

# Annual Report Fiscal Year 2017





**TEXAS INDIGENT DEFENSE COMMISSION**

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**Chair:**

Honorable Sharon Keller                      Presiding Judge, Court of Criminal Appeals

**Ex Officio Members:**

Honorable Sharon Keller                      Austin, Presiding Judge, Court of Criminal Appeals  
Honorable Nathan L. Hecht                      Austin, Chief Justice, Supreme Court of Texas  
Honorable John Whitmire                      Houston, State Senator  
Honorable Brandon Creighton                      Conroe, State Senator  
Honorable Joseph Moody                      El Paso, State Representative  
Honorable Andrew Murr                      Junction, State Representative  
Honorable Sherry Radack                      Houston, Chief Justice, First Court of Appeals  
Honorable Linda Rodriguez                      San Marcos, Judge (ret.), Hays County Court at Law #2

**Members Appointed by the Governor:**

Mr. Alex Bunin                                      Houston, Chief Public Defender, Harris County Public Defender’s Office  
Honorable Jon Burrows                              Temple, Bell County Judge  
Honorable Richard Evans                              Bandera, Bandera County Judge  
Mr. Don Hase    Arlington, Attorney, Ball & Hase  
Honorable Missy Medary                              Corpus Christi, Presiding Judge, 5th Administrative Judicial Region of Texas

**Staff:**

Wesley Shackelford                              Interim Executive Director  
Geoffrey Burkhart                                  Executive Director (incoming)  
Jim Bethke    Executive Director (immediate past)  
Brandon Bellows                                      Policy Analyst  
Edwin Colfax    Grant Program Manager  
Scott Ehlers    Special Counsel  
Marissa Kubinski                                      Executive Assistant  
Joel Lieurance    Senior Policy Analyst  
Morgan Shell    Policy Analyst  
Debra Stewart    Fiscal Analyst  
Sharon Whitfield    Budget & Accounting Analyst  
Doriana Torres    Grant Specialist  
Rachel Gartman    Law Clerk  
Susan Stradley    Law Clerk  
Rebecca Yung    Law Clerk

**Mission Statement**

The Texas Indigent Defense 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.

## TABLE OF CONTENTS

|  |            |
|--|------------|
| <b>Chair’s Letter</b> .....  | <b>iii</b> |
| <b>Farewell Message from Jim Bethke</b> .....                                      | <b>iv</b>  |
| <b>Welcome Message from Geoffrey Burkhart</b> .....                                | <b>iv</b>  |
| <b>Grant Program</b> .....   | <b>1</b>   |
| Formula Grants.....  | 1          |
| Discretionary Grants .....   | 1          |
| Discretionary Grant Program Spotlight.....   | 1          |
| <b>Appointment and Cost Trends</b> .....   | <b>3</b>   |
| <b>Legislative Developments</b> .....  | <b>4</b>   |
| <b>Rulemaking</b> .....  | <b>5</b>   |
| <b>Recent Developments in Indigent Defense</b> .....                               | <b>6</b>   |
| Harris County Public Defenders at Bail Hearings .....                              | 6          |
| <i>Salinas v. State</i> Leads to New Law Adding Funds to Fair Defense Account..... | 6          |
| Smart Defense Data Portal .....  | 6          |
| <b>Monitoring Program</b> .....  | <b>8</b>   |
| Policy Monitoring.....   | 8          |
| Fiscal Monitoring .....  | 9          |
| <b>Resources, Publications, Education, and Awards</b> .....                        | <b>11</b>  |
| Resources.....   | 11         |
| Model Procedures.....  | 11         |
| E-Newsletters .....  | 11         |
| Publications .....   | 11         |
| Trainings.....   | 13         |
| Awards and Acknowledgments.....  | 14         |
| <b>Innocence Program</b> .....   | <b>15</b>  |
| <b>Expenditure Report</b> .....  | <b>15</b>  |





November 30, 2017

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 2017.

Texas continues to gain recognition as a national leader in indigent defense, due in part to the Commission working with counties to find new approaches to indigent defense. The support of the Governor and Legislature has been critical to our success. Although there was a reduction in the funds appropriated for indigent defense for the upcoming biennium, we were pleased that the Legislature passed SB 2053 by Senator West and Representative Murr, which will increase our funding by about 50%. I also want to thank all of the legislators and staff with whom we worked this session, beginning with Representative Andrew Murr and his Chief of Staff Regan Ellmer, who worked tirelessly to improve state funding for indigent defense, as well as Chairman Joe Moody and his Chief of Staff Ellic Sahualla, who worked on several important indigent defense-related bills. Thanks also to Senator Royce West, Senator Charles Perry, and Representative John Frullo, who authored significant indigent defense bills. Finally, Chief Justice Nathan Hecht and the Texas Judicial Council deserve our thanks for their unwavering support.

This year we also mark the retirement from state service of our first executive director, Jim Bethke. Jim's leadership over the last 15 years has helped Texas to become a model for other states. His innovations were not even dreamed of when we started: managed assigned counsel programs, new kinds of public defender offices, and the first-in-the-nation client choice system. Although we will miss him, he leaves the Commission and the state's indigent defense system with a strong foundation on which we can continue building. I thank him for his service and friendship.

The following pages detail this year's activities and also highlight how some local jurisdictions are finding success through new indigent defense strategies. We look forward to continued opportunities for improvement, and we trust that you will enjoy working with our new executive director, Geoffrey Burkhart, who joins us in December.

Sincerely,

A handwritten signature in black ink that reads 'Sharon Keller'.

Sharon Keller  
Chair, Texas Indigent Defense Commission



## FAREWELL MESSAGE FROM JIM BETHKE



Someone once said, “Do what you love, and you will never have to work a day in your life.” For the past 16 years, I had the good fortune to do just that. Working with the Texas Judicial Council, Task Force on Indigent Defense, Texas Indigent Defense Commission, Regional Presiding Judges, and Office of Court Administration has been nothing short of extraordinary for me. What made this experience so rewarding and unforgettable were the people—current and former Commission members and staff, court and county officials across the state, defense lawyers, prosecutors, members of the Legislature, and the Governor’s office.

