

2001 - 2016

15
YEARS

Texas Fair Defense Act



Annual Report
Fiscal Year 2016

www.tidc.texas.gov

COMMISSION MEMBERS: 2002 TO PRESENT

<i>The Honorable Sharon Keller, Austin, Presiding Judge, Court of Criminal Appeals</i>	2002 - Present
<i>The Honorable Thomas R. Phillips, Austin, Chief Justice, Supreme Court</i>	2002 - 2004
<i>The Honorable Kenneth Armbrister, Victoria, State Senator</i>	2002 - 2003
<i>Mr. Eduardo Arredondo, Marble Falls, Attorney, Law Office of Eduardo Arredondo</i>	2002 - 2004
<i>The Honorable Jon Burrows, Temple, Bell County Judge</i>	2002 - Present
<i>The Honorable Robert Duncan, Lubbock, State Senator</i>	2002 - 2003
<i>Mr. Knox Fitzpatrick, Dallas, Attorney, Fitzpatrick, Hagood, Smith & Uhl</i>	2002 - 2013
<i>The Honorable Pete Gallego, Alpine, State Representative</i>	2002 - 2003, 2009 - 2012
<i>The Honorable Juan J. Hinojosa, McAllen, State Representative</i>	2002 - 2003
<i>The Honorable Ann Crawford McClure, El Paso, Justice, 8th Court of Appeals</i>	2002 - 2004
<i>The Honorable Orlinda Naranjo, Austin, Judge, Travis County Court at Law #2</i>	2002 - 2008
<i>The Honorable Olen Underwood, Conroe, Presiding Judge, 2nd Administrative Judicial Region of Texas</i>	2002 - Present
<i>The Honorable B. Glen Whitley, Hurst, Tarrant County Judge</i>	2002 - 2015
<i>The Honorable John Whitmire, Houston, State Senator</i>	2003 - Present
<i>The Honorable Todd Smith, Bedford, State Representative</i>	2002 - 2009
<i>The Honorable Terry Keel, Austin, State Representative</i>	2002 - 2006
<i>The Honorable Chris Harris, Arlington, State Senator</i>	2004 - 2006
<i>The Honorable Wallace Jefferson, Austin, Chief Justice, Supreme Court</i>	2004 - 2013
<i>Mr. Anthony Odiorne, Burnet, Assistant Public Defender, Regional Public Defender for Capital Cases</i>	2005 - Present
<i>The Honorable Sherry Radack, Houston, Chief Justice, First Court of Appeal</i>	2005 - Present
<i>The Honorable Jeff Wentworth, San Antonio, State Senator</i>	2006 - 2012
<i>The Honorable Aaron Peña, Edinburg, State Representative</i>	2007 - 2008
<i>The Honorable Alfonso Charles, Longview, Judge, 124th District Court</i>	2008 - 2011
<i>The Honorable Roberto Alonzo, Dallas, State Representative</i>	2010 - 2015
<i>The Honorable Laura Weiser, Victoria, Judge, County Court at Law #1</i>	2012 - 2013
<i>The Honorable Abel Herrero, Robstown, State Representative</i>	2013 - Present
<i>Mr. Don Hase, Arlington, Attorney, Ball & Hase</i>	2013 - Present
<i>The Honorable Nathan Hecht, Austin, Chief Justice, Supreme Court</i>	2013 - Present
<i>The Honorable Royce West, Dallas, State Senator</i>	2013 - 2015
<i>The Honorable Linda Rodriguez, San Marcos, Judge, County Court at Law #2</i>	2013 - Present
<i>The Honorable Andrew Murr, Kerrville, State Representative</i>	2015 - Present
<i>The Honorable Brandon Creighton, Conroe, State Senator</i>	2015 - Present



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OFFICERS:

The Honorable Sharon Keller Chair – Presiding Judge, Court of Criminal Appeals
 The Honorable Olen Underwood Vice-Chair – Presiding Judge,
 2nd Administrative Judicial Region of Texas

EX OFFICIO MEMBERS:

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

MEMBERS APPOINTED BY GOVERNOR:

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

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 Wesley Shackelford Deputy Director
 Debra Stewart Fiscal Monitor
 Joan Thomas Publications Manager/Analyst
 Sharon Whitfield Budget Analyst
 Carmen Tellez Law Clerk, 2L, The University of Texas School of Law

Mission and Duties

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.

The Commission operates under the authority of a thirteen-member governing board and is administratively attached to the Office of Court Administration (OCA). Texas Government Code 79.037 identifies some of the Commission’s key duties:

- Assist counties in improving indigent defense systems;
- Promote compliance by counties with requirements of state law relating to indigent defense;
- Distribute grants; and
- Monitor each county that receives a grant and enforce compliance with the conditions of the grant.

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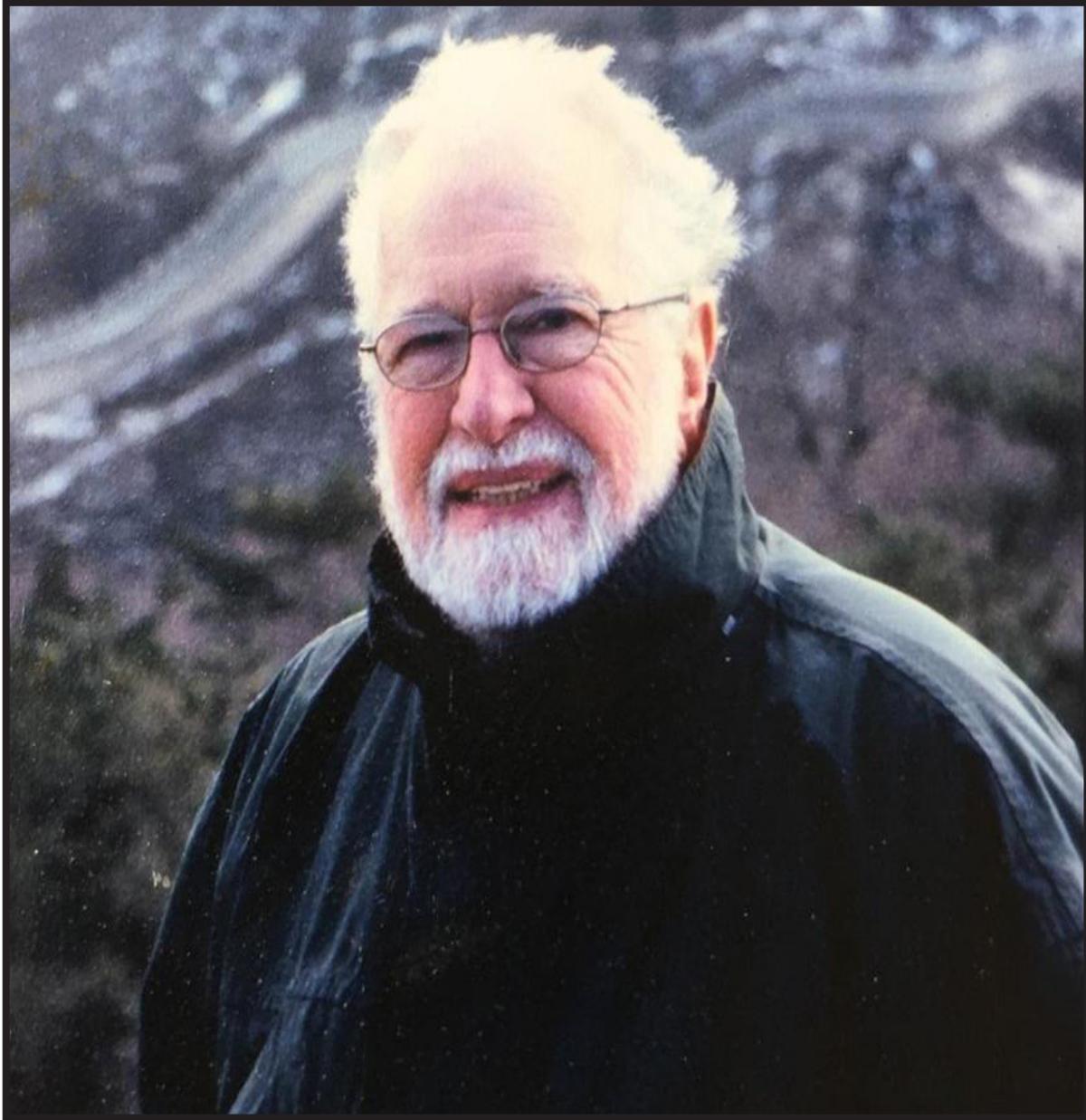


