



# Annual and Expenditure Report 2012

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**TEXAS INDIGENT DEFENSE COMMISSION**

209 W. 14th Street, Room 202, Austin, Texas 78701

512-936-6994; fax: 512-463-5724

www.txcourts.gov/tidc

**OFFICERS:**

Honorable Sharon Keller  
Honorable Olen Underwood

Chair – Presiding Judge, Court of Criminal Appeals  
Vice-Chair – Presiding Judge, 2nd Administrative Judicial Region of Texas

**EX OFFICIO MEMBERS:**

Honorable Sharon Keller  
Honorable Wallace B. Jefferson  
Honorable Roberto Alonzo  
Honorable Pete Gallego  
Honorable Sherry Radack  
Honorable Laura Weiser  
Honorable Jeff Wentworth  
Honorable John Whitmire

Austin, Presiding Judge, Court of Criminal Appeals  
Austin, Chief Justice, Supreme Court  
Dallas, State Representative  
Alpine, State Representative  
Houston, Chief Justice, First Court of Appeals  
Victoria, County Court at Law #1  
San Antonio, State Senator  
Houston, State Senator

**MEMBERS APPOINTED BY GOVERNOR:**

Honorable Jon Burrows  
Mr. Knox Fitzpatrick  
Mr. Anthony Odiorne  
Honorable Olen Underwood  
Honorable B. Glen Whitley

Temple, Bell County Judge  
Dallas, Attorney, Fitzpatrick, Hagood, Smith & Uhl  
Burnet, Assistant Public Defender, Regional Public Defender for Capital Cases  
Conroe, Presiding Judge, 2nd Administrative Judicial Region of Texas  
Hurst, Tarrant County Judge

**STAFF:**

James D. Bethke	Executive Director	512-936-6994	jim.bethke@txcourts.gov
Edwin Colfax	Project Manager	512-463-2508	edwin.colfax@txcourts.gov
Carol Conner	Fiscal Monitor	512-936-7561	carol.conner@txcourts.gov
Dominic Gonzales	Grant Program Specialist	512-463-2573	dominic.gonzales@txcourts.gov
Marissa Kubinski	Administrative Assistant	512-936-6994	marissa.kubinski@txcourts.gov
Joel Lieurance	Policy Monitor	512-936-7560	joel.lieurance@txcourts.gov
Wesley Shackelford	Deputy Director/Special Counsel	512-936-6997	wesley.shackelford@txcourts.gov
Terri Tuttle	Executive Assistant/Project Mgr	512-463-8015	terri.tuttle@txcourts.gov
Sharon Whitfield	Budget and Accounting Analyst	512-936-6998	sharon.whitfield@txcourts.gov
Bryan Wilson	Grants Administrator	512-936-6996	bryan.wilson@txcourts.gov
Andrew Bluebond	Legal Intern	512-936-7551	andrew.bluebond@txcourts.gov
Brad Estes	Legal Intern	512-463-2889	brad.estes@txcourts.gov

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Governor Rick Perry  
Lieutenant Governor David Dewhurst  
Speaker of the House Joe Straus  
Chief Justice Wallace B. Jefferson  
Texas Judicial Council

Gentlemen:

It is our privilege to submit this report concerning the duties, activities and accomplishments of the Texas Indigent Defense Commission in FY12.

Just as the states serve as laboratories of democracy in our federalist system, so too our counties are developing innovative strategies for delivering indigent defense services that are able to be shared and tailored to different circumstances in other counties. Because of the Commission's efforts in collaboration with local jurisdictions, Texas is becoming known as a national leader in indigent defense. A growing number of counties are implementing new evidence-based practices that not only improve indigent defense, but also benefit the operation of the criminal justice system as a whole. This report will demonstrate how local jurisdictions, with the support of this Commission, are achieving success.

These successes have come with a price. The Commission has grappled with how to continue to improve indigent defense while recognizing the large amount counties are paying for the advancements made to this point. Expenditures on indigent defense have risen to \$208 million in FY12 from \$91 million in FY01 just before implementation of the Fair Defense Act. After offsetting this 127 percent increase with the \$28.3 million in state grant funds from the Commission in 2012, the result is a funding gap of approximately \$88 million per year. After much deliberation the Commission decided to use this as the basis for its Legislative Appropriations Request (LAR). The LAR submitted in August asks for an additional \$77 million per year in state funding made up of existing but unappropriated revenue in the General Revenue Dedicated-Fair Defense Account and new general revenue funding. In our deliberations we were mindful that indigent defense is a state responsibility required by our nation's Constitution and essential for a fair system of justice.

Our success is due first and foremost to local government doing its part and more. With the support of the Texas Legislature, the Office of the Governor, county governments, and the judiciary, the Commission will continue its statewide exchange of ideas with all indigent defense stakeholders. During the past year, as outlined in the following pages of this report, much of this dialogue has been turned into positive results.

Sincerely,

Sharon Keller



# EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (Commission) continues to build a meaningful infrastructure to support the right to counsel. To help counties ensure that poor persons accused of crime are treated fairly and in accordance with the rule of law, the Commission provided funding through formula and discretionary grants, monitored compliance, offered trainings and provided technical support when requested or needed. Even with Commission fiscal assistance, counties continued to struggle to pay the overwhelming majority of costs of meeting right to counsel obligations under the Constitution and the Fair Defense Act of 2001.

- Costs increased from \$91.4 million (FY01) to \$207.5 million (FY12)
- People served rose from approximately 324,000 (FY02) to approximately 459,000 (FY12)
- In FY12 statewide indigent defense costs increased 4.6% or \$9.2 million over the previous year
- In FY12 the state funded \$29.7 million and county governments funded \$179.2 million

The Commission has invested its limited state resources wisely to promote compliance with state law by encouraging the development of innovative programs, monitoring compliance with financial and program standards, and to making available research and resources for counties to improve indigent defense through evidence-based approaches.

In addition to the formula grant funding for which all counties are eligible, the Commission continued to encourage and fund new programs that deliver effective services at reasonable costs through discretionary grants. Several of these programs are featured in the pages that follow, including the Harris County Public Defender, the Bell County Mental Health Indigent Defense Program, and several collaborative programs with the Texas Tech School of Law. These programs exemplify the Commission's efforts to implement new and innovative programs that deliver effective indigent defense services and benefit the overall efficiency of the criminal justice system.

The Commission also continued to fulfill its statutory mission to monitor county compliance with both financial and substantive requirements. The Commission's fiscal and program monitors conducted 32 monitoring and technical assistance visits in FY12. Rather than approaching monitoring reviews in a punitive way, the Commission views monitoring visits as opportunities to support county efforts to improve and maintain effective programs, not unlike the function of an internal auditor.

As part of our ongoing efforts to arm counties with helpful information and resources, the Commission developed a set of materials to assist courts in recouping the costs of providing legal representation from eligible defendants. These were developed with the goals of protecting persons who do not have the ability to pay from invalid reimbursement orders while also assisting county collection efforts where defendants are able to repay some or all of the costs of representation. The materials include discussion about the case law, recommendations on effective procedures, and sample court orders that may be customized to fit each jurisdiction's circumstance.

The Commission also published the Veterans Defender Resource for county and court officials who are interested in the creation of a new Veterans Court or enhancing their existing problem solving courts with the addition of a defender component. The Resource provides information about how counties can access support through the Commission's discretionary grant programs and includes a directory of the currently operating Veterans Courts programs throughout the state.

To commemorate the 10th anniversary of the Fair Defense Act the Commission brought together a compelling roster of state and national experts for a symposium and workshop in the fall of 2011. The program was designed to take stock of the progress made to date and address the work that lies ahead. Videos of the presentations are available on the Commission's website at <http://www.txcourts.gov/tidc/videos5.asp>.

Visit the Commission website ([www.txcourts.gov/tidc](http://www.txcourts.gov/tidc)) for historical context and purpose ([Who We Are and What We Do](#)), and [indigent defense data reported by all 254 counties](#) under the Fair Defense Act.

## *Mission*

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.

## EXECUTIVE SUMMARY

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The Commission also continued to promote research that expands the indigent defense knowledge base and develops resources for local officials that can help them implement cost-effective indigent defense solutions. In FY12 the Commission funded a comprehensive study by the Public Policy Research Institute at Texas A&M University titled *The Wichita Public Defender Office: An Evaluation of Case Processing, Client Outcomes, and Costs*. The findings show clients represented by the public defender are more likely to have better outcomes compared with private assigned counsel. For example, Wichita Public Defender clients are more likely to have their case dismissed compared with clients of appointed private counsel, helping the county to avoid about \$204 per case in unnecessary court processing, prosecution, and pretrial detention costs.

Finally, the Commission was pleased to welcome one new member during FY 12 and said goodbye to two long-serving and valued members who left the Commission. Judge Laura Weiser of the Victoria County Court at Law #1 was appointed to the Commission by Governor Perry in June 2012. The departing members were State Senator Jeff Wentworth of San Antonio, who served on the Commission since 2006, and State Representative Pete Gallego of Alpine, who served as a member of the Commission from 2002 to 2003 and 2009 to 2012. As we thank Senator Wentworth and Representative Gallego for their important contributions, we welcome Judge Weiser to join with us to continue the pursuit of our mission of helping counties to ensure that the constitutional rights of all Texans are protected.

Sincerely,

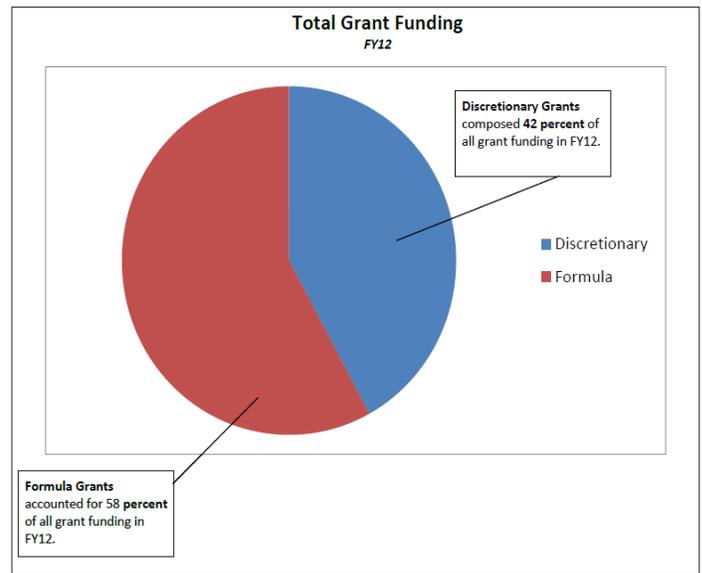
Jim Bethke

# INDIGENT DEFENSE GRANT PROGRAM

Since 2002, the Texas legislature has directed the Commission to provide technical support and grants to assist counties in improving their indigent defense systems and to promote compliance with the requirements of state law relating to indigent defense. The Commission developed a two-part grant policy that ensures funds are fairly distributed across the state while promoting compliance and more effective services. One program—which has benefitted all counties—provides formula-based grants throughout Texas. The other offers competitive funding to implement innovative programs or remedy non-compliance.

## Counties' Commitment to Compliance

To receive a grant under either program, a county must demonstrate its commitment to compliance with the requirements of state law related to indigent defense. This is accomplished in part by submitting a locally-developed county plan that specifies how the county and courts will meet the minimum standards set by law in the areas of magistrate responsibilities, indigence determination, minimum attorney training, attorney appointment processes, and, where applicable, Commission-promulgated contract standards and policies. A county must also report its indigent defense appointments and expenditures to the Commission each year. A county, however, may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the Commission under either program.



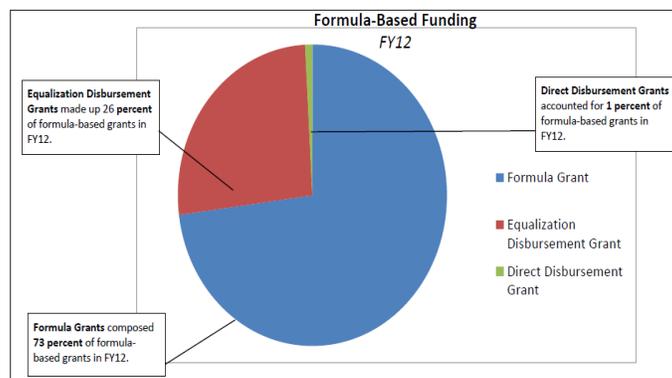
## Formula Grant Program

*The FY12 formula grant program provided for three funding strategies.*

**Population-Based Formula Grants** are determined based upon a county's percentage of state population multiplied by the Commission's population-based budgeted amount for formula grants. A county must meet minimum spending requirements and maintain a countywide indigent defense plan that complies with statutes and standards to qualify.

**Direct Disbursement Grants** allow small counties to access the formula grant pool. Rather than completing the formula grant application, counties seeking direct disbursements submit expenses over the pre-established baseline amount to the Commission. These counties are eligible to receive additional funding if it is available.

**Equalization Grants** are distributed to counties based on the percentage of increased costs. The Commission uses this program when budget conditions are favorable and grants are subject to the availability of funds. The Commission encourages counties to use this money to help pay for an indigent defense initiative or project that may have remained unrealized without this funding.



