improvements in a series of staff planning sessions.

## Summary of Improvements

### *Documenting Processes*

TIDC developed a process map, illustrating the tasks of a monitoring review, and a manual, with checklists for completing tasks. Proposed updates to the monitoring rules (in the Board materials) would further clarify procedures.

### *Removing Inefficiencies*

By mapping tasks and discussing common obstacles, TIDC streamlined each review stage:

- Selection: Clarified scope of reviews to expedite county selection process.
- Planning: Expanded off-site data collection to reduce travel time.
- Site Visit: Created checklists for data collection to organize on-site work.
- Analysis: Simplified staff and board report review process.
- Publication: Expanded assistance to counties to avoid additional reviews.
- Meta-Analysis: Created tools to track deadlines and aggregate findings across reviews.

### *Assessing Quality*

With a larger team and streamlined processes, TIDC can expand the breadth and depth of monitoring to include requirements for quality of counsel. A proposed pilot program is described on the next page.

## Next Steps

TIDC will continue to evaluate its monitoring processes over the next year. In particular, the Policy and Improvement teams will work together to improve assistance to counties on Fair Defense Act compliance.

## Quality Pilot

TIDC currently monitors Core Requirement 3, Minimum Attorney Qualifications (1 TAC § 174.28(c)(3)), by assessing whether counties have objective qualifications for appointment lists (CCP 26.04(d)) and require at least 6 CLE hours per year (1 TAC § 174.1).

The pilot will assess whether counties

*ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics ... (CCP 26.04(b)(5)).*

In monitoring reports, TIDC will describe counties' attorney performance review procedures, based on Indigent Defense Plans and interviews. It will assess whether these procedures are effective by using key performance indicators:

- Caseloads
- Use of Investigators
- Client Visits

Policy monitors will gather data from Indigent Defense Expenditure Reports and other sources as available—such as fee vouchers and jail visit logs—and compare them to standards, such as the *Weighted Caseload Guidelines*.

TIDC's assessment will be included in reports as "Additional Observations," which are not compliance findings and do not affect formula grant funding. At the end of the pilot, TIDC will collect its observations and recommendations for improving oversight.

# TIDC Policy Monitoring Process Map 2019



## Summary of Recent Complaints

### Complaint Statistics

Since the August 29, 2019 Board Meeting:

- TIDC has received **22** new complaints from **22** individuals.
- **3** complaints remain open, pending further investigation.
- **18** complaints were resolved via letter, phone call, e-mail, or no further response.\*
  - **3** were forwarded to local officials.
  - **6** were provided information on Innocence Projects.
  - **0** were forwarded to the Texas Fair Defense Project.
  - **5** were forwarded to the Texas Jail Project.
  - **0** were provided information on self-serve legal resources.
  - **2** were referred to the State Bar-Grievance System and CAAPs.
  - **1** was referred to the State Commission on Judicial Conduct.\*\*

*\*Note: One response may have contained referrals to more than one entity.*

*\*\*Judicial conduct referral was in reference to an out-of-state claim (Nebraska).*

### Relevant Complaints

#### **Complaint #1: Defendant denied access to counsel**

**Date: October 30, 2019**

**Contact Title: Martin Holsome, Rusk City Councilman**

**County: Cherokee**

**TIDC Contact: Kathleen Casey-Gamez**

**SUMMARY:** In the year 2000, Mr. Holsome was arrested and charged with Unlawful Carrying of a Weapon in Jacksonville, Texas. In his complaint, he states: “[w]hen brought before the prosecutor, I was not offered counsel. I was told to sign an affidavit forfeiting my weapons to the state for destruction and to enter a plea of guilt and accept 30 days time served. I was also told that if I didn't do this, I would go back to jail. Bear in mind that I'd already been incarcerated for 84 days. Not knowing what to do and definitely not wanting to go back to jail, I did as I was told.” He believes he has evidence to show that the case was mishandled.

**RESOLUTION:** This complaint is not yet resolved.

**Complaint #2: Excessive caseload complaint against judge and attorney (first reported last Board meeting)**

**Date: August 9, 2019**

**Contact Title: Drew Willey**

**County: Harris County**

**TIDC Contact: Kathleen Casey-Gamez**

**SUMMARY:**

Drew Willey makes the following complaint on behalf of his client against **Judge Amy Martin** (263<sup>rd</sup> District Court, Harris County) and attorney **Jerome Godinich**. He has filed a writ of mandamus which is pending the 14<sup>th</sup> Court of Appeals. In an e-mail to TIDC Mr. Willey alleges:

- Jerome Godinich's excessive caseload is preventing him from meeting with clients as required by Tex. CCP 26.04(j)(1), and that his excessive caseload is forcing him to violate Tex. Disc. Rules of Prof. Conduct 1.01, 1.02, and 1.03. (see attached ABA Formal Opinion).
- Judge Martin's system of public defense violates at least 5 of ABA's 10 principles (#1,2,5,8 & 10), she is not giving the Harris County Public Defender Office priority to appointments, as required by Tex. CCP 26.04(f), and she is failing to use discretion in replacing attorneys, namely, Jerome Godinich, according to Tex. CCP 26.04(k).