Photo courtesy of Carol Robinson

Robert L. "Bob" Spangenberg

May 16, 1933 - June 22, 2016

***Dedicated to the memory of Mr. Robert L. "Bob" Spangenberg,
who will forever be at the heart of criminal indigent defense for the poor in Texas.***

Through his research, analysis, and technical assistance, Spangenberg helped launch Texas into a new era of indigent defense improvement efforts that led to the passage of the Fair Defense Act of 2001 and the many advancements made since. With a keen understanding of the special culture, history, and perspectives in Texas, he was instrumental in helping our state apply the broader lessons of indigent defense reform around the country to develop Texas-specific solutions.



October 28, 2016

Governor Greg Abbott
Lieutenant Governor Dan Patrick
Speaker of the House Joe Straus
Chief Justice Nathan Hecht
Texas Judicial Council

Ladies and Gentlemen:

It is our privilege to submit this report concerning the duties, activities, and accomplishments of the Texas Indigent Defense Commission in fiscal year 2016 as we mark the fifteenth anniversary of our creation.

Texas continues to gain recognition as a national leader in indigent defense, due in part to the Commission's collaboration with counties to fund innovative approaches to improve indigent defense services. The continued support of the Texas Legislature and Office of the Governor is critical to help our counties pay the cost of defending the poor and continue to make advances in the way these services are delivered.

I want to thank Chief Justice Nathan Hecht and the Texas Judicial Council for their unwavering support of the mission of our program. I also want to welcome Representative Andrew Murr and Senator Brandon Creighton as they begin their service on the Commission. In particular, Representative Murr's willingness to share from his experience as a county judge, criminal defense attorney, and legislator has been invaluable to the Commission's work this past year.

In closing, the following pages contain the Commission's legislative recommendations to improve indigent defense in Texas, including our legislative appropriations request. We also highlight the successes some local jurisdictions have had in implementing new strategies to improve the delivery of indigent defense services. With the support of the legislature, the governor, county governments, and the judiciary, the Commission will continue to seek opportunities to build on the successes Texas has experienced this past year.

Sincerely,

A handwritten signature in blue ink that reads "Sharon Keller". The signature is written in a cursive, flowing style.

Sharon Keller



COMMEMORATING 15



Fair Defense Act (FDA) established the Task Force on Indigent Defense and provided structure and guidance to local officials carrying out constitutional responsibilities to ensure all defendants have access to counsel

First discretionary grants awarded to 19 counties, totaling \$1.2 million

Indigent defense plan submission process established

First Indigent Defense Workshop held in Austin

Task Force developed first 5-year strategic plan for improving Texas indigent defense (2005-2010)

Task Force legislatively directed to contract with four public law schools (later six) in Texas to operate innocence projects



Robert O. Dawson Award created to honor and acknowledge the late Professor Dawson's lasting impact on Texas indigent defense

U.S. Supreme Court case *Rothgery v. Gillespie County* held that adversarial judicial proceedings begin, and thus the right to counsel attaches, at the time an arrestee appears before a magistrate for a hearing pursuant to Article 15.17 of the Texas Code of Criminal Procedure.



Don Hase honored with the Robert O. Dawson Award

2001 2002 2003 2004 2005 2006 2007 2008

Published *Blueprint for Creating a Public Defenders Office in Texas*



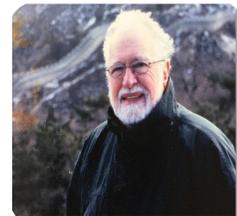
First formula grants awarded to 234 counties, totaling \$7.3 million

Dr. Tony Fabelo honored with the Robert O. Dawson Award



Lubbock County awarded a discretionary grant to create the Regional Public Defender Office for Capital Cases (RPDO) to provide representation in death penalty cases, initially serving 85 counties (now serving 178 counties)

Robert Spangenberg honored with the Robert O. Dawson Award



YEARS : 2001 - 2016

Lubbock County awarded a discretionary grant to create the Lubbock Private Defender Office (LPDO), the state's first Managed Assigned Counsel Program to handle felony and misdemeanor cases

Legislature reorganized Task Force to Texas Indigent Defense Commission



Commission hosted symposium on the Fair Defense Act to commemorate its 15th anniversary

Texas Legislature established the Timothy Cole Advisory Panel on Wrongful Convictions



Caprock Regional Public Defender Office created through a discretionary grant in conjunction with Dickens County and Texas Tech School of Law to provide indigent defense services for underserved rural counties



All 254 Texas counties awarded formula grants for the first time

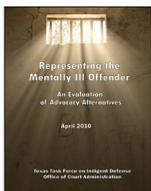


Formula grant calculation changed to be based 50% on a county's population and 50% on county indigent defense spending

Commission given statutory authority to provide continuing state funding up to 50% for regional public defender programs

2009 2010 2011 2012 2013 2014 2015 2016

Partnered with Texas A&M University's Public Policy Research Institute (PPRI) to publish *Representing the Mentally Ill Offender: An Evaluation of Advocacy Alternatives*

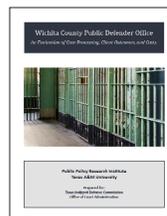


David Slayton honored with the Robert O. Dawson Award

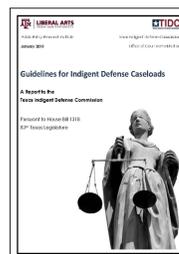


Introduced revamped website to provide public access to all county indigent defense plans and expenditure reports, guides, model forms, rules, publications, e-newsletters, and press releases

Published with PPRI *The Wichita Public Defender Office: An Evaluation of Case Processing, Client Outcomes, and Costs*