## Discretionary Grants

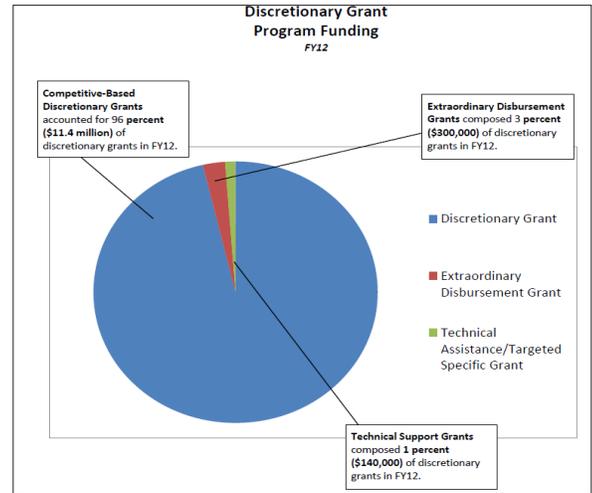
In addition to formula-based grants, the Commission also has a discretionary grant program to encourage innovation, help counties facing financial hardship, and remedy non-compliance with the Fair Defense Act. To ensure that the money is distributed fairly and efficiently, the Commission distributes funding through four strategies.

**Competitive-Based Discretionary Grants** are awarded to assist counties in developing new, innovative programs or processes to improve the delivery of indigent defense services. A committee reviews and scores counties' applications prior to presentation to the Grants and Reporting Committee and the full Commission. The Commission has prioritized programs that provide direct services to indigent defendants, mental health defender services, and juvenile defenders, as well as those that establish public defender or regional public defender offices.

**Extraordinary Disbursement Grants** are available to competing counties that demonstrate that indigent defense expenses in the current or immediately preceding fiscal year constitute a financial hardship for the county. In past years, events such as capital murder cases, hurricanes and other types of cases impacted counties and made them eligible for extraordinary funding.

**Targeted Specific Grants** promote compliance and provide a funding strategy to assist a county that has a finding of non-compliance. Staff will work with the court and county officials to develop an action plan for the county to address the compliance related to the Fair Defense Act.

**Technical Support Grants** increase the knowledge base about indigent defense or establish a process or program that may be replicated by other jurisdictions. The Commission will assist any county with technical support requests.



## IN FOCUS: DISCRETIONARY GRANTS ARE MAKING A DIFFERENCE

### Harris County Public Defender

#### Overview

Harris County established the Public Defender Office in 2011 with the help of a discretionary grant awarded by the Commission. Before this award, Harris County was the nation's largest urban jurisdiction without some form of public defender. The office operates four divisions. It has an appellate, felony trial, misdemeanor mental health, and juvenile division. In addition to providing effective representation to individual clients, the office has enhanced the overall infrastructure for better public criminal defense in the county and has applied for and received a federal grant to assist the private bar.

#### Evidence-Based Research Underway

The Commission's grant provided for a research component to help make the Harris County Public Defender (HCPD) a "learning site" that would yield generalizable lessons for the development of effective programs. In April 2012, Harris County contracted with the Council of State Governments Justice Center to review HCPD operations, analyze workload data and study case outcomes. Through this research Harris County and the Justice Center are developing the indigent defense knowledge base so that other jurisdictions in Texas and across the country can benefit from their experience. The Justice Center published a preliminary report in October 2012 which focused on the two longest operating divisions of the HCPD: misdemeanor mental health and appellate. According to the researchers, "[t]his preliminary report puts the new office in context, describing the professional and systemic challenges of indigent criminal defense and the overall Harris County criminal justice and indigent defense systems."

## IN FOCUS: DISCRETIONARY GRANTS ARE MAKING A DIFFERENCE

The HCPD was evaluated against the backdrop of the assigned counsel system that handles the vast majority of cases. The findings of the report indicate that HCPD is providing quality services that yield outcomes for indigent clients that compare favorably with those in indigent cases appointed counsel outside of the HCPD. For example, while “HCPD’s Mental Health Division represents more challenging clients than the norm” the office “achieves significantly better dismissal and guilty plea results (determined in a matched sample compared with assigned counsel).” According to the report, “The Harris County assigned counsel system is designed primarily for consistency and low cost for a high volume of indigent defendants. In comparison with other Texas urban jurisdictions, cost-per-case is low, plea bargaining more prevalent, and sentencing outcomes more costly because they are more tilted toward confinement.” Based on a review of appointed cases the authors note that “Harris County pays considerably less per case than other urban counties in the state, particularly for misdemeanors, where the payout per case is about two-thirds of the large county average.” The Justice Center report documented that attorneys with the Public Defender Office routinely avail themselves of in-house investigators and social workers who assist with representation of mentally ill defendants, two aspects of quality representation. By contrast, “Misdemeanor costs in Harris County remained at approximately \$82 per case, because such a small proportion (.4 percent) is spent on investigation and experts.” Finally, the authors also noted that “HCPD has established caseload caps in their Personnel Manual (p. 8). Caseload per attorney is consistent with those recommended by the National Advisory Commission on Criminal Justice Standards and Goals.” This was in stark contrast to the appointed system: “There were 32 attorneys who received more than 400 cases – 6 of whom received more than 400 in one court - exceeding the National Advisory Commission (NAC) “standard” of 400 misdemeanors, and again, without accounting for other workload.” They concluded that “These high numbers suggest the potential problem of excessive caseloads and raises questions about the quality of representation that could result.”

Subsequent reports will focus on the juvenile and felony divisions, which became operational later. Among the elements of the next phase of the study, a time study for appellate representation is planned, which can be used to provide a basis for developing evidence-based caseload guidelines for handling direct appeals in different types of cases.

### DOJ Grant Awarded to HCPD in FY12

The impact of the Harris County’s Public Defender goes beyond representation for individual clients. Through outreach to the private bar the Public Defender is becoming a resource hub for professional development. In FY12 the U.S. Department of Justice, Bureau of Justice Assistance awarded the Public Defender a grant of \$349,360 to enhance the quality of indigent defense, particularly in sentencing, in part through the training of court-appointed lawyers. Only four recipients across the entire country were awarded grants from the Department’s Bureau of Justice Assistance “Answering Gideon’s Call” program. Previously, Harris County had never received a DOJ grant, and it is likely that the creation of the HCPD was a major factor in leveraging these additional resources for Harris County.

### Achieving Justice through Successes Large and Small

The appellate division of the HCPD won a significant victory in FY12 on the issue of court costs. It was discovered that the clerk in Harris County developed processes that failed to clearly document court costs assessed by the courts. The appeals court ruled that the clerk must follow the law and provide a bill of costs in order for the court to properly assess courts costs. This case will have far-reaching impact, and has resulted in a change in county practices in order to comply with the law.

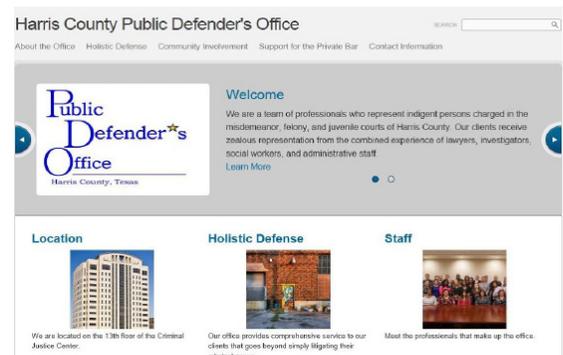
In June of 2012, the HCPD received the Francis Wellman Advocacy Award from the Houston Lawyers Association. Additionally, Alex Bunin, the Chief Defender, received the Torch of Liberty Award from Harris County’s Criminal Lawyers Association.

#### Website/Contact:

The Harris County Public Defender Office maintains a website that contains information for community involvement & support for the private bar, including trial support and advice on immigration concerns.

#### Contact:

Alex Bunin, Chief Defender  
1201 Franklin Street  
13th Floor  
Houston, Texas 77002



“This is a card Miranda Meador received today from one of her juvenile clients. Miranda did exactly the opposite of what the typical juvenile court-appointed counsel would have done with this case. She fought the probation department for a different recommendation after uncovering evidence no one else would have cared to uncover. She found a suitable environment for this young lady to live since living with mom was not going to be an option. In other words, she cared, and she made a difference in this young person’s life. I know this card made her day. Great work, Miranda.”

**Steven H. Halpert**  
Juvenile Division Chief  
Harris County Public Defender’s Office



Steven Halpert, Miranda Meador



## Bell County Mental Health Indigent Defense Program

### Overview

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, Bell County developed a program with the support of a discretionary grant from the Commission that provides specialized representation and legal support services to indigent defendants with mental health concerns. Unlike a mental health public defender office or managed assigned counsel program, Bell County utilized the existing appointment wheels to identify private attorneys who were interested in and qualified to represent this population. Specialized training was developed to help these attorneys develop skills needed to effectively represent the mentally ill, and social work interns were organized and trained to provide specialized support for mentally ill defendants and their attorneys in order to facilitate favorable outcomes.

### Mental Health Defense Social Work Internships

The internship program provides mental health attorneys with the assistance of social work interns. This is a unique approach to the provision of specialized indigent defense support services in Texas and has been very successful for the attorneys, the participating universities, and the students who have joined the program. The social work interns have been able to assist indigent defendants with mental health concerns and their attorneys by identification of appropriate housing, day, and/or treatment programs, coordination of applications to federal assistance programs, and helping the defendant to obtain or maintain any necessary medications. The interns also serve as a point of coordination on behalf of the defense attorney once a defendant’s competency has been restored and he or she is returned to Bell County for court proceedings. This helps to provide continuity in services to the defendant and minimizes the risk for additional jail time without appropriate treatment or medication prior to case disposition. As one attorney wrote in a letter to Bell County District Judge Fancy Jezek, “...I think the [Mental Health Indigent Defense] program is very important inasmuch as it serves a community of defendants whose unique needs are not customarily handled in the typical criminal case process. My experiences with the interns have been very beneficial and I strongly recommend that they remain a central part of the current or any follow-up programs.... They display a genuine sense of concern for the clients’ well-being and they bring a unique expertise to these cases.”

## IN FOCUS: DISCRETIONARY GRANTS ARE MAKING A DIFFERENCE

### Coordinated Case Support: Connecting to Community Resources

One of the benefits of the Mental Health Indigent Defense Program has been the creation of a weekly status docket (photo at right) for all defendants who are in the program. The docket is overseen by Judge Rebecca DePew, County Court at Law 3 in Bell County. The consistency of this docket has allowed prosecutors, defense attorneys, and the judge to more quickly ready cases for court, to remain engaged in each defendant's progress, and has also provided an opportunity to invite services like Central Counties Services (MHMR), the Central Texas Council on Alcoholism and Drug Abuse, Bell County Indigent Health Services, and the Veterans Justice Outreach Program to attend hearings with defendants. By inviting multiple stakeholders to the table, the court is better able to determine which defendant issues are related to mental health needs and which require legal resolution. Criminal needs can be addressed in the courtroom, and defendants can be immediately connected to services to help prevent recidivism.



**“I have been encouraged to see the collaboration among prosecution, defense, and community services that has been established as part of this program. This team based approach has allowed us to better address defendants with special needs.”** Judge Rebecca DePew

The weekly dockets have allowed the courts, defense attorneys, interns, and prosecutors to forge close relationships with service providers and provide a time for court appointed attorneys, social work interns, and care providers to come up with a treatment plan that expedites the resolution of the criminal case. These linkages make it possible to expedite referrals, leverage existing resources, and lead to a more seamless transition between the Bell County Jail and appropriate mental health, substance abuse, and rehabilitative service providers. The fewer the interruptions to care a client experiences, the higher the likelihood that client will be able to succeed in obtaining and completing treatment.

### Creating the Conditions for Client Success

#### “Frank”

Frank, a man diagnosed with schizophrenia living in a low income temporary/transitional housing complex in Bell County, was arrested after he got into an altercation with his roommate. He was charged with Assault Causing Bodily Injury/Family Violence and, upon being booked into the jail, was identified as having mental health needs. Frank was assigned to a mental health specialist attorney who approached the mental health social work interns to assist with the case because it was clear that Frank would be experiencing a housing crisis that could complicate a successful resolution of his case. Because of the nature of the arrest, it was unlikely that Frank would be allowed to return to his residence. The social work intern was able to find supportive housing in Travis County that provides long-term, permanent housing and provides meals, medication management and transportation to appointments. The court agreed to allow Frank to move to Travis County as long as he continued his medication, maintained communication with the PR bond office, reported to his attorney, and appeared for his court dates. Following the identification of the program and acceptance by the prosecutor and court, the defense attorney and social work intern began to coordinate Frank's move from Bell to Travis County. The client was successfully transitioned back into the community after staying in the Bell County Jail for only two weeks. Frank remains on a PR bond and has since been compliant with all of his requirements.

#### “Mary”

Mary, a woman in her 40's with a dual diagnosis of intellectual disabilities and schizophrenia, was arrested for harassment after allegedly repeatedly contacting estranged family members. She was found incompetent and continued to decompensate while awaiting a bed in Austin State Hospital (ASH) for competency restoration. She was witnessed responding to auditory hallucinations by both the jail mental health professionals and a social work intern. Mary was eventually transferred to ASH. The social work intern maintained regular communication with the social worker at ASH on the forensic unit to keep up with the progress of the client and prepare for the client's return. Prior to the client's discharge from ASH, the social work intern coordinated with the defense attorney, the social worker at ASH, Mary's mother, and a staff person at the MHMR in the client's home town to facilitate a transition back into the community from ASH without having to go back into the Bell County Jail.

After her competency was restored, Mary returned to the Bell County Justice Complex and her case was dismissed. She was noticeably more lucid, coherent, and friendly, and she returned home with her mother that day without having to go back through the jail. This prevented the risk of Mary decompensating in jail again, which was a very real possibility, given the

strain the jail environment placed on her. This not only reduced jail housing costs for Mary, it also prevented a second stay in ASH if she had been allowed to decompensate. The attorney and social work intern helped connect Mary to the local MHMR authority to meet her mental health needs and provided Mary's mother with resources and connections to support groups to help her learn how to support her daughter, with which she had previously struggled. The social work intern also provided information on how to reinstate Mary's social security benefits, which had been temporarily suspended because she was in the Bell County Jail and ASH for so long, and helped the family obtain the documentation needed. One month after the case was disposed, Mary remained connected to MHMR, was keeping up with her doctor appointments, and was taking all medications as prescribed.

