

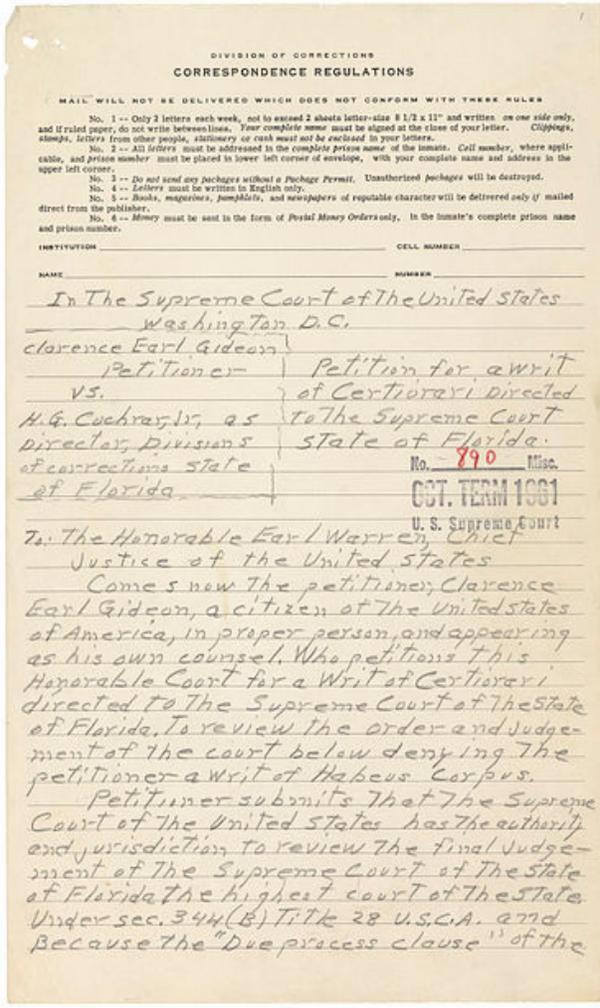
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“If an obscure Florida convict named Clarence Earl Gideon had not sat down in prison with a pencil and paper to write a letter to the Supreme Court; and if the Supreme Court had not taken the trouble to look at the merits in that one crude petition among all the bundles of mail it must receive every day, the vast machinery of American law would have gone on functioning undisturbed. But Gideon did write that letter; the court did look into his case; he was re-tried with the help of competent defense counsel; found not guilty and released from prison after two years of punishment for a crime he did not commit. And the whole course of legal history has been changed.”

Robert F. Kennedy



indigent defense news in Texas
www.txcourts.gov/tidc April 2013

TEXAS COMMEMORATION OF THE 50TH ANNIVERSARY OF GIDEON

Close to 200 gathered in person or watched live-streaming on the internet as the 50th Anniversary of *Gideon v. Wainwright* was celebrated at the Capitol on March 18th. *Gideon v. Wainwright* is the landmark Supreme Court decision requiring states to provide counsel to those too poor to hire counsel. Presenters included [Professor Bruce Jacob](#), former Assistant Attorney General of Florida who argued *Gideon v. Wainwright* before the U.S. Supreme Court; [Deborah Leff](#), Acting Senior Counselor for Access to Justice at the U.S. Department of Justice; [Honorable Sharon Keller](#), Presiding Judge, Texas Court of Criminal Appeals; [Honorable Rodney Ellis](#), Texas State Senator; [Buck Files](#), President, State Bar of Texas; and [Lydia Clay-Jackson](#), President, Texas Criminal Defense Lawyers Association.

In case you missed it, [video downloads](#) are available, including a [commemorative program](#) with agenda.