I thank the entire Commission for your strategic guidance and efforts to build a better indigent defense delivery system. Your time and energy has had a meaningful impact. Presiding Judge Keller, thank you for your leadership, your friendship, and for making indigent defense improvement a priority. No one else would have invested the amount of time or heart you did.

David Slayton thank you for your unyielding support of TIDC, its mission, and its staff, but also for all the great work you did in getting Lubbock ready to be my new home! You set the standard and have put in place the strongest and most dedicated team of directors and staff ever at the Office of Court Administration (OCA). Team OCA, thank you for providing quality administrative support services. The Commission and its staff knew human resources, budget matters, payroll, information technology, and legal support were in the hands of experts.

I have no doubt the Commission will continue to do great work because you have selected for your new executive director a gifted and devoted champion of indigent defense in Geoff Burkhart.

In closing, I am honored and humbled to have worked alongside such a remarkable, passionate, dedicated, and competent staff and law clerks. None of what was accomplished would have been possible without your hard work and commitment to excellence. You are the best! I thank each of you and countless others I have not mentioned for providing me the most rewarding years of my life. There is much still to be done, and I wish you all nothing but success in fulfilling the promise of *Gideon*.

Best and thanks,  
Jim Bethke

## WELCOME MESSAGE FROM GEOFFREY BURKHART



I am grateful for the opportunity the board has given me to serve as TIDC’s executive director. Jim Bethke leaves an incredible legacy as the first director of the agency and I look forward to continuing the advancements TIDC has achieved over the last 16 years. The foundation built over that time provides us a great opportunity to continue improving Texas’ indigent defense system. I look forward to meeting and working with all of the policymakers and stakeholders to make that possible.

Geoffrey Burkhart  
Executive Director

## GRANT PROGRAM

### Grant Types

#### Formula Grants

Formula grants are awarded annually to all qualifying counties to help ensure that all Texans can access constitutionally required legal defense services. Award amounts are determined by the county's population and indigent defense spending. In FY 2017, the Commission awarded \$25.1 million in formula grants to 254 Texas counties. Formula grant disbursements will be detailed in the forthcoming Annual Expenditure Report.

#### Discretionary Grants

Discretionary grants encourage innovation, remedy noncompliance with the Fair Defense Act, or help counties facing extraordinary indigent defense costs. In FY 2017, the Commission awarded 16 new and continuing discretionary grants totaling \$6.6 million. Disbursements will be detailed in the forthcoming 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.
- ▶ *Compliance Assistance Grants* assist counties that have a challenge related to compliance with the Fair Defense Act that may be identified through policy monitoring.
- ▶ *Extraordinary Disbursement Grants* reimburse a county for extraordinary indigent defense expenses causing a financial hardship.
- ▶ *Sustainability Grants* support regional public defender programs serving rural counties.

### Discretionary Grant Program Spotlight

#### Bexar County: Public Defenders Advocate to Divert Mentally Ill Persons from Jail to Treatment

Shortly after a person is arrested—and long before the final disposition of a case—one of the most consequential decisions in the case is made: whether the defendant will remain incarcerated while awaiting adjudication. A growing body of research shows that even short-term pretrial incarceration, which often results only because of a person's inability to afford a bail bond, starts a chain reaction of devastating consequences for defendants. Low-risk defendants with nonviolent charges can languish in jail waiting for their case to be considered by a court.

When the defendant is mentally ill, the damage of pretrial incarceration is even worse. Texas law provides for the granting of personal bonds to eligible mentally ill defendants so that they can quickly get out of jail and into the treatment they need. Often, however, these defendants do not fully understand the process, refuse to be assessed by a mental health clinician, and, as a result, remain in jail. Bexar County determined that only a fraction of its eligible individuals were being diverted. Since 2016, the Bexar County Public Defender has used a discretionary grant from TIDC to implement an innovative program providing representation to defendants with mental illness at the earliest stage of their case, the Article 15.17 magistrature hearing. Expediting the appointment of counsel allows defendants suffering from mental illness or an intellectual disability to address the behaviors that have led them into the criminal justice system.

Public defenders are based at the Central Magistrature Facility ("CMAG"), where they counsel arrestees with mental illness on the magistrature process. Attorneys help defendants understand the importance of their cooperation and participation in the mental health assessment. Lastly, they represent arrestees before the magistrate and facilitate their release on personal bonds, with mental health treatment required as a condition of release. The objectives of the program are to reduce jail costs, reduce recidivism, and improve outcomes for mentally ill defendants.

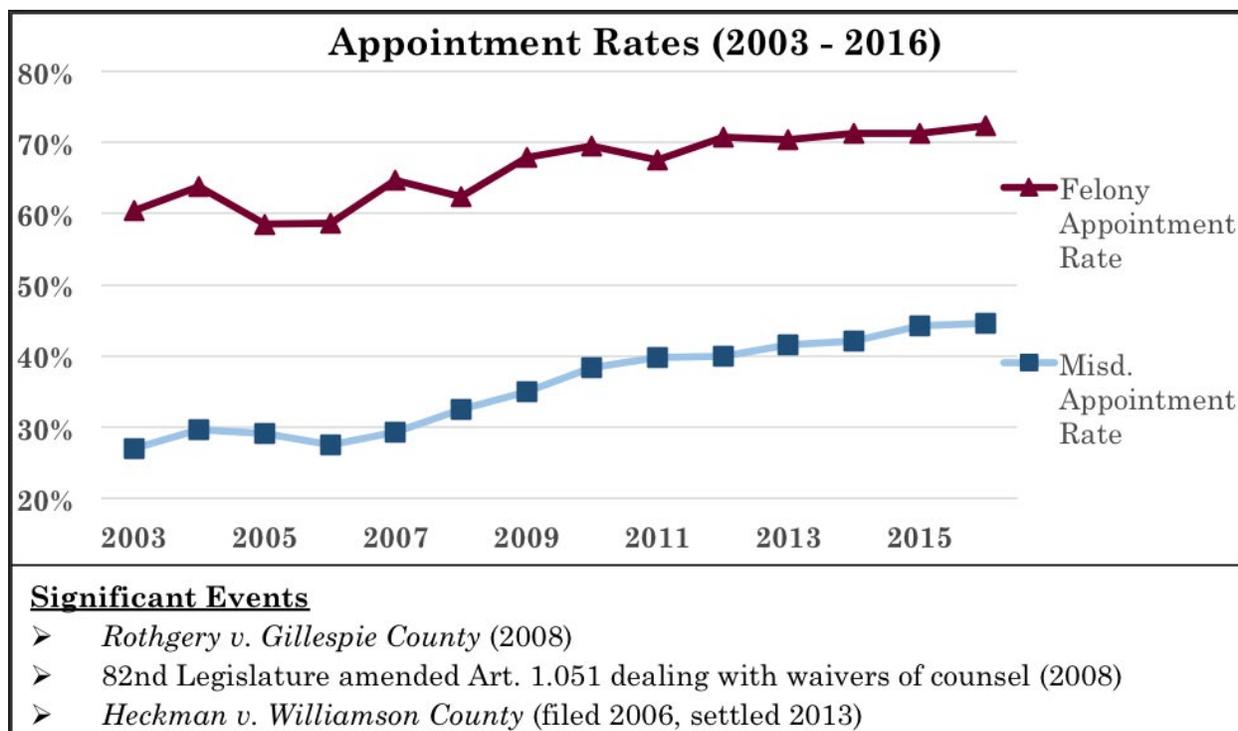
In FY 2017 the Bexar County Public Defender's Office represented 424 individuals suffering from a mental illness at initial magistratures. Of that number, 71% were released on personal bond, with mental health treatment as a condition of release. An analysis of data from the first year of the program's operation showed that, once released, the program's clients were more likely to comply with the requirements of their personal bonds than other similar arrestees who were not represented by the public defenders. The program's clients were also more likely to actively engage in their mental health services following release.