The increased communication between attorneys, assisted by social work interns, with the court and existing community services affords Bell County the opportunity to resolve criminal cases in ways that may help to reduce recidivism and better allow for successful re-integration of defendants into the community.

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## Commission Partners with Texas Tech University School of Law

### A trio of collaborative programs are improving indigent defense while educating the next generation of Texas attorneys

Beyond fulfilling the primary mission to prepare students to practice law, in little over one year Dean Darby Dickerson (photo right) has demonstrated an admirable dedication to advancing efforts to improve indigent defense in Texas as the School of Law's new dean. Like each of the four public law schools, Texas Tech University School of Law has played a role in the work of the Commission, but the variety and scope of Texas Tech's involvement is worth special recognition. Three Commission-funded programs provide clinical opportunities for students at Tech Law while meeting important indigent defense needs of jurisdictions across the entire state of Texas.



Dean Darby Dickerson

### Collaborative Programs

- **The Innocence Project of Texas (responsible for securing seven exonerations)**
- **The Caprock Regional Public Defender (served 16 West Texas counties in FY12)**
- **The Capital Punishment Clinic and the Regional Public Defender for Capital Cases (serving more than 140 counties, across seven administrative judicial regions)**

## Texas Tech Law and the Innocence Project of Texas

### Project Successes Have Statewide Impact

Texas Tech law students have had the opportunity to be involved in exonerations with IPOT that have been an impetus for system-wide reform of the Texas criminal justice system. IPOT has been involved in the exoneration of seven Texans. In the most high-profile case, students helped to establish the innocence of Timothy Cole. Cole was wrongfully convicted of a Lubbock sexual assault in 1986. He died in prison in 1999. On April 7, 2009, a district court proceeding was held in Austin which considered evidence of Timothy Cole's innocence, including exculpatory DNA results that identified the actual perpetrator. Governor Rick Perry presented a posthumous pardon based on innocence to Cole's family on March 1, 2010. The Cole exoneration story catalyzed reform efforts in the Texas legislature. The Timothy Cole Advisory Panel on Wrongful Convictions was created to report on the causes of wrongful convictions; the compensation statute was significantly expanded to help make restitution to those wrongly deprived of their liberty; and the legislature passed a new eyewitness identification law to improve lineup procedures that have been implicated in many erroneous convictions. Most recently, IPOT and Tech students have collaborated with the Texas Forensic Science Commission to conduct a comprehensive review of arson convictions that may have relied on erroneous indicators of intentional fires. For more information on the Commission-funded innocence projects and their latest exonerations, see page 22.

## The Caprock Regional Public Defender Office

### Overview

The Caprock Regional Public Defender Office (CRPDO) was established in 2011 after a group of county judges from the region met with officials from the state to discuss the unusually low misdemeanor appointment rates in their courts. Factors such as sporadic caseloads, a shortage of qualified local criminal defense lawyers, and a persistent lack of resources contributed to appointment rates that are well below statewide averages. The Honorable Lesa Arnold from Dickens County stepped forward to submit a discretionary grant application for a regional office. Texas Tech University's School of Law was selected as the public defender by responding to the county's solicitation. As a part of the startup funding provided to Dickens County for the program, the Commission included funds to establish a sophisticated videoconference system to ensure clients' timely access to counsel. County officials throughout the region were also given access to the videoconference equipment to help with the overall administration of the project. Sixteen counties joined the program for FY12 and the Commission authorized the program to expand to counties in the region that fit criteria proposed by the program's oversight board. As many as 26 counties in the area could join the program.

"My clinic experience has been one of the hallmarks of my law school career. I have been given the opportunity to experience first-hand cases that range from assault to possession of drugs. I've gained invaluable experience in how to approach a case, handle clients, and work with prosecuting attorneys."

Charles Blevins, Tech Law Clinic Student

### Tech Law Helping to Provide a Regional Solution to Historically High Numbers of Uncounseled Pleas

In addition to providing representation from highly skilled criminal defense lawyers, Texas Tech proposed to allow third-year law students to represent clients, under the close supervision of the program's attorneys. The participation of Texas Tech University School of Law's Criminal Defense Clinic was a critical factor for the counties in West Texas that joined the Caprock Regional Public Defender Office (CRPDO). "As very few private attorneys live in or serve this geographic area, it has been extremely difficult to establish a pool of experienced counsel to provide representation of indigent defendants in criminal cases, resulting in an underserved population," explains Professor Patrick S. Metze, Defense Clinical Director at the School of Law. The selection of Texas Tech to serve as the public defender entity helped to assure county leaders in the region of the institutional stability of the program. Donnell Yandell was hired as the Chief Defender of the office because of his extensive experience. The CRPDO is meeting a previously unmet need of providing quality indigent defense services that may be a model for other underserved areas.



Professor Patrick Metze



Texas Tech University's School of Law was selected as the public defender for a coalition of rural counties in the Caprock region. In addition to providing two full-time attorneys, the program allows third-year law students get to represent clients under the supervision of experienced attorneys.

**CRPDO Recent Appellate Victory**

The CRPDO was originally designed to take misdemeanor and felony cases. Dickens County requested a scope change to allow the CRPDO to accept appeals cases. The CRPDO represented a client in its first appellate case in 2012. Initially, CRPDO attorneys were appointed to the case through Garza County’s participation in the regional program. Overall, this victory is significant considering the resources for an appeals case would be totally unavailable without the support from the Commission’s funds and Tech Law support.



**Professional Development for Indigent Defenders at Tech Law:**

In addition to its commitment to clinical programs, Tech Law is also an important regional resource for the continuing education of practitioners on indigent defense. For example, Tech Law recently sponsored a Criminal Law Symposium whose focus was on the Sixth Amendment and featured panel discussions addressing the right to counsel at trial, during, and before trial. On November 9-10, 2012 the Tech Law in collaboration with the American Bar Association and the National Criminal Defense Lawyers Association offered a complimentary defender training program entitled “Defending in a New Era of Forensic Sciences.”

## Capital Punishment Clinic and the Regional Public Defender Office for Capital Cases

### Overview

Representation in capital cases is a complex and challenging area of practice. In many parts of the state it can be difficult to find attorneys with the requisite skills and support resources to provide effective representation. Moreover, the cost of a capital murder case can easily bankrupt a rural county. The RPDO represents a way for counties to mitigate the dramatic budget impact a capital case can have, while at the same time ensuring the kind of quality legal representation demanded by the seriousness of the charges. The RPDO was pioneered by the Lubbock County Commissioners and David Slayton, Director of Court Administration\*, along with counties and the Honorable Dean Rucker, Presiding Judge in the seventh Administrative Judicial Region and the Honorable Kelly Moore, Presiding Judge in the ninth Administrative Judicial Region (AJR). Lubbock County started the Regional Public Defender Office in 2007 with a discretionary grant from the Commission and organized it through inter-local agreements with participating counties. County and court leaders from the other seven AJRs expressed a need for similar services and the Commission provided Lubbock with additional funding to expand. As of FY12, more than 155 counties entered into agreements with Lubbock County to participate.



Judge Dean Rucker



Judge Kelly Moore

### Texas Tech Law Provides Opportunity to Participate in Nationally Recognized Defender Program

The Capital Punishment Clinic gives Tech Law Students the opportunity to assist in the representation of defendants charged with capital murder through the Regional Public Defender Office, headquartered in Lubbock. Four students work with the program during the summer months. After a rigorous application process, students are invited to work with attorneys, mitigators, investigators and other professionals helping to represent those facing the death penalty. Using cutting edge techniques and applying their legal education to a wide variety of activities, students investigate culpability facts and punishment mitigation, interview clients and witnesses, use their legal research and writing skills, and study team building, restorative justice, criminal procedure, and substantive criminal law. Students are closely supervised at all stages of their cases by Professor Patrick S. Metzger and the Chief Public Defender for Capital Cases, Adjunct Professor Jack Stoffregen. The classroom component continues the study of capital punishment jurisprudence focusing on skills development, ethics, and case strategy in real on-going capital cases.

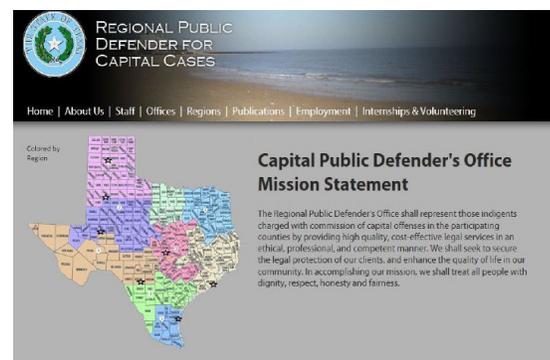


Jack Stoffregen

The National Association of Counties (NACO) presented Lubbock County with an Achievement Award for pioneering the Regional Public Defender Office. NACO presents Achievement Awards to recognize unique, innovative county programs. Applications for the awards are judged in part by whether they modernize county government and increase services to county residents. The Texas Association of Counties (TAC) Leadership Foundation also awarded Lubbock its Best Practices award for the RPDO.

### RPDO Online

RPDO launched its [own website](#) in 2012, which provides a full listing of staff as well as a directory of the seven RPDO offices throughout the state. Contact the Commission for more information as well as the program's administrative team in Lubbock.



\*David Slayton (pictured right) now serves as Administrative Director, Office of Court Administration



# POLICIES AND STANDARDS

One of the Commission's key strategic goals is to improve indigent defense services through the development of policies and standards, as well as legislative proposals. Initiatives under this goal are developed to improve consistency and quality in indigent defense services in Texas. While the Fair Defense Act contains a variety of statutory requirements, the Commission is given broad authority to develop additional rules, best practices, and model forms covering a wide range of indigent defense issues in a process that encourages stakeholder involvement and collaboration. In approaching this process, the Commission is always mindful of the potential costs associated with implementing additional requirements.

## **Legislative Proposals and Legislative Appropriations Request**

The Commission is charged in Section 79.035, Government Code, with recommending to the legislature ways to improve Texas's indigent defense system. The Commission developed and last year slightly modified a Legislative Policy to guide its development of such recommendations. 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 at their August 20, 2012 meeting. After reviewing each proposal carefully the Commission concluded that although perhaps worthy, the proposals were not critical to improving the indigent defense system and the focus should be on funding issues. Consequently none of the legislative proposals are being advanced in this report.

The Commission submitted its Legislative Appropriations Request (LAR) on August 16, 2012 for consideration by the 83rd Texas Legislature. The LAR includes two exceptional items that together would close the approximately \$154 million unfunded gap that is being borne by counties for the additional indigent defense costs that they have incurred due to the mandates of the Fair Defense Act of 2001. The first is restoration of estimated appropriation and unexpended balance authority between biennia. This will allow greater funding levels to be allocated towards indigent defense. There is expected to be over \$15 million in the General Revenue Dedicated-Fair Defense Account from FY11/12 that cannot be spent without this authority. Restoration of estimated appropriation authority, rather than a sum certain amount, would permit the Commission to spend the full amount of revenue flowing into the Fair Defense Account from fluctuating court costs and fees, while unexpended balance authority between biennia would allow these unappropriated funds to be spent in the FY14-15 biennium through increased grants to counties. The Texas Judicial Council passed a Resolution asking the legislature to 1) Restore access to all dedicated funds for indigent defense by reinstating estimated appropriation authority and by reestablishing unexpended balance authority between biennia to the Commission; and, 2) Close the unfunded gap that is being borne by counties for the additional indigent defense costs that they have incurred due the mandates of the Fair Defense Act of 2001.

## **Attorney Fee Recoupment Procedures/Orders**

In December 2011 the Commission promulgated a set of materials to assist courts in recouping from eligible defendants the costs of providing them legal representation. These were developed with input from a diverse group of stakeholders working towards the goals of protecting defendants who do not have the ability to pay from invalid reimbursement orders while also assisting county collection efforts where defendants are able to pay back some or all of the costs of representation. The issue arose because of a large amount of recent litigation in the appellate courts beginning with the Court of Criminal Appeals decision in *Mayer v. State*, where the court found "[T]he defendant's financial resources and ability to pay are explicit critical elements in the trial court's determination of the propriety of ordering reimbursement of costs and fees." *Mayer v. State*, 309 S.W.3d 552, 556 (Tex. Crim. App. 2010). Subsequent intermediate courts of appeals decisions have reversed many trial courts' orders that defendants repay the costs of legal representation because they were not supported by the required judicial determinations of fact regarding the defendant's ability to pay. The materials include discussion about the case law, recommendations on effective procedures, and sample court orders that may be customized to fit each jurisdiction's circumstance. It is available on the Commission's website: <http://www.txcourts.gov/tidc/pdf/AttorneyFeeRecoupmentProceduresandOrdersDec2011.pdf>

## **Guidance for Handling Mentally Ill Defendants**

Article 16.22 and Article 17.032 of the Code of Criminal Procedure set out certain procedures for the identification of mentally ill arrestees and for providing treatment and bonding options to these arrestees. These statutes are quite detailed, and in an effort to simplify the steps in this process, the Commission created and published flowcharts describing these statutes that are now [available on our website](#). Article 16.22 sets procedures for the identification of arrestees with MH/MR issues. Under Article 16.22, the magistrate orders the local MH/MR authority to make a written assessment as to: whether the arrestee is a person with mental illness or mental retardation; whether there is clinical evidence to support a belief that the arrestee may be incompetent to stand trial; and as to recommended treatment. The magistrate must provide copies of this assessment to defense counsel, the prosecutor, and the trial court. Article 17.032 follows on the written MH/MR assessment from Article 16.22. Article 17.032 lists certain situations in which a personal bond is presumed for arrestees with MH/MR issues and other situations in which a personal bond is allowed for these persons.