Message from the Chair

Several changes have taken place recently with members of the Commission and staff. On February 28, 2013, a seat on the Commission became open with the retirement of Judge Laura Weiser. I appreciated her service and guidance during her tenure with the Commission. She will be missed but I do look forward to working with her in her new role as Judicial Resource Liaison at the Texas Center for the Judiciary. We wish her the best of success —our loss is the Center’s gain. We welcomed a new member, Representative Abel Herrero, who is Chair of the House Committee on Criminal Jurisprudence. We also bid farewell to Carol Conner, the Fiscal Monitor for the Commission over the past eight years. Many of you have met Carol and come to know her over those years during her fiscal monitoring visits or technical assistance with expenditure reporting. She has pursued an opportunity at the Veteran’s Commission and we wish her well. We welcome West Garrett ([bio](#)). West started on February 1 as Research Specialist for the Commission. We thank our past member Laura Weiser and Carol Conner for their service and we look forward to working with Representative Herrero and West Garrett.

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

Message from the Executive Director

March was indeed a busy month with a flurry of *Gideon* anniversary activities, the legislative session and Commission meeting on March 21st.

Legislative update: I'm happy to report that both the senate and house committees approved the Commission's request to restore estimated appropriation authority and unexpended balance authority. If included in the final budget these changes are estimated to generate an additional \$16.7 million in funding for indigent defense. We have also prepared summaries of 14 [indigent defense bills](#), which are available on our website. See also, [Chief Justice Jefferson's State of the Judiciary 2013](#) wherein he emphasized the importance of adequately funding indigent defense.

Gideon events/news: Please see an article written by Judge Keller and myself for Texas Bar Journal: [Justice for All: How Texas Was Ahead of the Landmark *Gideon v. Wainwright* Decision](#).

Texas Association of Counties featured Wichita County in a recent edition of County magazine about the Gideon Recognition the county received in December: [Making Gideon Proud](#).

We have a [list of Gideon events that took place here and around the country last month](#) on our website.

We were truly honored on March 18th following the Texas Gideon Commemoration (article on page one), when both the House (Representative Turner and Representative Herrero) and Senate (Senator Ellis) presented Resolutions commemorating the 50th anniversary of *Gideon*: [HR808](#) (and [archive video](#), go to 45:25-51:16) and [SR479](#) (and [archive video](#), go to 5:05-11:15). The photos below are during the Senate presentation when speakers at the Commemoration were recognized on the Floor of Senate Chambers and exonerees and Commission staff were recognized in the Gallery of Senate Chambers.

Best,

Jim Bethke
Executive Director

Photo right, L-R: David Wiggins (exoneree), Judge Keller, Professor Bruce Jacob, Buck Files



Commission Members:

Chair:

Sharon Keller, Presiding Judge, Court of Criminal Appeals

Vice Chair:

Olen Underwood, Presiding Judge, 2nd Administrative Judicial Region of Texas

Roberto Alonzo, State Representative

Jon Burrows, Bell County Judge

Knox Fitzpatrick, Dallas Attorney, Fitzpatrick, Hagood, Smith & Uhl, L.L.P.

Abel Herrero, State Representative

Wallace B. Jefferson, Chief Justice, Supreme Court

Tony Odiorne, Public Defender, West Texas Regional Capital Public Defender

Sherry Radack, Chief Justice, First Court of Appeals

Glen Whitley, Tarrant County Judge

John Whitmire, State Senator

Interactive Features of Newsletter:

If you're viewing this as a PDF, be sure to take advantage of many of this newsletter's interactive features. Many of the stories feature hyperlinks to additional material, including videos, reports, national news items.



Texas Gideon Recognition 2013
Burnet County
and its Public Defender's Office

Burnet County Awarded the Texas Gideon Recognition for Improvements in Indigent Defense

On March 21 the Commission awarded the Texas Gideon Recognition to Burnet County for their outstanding commitment to improvements in indigent defense. The creation of the Burnet County Public Defender Office, together with other process improvements in the Burnet County justice system, have elevated the quality of justice available to the poor, provided high-quality indigent defense services with oversight and accountability, and saved taxpayer dollars with a more effective system of public defense. Burnet County Judge Donna Klaeger, County Attorney Eddie Arredondo and Chief Public Defender Michelle Moore accepted the award for Burnet County at the Commission's meeting in Austin.

The Burnet County Public Defender Office opened in December 2011 with the help of a grant from the Commission. The public defender has worked closely with Burnet County's magistrate judge to streamline processes to ensure that poor defendants have access to counsel early in the process. Caseload standards have been put in place and monitored, and well-trained and highly qualified attorneys staff the office. The public defender has also spearheaded the use of videoconferencing technology and has effectively worked with the magistrate to get help to mentally ill defendants quickly.