**In FY 2017 the Bexar County Public Defender's Office represented 424 individuals suffering from a mental illness at initial magistratures. Of that number, 71% were released on personal bond, with mental health treatment as a condition of release.**

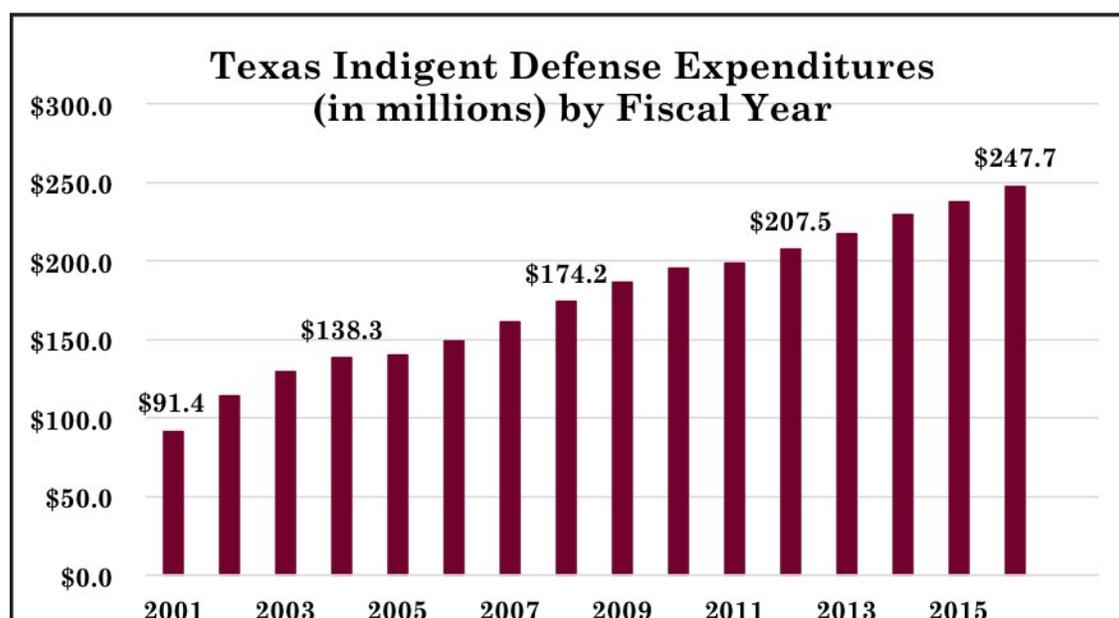
| <b>Discretionary Grant Programs Active in FY 2017</b>       |   |
|---|---|
| <b>Statewide/Regional Program</b>                           |   |
| Lubbock   | Regional Public Defender for Capital Cases                                    |
| <b>Programs Serving Rural Areas</b>                         |   |
| Bee*  | Regional Public Defender Office   |
| Starr   | Regional Public Defender Office   |
| Texas Tech University                                       | Caprock Regional Public Defender Office                                       |
| <b>Public Defender Programs</b>                             |   |
| El Paso   | Public Defender Office Expansion  |
| Fort Bend   | Public Defender Office  |
| <b>Managed Assigned Counsel Programs (MAC)</b>              |   |
| Travis  | Capital Area Private Defender Service   |
| <b>Specialized Defender Programs</b>                        |   |
| Bexar   | Representation of Mentally Ill Defendants at Magistration                     |
| Dallas  | Criminal Law/Immigration Program ( <i>Padilla v. Kentucky</i> Compliance)     |
| Fort Bend*  | Veterans Court Program  |
| Kaufman   | Mental Health Attorney/Advocate Team  |
| Travis  | Holistic Defense Program (Mental Health & <i>Padilla</i> Compliance)          |
| Wichita   | Public Defender Mental Health Social Worker                                   |
| <b>Technical Support &amp; Process Improvement Programs</b> |   |
| Bell (TechShare)*   | Functional Extensions for the Bell County System (TechShare Indigent Defense) |
| Bell (TechShare)*   | TechShare Indigent Defense Upgraded System Implementation                     |
| Bell (TechShare)  | TechShare Indigent Defense Maintenance and Operations                         |
| Collin*   | Indigent Defense Management Software Improvements                             |
| Comal*  | Client Choice Program   |
| Harris  | DNA Mixture Case Review and Support Services                                  |
| Kleberg   | Indigent Defense Coordinator  |
| Tarrant*  | DNA Mixture Case Representation   |
| Travis*   | DNA Mixture Case Review   |
| <b>Extraordinary Disbursement Grants</b>                    |   |
| Hunt  | Extraordinary Capital Defense   |
| Tom Green   | Extraordinary Capital Defense   |
| * 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 15 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 increased access to constitutionally required representation.