Partnered with PPRI to publish *Guidelines for Indigent Defense Caseloads*



Comal County became first jurisdiction in U.S. to give defendants a choice in their selection of defense counsel with help of a TIDC grant

New reporting requirements for the first time provided state and local policy makers detailed information on the number of cases handled by attorneys representing indigent defendants

Commission managed 25 active discretionary grants serving over 190 counties



Professor Norman Lefstein honored with the Robert O. Dawson Award

Bob Wessels honored with the Robert O. Dawson Award



GRANT PROGRAM

County Spotlight: Fort Bend

Expanded Public Defender Ensures Quality & Effectiveness

In 2010 the Texas Indigent Defense Commission provided Fort Bend County with a grant to implement a small, specialized public defender office for defendants with mental illness. In addition to high levels of client satisfaction with the quality of services, that program was also able to achieve cost savings through a significant reduction in pre-disposition jail days, particularly for misdemeanor clients. Based on the success of their mental health program, in 2016 Fort Bend County sought and was awarded a new TIDC grant to expand the program to handle a portion of the county’s regular felony and misdemeanor indigent cases.

A Hybrid System

As Fort Bend County has continued to grow, the number of indigent defense cases and associated costs increased. As the demands on the court system increased, the county’s dockets routinely experienced delays related to absent counsel and excessive resetting of cases. The county saw an opportunity to enhance their system by building on their successful specialized public defender while continuing to draw upon the talent of the private bar. The goal is a hybrid indigent defense system that relies on both appointed counsel and public defenders.

Because public defenders are assigned to cover particular courts they contribute to more efficient docket management through fewer resets. Additionally, the public defender approach provides the county with budget predictability over a substantial portion of the indigent defense spending and gives the county more control over the indirect costs of pretrial incarceration. The office also serves as a resource for the broader criminal defense bar by organizing continuing legal education and offering investigation assistance to private counsel for appointed cases.

Ensuring Quality

The Fort Bend Public Defender Office ensures quality representation by providing supervision, professional development, caseload management, and investigation resources that help to ensure effective representation. The office has helped the county to more fully realize several key principles among the American Bar Association’s standards related to the quality of indigent defense representation.

One of the ABA’s “Ten Principles of a Public Defense Delivery System” states that “Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.” Chief Public De-



Public Defender Office Staff



Fort Bend County Commissioners Court



**Judge Bob Hebert,
County Judge of Fort Bend**

“Although it is a relatively new endeavor, we are very pleased with the performance of the Public Defender Office to date. It is proving its value to our justice system every day.”

fender Rocky Glass supervises the work of the attorneys in the office, conducts personnel reviews that address any problems, and provides ongoing professional development opportunities for the staff, including training, and mentoring. Finally, the Chief Defender has the flexibility to allocate resources within the office to provide more support when complex cases demand it.

The office also helped the county meet the ABA’s Principle 5: “Defense counsel’s workload is controlled to permit the rendering of quality representation.” When defense attorneys carry excessive caseloads, they may compromise their ability to perform due diligence and meet their professional obligations to their clients. The public defender has adopted weighted caseload standards to ensure that attorneys have the ability to devote the time and attention required for meaningful adversarial testing of the state’s case.

The program is also able to initiate representation early in the case. Public defenders are required to visit clients in jail within 24 hours of appointment during the week or the next business day if appointed over a weekend. By engaging with clients and their cases early, public defenders are able to more effectively advocate for their clients.

By employing two full-time investigators on the public defender’s staff, the office ensures routine access to investigative support services. The availability of investigative support within the office makes it much more likely that attorneys will avail themselves of investigative assistance, which in turn increases the ability of the defense to fully challenge the state’s evidence, develop mitigating infor-

mation, and make sure that the final disposition of the case is fully informed of all relevant information. Investigators employed by the public defender are also made available for other court-appointed counsel.

Data Driven

The public defender is able to collect data on defense representation, such as timeliness of defendant interviews, attorney caseload, motions filed and case investigation. By systematically tracking key elements of client representation, the program is able to document its activities in a way that provides greater transparency in how public money is being used and what the county is getting in return for its indigent defense spending. The public defender provides the county and court officials with relevant data to help guide policy decisions and creates a benchmark for assessing the broader indigent defense system in the county.

In addition to providing regular reports to Commissioners Court, the Chief Public Defender regularly meets with an Advisory Board, the Council of Judges, and other stakeholders to keep them informed of program statistics, and facilitate solutions in any problem areas. The county and judges now know exactly how many open and closed cases are handled by the Public Defender, whether clients have been visited in jail or in the office, and the length of pretrial incarceration for the program’s clients.

According to 434th District Judge James Shoemake, Chief Defender Rocky Glass “has done an excellent job” implementing the expanded program. “Attorneys are attentive and prepared,” he said, adding that he is “very impressed with the quality of service.”

Mental Health Defender Programs

Across Texas, jurisdictions struggle to respond to significant unmet needs for mental health services. Many mentally ill individuals end up in the criminal justice system, often becoming repeat offenders. To help address these challenges, the Commission has made funding mental health programs through Discretionary Grants a priority. Mental Health Programs are designed to provide specialized client services focusing on each client's specific needs with the ultimate goals of providing alternatives to incarceration and decreasing recidivism.

In FY 2016, the Commission funded several mental health programs. In an attempt to provide services to mentally ill individuals at the earliest possible stage, Bexar County has implemented a pilot program: *Representation of Indigent Accused at Central Magistration Program*. Housed at the Central Magistration and Detention Facility (CMAG), this section of the Bexar County Public Defender Office provides representation to qualified arrestees suffering from mental illnesses at Article 15.17 magistration hearings. Attorneys counsel eligible arrestees on the magistration process, represent them before the magistrate, and facilitate their release on personal bonds with mental health treatment as a condition.

Several counties have adopted a holistic approach to providing this specialized representation by including social workers and/or case managers to work with defense attorneys to improve client outcomes. Kaufman and Wichita Counties have added both specially trained attorneys and social workers to their public defender offices. Attorneys

and social workers work as a team to serve their clients' legal needs while also providing other supports and referrals to address their unmet medical and social needs. The social workers provide mitigation strategy assistance to the attorneys, connect clients with community services, and provide additional supervision to clients ensuring they fully comply with the requirements of the program. Coryell County has taken a similar approach by contracting with a specialized mental health attorney and a case manager to serve indigent defendants who are found to have a mental illness.

Collin County implemented a Mental Health Managed Counsel program (MHMC) consisting of a managing attorney, contracted specialized mental health attorneys, and social workers. The program works with the jail medical department, a Mental Health Court Judge, jail administration, local law enforcement agencies, and local mental health providers to quickly address client needs. By providing defendants with supports and referrals that address their needs, many defendants are able to stabilize their lives and get help addressing the issues that often led to their involvement with the criminal justice system. With a focus on decreasing recidivism, the MHMC works with various community service providers to have services lined up for clients upon release.

Although each of these programs operates differently based upon specific county needs, all are focused on creating systemic solutions to keep mentally ill defendants out of the criminal justice system and assist them with successful reintegration into the community.