The Gideon Recognition program is inspired by the the landmark U.S. Supreme Court case *Gideon vs. Wainwright*. Counties are recognized based on how well their programs meet the principles of the Fair Defense Act and the American Bar Association's Ten Principles of a Public Defense Delivery System. Counties may receive recognition for programs or achievements that demonstrate a significant level of innovation, such as a new solution to a problem, significantly streamlining a process, a measurable and significant increase in productivity, or improved service to indigent defendants or other stakeholders. Recognition may also be given to counties with exceptionally high performing indigent defense systems. In recognizing a county, the Commission seeks to promote innovative, high performing policies that are replicable in other counties.



Pictured above, L-R: Eddie Arredondo, Burnet County Attorney; Burnet County Judge Donna Klaeger, Michelle Moore, Burnet County Chief Public Defender; Judge Sharon Keller, Chair of the Commission and Presiding Judge of the Court of Criminal Appeals

“Burnet County’s successful innovations have made real and valuable improvements to indigent defense and the overall criminal justice system. Their public defender helps to ensure effective representation through oversight, accountability, and standards development, all while monitoring compliance with the Fair Defense Act and at substantial savings to taxpayers compared with the previous system.”

Judge Sharon Keller

Contact Terri Tuttle, Executive Assistant/Project Manager, to nominate a county or for more information about the Commission's [Gideon Recognition program](#) at (512)463-8015 or email her at terri.tuttle@txcourts.gov.

GRANTS AND REPORTING UPDATE

FY13 Formula Grant Payments

Second quarter has ended and second quarter payments will go out soon. All second quarter payments should be received by Mid-April. Second quarter payments will go out to counties that received a first quarter payment. If your county did not receive a first quarter payment, check your award statement to see if there are any special conditions such as owing a refund, county resolution not submitted, etc. placed on the county. If there are no special conditions on the award statement, contact Bryan Wilson, Grants Administrator to see what the problem might be.

Distribution of Grant Funds by Direct Deposit

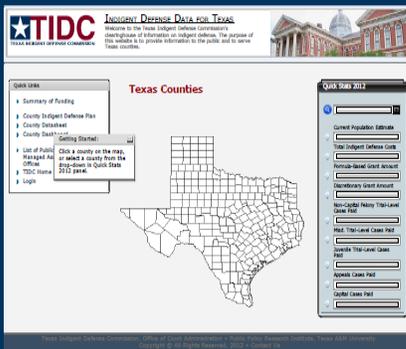
For those counties still receiving their grant payments by warrant (check), please consider direct deposit for receiving your payments. There are several advantages to receiving your payments by direct deposit versus by warrant such as the ability to trace your payments, no deposit delays, prompt availability of funds and no worry about a lost or stolen warrant.

To begin receiving your payments by direct deposit, simply complete the Vendor Direct Deposit Authorization Form 74-176 and return the completed form back to us. This form is available on the Comptroller's state government website at: www.cpa.state.tx.us/taxinfo/taxforms/74-176.pdf. If assistance is needed in filling out the form or you have additional questions a customer service representative is available Monday thru Friday, 8:00 a.m. to 5:00 p.m. by calling 1-800-531-5441, ext. 3-3600 (toll-free) or 512-463-3360 (in Austin) or by email at www.claims.pin@cpa.state.tx.us.

Contact Sharon Whitfield, Budget and Accounting Specialist, for more information about Commission funding at (512)936-6998 or email her at sharon.whitfield@txcourts.gov.

Contact Bryan Wilson, Grants Administrator, for more information about Commission funding programs at (512)936-6996 or email him at bryan.wilson@txcourts.gov.