As appointment rates and access to counsel increase, cases paid and overall indigent defense costs tend to also increase. Since 2001, statewide total spending on indigent defense has increased approximately \$156 million, or about \$10 million per year on average. As Texas strives to meet its constitutional and statutory indigent defense obligations, the costs for these services will likely continue to increase. FY 2017 indigent defense costs will be published in the Annual Expenditure Report in February 2018 after final review of expenditures is completed in late December 2017.



## LEGISLATIVE DEVELOPMENTS

### TIDC Budget

The Legislature appropriated \$66.48 million in General Revenue to TIDC over the FY 2018/19 biennium. Although this was a 6.5% reduction from the amount appropriated in FY 2016/17, the efforts of many county officials were critical in keeping these funding levels from being further reduced. TIDC's administrative allocation for operations was increased by \$100,000 per year to \$1,164,988, which will allow the Commission to provide additional programming, monitoring, and assistance to counties.

Included in the appropriation was budget rider language restricting the use of \$5.04 million over the biennium to implement cost containment initiatives designed to limit local indigent defense costs. The Commission will distribute the dedicated funding to counties that implement programs with cost containment strategies for indigent defense services. The budget rider also requires TIDC to submit a report to the Legislature detailing the effectiveness of various cost containment initiatives implemented by counties and to propose additional measures to reduce county operating costs. To address this charge, TIDC is collaborating with Texas A&M's Public Policy Research Institute, which has begun work on a comprehensive plan to assess factors causing growth in indigent defense costs and to identify best practices linked to efficient and effective indigent defense systems.

The Legislature also modified the budget rider for innocence projects. Since 2005, TIDC has contracted with all of the public law schools in Texas to operate innocence projects. The new budget rider requires TIDC to focus resources on investigation and litigation of wrongful conviction cases rather than non-case-related teaching and legal clinic expenses.

### Indigent Defense and Criminal Justice Legislation

The Commission is pleased to report that two bills it endorsed in the 85th Legislative Session were passed by the Legislature and signed into law by Governor Abbott:



Rep. Andrew Murr, TIDC board member and sponsor of SB 2053



Sen. Royce West, author of SB 2053

- **SB 2053**, authored by Sen. West and sponsored by Rep. Murr, will provide the single largest increase in funding to the Fair Defense Account since TIDC's inception. The bill, which reallocates certain consolidated court costs to the Fair Defense Account, is expected to generate an additional \$15 to \$17 million per year in revenue. The Legislature did not provide TIDC with spending authority for the additional revenue for the FY 2018/19 biennium however, so further legislative action will be necessary to release these funds next session.

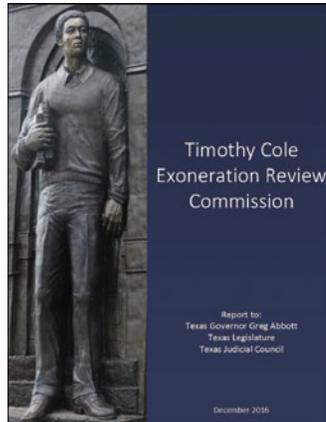
- **SB 1214**, coauthored by Sen. Perry and Sen. Garcia and sponsored by Rep. Frullo, provides a statutory framework and succession plan for the Regional Public Defender Office for Capital Cases (RPDO) to assure its continued operation should Lubbock County choose to no longer serve as administrative county. The RPDO was developed to provide capital defense services to counties in the 7th and 9th administrative judicial regions. Thanks to this award-winning program's early success, it has expanded to serve 178 counties in all 11 administrative judicial regions across Texas.

Other significant indigent defense and criminal justice-related bills include:

- **SB 527**, authored by Sen. Birdwell and sponsored by Rep. Cook, permits a court to order a defendant who did not have the financial resources to pay for legal services at the time of sentencing, to pay for all or part of those services at any time during a defendant's sentence of confinement, placement on community supervision, or period of deferred adjudication, if a judge determines that a defendant has the financial ability to pay. TIDC's 2017 briefing paper, *Orders for Repayment of Appointed Attorney Costs Under Code Criminal Procedure art. 26.05(g) and (g-1)*, is available on our website.



Rep. Joe Moody, House Criminal Jurisprudence Committee Chairperson, TIDC board member, and co-author of HB 34



Report of the Timothy Cole Exoneration Review Commission (issued December 2016)

- ▶ **HB 34**, authored by Rep. Smithee, Rep. Moody, Rep. Canales and Rep. White, and sponsored by Sen. Perry, implements recommendations of the Timothy Cole Exoneration Review Commission, which include requiring the tracking of testimony and recording of custodial interrogations in certain felony cases. The bill also requires the state to make certain disclosures to a defendant if it intends to introduce the statements of a defendant made to a fellow inmate. HB 34 improves standards for eyewitness identification and requires information about an informant's history of information-sharing as well as the incentives behind such disclosures.

- ▶ **SB 1913/HB 351** includes key provisions from the Texas Judicial Council's resolution on court costs for the 85th Legislature. The bills address "debtors' prisons," the practice of jailing criminal defendants who are unable to pay their fines and court costs. Among many provisions, the bills require judges to inquire into a defendant's ability to pay when imposing a fine. If a defendant is unable to pay the fine in full, a judge may elect to fully or partially waive the fines and fees, implement an installment plan, assign community service, or use any combination of methods therein.
- ▶ **SB 1326** includes recommendations made by the Texas Judicial Council to improve the administration of justice for those suffering from mental illness or an intellectual disability. The legislation revises the process of gathering information about potentially mentally ill arrestees during the magistration process, streamlines the competency restoration process, and authorizes counties to establish jail-based competency restoration programs.
- ▶ **SB 1849**, known as the Sandra Bland Act, adds numerous provisions to the law regarding how law enforcement and jails should handle individuals suffering from a mental health crisis or the effects of substance abuse. The bill requires law enforcement agencies to make a good-faith effort to divert such persons to appropriate treatment centers. Counties must now develop and publicize a plan to divert individuals from jail and develop community collaboratives where possible. The bill instructs various agencies to develop rules and guidelines for training jailers and for providing medical treatment to persons in confinement. Moreover, SB 1849 addresses provisions regarding racial profiling by law enforcement agencies including expanding and improving data collection.
- ▶ **SB 1124** provides for the administrative attachment of the Texas Forensic Science Commission to the Office of Court Administration.