**RESOLUTION:**

This complaint is not yet resolved.

**Complaint #3: Alleged unlawful removal from appointment list**

**Date: May, 28, 2019; June 3, 2019; November 18, 2019**

**Contact Title: Richard De Los Santos**

**County: Johnson**

**TIDC Contact: Kathleen Casey-Gamez**

Mr. De Los Santos alleges that he and attorney Reynaldo De Los Santos were:

- (1) Skipped on the juvenile appointment list without good cause, which was required by the indigent defense plan;
- (2) Removed from the juvenile appointment list without good cause, which was required by the indigent defense plan.

The attorneys have also filed several Rule 12 requests to obtain documentation related to their removal, but they have not received any documents.

Currently, the Office of Court Administration has appointed a special committee to review alleged rule 12 Request violations regarding Judge McClure and Judge Mayfield of Johnson County.

**RESOLUTION:**

This complaint is not yet resolved.

# Improvement Team Report

TIDC recently established its Improvement Team to better coordinate and expand the Commission's efforts to improve county indigent defense systems. The Improvement Team includes **Scott Ehlers**, Director of Public Defense Improvement, and **Kathleen Casey-Gamez**, Senior Policy Analyst.

Following is a summary of some of the Improvement Team's accomplishments over the past few months:



## Public Defense Improvement Plan

- The team developed a Public Defense Improvement Plan that identified focus areas, activities, and goals for the Improvement Team in the coming year.

## Communications

- Improvement Team staff sent a mailing to over 370 constitutional county court judges, district judges, and statutory county court judges in rural counties to inform them of new grant funding opportunities for rural counties and the technical assistance services provided by TIDC.
- The Improvement Team developed a web presence at <http://www.tidc.texas.gov/resources/improvement/> where local officials can see what services are available, download publications, and contact team members.
- The Improvement Team assisted in drafting an article for the fall edition of *In Chambers*, the magazine of the Texas Center for the Judiciary. Online [here](#).

## System Building and Planning Studies

- Improvement Team staff are writing two planning studies to build one rural regional public defender office and one single-county public defender office after receiving requests for these studies from county officials.
- Staff had conversations with others who are interested in building rural regional public defender offices in various parts of the state. The Improvement Team will develop planning studies for those counties if it receives a request from a local county official.

## Technical Assistance

Improvement team members provided technical assistance to:

- Harris County – Improvement team members met with district judges and local attorneys multiple times to provide technical assistance for building a felony managed assigned counsel program (MAC). The Improvement team also arranged for multiple speakers from Massachusetts; Lubbock; New York City;

San Mateo, California; and Colorado to provide presentations for the Harris County District Court judges who are considering establishing a MAC.

- Galveston County – Improvement team members met with a local judge who is interested in improving representation of defendants with mental illness.

## Education

- On November 19, Improvement Team members developed the agenda and hosted the **Third Texas Roundtable on Representing Defendants with Mental Illness**, which was held after the Judicial Summit on Mental Illness in San Marcos. Over 50 defense attorneys, social workers, investigators, and others attended. Agenda here: <http://www.tidc.texas.gov/media/58243/tidc-2019-mh-roundtable-agenda-111219.pdf>.
- In October, Improvement Team staff and Geoff presented to over 300 attendees of the **County Judges and Commissioners Association of Texas** about TIDC's new funding opportunities for rural counties.
- In October, Scott Ehlers presented to the **Travis County Public Defender Oversight Board** on the *Past, Present, and Future of Texas Public Defense*.
- On January 16-17, TIDC will be hosting the **Texas Indigent Defense Workshop** at the Texas Association of Counties in Austin. Agenda here: <http://www.tidc.texas.gov/media/58225/id-workshop-agenda-2020.pdf>.
- On January 30, TIDC and the Texas Justice Courts Training Center will be hosting the **Rio Grand City Workshop on Effective Magistration and Indigent Defense Practices**. Agenda here: <http://www.tidc.texas.gov/media/58262/starr-jp-training-event-flyer.pdf>.

## Partnership Programs

- **Future Indigent Defense Leaders** – Improvement team staff continued working with first co-hort of mentees who will be attending their next Gideon's Promise training in Atlanta, Georgia in January 2020. Staff also worked with project partners to develop a second application and prepare to interview a new round of FIDL mentees for 2020.
- **Juvenile Training Immersion Program** – TIDC was recently awarded a grant to bring the nationally recognized JTIP training to Texas. This training, created by the National Juvenile Defender Center, is generally recognized as the gold standard in juvenile defense training. Improvement team members convened an Advisory Council that developed an application to gather 18 attorneys who will attend a “train the trainer” and provide juvenile defense trainings throughout the state for the next three years.

## Publications

- *Fair Defense Laws 2019-20121*
- [Managed Assigned Counsel Programs—Frequently Asked Questions](#)