Check out your County's data sheet for a snap shot of your indigent defense system



FY12 TIDC Annual and Expenditure Report



Annual and Expenditure Report 2012

www.txcourts.gov/tidc

POLICIES AND STANDARDS UPDATE

Policy Monitoring: County Practices for Tracking Requests for Counsel

The statutory framework relating to requests for counsel requires that multiple parties must coordinate in order to prevent untimely determinations of indigence or waivers of counsel that do not meet the requirements of Article 1.051 of the Code of Criminal Procedure. In particular, counties must have a method to assist arrestees with affidavits of indigence. Article 15.17(a) of the Code of Criminal Procedure requires that a magistrate “shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time.” Unfortunately, many magistrates struggle to find adequate time to assist arrestees with the completion of affidavits of indigence.

If steps are not taken to ensure the completion of affidavits of indigence, later steps may fail. For instance, Article 15.17 also requires that requests for counsel and accompanying paperwork be transmitted to the appointing authority within 24 hours of the request being made. Article 1.051(c) then requires that the appointing authority, typically a judge, rule on the requests within three working days (for counties with a population less than 250,000) or within one working day (for counties with a population of at least 250,000). If a person has requested counsel, but the request has not been ruled upon, Article 1.051(f-1) disallows the defendant from communicating with the prosecutor.

In order to consistently meet the statutory requirements relating to counsel requests, counties must put in place a method to track the requests, so that courts of dispositive jurisdiction can be confident that all persons reaching a docket have had pending requests for counsel ruled upon. Wichita County has addressed the issue by providing affidavits of indigence to arrestees prior to the Article 15.17 hearing. When arrestees appear before a magistrate and request counsel, the goal is for the affidavits to already be complete at the time of the Article 15.17 warnings. The magistrate can then forward each completed affidavit to the appointing authority. A log of all persons appearing before a magistrate is created, and one notation is entered if a person requests counsel and another notation is entered if all forms were completed. In this way, if a person requested counsel at the Article 15.17 hearing, the appointing authority can have documentation as to whether all requests for counsel have been received.

In Bell County requests for counsel are logged electronically. Pre-trial Services staff meet the arrestee and conduct the indigence assessment (whether counsel was requested at the Article 15.17 hearing or at a later time). The information gathered in this screening is used both for pre-trial bond purposes and for indigence determinations. The screening is designed to be efficient so that questions that would automatically trigger a determination of indigence are asked first, such as whether the person receives a means-tested federal benefit. All requests for counsel are ruled upon, so that no one should arrive at a court docket with a pending request for counsel. The records are electronically stored, and a court can examine all events that occurred prior to the hearing.

Counties are free to choose their own methods for meeting the requirements of the Fair Defense Act. However, in order to meet these requirements, counties must create methods to ensure that all persons requesting counsel can receive assistance in completing affidavits of indigence and that all requests are ruled upon in a timely manner.

Contact Joel Lieurance, Policy Monitor, for more information about Commission Policy Monitoring at (512)936-7560 or email him at joel.lieurance@txcourts.gov.

Available on the Commission website:

- [Fair Defense Law: A Primer for Texas Officials](#)
- [Fair Defense Laws-Codified](#)
- [Justice for All: How Texas Was Ahead of the Landmark Gideon v. Wainwright Decision](#), article by Presiding Judge Sharon Keller and Jim Bethke in the Texas Bar Journal (March 2013)
- [Message For You](#) from Executive Director
- [Videos](#) of presentations at indigent defense workshops and symposium
- [Flowcharts](#) describing Articles 16.22 and 17.032 of the CCP to aid jurisdictions in improving defense processes in mental health issues
- [Veterans Defender Resource](#)

See any Texas county indigent defense plan--all 254 are available **online**, A-Z



The screenshot shows the TIDC website interface. At the top, it says "TIDC INDIGENT DEFENSE DATA FOR TEXAS" and "TEXAS INDEBTED OFFENSE COMMISSION". Below that, it says "Welcome to the Texas Indigent Defense Commission's clearinghouse of information on indigent defense. The purpose of this website is to provide information to the public and to serve Texas counties." There are search filters for "County" and "Sort By". The main content area is titled "Current Indigent Defense Plan" and shows a list of counties with their respective plans and update dates. The first entry is "Anderson County" with two plans: "Anderson District Court and County Court Plan (last updated 8/10/2016)" and "Anderson Juvenile Board Plan (last updated 8/10/2016)".