Case Study -- Wichita County Client Success Story

Ms. C, a petite, middle-aged woman with a distinct limp, was accused of assaulting her roommate. Her appointed public defender Scott Stillson noticed Ms. C's unusual thinking and reasoning difficulties when she wanted to plead guilty to "get it over with." Upon further discussion Ms. C confided that she had not assaulted anyone this time, nor the previous time she had pled guilty to assault. Both times she had confessed to prevent the victim from "getting into trouble." After this conversation, Mr. Stillson referred the client to the Public Defender's Mental Health Case Manager, Ms. Shawnee Lofland, for assistance.

Ms. Lofland gathered records, consulted with health professionals, and eventually learned that Ms. C labored under low intellectual functioning with recurring thought disorders, but most importantly, a congenital birth defect crippled her hands and feet and hindered muscle-tissue growth. Ms. C felt that taking blame for committing the assaults would get the police to remove her from a volatile situation for a little while, thus, avoiding confrontation. Mr. Stillson and Ms. Lofland persuaded Ms. C to delay any plea agreement and instead engaged available community resources to assist Ms. C with obtaining housing, mental health services, physical health services, and financial assistance. A medical doctor who examined Ms. C found that with substantial assistance she would be competent to stand trial; however, her physical defects made it impossible for her to have ever committed the alleged assaults in the manner described.

Mr. Stillson was able to get the case dismissed based on this information. More importantly, the community services Ms. C received renewed her spirit and empowered her to seek a more successful lifestyle. At last contact, Ms. C was living and functioning at a higher level — outside the criminal justice system.

"Cases such as this are an important reminder of how a dedicated mental health coordinator can do more than serve a client's legal needs, but actually improve their quality of life."

***Scott Stillson, Wichita County
Assistant Public Defender***

Grants – Making a Difference

Equipping Lawyers to Deliver Quality Representation: Travis County Mentoring

Unlike prosecutors who work together in a county department, most attorneys providing indigent defense services in Texas are solo practitioners without an organizational support network. This can make it difficult for young lawyers to continue their professional development without the benefit of guidance from more experienced lawyers. In 2015, TIDC was awarded a grant from the Criminal Justice Division of the Office of the Governor to develop a new resource for local stakeholders to improve the professional skills of attorneys providing public defense services. In partnership with the National Legal Aid and Defender Association, TIDC published a comprehensive guide adaptable for different Texas counties: *Indigent Defense Attorney Mentoring in Texas: A Guide to Establishing a Mentoring Program*.

TIDC awarded a grant to Travis County to put this new resource into action through implementation of a pilot mentoring program through the Capital Area Private Defender Service (CAPDS), the county's managed assigned counsel program. CAPDS recruits experienced mentors, who undergo training of their own on effective mentoring, and pairs them with less experienced attorneys. The teams work through a curriculum that addresses the key aspects of effective indigent defense. The funding also supports second chair appointments for attorneys in cases that may not otherwise have two attorneys in order to build the skills of young lawyers representing the indigent.

“The CAPDS mentoring program was invaluable to starting my career as a criminal defense attorney. The program provided many quality hours of training in criminal law, practice skills, and the operations of the Travis County criminal justice system. The program matched me with a wonderful mentor, Kelly Bailey, with many years of experience. Kelly helped me navigate the criminal justice system, strategized with me on cases, and shared all of her motions. The program helped me get two second chair opportunities and has a listserv that mentees can pose questions to mentors. After completing the program, I was given the opportunity to take misdemeanor appointments much earlier in my career than would typically be allowed. I believe that every county should have a similar program to improve indigent defense and build the next generation of criminal defense lawyers in Texas.”



***Scott Ehlers, J.D.
Law Office of Scott Ehlers***

Ensuring the Integrity of Forensic Results: The DNA Mixture Case Review

The cases of many indigent defendants throughout Texas are potentially affected by a recent change in the protocol used for calculating inclusion statistics in the analysis of DNA mixtures (i.e., evidence from more than one contributor). Experts have determined that some forensic reports may have improperly overstated the probability that a defendant's DNA was found among the evidence, and there is a substantial concern that the inaccuracy could make a significant difference in the cases of some of these defendants. Prosecutors have been working to identify affected cases and notify defendants.

A group of stakeholders convened by the Texas Forensic Science Commission and including scientists, judges, prosecutors, and defender organizations identified a need for resources for these affected defendants. To respond to this need, TIDC has awarded three grants to assist affected defendants. In December 2015, TIDC awarded a grant to Harris County to fund a coordinated team of attorneys to provide assistance to indigent defendants anywhere in Texas who may be affected by the new guidance regarding testing and reporting protocols for DNA mixtures. The effort is being coordinated through the Harris County Public Defender Office, which has staff

with extensive experience in similar systemic forensic failures affecting numerous defendants. In addition

"Texas is widely recognized as the national leader in efforts to proactively and efficiently address issues in DNA mixture interpretation. TIDC's support for this collaborative effort between defense lawyers, prosecutors, forensic laboratories and the court system is invaluable."



Lynn Robitaille Garcia
General Counsel
Texas Forensic Science Commission



"We have been greatly encouraged by the response, not only from more than 1,000 inmates from around the state who have asked us to review their cases, but from prosecutors as well, who have made our job easier by providing us with case information that enables us to do our review."

Bob Wicoff
Appellate Division Chief
Harris County Public Defender Office

to providing triage and assistance on cases from across the state, the project also serves as a clearinghouse of information and resources on the DNA mixture protocol issue.

As the volume of cases from around the state continued to rise, the Commission awarded additional targeted grants in June 2016 to Travis and Tarrant Counties to help them respond to cases in their urban jurisdictions. All these efforts are collecting data on the cases

reviewed, which will be shared with all stakeholders in order to ensure that the science behind the affected cases is sound and, where it is not, that defendants can get assistance in seeking release.

Grant Types

Formula Grants

The Commission awarded \$24 million in formula grants to 254 Texas counties in FY 2016 to help them ensure that all Texans can access constitutionally required legal defense services. Formula Grants are awarded annually to all qualifying counties. Award amounts are determined by the county's population and indigent defense spending. Formula Grant disbursements are detailed in the Annual Expenditure Report.

Discretionary Grants

Discretionary grants encourage innovation, remedy non-compliance with the Fair Defense Act, or help counties facing extraordinary indigent defense costs. In FY 2016 the Commission awarded \$8.7 million in new and continuing discretionary grants to eighteen counties. Disbursements are detailed in the Annual Expenditure Report.