## POLICIES AND STANDARDS

### Review of Existing Continuing Legal Education and Contract Defender Program Rules

As part of the rule review required by Chapter 2001, Government Code, the Commission considered two sets of its rules at its meeting on August 20, 2012. The Commission voted to publish for public comment its rules related to continuing legal education requirements for attorneys seeking appointment in indigent defense cases, as well as its rules governing contract defender programs in Texas. At the time of publication the Commission found that no changes were needed to the rules. The rules were readopted without changes at the December 13, 2012 meeting.

### Indigent Defense Plan Submission and Review

Commission staff worked with the Public Policy Research Institute to build onto the online system a simple process through which local judges can easily meet the requirements contained in Section 79.036, Government Code. This section requires officials by November 1 of each odd-numbered year to submit their indigent defense plans, any revisions to the plans, or verify that a plan previously submitted is still in effect. The online system included an email to the official charged with submitting/verifying the plan with a hyperlink where the judge may then review the existing plan and forms on file and either verify and approve it as is, or submit revisions to the plan. All local officials completed the plan submission process last year and many have also actively been managing their plans by submitting updates to sections as they have occurred. All indigent defense plans are available to the public on the Commission's website at: <http://tidc.tamu.edu/Public>.

In addition to reviewing the plans for compliance with legal requirements, staff determined what financial standards are used to determine indigence in the 370 indigent defense plans currently on file. The standards are as follows:

Financial Standard	Number of Indigent Defense Plans
Percentage of Federal Poverty Guidelines	352
Qualification for a Means-Tested Public Benefit	317
Resides in Correctional/Mental Health Facility	297
Assets= <\$2500 OR <\$5000 if over 60 years old, Disabled, Resides in Institution OR Twice Cost to Hire Counsel	78
Income less necessary Expenses Amount per Month*	54
Other	35

\*\$500 was the most common amount established as a maximum threshold below which a defendant would be presumed indigent.

The top three categories of standards (federal poverty guidelines, public benefits, and residence in institution) above match up directly with the three that appeared in the primary template the Commission issued as part of the then new plan submission process in 2009. These were also the three most common standards used in earlier plans and are also included in the model guidelines the State Bar of Texas issued a few years ago. Of the 352 plans using a multiple of the federal poverty guidelines, the most common percentage used is 125%. The breakdown of percentages among plans is to the right:

Federal Poverty Guideline	Number of Plans
80%	2
100%	131
110%	5
125%	135
130%	3
150%	60
175%	10
200%	6

### **U.S. Supreme Court Extends Right to Effective Counsel to Plea Bargaining**

On March 21, 2012, the U.S. Supreme Court decided two cases that held a defendant in a criminal case has a Sixth Amendment right to effective assistance of counsel in the plea bargaining process. The cases, *Missouri v. Frye* and *Lafler v. Cooper*, were 5-4 decisions with the majority opinions written by Justice Anthony Kennedy. In *Frye*, the defendant's attorney did not inform him of plea offers from the prosecution and he later plead guilty without an agreement and received a substantially longer sentence than the earlier offers. The court held that generally "defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Justice Kennedy reasoned that because our system relies heavily on plea bargains, "the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant." In order to show prejudice, the majority held that "defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law." The Texas Court of Criminal Appeals reached a similar conclusion in the *Ex Parte Lemke* decision in 2000. The court held that, "[f]ailure of defense counsel to inform a criminal defendant of plea offers made by the State is an omission that falls below an objective standard of professional reasonableness." The court found that the defendant was prejudiced by counsel's failure to inform defendant of plea offers of 20 and 16 years confinement and instead plead guilty to a term of confinement of 40 years. The court ordered the trial court to withdraw the defendant's pleas, require the State to reinstate its 20 year plea bargain offer, and allow the defendant to re-plead to the indictments in these causes.

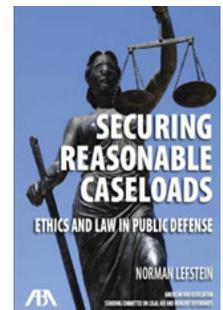
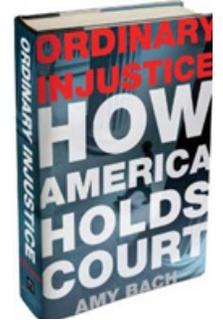
In the *Lafler* case, the attorney transmitted the plea offer to the client; however the client rejected the offer based on the erroneous advice of counsel. After the plea offer had been rejected, there was a full jury trial resulting in a harsher sentence than the one offered in the rejected plea deal. Justice Kennedy once again writing for the majority held that to gain relief "a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed." Fashioning an appropriate remedy in such cases will potentially be challenging. In his dissenting opinion, Justice Scalia noted the decisions open "a whole new field of constitutionalized criminal procedure: plea-bargaining law."

# EDUCATION, PUBLICATIONS, AND ONLINE RESOURCES

The Commission serves as a clearinghouse for indigent defense information that enhances understanding of the Fair Defense Act and makes available 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, studies, e-newsletters, brochures, site visits, webinars, and other outreach described below. In FY12, Commission staff made presentations, site visits, and provided trainings to more than 1,600 participants.

## Indigent Defense Symposium and Workshop

In the fall of 2011 the Commission held a Symposium and Workshop event -- "10 Years Later: The Fair Defense Act – Looking to the Future." Over 120 participants convened at the Texas Capitol for day one of the Symposium. There was a very wide range of stakeholder participation including legislative staff, local officials, indigent defense administrators, and defense attorneys. Presentations were given by state elected officials including Senator Rodney Ellis, Judge Jon Burrows (Bell County Judge), Judge Fancy Jezek (426th District Judge, Bell County), Judge Sharon Keller (Presiding Judge of the Court of Criminal Appeals) and Chief Justice Brian Quinn (Seventh Court of Appeals). Nationally recognized experts on indigent defense presented on recently published books. Professor Norm Lefstein spoke on *Securing Reasonable Caseloads: Ethics and Law in Public Defense* (image below right with link to book) and Amy Bach presented on her book, *Ordinary Injustice-How America Holds Court* (image upper right with link to more information). The Commission was honored to also have many others there to present, including Dr. Tony Fabelo who gave the keynote and Buck Files, President of the State Bar of Texas. Please see the agenda listing all presenters at Appendix B. Attendees included a cross-section of county leadership, including judges, commissioners and administrators. The Symposium was live streamed thanks to the sponsorship of Senator Ellis. Video downloads of presenters are available on the Commission website at: <http://www.txcourts.gov/tidc/videos5.asp>.



On day two (the county workshop portion of the event) approximately 60 local officials stayed for a half-day workshop to participate in small workgroups and work on 90-day action plans. 90-day action plans and county activities after the workshop included:

- Bell County – judges to meet monthly to address attorney and compliance issues.
- Bowie County – addressed the case overload by cross training attorneys in the public defender office.
- Brazoria County – asked the attorneys to provide status update letters to clients.
- Dallas County – to utilize new performance guidelines and measures to evaluate the attorneys in the public defender office.
- Fort Bend County – to provide CLE training with local defense bar dealing with mentally ill clients.

Video Files for Download/Viewing	
WWW/Thumbnail	Video Description
	<b>Video 1: Welcoming and Opening Remarks</b> Presenters: Honorable Sharon Keller, Presiding Judge, Court of Criminal Appeals, Chair of the Commission; Carl Bernick, Administrative Director, Office of Court Administration, Executive Director, Texas Judicial Council; Christopher Barnett, Executive Director, Governor's Office Criminal Justice Division (OCJ); Jim Bethke, Executive Director, Texas Indigent Defense Commission (TIDC)
	<b>Video 2: Keynote: Taking Governor's Pledge: Impacts of the Texas Fair Defense Act 10 Years Later</b> Introduction: Wesley Shackelford, Deputy Director and Special Counsel, TIDC; Anthony Houghton, Law Professor, Texas Southern University Keynote: Dr. Tony Fabelo, Justice Center - The Council for State Governments (CSG); Senator Rodney Ellis <a href="#">Link to powerpoint presentation</a>
	<b>Video 3: Executive Director Rodney Ellis, Texas State Senate</b> <a href="#">Link to powerpoint presentation</a>
	<b>Video 4: Ordinary Injustice - How America Holds Court</b> Presenters: Amy Bach, attorney, author
	<b>Video 5: Lone Star Solutions: Bell Indigent Defense Walk-Through: Creating Transparency and Measuring Performance</b> Moderator: Judge Jon Burrows, Bell County Judge Panel of presenters: Judge Fancy Jezek, presiding judge of the 426th District Court in Bell County; Brad Sibers, Senior Consultant for Bell County
	<b>Video 6: Harris County Public Defender Office: A National Learning Site</b> Presenters: Alex Bunn, Chief Public Defender, Harris County Public Defender Office; Jessica Tyler, Justice Center - The Council for State Governments (CSG) <a href="#">Link to powerpoint presentation</a>
	<b>Video 7: For The Defense</b> Presenter: Buck Files, President-elect, State Bar of Texas

The Commission has digitally recorded past Indigent Defense Workshops. The collection of these over the past four years is available not only on its website, but also on YouTube. The presenters and the messages they deliver contain a wealth of information for those who are interested in keeping abreast of the latest best practices, both in the state and nationally. Not only will county officials (commissioners and judiciary) benefit from the information, but policy makers, defense lawyers, and the public in general will see how much has been accomplished and the importance of the work that lies ahead. All share the important message that the right to counsel under the 6th Amendment is fundamental and a basic cornerstone to our justice system and democracy. You will be truly inspired as you watch and share these with others. Video downloads are on the Commission website: <http://www.txcourts.gov/tidc/archivesworkshops.htm> Also on YouTube: <http://www.youtube.com/user/TheTIDC?feature=watch>

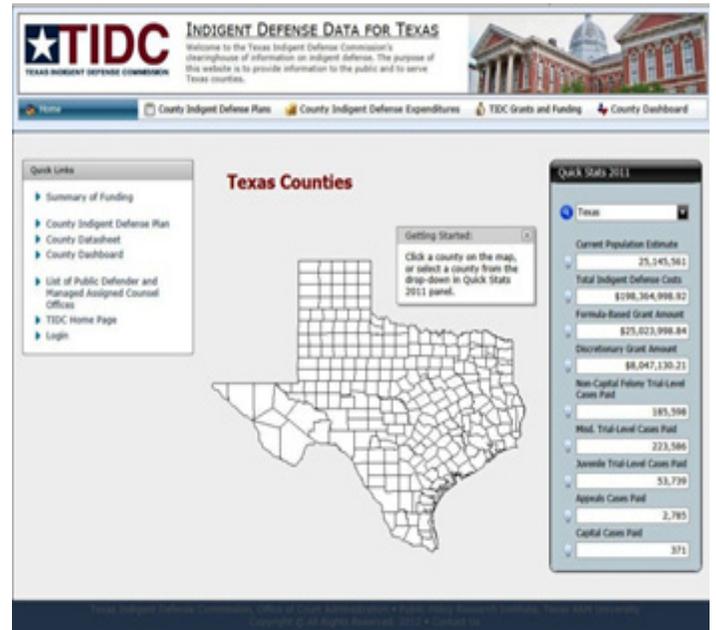
**Other Presentations**

Commission staff present information about the Fair Defense Act, the mission, goals and strategies of the Commission and information on evidence-based practices derived from studies undertaken regarding public defense processes. The Executive Director is often the presenter and will at times be joined by other key staff members or board members as co-presenters. Numerous presentations were made to professionally sponsored conferences in FY12 with over 1,600 in attendance. Highlights include:

- Texas Municipal Courts Education Center Regional Judges’ Seminars (Tyler, October 25, 2011; Galveston, February 27, 2012; Lubbock, April 10, 2012)
- Texas Association of County Auditors (New Braunfels, January 12, 2012)
- VG Young Institute School for County Commissioners Courts (College Station, February 9, 2012)
- Texas Association of Counties (San Marcos, February 23, 2012)
- Texas Center for the Judiciary (Dallas, May 8, 2012; Austin, July 30, 2012)

**Commission Website**

The Commission has continued to augment and expand its website in order to provide public access to all county indigent defense plans and expenditure reports, as well as guides, model forms, rules, publications, e-newsletters and press releases. As of December 1, 2012, there have been 47,483 distinct visits out of 127,913 page hits to the public access site since its inception on September 23, 2003. The website address is [www.txcourts.gov/tidc](http://www.txcourts.gov/tidc). The website supports open government. To further increase transparency and ease in access, in March the Commission unveiled a new format for its public data site. Restructured from the ground up with the help of the Public Policy Research Institute at Texas A&M, the site aims to make it easier for county and state officials to navigate the extensive amount of data maintained by the Commission. The Commission collects information on a wide variety of indigent defense expenditures and appointment trends, as well as the state indigent defense funds distributed to counties through formula and discretionary grant programs. With ten years’ worth of data in the archives, the new format was needed to



improve the accessibility of the data. The new streamlined site was developed over the course of the previous year, and the Commission believes that the added value will be well worth the effort. County data sheets are useful tools for county users and others to see a snapshot of a county’s indigent defense program and data elements such as cases added, cases paid and percent of charges defended with appointed counsel for felony, misdemeanor and juvenile cases, total indigent defense expenditures, and grant disbursements. In addition, indigent defense plans for each county are more accessible and it is easier for counties to submit, update, and compare plans. The public may visit the new TIDC data site at: <http://tidc.tamu.edu/public.net>.