Around the Nation

Fifty Years since Gideon: Federal Sentencing Reporter on the Challenges of Underfunded Indigent Defense. The latest issue of the Federal Sentencing Reporter (FSR) focuses on the ethical and legal ramifications of America's overburdened, underfunded public defense system. It also features commentary on *Lafler v. Cooper* and *Missouri v. Frye*, two recent Supreme Court cases that restate the importance of access to effective counsel in the plea bargaining process. By special arrangement with the University of California Press, the Editors' Observations and Professor Erica Hashimoto's article, Abandoning Misdemeanor Defendants, can be read for free on Vera's website: <http://www.vera.org/project/federal-sentencing-reporter>

The National Juvenile Defender Center has released "National Juvenile Defense Standards." The standards provide comprehensive information about the role and duties of the juvenile defenders in the modern juvenile court system and provide a framework for representation anchored in law, science, and professional codes of responsibility.

Innocence Project report looks at the difference that a lawyer makes to the outcomes of serious criminal cases in Philadelphia. http://www.innocenceproject.org/Content/New_Report_on_Indigent_Defense_Examines_Philadelphia_Homicide_Verdicts.php

Film by Former In-House Counsel looks at 50 years after Gideon – Sundance film festival entrant!! Funded by the Ford Foundation: <http://gideonsarmythefilm.com>. Article: <http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1361435026759&slreturn=20130201145200>

National Association of Criminal Defense Lawyers (NACDL) announced the release of a new report that examines the low rates paid to assigned counsel and the impact that has on legal representation for defendants. According to the report, assigned counsel compensation rates often fail to cover basic overhead costs. Because of this, attorneys who work on indigent defense cases often lose money in the process. On top of low hourly rates, more than half of all states have maximum compensation fees, with any additional hours of work going uncompensated. The report, titled Rationing Justice: The Underfunding of Assigned Counsel Systems, is available for download [here](#).

In commemoration of the 50th anniversary of *Gideon*, **The Constitution Project** and the **New Media Advocacy Project** released the documentary "**Defending Gideon**." Narrated by noted actor Martin Sheen, the film highlights the importance of a system that guarantees skilled and well-resourced representation for all - and the dire consequences when that system fails. Watch and order the video at www.constitutionproject.org and help educate the public about this vital right.

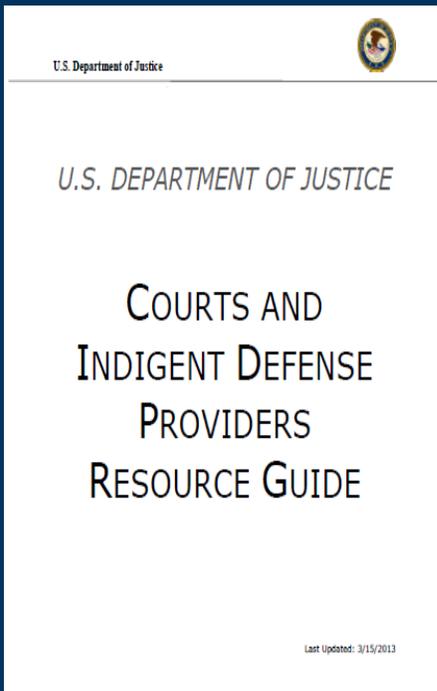
The Department of Justice Access to Justice Initiative recently launched a new website <http://www.justice.gov/atj/gideon/> which has information about the Justice Department's efforts to ensure effective legal assistance for all persons charged with crimes. The website includes video from the Department's March 15th commemorative event, information on grants, training and technical assistance, as well as a recent blog on indigent defense research opportunities.

Contact Jim Bethke
Executive Director

US DOJ Access to Justice
Grant Information Webpage

and

Resource Guide for Courts
and Indigent Defense
Providers:





Members of the Texas Indigent Defense Commission at March 21, 2013 Commission meeting pictured above, L-R: Tony Odiome, Judge Jon Burrows, Judge Sharon Keller, Representative Roberto Alonzo, Judge Glen Whitley, Representative Abel Herrero, Justice Sherry Radack, Judge Olen Underwood

Please contact any of the following staff members for assistance:

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Archived
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