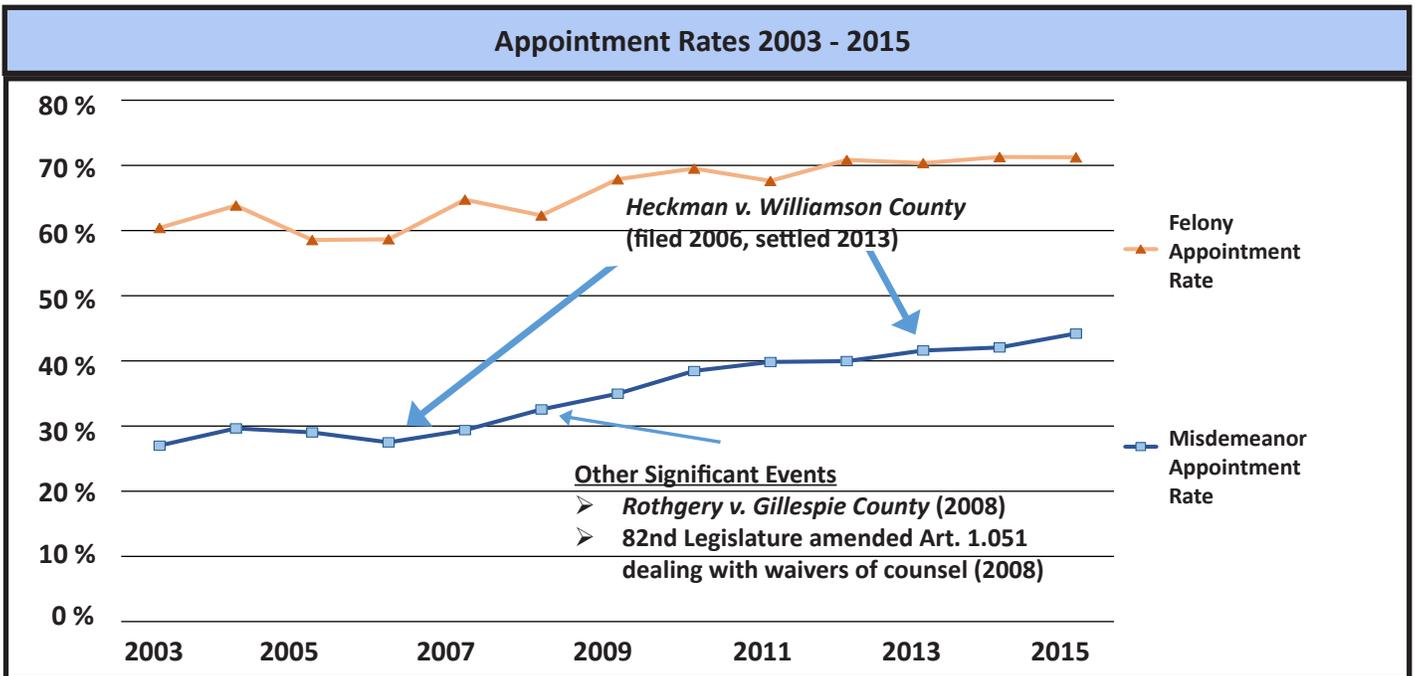
Discretionary Grant Types

- *Competitive Discretionary Grants* assist counties in developing new, innovative programs or processes to improve the delivery of indigent defense services.
- *Technical Support Grants* assist counties with improving local indigent defense services through projects that build the knowledge base about indigent defense and establish processes that can be replicated by other jurisdictions.
- *Targeted Specific Grants* assist counties that have a challenge related to compliance with the Fair Defense Act.
- *Extraordinary Disbursement Grants* reimburse a county for extraordinary indigent defense expenses causing a financial hardship.

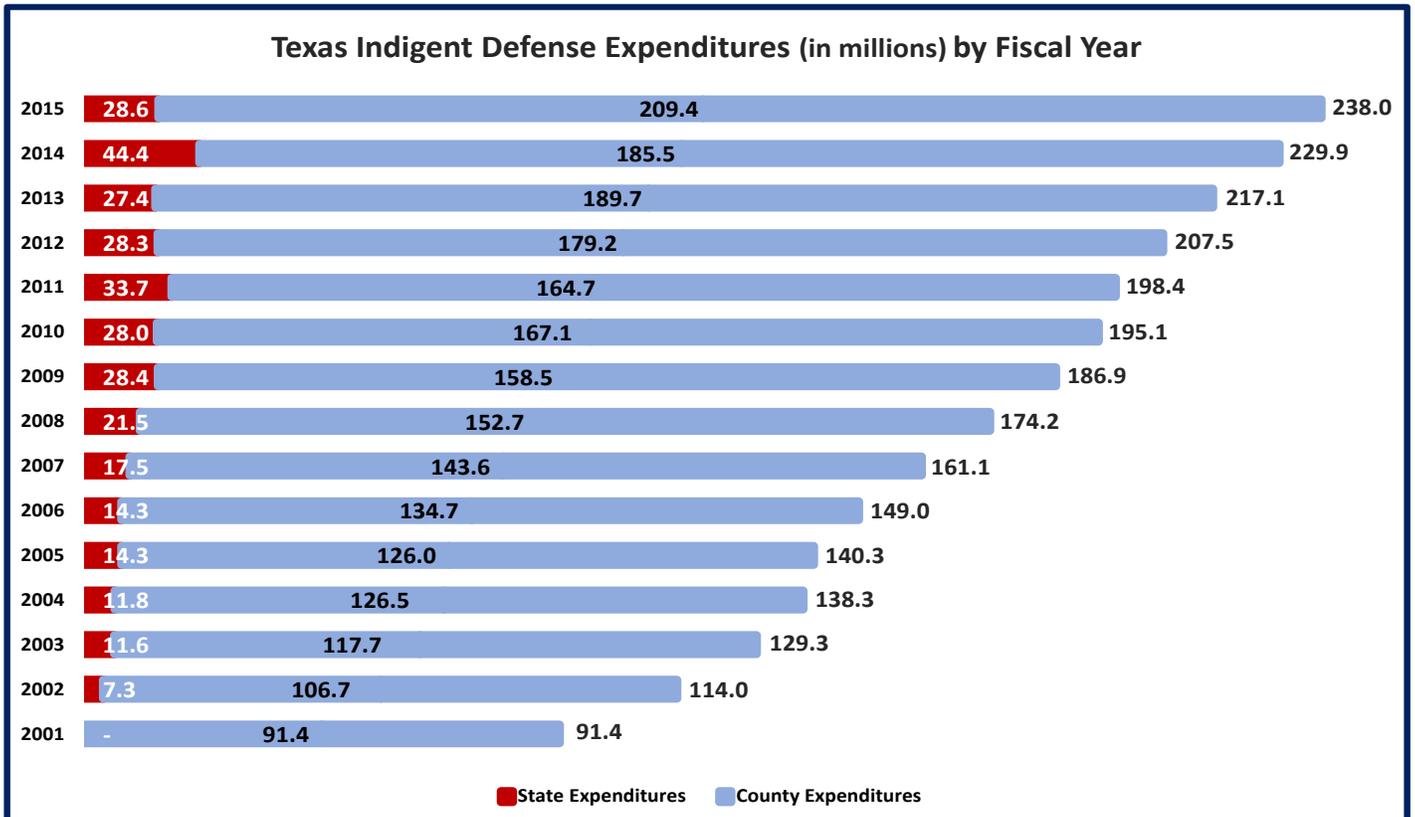
Discretionary Grant Programs Active in FY 2016	
Statewide/Regional Program	
Lubbock	Regional Public Defender Office for Capital Cases (178 counties)
Programs Serving Rural Areas	
Bee	Regional Public Defender (Bee, Live Oak, McMullen & Willacy Counties)
Starr	Regional Public Defender (Starr, Duval & Jim Hogg Counties)
Texas Tech	Caprock Regional Public Defender Office
Mental Health Programs	
Bexar	Early Representation of Defendants with Mental Illness
Collin	Mental Health Managed Assigned Counsel Program
Coryell	Mental Health Contract Defender
Kaufman	Mental Health Attorney/Advocate Team
Wichita	Mental Health Social Worker for Public Defender Office
Managed Assigned Counsel Programs (MAC)	
Travis	Capital Area Private Defender Service
Specialized Defender Programs	
Dallas	Immigration/Criminal Defense Program
El Paso	Problem Solving Attorney
Fort Bend	Veterans Court Contract Defender Program
Public Defender Programs	
El Paso	Public Defender Office Expansion
Fort Bend	Public Defender Office
Hidalgo	Public Defender Office for Capital Cases
Technology and Process Improvement Programs	
Bell *	Functional Extensions for Multi-County Indigent Defense Management Software
Bell	Implement Upgraded Indigent Defense Software System
Comal *	Client Choice Pilot Project
Collin *	Indigent Defense Functionality Improvements for Court Software System
Harris *	Attorney Voucher Processing & Reporting System
Harris	DNA Mixture Analysis Appellate Review & Support
Lubbock	Pre-Trial Indigence Screening Program
Travis	DNA Mixture Analysis Case Review
Tarrant	Client Services for Post-Conviction Forensic DNA Testing Review
Tarrant *	Multi-county Implementation of Indigent Defense Management Software
Travis	Indigent Defense Attorney Mentoring
* Awarded in previous budget years	