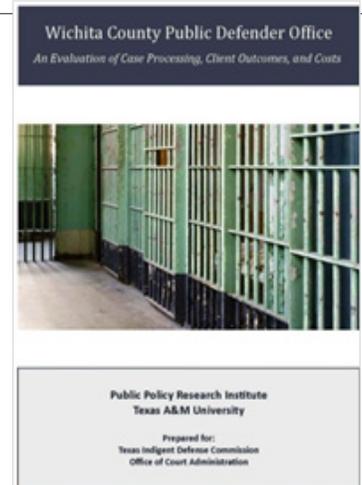
**e-Newsletters**

The Commission distributes an e-Newsletter to approximately 2,000 recipients derived from the database of Texas county indigent defense program contacts and others who have expressed an interest in receiving regular information from the Commission. The newsletter is distributed via email after each board meeting (typically four times a year) to inform counties of indigent defense developments that they need to be aware of. It also highlights county success stories and Commission studies and publications. The newsletter also has a national audience. Thirty-five e-Newsletters have been published and distributed since 2003.

## EDUCATION, PUBLICATIONS, AND ONLINE RESOURCES

### Research Publications

**Wichita Public Defender Office: An Evaluation of Case Processing, Client Outcomes, and Costs.** The Commission and Wichita County jointly released a study providing evidence that the county's public defender can provide high-quality indigent defense counsel while also containing costs. The study, led by the Public Policy Research Institute at Texas A&M University, involved a survey of court-appointed attorneys as well as analyses of over five years of criminal justice and court records. The findings in the report show clients represented by the public defender have better outcomes. They are more likely to have their case dismissed, and therefore have a lower chance of being found guilty. The higher dismissal rate helps the county to avoid about \$204 per case in court processing, prosecution, and pretrial detention costs, the study shows. A survey found public defenders spend more time with each defendant than other court-appointed lawyers. Even so, cost data demonstrates they still cost the county less per case. Interest in public defender offices has been increasing in Texas, as the number of full-time public defender offices has risen from 7 to 19 over the past decade. Over 30 counties now have a trial-level public defender program, and more than 150 counties are served by some form of public defender office. Here is the link to the study: <http://www.txcourts.gov/tidc/pdf/WichitaPDOStudy101212.pdf>



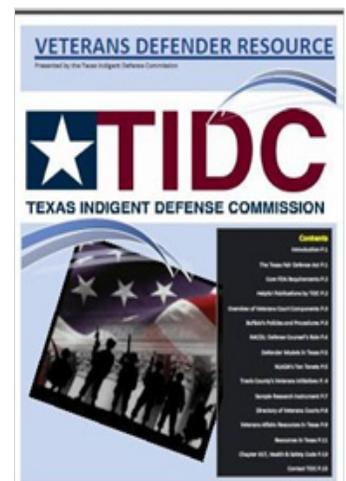
“Dear Jim, thanks to you, Joel and your staff and especially to Dottie and Trey. We appreciate your continued efforts and devotion to indigent representation and also the support of the Commission and its members. I believe this study can and will serve as a springboard for improved representation for the indigent-accused. Please keep up the good work.” James A Rasmussen, Chief Public Defender, Wichita County, Texas

**Veterans Defender Resource.** The Commission published the Veterans Defender Resource for county and court officials who are interested in the creation of a new Veterans Court or enhancing their existing problem solving courts with the addition of a defender component. A law passed by the 81st Texas legislature authorized counties to establish a Veterans Courts. According to Senator Leticia Van de Putte, “Senator Rodney Ellis and I authored legislation to create Veterans Courts in Texas counties because we saw the need to recognize the unique challenges faced by service members who have endured the stresses of combat. Our war fighters have sacrificed so much for us; they deserve special consideration in helping deal with the complexities within the criminal justice and legal system.”



Senator Leticia Van de Putte

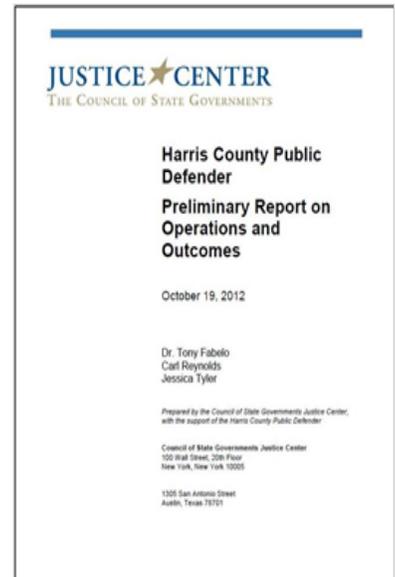
Defendants are eligible to participate in a veterans court program only if the attorney representing the state consents to the defendant's participation in the program and if the court in which the criminal case is pending finds that the defendant is a veteran or current member of the United States armed forces, including a member of the reserves, national guard, or state guard; and suffers from a brain injury, mental illness, or mental disorder, including post-traumatic stress disorder, that resulted from the defendant's military service in a combat zone or other similar hazardous duty area and materially affected the defendant's criminal conduct at issue in the case. The Commission provides an array of support to counties that wish to implement initiatives that will improve access to the right to counsel. The Veterans Defender Resource provides information about how counties can access this support through the Commission's discretionary grant programs. Additionally, the Resource includes a directory of the currently operating Veterans Courts programs throughout the state. Many of the judges who have chosen to run Veterans Courts may be valuable sources of wisdom and advice as a new court is formed. The Veterans Defender Resource is available on the Commission's website: [http://www.courts.state.tx.us/tidc/pdf/VetDefenderMarch28Publication\(Final\).pdf](http://www.courts.state.tx.us/tidc/pdf/VetDefenderMarch28Publication(Final).pdf)



“The veteran's court has been an incredible experience. This program is not a gift to a veteran, it is an opportunity. By completing a professionally designed course of therapy and treatment, the veteran has the opportunity to correct destructive behavior and have his or her good name restored. This is good for the veteran, the veteran's family, and the community. It's the least we can do.” Judge Brent Carr, Tarrant County

**First Stage of Harris County Public Defender Office Evaluation Completed**

In January 2011, the Harris County Public Defender Office (HCPD) opened with the help of a discretionary grant from the Commission. Within a year the office became fully operational with four divisions: misdemeanor mental health, felony, juvenile and appellate divisions. The Commission’s grant provided for a research component to help make the HCPD a “learning site” that would yield generalizable lessons for the development of effective programs. In April 2012, Harris County contracted with the Council of State Governments Justice Center to review HCPD operations, analyze workload data and study case outcomes. Through this research Harris County and the Justice Center are developing the indigent defense knowledge base so that other jurisdictions in Texas and across the country can benefit from their experience. The Justice Center published a preliminary report in October 2012 which focused on the two longest operating divisions of the HCPD: Misdemeanor Mental Health and Appellate. According to the authors, “This preliminary report puts the new office in context, describing the professional and systemic challenges of indigent criminal defense and the overall Harris County criminal justice and indigent defense systems.” The findings of the report indicate that HCPD is providing high-quality services that yield outcomes for indigent clients that compare favorably with those in indigent cases appointed counsel outside of the HCPD. Subsequent reports will focus on the juvenile and felony divisions, which became operational later. Among the elements of the next phase of the study, a time study for appellate representation will be conducted, which can be used to develop evidence-based caseload guidelines for handling direct appeals in different types of cases.



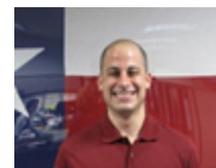
**Technical Assistance**

The Commission makes technical assistance available to county personnel regarding the requirements of the Fair Defense Act. The assistance may be via phone or on-site. The staff, including the Executive Director, travels to many jurisdictions across the state each year. In FY12 staff conducted over 70 site visits in Texas counties for a variety of purposes. Visits were related to program improvements, grant funding and expenditure reporting. The Commission places a high priority on communication, training, and educating all stakeholders in the indigent defense process. This assistance may be in the form of a presentation or an informal meeting requested by a county grappling with spikes in spending, process-related challenges, and other related issues.

The sharing of information between the state and local jurisdictions benefits not only the local jurisdictions, but the Commission comes away with a better understanding of local challenges and potential solutions. As a result, the state is better able to meet the needs of the local jurisdictions, and it is not uncommon for process changes to be implemented by the local officials that benefit not only the county, but indigent clients as well. Whatever a county’s indigent defense issues or needs are, counties are encouraged to contact Commission staff for technical assistance.

**Commission Law Student Interns**

The Commission had two outstanding interns last summer from The University of Texas School of Law: Andrew Bluebond (below left) and Brad Estes (below right). Andrew is a rising 2L. Before working at the Commission, Andrew completed his bachelor’s degree in the Philosophy, Politics and Economics program at Claremont McKenna College. Andrew is a native of Akron, Ohio. Brad is a rising 2L. He received his B.A. in history from the University of Michigan in 2011, and wrote his colloquium paper on the intersection of technology, law, and the War on Drugs. Both worked on several projects last summer including assisting the Executive Director with prepping the Legislative Appropriation Request, assisting with a study underway in Harris County, a publication regarding managed assigned counsel systems, and a law review article relating to representing the mentally ill offender.



# POLICY AND FISCAL MONITORING

## Policy and Fiscal Monitoring

The Commission is required in Texas Government Code §79.037 to monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, as well as all state and local rules and regulations. Grant rules and the Uniform Grant Management Standards (UGMS) set priorities and processes to be considered when determining what counties to monitor. Staff applies a consistent procedure to the review of all county files and considers both programmatic and fiscal concerns when determining a county's risk level. Fiscal concerns are those related to the type and adequacy of the financial management system, the overall percentage of administrative expenses as they relate to total expenditures, value of grants awarded, value of equipment purchased and adjustment or tardiness in document submission. Programmatic concerns are those related to compliance with plan submission instructions, type of appointment system maintained by the county, the lack of an administrative person responsible for the oversight of indigent defense services, and compliance with the policies outlined in the county indigent defense plan. Staff would like for counties to see the monitor as a resource for technical assistance.

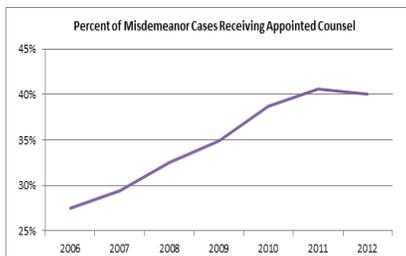
## Policy Monitoring

The policy monitoring process includes interviews with local officials, staff, and members of the bar, observation of court hearings, review of expenditure records, and examination of case files to determine how well jurisdictions meet the core requirements of the Fair Defense Act. The monitoring process is designed to ensure the following; that Article 15.17 hearings are held within 48 hours of arrest; that the county's indigent defense plan sets a standard of indigence; that the jurisdiction has a method for tracking continuing legal education (CLE) hours of attorneys on the appointment list; that counsel is appointed within statutorily required times; that appointments are distributed in a fair, neutral, and non-discriminatory manner; and that attorneys are paid according to a standard payment process. For a listing of policy monitoring-related reviews, please see the following table.

County	Dates of Visit	Issues Addressed
Erath	September 6-9, 2011	Full monitoring review addressing: <ul style="list-style-type: none"> <li>• Prompt transmission of affidavits of indigence to the appointing authority</li> <li>• Timely appointment of counsel</li> <li>• Tracking CLE hours</li> </ul>
Williamson	September 9, 23, 2011	The visits involved technical assistance to examine magistrate warnings.
Harris	October 16-20, 2011	Juvenile court review addressing: <ul style="list-style-type: none"> <li>• Timely appointment of counsel when juveniles are released from custody</li> </ul>
Brazos	January 27, 2012	The visit involved technical assistance to examine procedures for improving the transmission of requests for counsel to the appointing authority.
Jefferson	February 13-16, 2012	Review addressing: <ul style="list-style-type: none"> <li>• Continuity of counsel</li> <li>• Procedures for determining indigence</li> </ul>
Bexar	April 10-13, 25-26, 2012	Follow-up review finding that all past monitoring issues had been addressed.
Maverick	June 5-6, 2012	Follow-up review addressing: <ul style="list-style-type: none"> <li>• Prompt transmission of affidavits of indigence to the appointing authority</li> <li>• Timely appointment of counsel</li> </ul>
Randall	June 11-15, 2012	Full monitoring review addressing: <ul style="list-style-type: none"> <li>• Prompt magistrate warnings</li> <li>• Prompt transmission of affidavits of indigence to the appointing authority</li> <li>• Timely appointment of counsel</li> </ul>
Wichita	July 11-12, 2012	Follow-up review addressing: <ul style="list-style-type: none"> <li>• Prompt transmission of affidavits of indigence to the appointing authority</li> <li>• Timely appointment of counsel</li> </ul>
Uvalde	August 8, 2012	This visit involved technical assistance to assist with procedures for tracking requests for counsel.

**Indigent Defense Appointments Leveled Off in FY12**

The percent of misdemeanor cases receiving appointed counsel rose from 28% in 2006 to 41% in 2011. Last year, misdemeanor appointments leveled off at 40%. For felony cases, the percent of persons receiving appointed counsel has seen a gradual increase since 2006, from 59% in 2006 to 75% in 2012.



**Bexar County Program Review**

In 2010, at the request of Senator Jeff Wentworth, Commission staff conducted a comprehensive review of Bexar County’s indigent defense system. This review made several recommendations regarding the timely appointment of counsel and regarding the distribution of attorney appointments. Bexar County responded to these recommendations with its own action plans for improving local processes. In 2012, Commission staff returned to the County and determined that these action plans had successfully addressed the Commission’s concerns. We congratulate Bexar County for bringing much thought and energy to improving its indigent defense system. The Commission’s report may be found at: <http://www.txcourts.gov/tidc/policymonitorreports.asp>.

**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 review process considers a number of factors in determining the county’s risk level related to the adequacy and type of financial management system, administrative costs, and equipment expenditures.

The annual Indigent Defense Expenditure Report (IDER) provides a thorough snapshot of all county indigent defense expenditures. This data provides the basis for eligibility in all of the Commissions’ grant programs, both formula and discretionary, as well as whether a fiscal review may be warranted. It also provides policymakers at the state and local levels with a clear and reliable picture of indigent defense services, evidence of funding needs, and whether statutory and state standards are being fulfilled.

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.