## RULEMAKING

The Government Code requires state agencies, including the courts, to review and consider for re-adoption each of its rules every four years. The agency's review of a rule must include an assessment of whether the reasons for initially adopting the rule continue to exist. The Commission reviewed and proposed updates to the rules for grant administration, contract defender programs, continuing legal education, and policy monitoring. The proposed changes regarding grant administration were published in the Texas Register and went into effect on October 20th. The other rules have been proposed and are under consideration for adoption by the board. TIDC's current grant rules are found in Chapter 173, Texas Administrative Code, available at <https://www.sos.state.tx.us/tac/index.shtml>.

## RECENT DEVELOPMENTS IN INDIGENT DEFENSE

### Harris County Public Defenders at Bail Hearings

In July 2017, the Harris County Public Defender's Office began providing counsel at all Article 15.17 bail hearings to represent those arrested in the county. This pilot program, funded by the Harris County Commissioners Court, is part of a series of initiatives to reform its criminal justice system and curb growing jail numbers. In 2010, the county received a grant from the Task Force on Indigent Defense (now TIDC) to establish the county's first ever public defender's office. Representation of arrestees at initial bail hearings was not covered by the original grant.



“ I think it’s a huge step forward that will assure that people’s rights are protected at these hearings. ”

—Alex Bunin, Harris Co. Chief Public Defender and TIDC board member, on the issue of public defenders at bail hearings.

In 2015, Harris County's Criminal Justice Coordinating Council (CJCC) collaborated with the Laura and John Arnold Foundation to implement a pretrial risk assessment instrument that evaluates a series of risk factors to predict whether a defendant will re-offend and whether the new offense will increase the risk of nonappearance. The Public Safety Assessment (PSA) uses objective, data-driven criteria to help a judge make a more accurate and fair assessment, thereby increasing public safety and improving the efficient use of public resources. Based on its success in other jurisdictions, both the misdemeanor and felony courts in Harris County have implemented the tool into their bail practices.

This series of initiatives laid the groundwork for discussion in the CJCC about providing defense representation at Article 15.17 hearings. By 2017, Harris County was ready to implement both the PSA and provide for legal representation at bail hearings. Alex Bunin, HCPDO's Chief and TIDC board member, told the *Houston Chronicle*, “I think it’s a huge step forward that will assure that people’s rights are protected at these hearings.” Harris County Judge Ed Emmett said of the pilot project, “It’s going in the right direction. This is one of those things we needed to do.”

### Salinas v. State<sup>1</sup> Leads to New Law Adding Funds to Fair Defense Account

In *Salinas*, the appellant challenged the assessment of a consolidated court fee, part of which was distributed to an account for “abused children’s counseling” and to another account for “comprehensive rehabilitation.” The Court of Criminal Appeals (CCA) held that it is unconstitutional to allocate court costs in a criminal case to these two accounts. The CCA explained that the collection of fees in a criminal case is a proper judicial function if the fees are expended for a legitimate criminal justice purpose. Finding that the fees allocated to the two accounts did not relate to the criminal justice system, it held that the distributions violated the Separation of Powers provision of the Texas Constitution. The CCA opinion also held that the entire consolidated court cost could still be collected if the Legislature redirected the funds to a legitimate criminal justice purpose.

Senator West and Representative Murr filed legislation to redirect the percentages previously allocated to these funds to the Fair Defense Account. While Senator West’s bill (SB 2053) was passed by the Legislature and signed by Governor Abbott, the General Appropriations Act (SB 1) did not authorize TIDC to spend any of the expected funding increase for the FY 2018/19 biennium. Further legislative action is needed next legislative session to spend those funds. However, because SB 2053 went into effect immediately, approximately \$7 million in new funds was deposited into the Fair Defense Account before the end of FY2017, which will be distributed to the counties to offset some of their indigent defense expenditures.

### Smart Defense Data Portal

In October 2015, the US Department of Justice (DOJ) awarded a \$400,000 grant to the Public Policy Research Institute at Texas A&M University (PPRI) in partnership with TIDC to build the “Smart Defense Data Portal,” an internet interface promoting high-quality court-appointed defense systems statewide. The grant is one of five that was awarded by the DOJ under the Smart Defense Initiative. The American Bar Association is providing significant assistance in developing content for the project. Additionally, the National Legal Aid and Defender Association is providing project development assistance.

1. *Salinas v. State*, 523 S.W.3d 103 (Tex. Crim. App. 2017).



This new interactive website, called ACT Smart for Public Defense, will integrate local data into a statewide quality indicator system. Data in three broad categories—Access to counsel, legal Competence, and public Trust—can be reported by counties through the website. The site will also include educational content on the Fair Defense Act (FDA), the Sixth Amendment’s right to counsel, legal standards and professional guidelines, and resources to guide county officials who are monitoring the effectiveness of local indigent defense systems. The Commission and PPRI have been work-

ing closely with advisors from the following six Texas counties: Bell, Bexar, El Paso, Harris, Tarrant, and Travis.

TIDC and PPRI worked on the project throughout 2016 and 2017. Some highlights include:

- ▶ Sought input and guidance from key stakeholders including a National Advisory Group (February 2016), the Texas Smart Defense Web Portal State Advisory Committee (April 2016), and pilot counties assisting with early implementation and testing of the ACT Smart Indigent Defense Web Portal (July 2017);
- ▶ Developed a set of 50 basic quality indicators building on TIDC’s “Recommended Functionality and Data Guidelines for Indigent Defense Technology Projects;”
- ▶ Provided discretionary grant funding for multi-county data system upgrades that will make data collection and reporting for the project easier;
- ▶ Developed the ACT Smart website infrastructure and graphical interface;
- ▶ Developed educational content for the website with the assistance of the American Bar Association; and
- ▶ Made presentations around the state and country, including at the Smart Defense Summit in Washington, DC in May 2017.