APPOINTMENT AND COST TRENDS

Since the passage of the Fair Defense Act in 2001, overall appointment rates in Texas continue to increase statewide. This is especially true of misdemeanor appointments, which have doubled over the last fifteen years. The Fair Defense Act's implementation of a framework for the appointment of counsel, including appointment timelines, formal appointment lists, and appointment guidelines, has played a crucial role in driving the upward trend in state appointment rates.



As appointment rates increase, so too do indigent defense costs. Since 2001, statewide total spending on indigent defense has increased approximately \$148 million per year, with counties bearing approximately 88 percent of costs in FY 2015. As Texas strives to meet its constitutional and statutory indigent defense obligations, the costs for these services will continue to increase. FY 2016 indigent defense costs will be published in the Annual Expenditure Report in January 2017 after final review of expenditures is completed in late December 2016.



RECOMMENDATIONS TO THE 85TH LEGISLATURE

Legislative Appropriations Request

Pursuant to Section 79.033, Government Code, the Commission submitted its [Legislative Appropriations Request \(LAR\)](#) separate and apart from the Office of Court Administration. The LAR includes the following four exceptional items:

1. Restoration of 4 Percent Reduction in Funding -- \$2.87 million

Restoration of the 4 percent reduction is needed because the program is already severely underfunded at current levels. Indigent defense representation is not a discretionary expense, but rather a requirement by the U.S. and Texas Constitutions and an important part of operating a fair criminal justice system. Texas Counties would be forced to absorb an additional expense of \$2.87 million without funding for this exceptional item.

2. Support 50/50 State-County Funding for Statewide Regional Public Defender Office for Capital Cases (RPDO) -- \$2.9 million

In the FY 2016/17 biennium, \$2.6 million in General Revenue was appropriated for the RPDO, which is approximately 24 percent of the program cost. An additional appropriation of \$2.9 million will provide for a sustainable 50/50 cost sharing arrangement with participating counties, which now number 179, and ensure that the program remains affordable and accessible to all eligible counties throughout Texas that wish to participate. In exchange for paying dues, when a member county has a capital murder case, a qualified defense team consisting of two attorneys, an investigator, and a mitigation specialist is provided by the program at no additional cost. The costs associated with a capital murder case have the potential to decimate the budgets of smaller counties. In many parts of the state, it can be difficult to find qualified attorneys to handle death penalty cases, as this type of representation is one of the most complex, time consuming, and challenging areas of defense practice.

3. Support Statewide Funding for Early Identification and Representation of Defendants with Mental Illness -- \$10 million

The Commission requests \$10 million in General Revenue over the biennium for targeted grants to provide early identification and specialized representation for defendants with mental illness. Creating and enhancing defender programs will assist with statewide implementation of Articles 16.22 and 17.032, Code of Criminal Procedure, and will facilitate the release on a personal recognizance bond of arrestees with mental illness.

4. Provide Local Property Tax Relief to Texas Counties by Fully Funding Criminal Indigent Defense -- \$212.2 million

The Commission seeks full funding (100 percent) of state obligations for criminal indigent defense with a stepped-up funding approach over a six-year period. Currently, counties bear most of the financial burden of complying with constitutional and state law in funding criminal indigent defense, with the state providing only about 12 percent of the costs through Commission grant programs. In an effort to both accommodate the state's transition to fully funding these constitutionally mandated expenses and also allow for the Commission to properly prepare for transition in administering a fully-state funded criminal indigent defense system, the Commission requests 50% funding (being \$103.6 million in FY 2018 and \$108.6 million in FY 2019) for the next biennium, with a goal of recommending 75 percent funding for FY 2020/21, and 100 percent funding for FY 2022/23. The Commission further anticipates conducting a study on how best to transition to full state funding, needed enhancements in indigent defense services, equitable means to distribute the funds, appropriate caseload and other quality controls, and any needed amendments to the Fair Defense Act. A small portion of the funds would also be used to hire four new full time FTEs, one additional fiscal analyst and three additional policy analysts.

Legislative Proposals to Improve Indigent Defense

The Commission is charged in Section 79.035, Texas Government Code, with recommending to the legislature ways to improve Texas' indigent defense system. According to its Legislative Policy, the Commission convened a workgroup consisting of a broad range of criminal justice stakeholders who proposed and vetted several proposals over the course of two meetings last summer. The resulting proposals were then presented to the Commission's Policies and Standards Committee for consideration on August 17, 2016 and then to the full board on August 30, 2016. After careful review of each proposal, the Commission approved the following three for legislative consideration:

- **Repeal the requirement that public defender attorneys must inform the court of the results of any investigation into a defendant's financial circumstances:** Delete Art. 26.044(l), Code of Criminal Procedure, requirement that attorneys in public defender offices must report to the presiding judge in a case the results of any investigation of the client's financial circumstances. This requirement appears to violate the attorney-client privilege and there is no similar provision for private or managed assigned counsel attorneys.
- **Create a statutory framework for the operation of the Regional Public Defender Office for Capital Cases (RPDO):** The RPDO is operated by Lubbock County and currently serves 178 counties to provide a defense representation team when a person is charged with a capital offense. The framework should include a succession process to transfer the coordinating county role to another county or the Commission should Lubbock County decide at some future point to withdraw from this role, as well as a request for the state to fund Lubbock County's long-term unfunded liabilities such as pensions, retirement, and health care.
- **Change the terms of Commission board members to six years from two years:** This proposal will provide greater stability and alleviate the need to make appointments so frequently.