“Colorado County will continue to provide quality representation to indigent defendants and protect the constitutional rights of everyone in our community. Ms. Conner’s professionalism and knowledge during the fiscal process was greatly appreciated by us. We are also grateful to have a familiar face to contact for technical assistance.”

Raymie Kana  
Colorado County Auditor

## POLICY AND FISCAL MONITORING

In FY12, the fiscal monitor traveled to 22 counties and conducted 13 fiscal monitoring reviews and nine technical assistance visits. These counties received over \$6,378,346 in indigent defense grant disbursements. Some of the most common fiscal issues identified through monitoring are listed below:

- Indigent defense expenses for licensed investigators, experts, and other direct litigation expenses are often not consistently reported. (See Government Code, Sec. 79.036.) Often these expenses are mistakenly included in the attorney services category; however, they must be reported separately.
- Continuing Legal Education (CLE) hours are often not consistently documented for court appointed attorneys. (See Texas Administrative Code, Title 1, Chapter 174.) While county indigent defense plans are required to include a policy for ensuring that attorneys qualified for appointment are current on CLE hours, some counties do not follow through on this requirement.
- Contracts for indigent defense services sometimes do not meet the guidelines for awarding contracts for indigent defense services as specified in Article 26.04(h), Code of Criminal Procedure and the Commission-adopted contract defender program rules under Title 1, Part 8, Section 174.10-174.25, Texas Administrative Code. Counties using contract defender programs are required to follow the guidelines for awarding contracts.

In addition to regular monitoring visits, all IDERs undergo a staff desk review which screens for anomalous reports that may indicate a potential reporting error. In cases where a desk review raises a question, staff may contact counties to verify reported figures or confirm that the Commission's reporting guidelines were followed.

Beyond the general desk review of submitted IDERs, the fiscal monitor conducted special desk reviews during FY12 that focused on:

- A review of all contract defender programs to ensure that counties using contract attorneys include required provisions in their contracts.
- A review of data collected from the Indigent Defense Expenditure Report in which counties claimed cases and expenses for the category of "payments made no court identified."

Fiscal monitoring and technical assistance visits for FY12 are listed in the table below.

FY12 Fiscal Monitor Visits			
County	Date	Visit	Region
Anderson	May 16-18, 2012	Fiscal	1st
Atascosa	July 9-10, 2012	Fiscal	4th
Bexar	April 25-26, 2012	Fiscal	4th
Caldwell	September 26, 2011	Fiscal	3rd
Colorado	April 3-4, 2012	Fiscal	3rd
Comal	September 29, 2011	Fiscal	3rd
Crosby	June 25, 2012	Technical Assistance	9th
Delta	September 13, 2011	Technical Assistance	1st
Dickens	June 25-27, 2012	Fiscal	9th
Franklin	September 14, 2011	Technical Assistance	1st
Freestone	May 14-15, 2012	Fiscal	2nd
Hale	June 28, 2012	Technical Assistance	9th
Harrison	January 24, 2012	Technical Assistance	1st
Hays	September 27-28, 2011	Fiscal	3rd
Hopkins	August 7-8, 2012	Fiscal	1st
Lubbock	October 11-14, 2011	Fiscal	9th
Montgomery	March 13-16, 2012	Fiscal	2nd
Rains	August 9, 2012	Technical Assistance	1st
Swisher	October 10, 2011	Technical Assistance	9th
Titus	September 15, 2011	Technical Assistance	1st
Upshur	January 25, 2012	Technical Assistance	1st
Wilson	July 11-12, 2012	Fiscal	4th

# INNOCENCE PROJECT PROGRAM

The Commission administers a legislatively directed appropriations to Texas public law schools to operate innocence projects. These projects organize law students who work with attorneys to review claims of actual innocence from Texas inmates.

In its seventh year this program continued to achieve results both educational and legal. During FY12, 116 students worked more than 11,500 hours reviewing and investigating claims of actual innocence in both DNA and non-DNA cases. The projects processed 2953 requests for assistance and screened 1,640 inmate questionnaires. At the end of the fiscal year the projects had 603 cases with open investigations and 1,265 cases that have undergone screening and are awaiting investigation. Four clients were formally exonerated.

## **Commission Funding Supports Exoneration of Four**

The work of two of the projects, the Texas Tech Law Lubbock-based Innocence Project of Texas and the University of Houston Innocence Project, led to relief based on innocence for three codefendants: Darryl Washington, Shakara Robertson and Marcus Lashun Smith. After Washington was convicted of aggravated robbery in Dallas in 1994 and sentenced to 99 years, co-defendants Robertson and Smith decided to plead guilty. Robertson was subsequently sentenced to five years following a period of deferred adjudication, while Smith's conviction resulted in probation only. Attorney Tracey Cobb began investigating Washington's case while a law student working with the University of Houston Innocence Project. She continued to work the case after completing law school and eventually developed compelling evidence of the men's innocence. Cobb teamed with attorneys working with the Innocence Project of Texas to litigate the cases. The Court of Criminal Appeals granted habeas corpus relief based on innocence to Washington and Robertson on May 23, 2012. Smith, whose plea resulted in probation only, was granted habeas corpus by a Dallas County district court on April 6, 2012. The investigation also identified the actual perpetrators.



Attorney Tracy Cobb, 2nd from left, was first assigned the case of Darryl Washington (left) while a law student at the University of Houston. Her work culminated in the exoneration of Washington and codefendants Shakara Robertson (2nd from right) and Marcus Lashun Smith (right) with the help of the Innocence Project of Texas.

## INNOCENCE PROJECT PROGRAM

In another case from FY12 a client of the University of Texas Innocence Clinic was granted relief based on actual innocence. Michael Trevino was charged with sexual assault of a child in Travis County after an outcry by his eight-year-old daughter about abuse that she alleged occurred when she was five years old. Trevino maintained his innocence, but he eventually accepted a plea deal for deferred adjudication probation in exchange for entering a plea of nolo contendere. Trevino was required to register as a sex offender and went on to successfully complete the probation. His daughter later recanted her allegations on multiple occasions. In recent years the Actual Innocence Clinic investigated and worked with the Travis County District Attorney's office to establish Mr. Trevino's innocence. Based on this investigation, the Clinic prepared a writ of habeas corpus, which was filed and litigated pro bono by former Clinic board member David A. Sheppard. On May 24, 2012, Judge Cliff Brown of the 147th District Court in Travis County granted relief based on actual innocence with the agreement of the Travis County District Attorney's Office. (Because the writ was filed under Article 11.072 of the Texas Code of Criminal Procedure it does not proceed to the Texas Court of Criminal Appeals.) Mr. Sheppard also assisted Mr. Trevino in getting off of the Texas sex offender registry.

### **Exoneration Reports**

During FY12 the Innocence Project of Texas submitted the first Exoneration Report as required under a statute passed by the Legislature in 2011. The report analyzed the wrongful conviction of Johnny Pinchback, who was wrongfully convicted based on faulty eyewitness identification testimony. Two exoneration reports are expected in FY13. The Innocence Project of Texas is preparing a report on their most recent exoneration case of defendants Darryl Washington, Shakara Robertson and Marcus Lashun Smith, and the University of Texas Innocence Clinic is preparing a report on the Michael Trevino case, both summarized above.

### **Highlights from the FY12 Annual Reports of Each Project**

#### **Texas Tech University School of Law (Innocence Project of Texas)**

During FY12, 17 law students worked a total of 2,210 hours and 18 students from the forensic science department worked a total of 1,260 hours. These students worked alongside IPOT attorneys to screen cases and investigate claims of actual innocence. The clinic received a total of 1,134 requests for assistance and rejections were sent to 1,064 people. This number is comprised of pre-questionnaire rejections for cases outside the scope of the project and post-screening rejections, some of which were from cases where the request was received in the previous fiscal year. Questionnaires were sent to 289 individuals in an effort to learn more information about their cases. The clinic opened 72 new investigations and of those 72, 28 were closed within the fiscal year. Relief was granted in one case involving three defendants: Darryl Washington, Marcus Smith, and Shakara Robertson (see photo on page 22).

#### **University of Texas School of Law (Texas Center for Actual Innocence)**

The University of Texas School of Law operates the Actual Innocence Clinic in cooperation with the Texas Center for Actual Innocence (TCAI), a non-profit corporation. TCAI processed 846 new requests for assistance during FY12 and screened 449 inmate questionnaires. One hundred thirty-five investigations were open at the end of the fiscal year. During fall semester 2011, the clinic included the usual 12 new law students and an additional two journalism students. During the spring semester 2012, the clinic included 12 new law students and five new journalism students. Additionally, 11 law students enrolled in the Advanced Clinic and continued working on cases assigned to them in previous semesters. These law students worked 1,452 hours and the journalism students worked 144 hours reviewing and investigating claims of actual innocence. One of the cases investigated by the Clinic, Michael Trevino, ended in habeas corpus relief based on innocence (see above).

The clinic is currently representing an inmate who was convicted in McLennan County in 1994 for capital murder involving a sexual assault and multiple victims. The client was sentenced to life in prison. The client has filed previous DNA motions requesting DNA testing, however he has always been denied relief on the basis of the testimony against him by three co-defendants. The clinic has worked with local law firms (Andrews Kurth, LLP; Graves Dougherty Heaton & Moody; Baker Botts, LLP; and McDermott Will & Emery) who are each representing a co-defendant in the case. All parties worked together to file concurrent DNA motions. The DNA motion was filed in the 54th District Court of McLennan County on February 8, 2012. A DNA hearing was held on August 31, 2012. On that date, Judge George Allen granted the petitioner's joint requests to have DNA testing conducted by Orchid Cellmark on the evidence related to their cases. The clinic's client and his three co-defendants are currently awaiting the results of that DNA testing.

## INNOCENCE PROJECT PROGRAM

### **University of Houston Law Center (University of Houston Innocence Project)**

The University of Houston Innocence Project (UHIP) processed 733 new requests for assistance and screened 649 inmate questionnaires during FY12. Twenty-three law students worked 3,874 hours reviewing and investigating actual innocence claims in non-capital cases. One hundred thirty-six new investigations were initiated during the year and 128 cases were closed after investigation. There were 336 investigations open at the end of the fiscal year. Commission funding of a full-time staff attorney has allowed the project to continue to maintain no backlog at the intake and screening phases. Incoming mail is read and processed immediately upon receipt. Moreover, inmate questionnaires are now assigned for screening the day they are received.

### **Texas Southern University (Thurgood Marshall School of Law Innocence Project)**

The Thurgood Marshall School of Law Innocence Project (TMSLIP) continued to experience significant growth in new requests for assistance, and is now receiving about 30 to 50 new requests for assistance a month. TMSLIP had five students in the fall of 2011, nine students in the spring of 2012, and nine volunteer students over the summer. TMSL students gave a total of 2,643 hours of investigation on their cases during the past year. In FY12 the project opened a total of 240 new cases, and screened 246 cases. Of the cases screened the project has closed 35 cases and have an additional 12 cases scheduled for closure. The project started the year with 51 open investigations and has opened eight new investigations. During the year students have interviewed 37 lay witnesses and 21 experts or attorneys. Of the cases investigated, it has determined that 26 should be closed, and the project is continuing investigations on 33 cases. Of the cases that are continuing to be investigated, the project is close to filing new litigation in two. The project also engaged in litigation in two cases in FY12 centered on obtaining sealed records for further investigation of the cases. Both motions to secure the records were granted. The motions used have been made available to the other projects. TMSLIP has also agreed to co-counsel two cases that are already in litigation. In one of those cases the hearing on the actual innocence claim will take place in December of 2012. Two project students will assist at the hearing as student-attorneys with student bar cards. The decision to co-counsel in these cases came after investigation carried out on these cases in FY12.

## Student Experiences

*"I think that giving students the opportunity to work hands on with real cases gives them a sense of the responsibility and professional demeanor that will be essential to our ultimate success as future lawyers." --Samuel Solana, TSU Thurgood Marshall School of Law student*

*"Working for the Actual Innocence Clinic not only instilled in me a deeper faith in the justice system, it taught me management tools necessary to be a successful lawyer and the awareness to know I have a professional duty to help those less fortunate." --Mateo Fisher, UT Law student*

*"The Innocence Investigations Clinic gave me insight into the criminal justice system unlike any other course in law school. Investigating current prisoners' files and claims of innocence offered hands-on experience. As a result, I gained a realistic and more complete understanding of criminal judicial processes." --Ellis Ware, University of Houston Law Center student*

*"The amount of experience and knowledge that the clinic has provided me is invaluable. My classroom knowledge meets the real world. My work at the clinic has inspired me to become a defense lawyer and has showed me the impact attorneys have on people." --Tania Ward, Texas Tech Law student*

## Conclusion

The Commission is proud to report on the great strides Texas has made in indigent defense since our program was created in 2001. Through strong partnerships with local jurisdictions the Commission has helped counties uphold the Constitution and the Fair Defense Act by developing and supporting innovative indigent defense delivery systems that ensure quality representation, accountability and cost-effectiveness. We look forward to continuing our progress into the next decade.

# EXPENDITURE REPORT

## FY12 State and County Spending on Indigent Defense

Total indigent defense expenditures in FY12 were \$207,539,623. Of that amount counties funded \$179,234,222 (86.4%) and the State funded \$28,305,371 (13.6%) through the Commission's grants program. See Chart 1 at right.

Total FY12 indigent defense expenditures of \$207,539,623 represent a 4.6% increase over FY11 expenses of \$198,364,999. The Commission provided funding of \$28,305,371 in FY12, \$33,640,712 in FY11 and \$28,453,983 in FY10. See Chart 2 below right.