In the coming year, TIDC and PPRI will continue to add new functionality to the website before it is released, refine the statewide indigent defense measures, and work with counties to extract data from their systems. The ACT Smart data portal is scheduled to be launched in mid-to-late 2018.

Smart Defense Web Portal State Advisory Committee Meeting

## MONITORING PROGRAM

### Policy Monitoring

Policy monitoring reviews seek to promote local compliance with the requirements of the FDA and to provide technical assistance to improve county indigent defense processes. A county is selected for an on-site monitoring review based on a combination of objective risk assessment scores and geographical distribution or through an official request. On-site policy reviews examine the accuracy of statutorily required data reports to the Commission, and measure a jurisdiction's compliance with the six core requirements of the FDA:

- ▶ Article 15.17 hearings are promptly conducted, at which defendants may request counsel;
- ▶ 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 2017 Policy Monitoring  |           |         |
|--|-----------|---------|
|  |           |         |
| Initial Reviews  |           |         |
| Bosque   | Galveston | Harris  |
| Comanche   |           |         |
|  |           |         |
| Follow-up Reviews (attempt to resolve issues identified in a previous monitoring review)   |           |         |
| Childress  | Erath     | Wharton |
| Dallas   | Fort Bend | Wichita |
| Dawson   | Gaines    | Zavala  |
| Deaf Smith   | Maverick  |         |
|  |           |         |
| Drop-in Reviews (informal and involve an examination of records; items covered may vary, but misdemeanor appointment processes are often reviewed) |           |         |
| Armstrong  | Glasscock | Nolan   |
| Carson   | Hamilton  | Oldham  |
| Collingsworth  | Lampasas  | Runnels |
| Fisher   | Mills     | Scurry  |
| Garza  | Mitchell  |         |

#### Common Policy Monitoring Findings:

- ▶ Defendants not provided an opportunity to request counsel at Article 15.17 hearings
- ▶ Requests for counsel not promptly transmitted to the appointing authority
- ▶ Appointing authority does not rule upon requests in a timely manner
- ▶ Waivers of counsel do not conform to the requirements of Article 1.051(f)-(g)
- ▶ Uneven distributions of attorney appointments

## Fiscal Monitoring

The standards used to conduct fiscal monitoring reviews are based on Texas statutes 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 strives to make monitoring reviews constructive, not punitive. It is in the best interest of the counties and state to have the state's limited indigent defense resources be used for their intended purposes. It is also important that the indigent defense expenditure data reported to the state accurately reflects the financial status of indigent defense in the counties.

Fiscal monitoring activities in FY 2017 were performed for the following counties:

| FY 2017 Fiscal Monitoring   |                             |                |
|---|-----------------------------|----------------|
| On-Site Reviews   | Follow-Up Visits            | Drop-In Visits |
| Brazoria  | Wharton                     | Ector          |
| Galveston   |                             | Howard         |
| Lubbock   | <b>Technical Assistance</b> | Lubbock        |
| Johnson   | Lubbock                     | Martin         |
| McLennan  | Andrews                     | Midland        |
| Maverick  |                             | Winkler        |
| Zavala  | <b>Desk Reviews</b>         |                |
|   | Blanco                      |                |
|   | San Saba                    |                |
| Comprehensive Annual Financial Report (CAFR)/Single Audit Reviews |                             |                |
| Bell  | El Paso                     | McLennan       |
| Bexar   | Fort Bend                   | Midland        |
| Brazoria  | Harris                      | Montgomery     |
| Burnet  | Harrison                    | Randall        |
| Dallas  | Hays                        | Tarrant        |
| Denton  | Hill                        | Travis         |
| Ector   | Lubbock                     | Williamson     |

***Common Fiscal Monitoring Findings:***

**Unallowable Costs**

- ▶ General court expenditures including competency evaluations, court reporter costs, and costs for a special prosecutor
- ▶ Attorney fees in civil cases

**Attorney Fee Voucher Errors**

- ▶ No itemized form submitted
- ▶ No written explanation for variance from requested payments
- ▶ Various forms utilized

**Case Count Errors**

- ▶ Jail docket cases reported incorrectly, often involving a voucher for multiple cases being counted as one case

**Fee Schedule**

- ▶ Attorneys were not paid in accordance with the county's published fee schedule

**Continuing Legal Education**

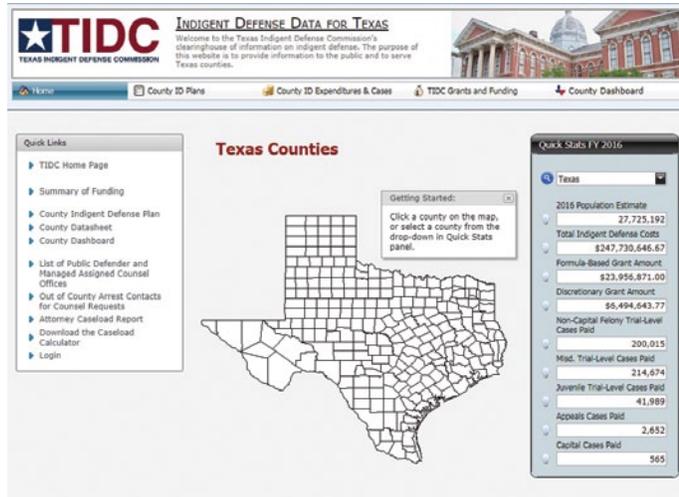
- ▶ CLE hours were not maintained

**Reporting Errors**

- ▶ Errors or miscategorized expenditures
- ▶ Duplicate payments

## RESOURCES, PUBLICATIONS, EDUCATION, AND AWARDS

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



### Resources

The Commission's website provides access to 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>.

### Model Procedures

**Model Attorney Fee Voucher Review Procedures:** The Commission adopted a model attorney fee voucher review procedure that judges may consider to assist them in reviewing fee vouchers. The model is based on a long-standing process used by the district courts in Bexar County. It includes provisions for a standing committee of defense attorneys selected by the local bar association to review attorney fee vouchers and provide the judge presiding in the case with a recommendation on the amount to approve.