*Legislative Workgroup
July 15, 2016*

MONITORING PROGRAM

Policy Monitoring

Policy monitoring reviews seek to promote local compliance and accountability with the requirements of the Texas Fair Defense Act (FDA) and to provide technical assistance to improve county indigent defense processes where needed. A county is selected for an on-site monitoring review based on a combination of objective risk assessment scores and geographical distribution. A monitoring review may also be conducted at the request of an elected state or local official. On-site policy reviews measure a jurisdiction’s compliance with the six core requirements of the FDA:

- Article 15.17 hearings are held within forty-eight hours of arrest and defendants are able to request counsel at the hearing;
- The county’s indigent defense plan sets a financial standard of indigence in compliance with Article 26.04 of the Code of Criminal Procedure;
- The jurisdiction has a method for tracking continuing legal education (CLE) hours of attorneys on the appointment list;
- Counsel is appointed within statutorily required times;
- Appointments are distributed in a fair, neutral, and non-discriminatory manner; and
- Attorneys are paid according to a standard payment process. The review may examine caseloads and usage of support services such as investigators and expert witnesses.

FY 2016 Policy Monitoring		
<i>Full-Scope Reviews (cover the six core requirements of the FDA)</i>	<i>Follow-up Reviews (attempt to resolve issues identified in a previous monitoring review)</i>	<i>Technical Assistance (may be at a county's request and seek to address an identified problem)</i>
Harris	Fort Bend	Atascosa
Waller		Bee
		Bexar
Drop-in Reviews (informal and involve an examination of records; items covered may vary, but misdemeanor appointment processes are often reviewed)		
Camp	Leon	Red River
Delta	Milam	Robertson
Franklin	Morris	
Freestone	Rains	

Common Findings for FY 2016		
Ability to Request Counsel	Timeliness of Attorney Appointments	Waivers of Counsel
Defendants not provided an opportunity to request counsel at Article 15.17 hearings	Requests for counsel are not timely transmitted to the appointing authority	Waivers of counsel do not conform to requirements of Article 1.051(g)
	Appointing authority does not rule on requests in a timely manner	

Fiscal Monitoring

The standards used to conduct fiscal monitoring reviews are based on state law and administrative rules. The Commission is required by Texas Government Code §79.037 to monitor counties that receive grant funds and to enforce compliance by the county with the conditions of the grant. The Uniform Grant Management Standards (UGMS) and grant rules set the monitoring criteria and priorities for counties. Counties are selected for a monitoring visit based on a combination of objective risk assessment scores and geographical distribution.

The fiscal monitor serves as a valuable resource to counties by providing technical assistance to county employees regarding the tracking and reporting of indigent defense expenses. By helping counties proactively identify and rectify reporting issues and providing technical assistance, the fiscal monitor fills a critical role. This effort helps ensure the overall integrity of the local and state indigent defense expenditure report.

The Commission always strives to make monitoring reviews constructive, not punitive. It is in both the county's and the state's interest to have the limited state resources allocated for indigent defense used for the intended purposes and for the expenditure data reported to the state to accurately reflect the financial state of indigent defense in that particular county.

<i>FY 2016 Fiscal Monitoring</i>		
<i>On-Site Reviews</i>	<i>Desk Reviews</i>	<i>Technical Assistance</i>
Williamson	Andrews	Andrews
Bell	Concho	
Harris	Kenedy	
Travis	Kent	
Waller	Motley	
	Reagan	
<i>CAFR/Single Audit Reviews</i>		
Bell	Fort Bend	Midland
Bexar	Harris	Montgomery
Brazoria	Harrison	Randall
Burnet	Hays	San Jacinto
Dallas	Hill	Tarrant
Denton	Lubbock	Travis
Ector	Matagorda	Williamson
El Paso	McLennan	

<i>Common Findings for FY 2016</i>			
<i>Unallowable Costs</i>	<i>Attorney Fee Voucher Errors</i>	<i>Reporting Errors</i>	<i>Continuing Legal Education</i>
General court expenditures, including court-ordered competency evaluations	No itemization	Errors in case counts	CLE hours not maintained
Civil case attorney fees	No written explanation for judges' variance in attorney requested fee	Expenditures reported in incorrect categories	

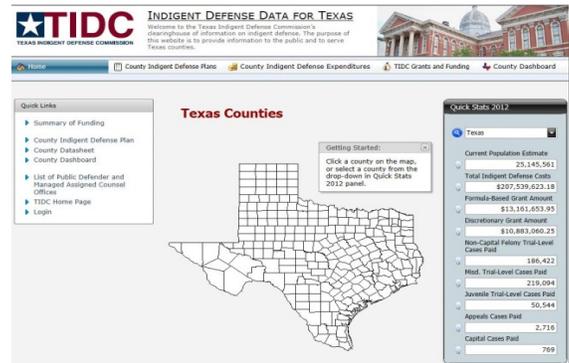
RESOURCES, PUBLICATIONS, EDUCATION, AND AWARDS

The Commission makes available indigent defense information that enhances understanding of the Fair Defense Act and provides tools and resources that can help improve indigent defense in Texas. The Commission serves this function in a number of ways, including through its website, trainings, presentations, site visits, studies, e-newsletters, and other outreach described below.

Resources

The Commission's website provides access to the data that drives its work, as well as information about indigent defense. Local data is available via the website at <http://tidc.tamu.edu/public.net>.

The [FY 2015 Annual and Expenditure Report](#) provides information on the Commission's activities and accomplishments in fiscal year 2015.



E-Newsletters

The Commission distributes an e-Newsletter to approximately 2,000 recipients after each board meeting (typically four times a year) to inform counties of indigent defense developments. The newsletter also highlights county success stories and Commission studies and publications. All [newsletters are archived](#) on the Commission's website, and FY 2016 newsletters include:

[2015 Fall Edition Newsletter](#)

[2016 Winter Edition Newsletter](#)

[2016 Spring/Summer Edition Newsletter](#)

Model Forms

<http://tidc.texas.gov/policies-standards/model-forms-procedures.aspx>

In September 2016, TIDC finalized six new or revised model forms as a resource to assist counties in implementing the front end processes necessary for an effective appointment of counsel system. The Magistrate's Warning Form, Adult and Juvenile Affidavits of Indigence, and the Juvenile Intake Form replace prior forms and are intended to streamline and simplify procedures for counties. The Appointment of Counsel for Out-of-County Warrant Arrestees, Waiver of Counsel to Speak with the Prosecutor, and Waiver of Counsel to Plea or Proceed to Trial are new forms based on changes to the law and issues encountered during policy monitoring. Staff sought input from various stakeholders in developing the new and revised forms.

Effective Indigence Screening

<http://www.tidc.texas.gov/resources/publications/reports/special-reports/effective-indigence-screening.aspx>

In September 2015, TIDC published *Effective Indigence Screening*, the second edition of a 2007 report issued by the Commission. The report is intended to serve as a resource for courts and counties to utilize in developing and improving the processes used to determine whether defendants are eligible for appointed counsel. The publication examines the current state of indigence screening law in Texas, explaining how the requirements of the Fair Defense Act affect each stage of the screening process and documenting a variety of approaches across the state.