## Commission Revenue Sources

Court costs are the largest source of revenue and are amounts paid by a defendant upon conviction for a range of offenses from fine only misdemeanors to felonies. This fiscal year, \$22,768,186 in court costs was collected for the purpose of indigent defense.<sup>1</sup> The Fair Defense Account is also funded from Surety Bond Fees and State Bar Fees. A \$15 fee is assessed when posting a surety bond (bail bond), with one-third going to the Fair Defense Account and the remaining balance going to support longevity pay for prosecutors. This year, the Fair Defense Account received \$2,066,453 million from Surety Bond fees. Finally, a \$65 fee is also assessed by the State Bar of Texas as part of each attorney's bar dues. One-half of the fees collected are allocated to the Fair Defense Account. This fiscal year the Fair Defense Account received \$2,181,383 million from this State Bar fee. See Chart 3 below. The total revenue received in the Fair Defense Account in FY12 from all these sources was \$34,636,353. (While the Commission has historically been allowed to utilize all funds deposited into the Fair Defense Account under estimated appropriation authority, in FY12-13 the Commission's appropriation was capped at a sum certain appropriation.)

Two changes to the Commission's appropriations were made by the 82nd Legislature that negatively impacted the amount of funds available for grants to counties in FY12. In previous sessions the Commission was given the authority to use any unexpended funds in the Fair Defense Account in the following biennium, also known as Unexpended Balance authority or UB.

Chart 1

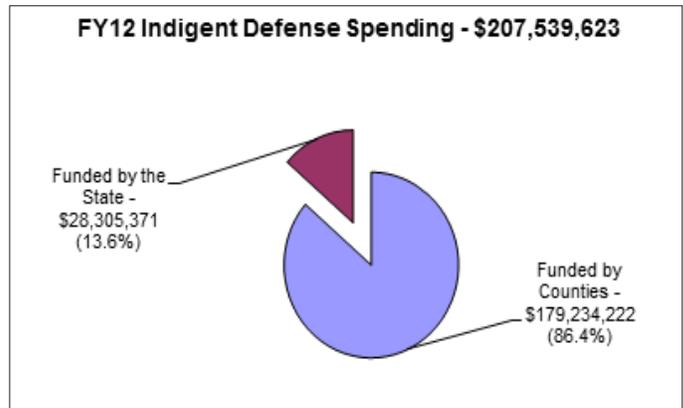


Chart 2

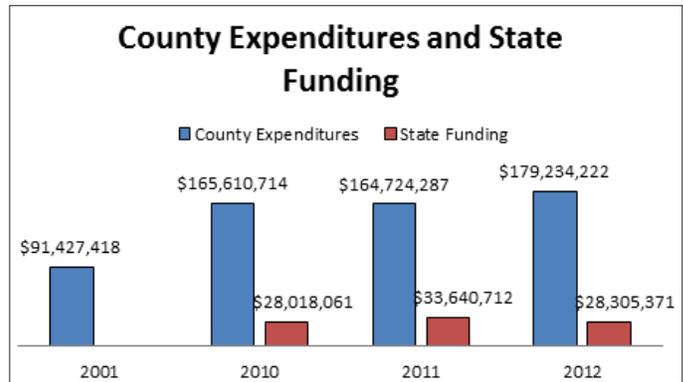
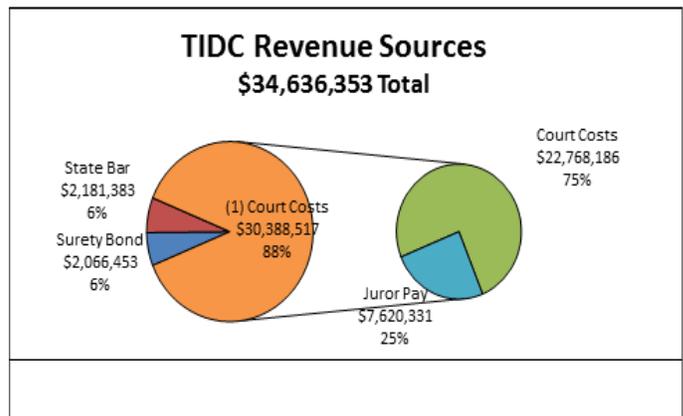


Chart 3



<sup>1</sup> Court costs are made of two different types of courts costs that have been implemented incrementally since the passage of the Fair Defense Act: original court costs, and juror pay court costs.

## EXPENDITURE REPORT

Due to the fact that the payment for the overage of juror pay court costs is not deposited into the Fair Defense Account in the fiscal year that the funds are collected, the Commission was not afforded an opportunity to award in excess of \$7.2 million in FY11. Moreover, with the removal of UB authority, the Commission was not authorized to award these funds in FY12 either. As a result, there is \$7,299,991 in the Fair Defense Account that may not be spent without authority from the legislature.

Additionally, the Commission's appropriation for FY12 was set at a sum certain amount rather than an estimated amount as it was in prior sessions. Because the funding sources for the Fair Defense Account include court costs and other sources that fluctuate from year to year there was additional dedicated revenue deposited to the account that is unappropriated to the Commission and therefore unavailable for grants to counties. This amount also increased due to the passage of HB 442 in the 82nd Legislature, which increased the percentage of the original court cost allocation to the Fair Defense Account from 6.0143% to 8.0143%. Thus the Fair Defense Account's receipts for FY12 are projected to exceed the Commission's spending authority by approximately \$4.7 million.

### Distribution of Funds by Type of Grant

The Commission distributed \$16,406,635 in formula-based grants and \$11,898,736 in competitive-based discretionary grants, bringing the total distribution of indigent defense grants to counties to \$28,305,371. Chart 4 above right illustrates the breakdown of funds between these categories.

Chart 4

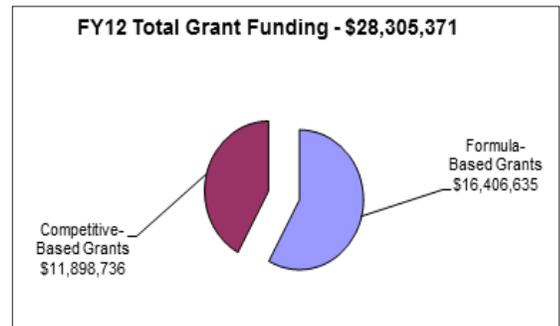
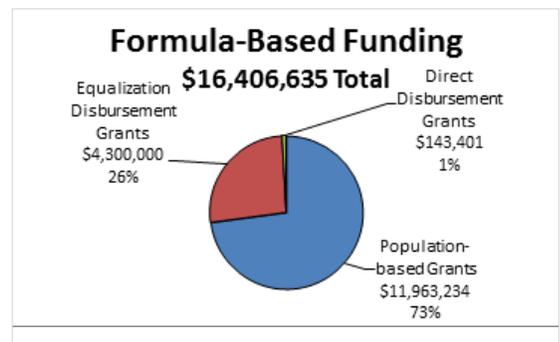


Chart 5



Formula-based grants include three types of grants that are shown on Chart 5, right.

What follows is a detailed listing of funds disbursed by type of grant.

**Population-based Formula Grants.** In FY12, 220 counties received a population-based formula grant. The total amount disbursed under this category was \$11,963,234. Population-based formula grants represents 73% of total grant funding. Appendix A lists all counties that received a formula grant.

**Direct Disbursement Grants.** In FY12, 20 counties received a direct disbursement grant. The total amount disbursed under this category was \$143,401. This amount represents almost 1% of total formula-based grant funding. Table 1 (at right) lists all counties that received a direct disbursement.

Table 1

County	Amount Disbursed
Armstrong	\$6,463
Bailey	\$13,535
Borden	\$5,273
Briscoe	\$5,614
Coke	\$1,348
Crosby	\$7,585
Dickens	\$8,404
Dimmit	\$15,403
Foard	\$6,342
Jeff Davis	\$7,444
Karnes	\$11,325
La Salle	\$11,457
Live Oak	\$4,459
McMullen	\$10,139
Motley	\$291
Oldham	\$5,875
Rains	\$4,644
Roberts	\$143
Robertson	\$12,092
Stonewall	\$5,565
Total (20 counties)	\$143,401

## EXPENDITURE REPORT

**Equalization Disbursement Grants.** In FY12, 78 counties received an equalization disbursement grant. The total amount disbursed under this category was \$4.3 million. This amount represents 26% of total formula-based grant funding. With this funding the Commission was able to reimburse every qualifying county for at least 24% of their increased indigent defense costs. The size of payments varied from \$209 to over \$600,000. Table 2 lists all counties that received an equalization disbursement grant.

Table 2

County	Amount Disbursed
Anderson	\$9,067
Atascosa	\$4,471
Austin	\$29,170
Bastrop	\$24,093
Bexar	\$660,380
Brazoria	\$15,301
Brazos	\$77,599
Brooks	\$6,101
Brown	\$55,326
Burnet	\$30,013
Carson	\$6,466
Coryell	\$6,025
Crockett	\$6,582
Dallas	\$107,728
Eastland	\$2,969
El Paso	\$484,202
Ellis	\$18,994
Falls	\$3,917
Fannin	\$30,167
Frio	\$4,085
Galveston	\$90,903
Gray	\$27,331
Gregg	\$15,090
Grimes	\$9,384
Guadalupe	\$1,880
Hardin	\$15,022
Hartley	\$253
Haskell	\$209
Henderson	\$23,247
Hidalgo	\$467,710
Hill	\$19,440
Hood	\$30,255
Houston	\$7,806
Hunt	\$125,671
Hutchinson	\$14,841

County	Amount Disbursed
Jasper	\$22,477
Johnson	\$49,178
Kaufman	\$89,472
Kimble	\$2,409
Kinney	\$781
Kleberg	\$13,762
Lamar	\$30,941
Liberty	\$61,267
Limestone	\$17,282
Matagorda	\$3,872
McLennan	\$139,369
Midland	\$10,891
Montgomery	\$235,635
Moore	\$28,970
Nacogdoches	\$2,814
Navarro	\$17,414
Newton	\$6,201
Nolan	\$2,591
Nueces	\$123,857
Parker	\$39,121
Polk	\$2,079
Potter	\$1,493
Randall	\$21,093
Reeves	\$220
Rusk	\$11,840
San Augustine	\$1,689
Stephens	\$895
Sutton	\$525

County	Amount Disbursed
Tarrant	\$444,254
Taylor	\$46,081
Terrell	\$3,140
Titus	\$9,052
Tom Green	\$12,896
Travis	\$230,886
Upshur	\$8,888
Victoria	\$15,349
Walker	\$19,987
Waller	\$10,677
Wharton	\$6,846
Wichita	\$86,696
Wilbarger	\$1,552
Wise	\$23,822
Young	\$10,038
Total – 78 Counties	\$4,300,000

# EXPENDITURE REPORT

## Four Types of Discretionary Grants

**Competitive-based.** In FY12, \$11,458,736 was disbursed to fund 12 discretionary grant programs, which represents 96% of total competitive grant funding. A summary of disbursements for each funded program is shown in Table 3 below.

**Extraordinary.** In FY12, the Commission distributed \$300,000 in extraordinary disbursement funding to two counties, which represents 3% of total discretionary grant funding. Austin County received a grant in the amount of \$200,000 and Hunt County received a \$100,000 grant.

**Technical Support.** In FY12, the Commission disbursed \$140,000 to two counties under this program, which represents 1% of total discretionary grant funding. The Commission paid Texas Tech University Center for Public Service \$40,000 to conduct an evaluation of the Kaufman County Public Defender Office. Williamson County received a award \$100,000 for an evaluation of their Indigent Defense system.

**Targeted Specific.** For FY12, the Commission did not receive any applications for a targeted specific grant, therefore no grants were issued.

County	Program Title	Disbursement	Impact
Bell	Mental Health Defense Campaign	\$113,200	The first attempt to provide specialized defense services to people with mental illness in an assigned counsel model. Provide a specialized attorney wheel with a school of social work assisting case management.
Burnet	Central Texas Regional Public Defender Office	\$339,791	Created an institutional presence for indigent defense representation in the county. The county reports that it has better data available to make informed decisions.
Hidalgo	Public Defender Office- Juvenile Section	\$123,690	Provides juvenile respondents with consistent, accountable legal representation throughout the criminal justice process.
Lubbock	Felony and Misdemeanor Managed Assigned Counsel Program	\$1,152,796	Lubbock county expanded the model to cover all felony and misdemeanor cases. The county experienced more residual expenses from the previous assigned system than expected. The Commission provided more funds to assist.
	<b>Sub-Total (New Multi-Year)</b>	<b>\$1,729,477</b>	
Bee	Regional Public Defender	\$195,804	Regional model for counties that contract with a non-profit corporation. The Commission learned that more assistance needs to be provided for small county contracting for indigent defense.
Dickens	Caprock Regional Defender Office	\$398,925	The first regional program to contract with a Texas Law School (Texas Tech) using a clinical program to serve an area with historically low appointment rates in misdemeanor cases. Serves 15 counties with limited access to attorneys or investigators.
Fort Bend	Mental Health Public Defender Office	\$221,095	The county approved an additional attorney position due to the positive impact of this program. County officials report the average number of days in jail continues to be low for misdemeanor and felony cases due to program.
Harris	Public Defender Office	\$5,942,005	The program received the Francis Wellman Advocacy Award from the Houston Lawyers Association. The Chief Defender received the Torch of Liberty Award from Harris County Criminal Lawyers Association. The County received the first ever federal award for indigent defense. Not all judges use the PDO.
Lubbock	Regional Public Defender for Capital Cases	\$2,495,397	Over 50% of the counties from Judicial Regions 2 & 3 that were eligible for services entered into formal agreements to participate. Over 80% of eligible counties have joined. More than 150 counties are participating.
Lubbock	Mental Health Private Defender Program	\$96,434	Established in 2009. Led to the creation of the Felony and Misdemeanor Managed Assigned Counsel Program (Lubbock Private Defender Office). Brought under the umbrella of the Lubbock Private Defender Office.
Montgomery	Regional Mental Health Court	\$311,677	Case managers assist attorneys with clinical services support by local college. The oversight board has voted to expand the wheel of qualified attorneys, moving the total to 16 by some time in December.
	<b>Sub-Total (Continued Multi-Year)</b>	<b>\$9,661,340</b>	
Uvalde	Audio/Video Conferencing	\$67,920	Uvalde led a regional indigent defense assessment as part of the TJC Shared Solutions Conference and adopted significant process changes. This program revealed difficulties rooted in process, technology and county culture to establish regional magistration.
	<b>Sub-Total (New Single Year)</b>	<b>\$67,920</b>	
	<b>Total</b>	<b>\$11,458,736</b>	

## Innocence Project Funding

In addition to its core mission of supporting county indigent defense systems, the Commission also administers legislatively directed appropriations to Texas's public law schools to operate innocence projects. These projects organize law students who work with experienced attorneys to review claims of actual innocence from Texas inmates. For the FY12-13 biennium the Texas Legislature appropriated \$640,000, or \$80,000 per law school per year. In the six years prior to the FY12-13 biennium, the Texas Legislature appropriated \$100,000 per law school per year.