### 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. FY 2017 newsletters include:

- ▶ [Fall 2016 Special Edition](#)
- ▶ [Fall-Winter 2016](#)
- ▶ [Spring 2017](#)
- ▶ [85th Legislative Update Special Edition](#)

### Publications

- ▶ [The Juvenile Addendum: Guidelines for Indigent Defense Caseloads](#)
- ▶ [The Appellate Addendum: Guidelines for Indigent Defense Caseloads](#)
- ▶ [Fair Defense Law: A Primer for Texas Legislators and Staff](#)
- ▶ [Fair Defense Law: A Primer for County Officials](#)
- ▶ [Making A Difference in Texas: NAPD Report on the Regional Public Defender Office](#)
- ▶ [Liberty and Justice: Pretrial Practices in Texas](#)
- ▶ ["Wichita County Serves as Model for Indigent Defense Practices," County Progress Magazine](#) (April 2017)
- ▶ [A Defense Attorney's Ethical Responsibilities in a Specialty Court, article for Texas Association of Specialty Courts' Annual Training Conference](#)
- ▶ [Orders for Repayment of Appointed Attorney Costs Under Code Criminal Procedure art. 26.05\(g\) and \(g-1\)](#)

### ***The Power of Choice:***

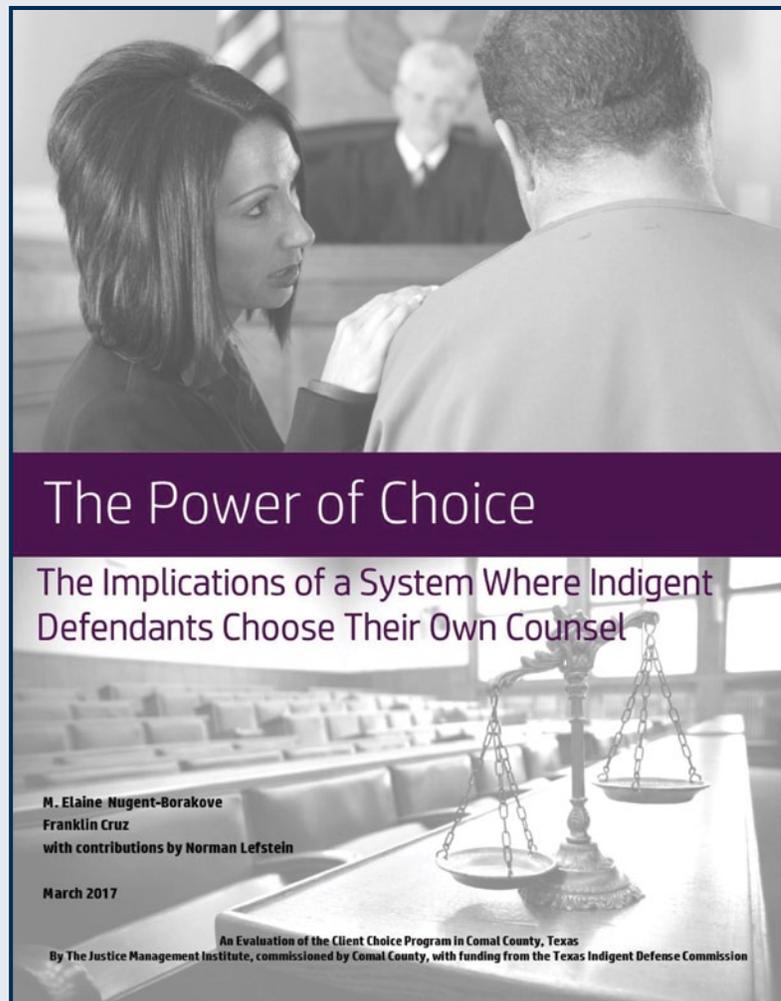
#### ***The Implications of a System Where Indigent Defendants Choose Their Own Counsel***

In a ground-breaking pilot project in Texas in which indigent defendants choose their own lawyer, the Justice Management Institute (JMI) found that indigent defendants who chose their lawyer were more inclined to believe they had received procedural justice.

JMI is a Virginia-based research, training, and technical assistance organization. It also found that the majority of defendants who were offered the option to choose their attorney from a list approved by the judges did so. The report, [\*The Power of Choice: The Implications of a System Where Indigent Defendants Choose Their Own Counsel\*](#), was released in April 2017.

The Commission helped implement the Client Choice pilot project in Comal County and financed JMI's evaluation. The consultant who designed the program, Norman Lefstein, Professor and Dean Emeritus at the University of Indiana Robert H. McKinney School of Law, credited Comal County judges and the Texas Indigent Defense Commission. "Both were willing to experiment with a concept that is well-established abroad by permitting indigent clients to have a voice in selecting their defense lawyers. The project proved that this can be implemented in the U.S. and that most defendants prefer to exercise choice about the lawyers to represent them," said Lefstein.

In counties without public-defender or managed assigned counsel offices, attorneys for indigent defendants are appointed by judges or court administrators. In addition to enhancing defense attorneys' independence, the program is intended to align defense attorneys' incentives more closely with their indigent clients. By giving defendants the option to choose their lawyers, the program's intent was to confront a reputation that appointed lawyers on the whole provided poor quality representation. It was anticipated that lawyers chosen by defendants will provide better representation and therefore be rewarded with more cases.



## Trainings

In FY 2017, Commission staff and members trained more than 1,700 judges, county officials, and attorneys.