Training

In FY 2016 Commission staff and members trained more than 1,000 judges, county officials, and attorneys. Training events and presenters included:

- *Indigent Defense Reporting and Fiscal Monitoring*, Texas Association of Counties, October 22, 2015 - Edwin Colfax, Debra Stewart
- *Reinvesting in Justice: What Comes Next?*, Center for Court Innovation, November 12, 2015 - Wesley Shackelford, David Slayton, and David Brown, Dallas Police Chief
- *Weighted Caseload Study Methods: The Texas Experience*, Annual Society of Criminology Conference, November 18, 2015 - Jim Bethke
- *Importance of Investigation on Indigent Defense*, Capital Area Private Defender Service, December 9, 2015 - Edwin Colfax
- *What Do We Mean by a "Good" Lawyer?*, Texas Conference of Urban Counties, January 14, 2016 - Jim Bethke
- *Education Roundup - Life's a Journey, Enjoy the Ride*, County and District Clerks Association of Texas, January 20, 2016 - Wesley Shackelford and Michael Young, Bexar County Chief Public Defender
- *Indigence Screening*, Municipal Fines and Fees Roundtable, University of Texas, February 10, 2016 - Jamie Dickson
- *Indigent Defense Funding for Upcoming 85th Legislature*, and *TIDC Smart Defense Data Portal*, Criminal Justice Planners, April 6, 2016 - Jim Bethke and Dr. Dottie Carmichael, Texas A&M Public Policy Research Institute (PPRI)
- *State of Indigent Defense in Texas*, Texas Association of Pretrial Services, April 7, 2016 - Jim Bethke and Commission member Don Hase
- *Overview of Indigent Defense*, and *Recent Randall County Policy Monitoring*, Panhandle Criminal Defense Lawyers Association, May 5, 2016 - Wesley Shackelford
- *What States are Doing to Enhance Indigent Defense; Ongoing Challenges and Opportunities*, The Council of State Governments West, May 19, 2016 - Jim Bethke and David Carroll, Executive Director of the Sixth Amendment Center
- *Hot Topics, Legislative Appropriations Request, and Indigent Defense Data Trends*, Texas Criminal Defense Lawyers Association, June 15, 2016 - Wesley Shackelford
- *Managed Assigned Counsel and Its Proposed Systems*, Harris County Criminal Courts at Law Judicial Conference, August 1, 2016 - Jim Bethke, attorney Peyton Peebles, and Ed Wells, Court Manager, Harris County Courts at Law
- *Report on Employee Satisfaction Survey & Funding & Governance*, Regional Public Defender Office for Capital Cases, August 2, 2016 - Jim Bethke
- *Indigent Defense Funding and Other Challenges*, Texas Association of Counties Annual Conference, August 24, 2016 - Jim Bethke, Commission member Rep. Andrew Murr, and Jim Allison, General Counsel for the County Judges and Commissioners Association of Texas

Awards and Acknowledgments

On August 30, 2016, the Commission presented Norman Lefstein with the 2016 Robert O. Dawson Indigent Defense Distinguished Service Award. Professor Lefstein is Professor of Law and Dean Emeritus of the Indiana University Robert H. McKinney School of Law in Indianapolis. For decades he has focused his career on indigent defense research and policy matters and has been deeply engaged in indigent defense improvement efforts in Texas and through the United States. Through his work, he has emerged as a national leader in the field.

Most recently, Professor Lefstein has focused his research and publications on the problem of high caseloads in public defense, a pressing issue in some Texas jurisdictions. He is the author of the book *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, published by the American Bar Association in 2011. Among the dozens of his published articles is his work on indigent client selection of counsel, or “client choice,” which he has studied in the context of its implementation in England. He was one of the first to identify the potential of improving indigent defense through client selection of counsel in the United States, based on its successful implementation abroad, and remains one of only a tiny group to have published on this innovative concept currently being piloted in Comal County.

Professor Lefstein’s service to the legal profession in Texas has been groundbreaking and consequential. He was a presenter at TIDC’s indigent defense workshop in 2011 and client choice attorney training in 2015, in addition to his numerous other educational presentations in our state. When the Texas Legislature directed TIDC to conduct a weighted caseload study, Professor Lefstein enthusiastically agreed to consult with the Commission and the Public Policy Research Institute to plan and guide



Commission Chair Judge Sharon Keller presenting Robert O. Dawson Award to Professor Norman Lefstein

the study. He devoted many hours toward the success of the Texas caseload study, bringing his unique expertise, highest ethical commitment, and countless pro bono hours to the effort. He helped to edit the report and drafted its preface. His contributions to the Delphi panel sessions proved invaluable, helping to frame the questions for the participants in the context of professional responsibility, ethical representation, and relevant standards and case law.

Professor Lefstein has also been extraordinarily generous in his work on the Comal County Client Choice Project. While he was compensated in part for his time as a project design consultant, he has gone far above and beyond that compensated time and has continued to contribute his time and expertise pro bono on the project.

The Dawson Award honors the late Professor Robert O. Dawson for his exceptional contributions and symbolizes his lasting impact on the Texas Fair Defense Act and the Commission. The award recognizes outstanding service by a group or an individual to improve the way Texas provides counsel for its poorest citizens accused of crimes.



Commission Chair Judge Sharon Keller with Professor Norman Lefstein and previous Dawson Award recipients (shown right to left) Mr. Don Hase (2007), Mr. David Slayton (2010), and Dr. Tony Fabelo (2006). Other recipients include Dr. Robert Dawson (2005), Mr. Robert Spangenberg (2008), and Mr. Bob Wessels (2014).

Gideon Recognitions

The Commission established the Texas Gideon Recognition Program to commend local governments and others across Texas that seek to meet a high standard for indigent defense. The program was inspired by the 50th anniversary of the landmark U.S. Supreme Court case *Gideon v. Wainwright*. 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 quality to indigent defendants or other stakeholders. Past recipients of Gideon Recognition include:



2015 Lubbock County



2015 Dickens County and Texas Tech University School of Law



2014 Cameron County



2013 Burnet County



2013 Montgomery County



2012 Wichita County

INNOCENCE PROGRAM

In 2005, the Texas Legislature directed the Commission to contract with four public law schools to operate innocence projects: The University of Texas School of Law, Texas Tech University School of Law, the Thurgood Marshall School of Law at Texas Southern University, and the University of Houston Law Center. In 2015, the 84th Legislature expanded funding for innocence projects to include two new public law schools at the University of North Texas Dallas College of Law and the Texas A&M University School of Law in Fort Worth. These projects organize law students who work with attorneys to review claims of actual innocence from Texas inmates. The annual reports filed by the participating innocence projects, as well as previously filed Exoneration Reports and other information on the innocence program, are available on the Commission's website at [Innocence Program Overview](#).

EXPENDITURE REPORT

The Commission's FY 2016 Expenditure Report of state and county spending on indigent defense will be published in January 2017 after final review of expenditures is completed in late December 2016.



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