Law School	FY08	FY09	FY10	FY11	FY12
University of Houston	\$100,000	\$96,731	\$68,849	\$82,934	\$74,292
University of Texas	\$65,887	\$125,845	\$92,623	\$94,572	\$76,605
Texas Southern University	\$29,167	\$42,236	\$91,010	\$100,084	\$80,000
Texas Tech University	\$100,000	\$100,000	\$96,650	\$99,996	\$66,667
Total Expended	\$295,053	\$364,812	\$349,132	\$377,586	\$297,564

In its seventh year this program continued to achieve both educational and legal results. During FY12, 116 students worked more than 11,500 hours reviewing and investigating claims of actual innocence in both DNA and non-DNA cases. The projects processed 2,953 requests for assistance and screened 1,640 inmate questionnaires. At the end of the fiscal year the projects had 603 cases with open investigations and 1,265 cases that had undergone screening and were awaiting investigation. Four clients were formally exonerated. See page 22 for a more detailed program overview.

# EXPENDITURE REPORT

## FY12 TIDC Operating Budget

This fiscal year, the Commission expended \$943,223 for administrative costs from the Fair Defense Account. Administrative costs represent 3.2% of the total amount expended. These expenses included salaries for 11 full-time staff, travel for board members and staff, an on-line data system that provides public access to county indigent defense plans and expenditures through the internet, and other administrative functions as shown in the chart below.

Budget Category	FY12 Total Expended	FY11 Comparative Total
Salaries & Wages	\$689,275	\$634,855
Other Personnel Costs	\$21,940	\$24,560
Benefit Replacement Pay	\$2,054	\$2,054
Payroll Related Costs	\$6,893	\$0
Professional Fees & Serv.	\$223	\$223
In-State Travel	\$30,156	\$32,836
Out-of State Travel	\$2,823	\$4,698
Training	\$2,728	\$1,758
Postage	\$2,108	\$4,161
Materials & Supplies	\$9,083	\$8,592
Printing & Reproduction	\$954	\$1,305
Maintenance & Repairs	\$1,436	\$148
Telecommunications	\$10,795	\$9,051
Rentals & Leases	\$4,286	\$3,261
Other Operating Expenses	\$160,523	\$162,768
Office of Capital Writs (OCW)	\$0	\$548,915
Innocence Project	\$297,564	\$377,586
CJD/SJI Grant	\$0	\$78,772
Formula Grant	\$11,963,234	\$13,874,201
Discretionary Grant	\$11,458,736	\$7,539,539
Equalization Disbursement Grant	\$4,300,000	\$11,000,000
Extraordinary Disbursement Grant	\$300,000	\$649,999
Direct Disbursement Grant	\$143,401	\$134,973
Technical Assistance/Targeted Specific Grant	\$140,000	\$522,414
Capital Outlay	\$0	\$0
<b>Total Expended</b>	<b>\$29,548,212</b>	<b>\$35,616,669</b>
<b>Method of Finance Category</b>	<b>FY12 Method of Finance</b>	<b>FY11 Method of Finance</b>
Fund 5073, Fair Defense Account, Court Costs	\$22,768,186	\$11,380,834
New Court Costs		\$8,255,956
Surety Bond Fee	\$2,066,453	\$2,045,682
State Bar Fee	\$2,181,383	\$1,979,463
Juror Pay Fee	\$7,620,331	\$7,299,991
Interagency Contracts		\$78,772
<b>Total Revenue</b>	<b>\$34,636,353</b>	<b>\$31,040,698</b>
FY10 Carryforward Revenue		\$12,024,459
FY11 Juror Pay Fee <sup>(1)</sup>		(\$7,299,671)
FY12 Employee Benefits	(\$143,794)	(\$148,817)
FY12 Carryforward - Appropriated	(\$226,739)	
FY12 Unappropriated <sup>(2)</sup>	(\$4,717,608)	
<b>Total MOF</b>	<b>\$29,548,212</b>	<b>\$35,616,669</b>

(1) FY11 Juror Pay revenue in the amount of \$7,299,991 is not allowed to be expended this fiscal year because of the elimination of unexpended balance authority between biennia.

(2) Cash received in the dedicated Fair Defense Account above the appropriated cap of \$29,774,951 set by the Legislature.

# APPENDIX A - FY12 FORMULA GRANTS

County	Grant Disbursement
Anderson	\$30,074
Andrews	\$11,342
Angelina	\$43,833
Aransas	\$14,933
Archer	\$9,054
Atascosa	\$26,914
Austin	\$17,726
Bandera	\$14,173
Bastrop	\$36,813
Baylor	\$6,598
Bee	\$19,269
Bell	\$143,932
Bexar	\$772,926
Blanco	\$9,502
Bosque	\$12,811
Bowie	\$46,454
Brazoria	\$145,244
Brazos	\$92,260
Brewster	\$9,135
Brooks	\$8,098
Brown	\$22,065
Burleson	\$12,372
Burnet	\$23,336
Caldwell	\$21,327
Calhoun	\$14,171
Callahan	\$11,065
Cameron	\$186,917
Camp	\$10,554
Carson	\$7,769
Cass	\$18,643
Castro	\$1,725
Chambers	\$20,053
Cherokee	\$26,808
Childress	\$8,153
Clay	\$9,612
Coleman	\$8,983
Collin	\$340,560
Collingsworth	\$6,369
Colorado	\$13,953
Comal	\$51,526
Comanche	\$11,258
Concho	\$6,753
Cooke	\$21,486
Coryell	\$38,761
Crane	\$6,960
Crockett	\$6,595

County	Grant Disbursement
Dallam	\$8,002
Dallas	\$1,020,737
Dawson	\$10,933
Deaf Smith	\$13,309
Denton	\$289,207
DeWitt	\$14,000
Donley	\$6,647
Duval	\$10,277
Eastland	\$13,322
Ector	\$63,817
Edwards	\$5,859
El Paso	\$348,412
Ellis	\$71,999
Erath	\$21,252
Falls	\$12,663
Fannin	\$20,188
Fayette	\$15,996
Fort Bend	\$267,148
Franklin	\$9,750
Freestone	\$13,874
Frio	\$12,711
Gaines	\$12,517
Galveston	\$129,948
Garza	\$7,771
Gillespie	\$15,653
Goliad	\$8,228
Gonzales	\$13,871
Gray	\$15,092
Grayson	\$56,846
Gregg	\$57,212
Grimes	\$16,411
Guadalupe	\$63,904
Hale	\$20,558
Hall	\$6,501
Hamilton	\$8,814
Hansford	\$7,408
Hardeman	\$4,109
Hardin	\$29,467
Harris	\$1,760,329
Harrison	\$33,150
Hartley	\$7,715
Haskell	\$7,642
Hays	\$72,386
Hemphill	\$6,633
Henderson	\$38,684
Hidalgo	\$351,964

County	Grant Disbursement
Hill	\$20,714
Hockley	\$14,837
Hood	\$27,921
Hopkins	\$20,081
Houston	\$15,628
Howard	\$20,679
Hudspeth	\$6,491
Hunt	\$43,571
Hutchinson	\$14,501
Jack	\$8,879
Jackson	\$11,303
Jasper	\$20,992
Jefferson	\$113,204
Jim Wells	\$22,516
Johnson	\$72,592
Jones	\$13,665
Kaufman	\$51,283
Kendall	\$19,962
Kenedy	\$5,186
Kent	\$5,362
Kerr	\$26,285
Kimble	\$7,063
Kinney	\$1,276
Kleberg	\$18,752
Knox	\$6,657
Lamar	\$27,299
Lamb	\$10,995
Lampasas	\$13,440
Lavaca	\$13,262
Lee	\$12,125
Leon	\$12,206
Liberty	\$38,876
Limestone	\$15,472
Lipscomb	\$3,096
Llano	\$13,644
Loving	\$5,035
Lubbock	\$129,869
Lynn	\$7,649
Madison	\$11,119
Marion	\$9,523
Martin	\$7,149
Mason	\$6,797
Matagorda	\$20,742
Maverick	\$29,298
McCulloch	\$8,710
McLennan	\$110,197

County	Grant Disbursement
Medina	\$24,733
Menard	\$6,004
Midland	\$63,707
Milam	\$15,619
Mills	\$7,210
Mitchell	\$9,033
Montague	\$13,831
Montgomery	\$209,097
Moore	\$14,809
Morris	\$10,548
Nacogdoches	\$33,895
Navarro	\$26,377
Newton	\$11,196
Nolan	\$11,526
Nueces	\$150,928
Ochiltree	\$9,385
Orange	\$40,101
Palo Pinto	\$17,057
Panola	\$15,657
Parker	\$57,363
Parmer	\$9,405
Pecos	\$11,651
Polk	\$25,337
Potter	\$56,930
Presidio	\$75
Randall	\$59,064
Reagan	\$2,081
Real	\$359
Reeves	\$10,912
Refugio	\$8,167
Rockwall	\$38,600
Runnels	\$9,504
Rusk	\$28,883
Sabine	\$9,852
San Augustine	\$8,970
San Jacinto	\$16,317
San Patricio	\$32,796
Scurry	\$12,578
Shackelford	\$6,513
Shelby	\$15,915
Sherman	\$6,358
Smith	\$94,950
Somervell	\$8,642
Starr	\$32,303
Stephens	\$9,312
Sterling	\$5,512

County	Grant Disbursement
Sutton	\$6,849
Swisher	\$6,101
Tarrant	\$815,138
Taylor	\$63,892
Terrell	\$2,977
Terry	\$10,426
Titus	\$19,480
Tom Green	\$52,277
Travis	\$444,326
Trinity	\$11,532
Tyler	\$14,336
Upshur	\$21,860
Upton	\$6,502
Uvalde	\$16,266
Val Verde	\$16,343
Van Zandt	\$28,546
Victoria	\$43,868
Walker	\$35,390
Waller	\$24,348
Ward	\$9,571
Washington	\$19,462
Webb	\$117,094
Wharton	\$22,706
Wheeler	\$7,320
Wichita	\$61,403
Wilbarger	\$10,805
Willacy	\$14,913
Williamson	\$194,288
Wilson	\$24,220
Winkler	\$8,184
Wise	\$31,479
Wood	\$15,848
Yoakum	\$4,188
Young	\$13,307
Zapata	\$11,013
Zavala	\$10,229
Total	\$11,963,234

## Symposium and Workshop on Indigent Defense 10 Years Later: The Fair Defense Act – Looking to the Future

**Thursday, October 27 (Symposium location: Capitol Extension Auditorium, 1100 Congress, Austin, also will be live broadcast)**

- 8:30 – 8:45 Welcome and Opening Remarks  
Presiding Judge Sharon Keller, Carl Reynolds, Christopher Burnett, Jim Bethke
- 8:45 – 9:30 Keynote: Taking Gideon’s Pulse: Impacts of the Texas Fair Defense Act 10 years later  
Senator Rodney Ellis, Dr. Tony Fabelo
- 9:30 – 10:15 “Ordinary Injustice-How America Holds Court” - Amy Bach
- 10:30 – 11:00 Lone Star Solutions: Bell Indigent Defense Web Portal: Creating Transparency and Measuring Performance moderated by Judge Jon Burrows – Panel members are Judge Fancy Jezek, Brad Sibley
- 11:00 – 11:30 Harris County Public Defender Office: A National Learning Site – Alex Bunin; Jessica Tyler
- 11:30 – noon For the Defense – Buck Files
- 1:30 – 2:15 Getting Lawyers To Do Better: The New State Bar Performance Guidelines -  
Jeff Blackburn, Andrea Marsh, Chief Justice Brian Quinn
- 2:15 – 3:00 Pre-trial Matters - Tim Murray
- 3:15 – 4:00 “Securing Reasonable Caseloads: Ethics and Law in Public Defense” - Norm Lefstein
- 4:00 – 4:30 Lessons From Around the Nation - John Gross
- 4:30 – 5:00 What Now? Strategies to Improve Justice Outcomes – Jonathan Rapping

**Friday, October 28 (Workshop for Counties)**

- 8:00 – 8:10 Welcome back, opening remarks, introduction of county teams – Terri Tuttle, Marshall Shelsy
- 8:10 – 8:30 TIDC Services: Program Development and Assessment, Grant Program, Technical Support, and Website  
TIDC staff members
- 8:30 – 9:00 2011 Legislative Update - Jim Allison, Wesley Shackelford
- 9:00 – 10:30 Breakout Groups: Group facilitators promote discussion of other possible Lone Star Solutions to improve county indigent defense systems and working with what you have. Group facilitators will work to see that workgroup sessions result in recommendations. Group reporters will document recommendations on a 90-day action plan and conclusions of each group.
- 10:45 – 11:45 Group Reports  
Moderators Marshall Shelsy, Terri Tuttle
- 11:45 – 12:00 Final Thoughts, certificates