Trainings, events, and presentations included:

- ▶ Ethics Seminar Panel, Travis County, September 8, 2016—Jim Bethke
- ▶ Indigent Defense: Funding, Reporting, Improving, 71st Annual Texas Association of Counties Fall Conference, Texas Association of County Auditors, October 18, 2016—Edwin Colfax, Debra Stewart
- ▶ Indigent Defense, Doug Tinker Criminal Law Seminar, Corpus Christi Bar Association, November 18, 2016—Wesley Shackelford
- ▶ Mental Health Defender Roundtable, TIDC, December 7, 2016—Edwin Colfax, Jamie Dickson



Jamie Dickson and Joel Lieurance presenting at Highland Lakes Indigent Defense Workshop

- ▶ Highland Lakes Indigent Defense Workshop, TIDC and the Texas Justice Court Training Center, January 6, 2017—Joel Lieurance, Jamie Dickson
- ▶ South Texas Indigent Defense Workshop, TIDC and the Texas Justice Court Training Center, January 13, 2017—Wesley Shackelford, Joel Lieurance, Jamie Dickson, Scott Ehlers
- ▶ Presiding Judges Strategic Retreat, January 29, 2017—Jim Bethke
- ▶ *Court Appointed Attorneys: Indigent Defense*, 2017 CDCAT Winter Conference, Texas District and County Clerks Association, February 9, 2017—Wesley Shackelford
- ▶ *Indigent Defense & ABA Pretrial Release Standards*, 2017 Texas Association of Pretrial Services Annual Conference, April 6-7, 2017—Wesley Shackelford
- ▶ *Public Defense Innovation in Texas*, Indiana Law

Review Symposium, Indiana Law Review, April 7, 2017—Jim Bethke

- ▶ *A Defense Attorney's Ethical Responsibilities in a Specialty Court*, 2017 TASC Annual Specialty Court Training Conference Session: Zealous Advocate and Member of the Specialty Court Team, Texas Association of Specialty Courts, April 12, 2017—Scott Ehlers, Morgan Shell



TIDC staffer Wesley Shackelford presenting at South Texas Indigent Defense Workshop

- ▶ *Indigent Defense: Funding, Improving, and Reporting*, Texas Association of County Treasurers, April 19, 2017—Edwin Colfax, Debra Stewart
- ▶ *Overview of Texas Indigent Defense*, Tarrant County Mexican American Bar Association, April 27, 2017—Scott Ehlers
- ▶ *Texas Smart Defense Data Portal*, Smart Defense Inter-Site Summit, May 16, 2017—Jim Bethke, Scott Ehlers
- ▶ Executive Forum for Criminal Justice Planners, Criminal Justice Center and Sam Houston State University, May 17-19, 2017—Jim Bethke
- ▶ *Indigent Defense Legislation and Implementation*, Rusty Duncan 2017, Texas Criminal Defense Lawyers' Association, June 22, 2017—Wesley Shackelford

## Awards and Acknowledgments

On March 9, 2017, the Commission presented the Texas Gideon Recognition to Texas RioGrande Legal Aid (TRLA) and Bee, Live Oak, and McMullen Counties for their dedication to improving indigent defense practices. In 2009, the three counties joined with TRLA to form the Bee County Regional Public Defender Office with the support of a TIDC discretionary grant. Since then, the program has addressed two critical and challenging indigent defense needs: access to counsel and quality of representation.

On hand to accept the award were Bee County Judge Stephanie Moreno, Live Oak County Judge Jim Huff, McMullen County Judge Jim Teal, TRLA Executive Director David Hall, Bee County Chief Public Defender Michelle Ochoa, and First Assistant Public Defender Jessica Canter.

The program helps ensure that all eligible defendants have access to legal representation. Prior to its inception, Bee, Live Oak, and McMullen Counties were among 110 counties in Texas with misdemeanor appointment rates below 10%, and the counties struggled to find enough attorneys to represent indigent defendants. Today, TRLA staff investigators actively monitor jail populations and provide intake support at the jails and dockets, streamlining applications for counsel and eligibility determinations. Appointment rates in the counties are now in line with or above state averages.

The Commission has established the Texas Gideon Recognition Program to commend local governments that meet a high standard for indigent defense.



Pictured (L-R): Jessica Canter, TRLA; Michelle Ochoa, TRLA; Live Oak Co. Judge Jim Huff; McMullen Co. Judge Jim Teal; Bee Co. Judge Stephanie Moreno; David Hall, TRLA; and Presiding Judge Sharon Keller.

## 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 Exoneration Reports and other information on the innocence program, are available on the Commission's website in the "Innocence Program Overview" section.

During FY 2017, five clients of the Innocence Project of Texas, which contracts with Texas A&M School of Law and Texas Tech School of Law to operate their innocence projects, were granted relief based on innocence.

### *Sonia Cacy*

Sonia Cacy was convicted of killing her stepfather, Bill Richardson, by deliberately setting his home on fire in Fort Stockton, Texas in 1991. After being sentenced to 99 years in prison, Cacy was released on parole in 1998 based on new evidence that the forensic evidence of arson presented at trial was unreliable and that Richardson likely died of a heart attack. A subsequent investigation by the State Fire Marshall found that there was no credible evidence of arson. In 2012 lawyers for the Innocence Project of Texas filed a state petition for a writ of habeas corpus on Cacy's behalf. On November 2, 2016, the Texas Court of Criminal Appeals vacated Sonia Cacy's murder conviction on the basis of actual innocence.

### *Elizabeth Ramirez, Kristie Mayhugh, Cassandra Rivera and Anna Vasquez*

Elizabeth Ramirez was convicted of aggravated assault of a child and indecency with a child in San Antonio in 1997 and sentenced to 37 years' imprisonment. Her friends Kristie Mayhugh, Cassandra Rivera, and Anna Vasquez were convicted the following year of the same offenses and were each sentenced to 15 years' imprisonment. The charges stemmed from allegations of sexual abuse in 1995 from Ramirez's two nieces, who were 7 and 9 years old. The women were 19-21 years old at the time of the alleged offenses. The younger niece eventually recanted her testimony and said that she and her sister were forced by their father to make the allegations. In 2011, lawyers for the Innocence Project of Texas accepted the case and began a complete reinvestigation. Experts reexamined the medical evidence and found no physical evidence of sexual abuse. Presented with these conclusions, the original testifying expert acknowledged on the record that her testimony regarding physical evidence of abuse was wrong. The women were released on bail in November 2013 while their appeals continued. On November 23, 2016, the Texas Court of Criminal Appeals vacated the convictions of the four women based on evidence of actual innocence.

## EXPENDITURE REPORT

The Commission's FY 2017 Expenditure Report of state and county spending on indigent defense will be published in February 2018 after final review of expenditures is completed in late December 2017.







TEXAS INDIGENT DEFENSE COMMISSION

[www.tidc.texas.gov](http://www.tidc.texas.gov)