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Report from the Texas Indigent Defense Commission for February 20, 2015 Texas Judicial Council Meeting

The next Texas Indigent Defense Commission meeting will be on March 6th at 9 a.m. in the Court of Criminal Appeals Courtroom.

Legislative News

Presiding Judge Sharon Keller and **Jim Bethke** presented the Commission's budget request before the Senate Finance Committee on February 2nd and the House Appropriations subcommittee on February 18th. Legislation of interest includes [HB 48 / SB 81](#) establishing an exoneration review commission, [SB 260](#) requiring local judges to establish caseload caps in assigned counsel jurisdictions, and [SB 316](#) requiring priority in appointments be given to a public defender office where such offices exist. Two of the Commission's legislative proposals were also recently filed. [HB 1346](#) would require appointment of counsel to represent an indigent defendant the State says is not guilty of the offense for which they were convicted or the offense has since been ruled unconstitutional. [SB 544](#) clarifies that courts must make a determination of a defendant's ability to pay before ordering the repayment of the costs of legal services provided. Legislative developments related to the indigent defense budget, as well as bills impacting indigent defense, are updated on our [legislative web page](#).

Implementation of New Legislative Requirements from 83rd Legislative Session; FY 2014 Appointment Trends

The Commission implemented new reporting requirements in [House Bill \(HB\) 1318](#), which for the first time provide policy makers at both the state and local levels detailed information on caseloads handled by attorneys representing indigent defendants. Beginning November 1, 2014, counties were required to annually report the number of appointed cases handled by each attorney for the preceding fiscal year. The reports show appointed case figures and amounts paid to over 6,000 across the state. Case totals per attorney varied from one to 1476 with a median of thirty-nine total felony and misdemeanor cases disposed across all counties. The amount paid to each attorney also varied widely from \$30 up to \$419,668 across all counties with a median of just over \$15,000. For an analysis of statewide attorney fees per case, by case type and appointment type, see [Attorney Fees per Case \(2010-2014\)](#). In addition, data reported to the Commission and to the Office of Court Administration indicates that the percent of misdemeanor cases receiving appointed counsel has increased from 28 percent in FY 2006 to 41 percent in FY 2014, while the percent of felony cases receiving appointed counsel has risen from 59 percent in FY 2006 to 71 percent in FY 2014.

HB 1318 also requires all attorneys who accept appointments in adult criminal and juvenile delinquency cases to submit an annual statement that describes the percentage of their practice time that is dedicated to work on those appointed cases to each county. Just over 4,000 attorneys have completed the reports, most of whom used an online reporting portal offered by the Commission. The median percentage of practice time devoted to appointed criminal and juvenile cases

across all counties was about 50 percent. Attorneys reported working on indigent defense cases in one to eighteen different counties.

The Commission also partnered with Texas A&M University's Public Policy Research Institute (PPRI) to conduct a mandated study on criminal defense attorney caseloads. The final report, [Guidelines for Indigent Defense Caseloads](#), is discussed below.

Weighted Caseload Study under HB 1318

The findings of the state's first criminal defense weighted caseload study have been published in [Guidelines for Indigent Defense Caseloads](#). The **83rd Legislature through HB 1318** directed the Commission to conduct a study on criminal defense attorney caseloads "for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that...allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation." The Commission partnered with Texas A&M University's Public Policy Research Institute (PPRI) to conduct the research, and the study was conducted in collaboration with the State Bar of Texas and the Texas Criminal Defense Lawyers Association. A national advisory board of experts in caseload studies was established to help guide the project. The study consists of three main parts that began with a time tracking component where attorneys tracked the types of work they completed by case type for a twelve-week period. This was followed by a survey to a broad cross section of Texas criminal defense attorneys. Lastly, a Delphi panel of highly experienced and respected criminal defense attorneys developed consensus on the appropriate amount of time that is needed for various aspects of representation by case type.

Prior to the study, the best available caseload standards were published in 1973 by the National Advisory Commission (NAC) on Criminal Justice Standards and Goals. Since then important changes have occurred that extend the time required for competent and effective criminal defense. The *Guidelines* report recommends that for the delivery of reasonably effective representation, criminal defense attorneys should carry an annual full-time equivalent caseload of no more than 226 misdemeanors or 128 felonies, or 43 percent fewer misdemeanors and 15 percent fewer felonies than allowed under NAC standards. Local jurisdictions can use these new Texas-specific parameters to better manage the number of cases assigned to attorneys. For more information, see the [presentation](#) given by **Jim Bethke, Dr. Dottie Carmichael,** and **Professor Stephen Hanlon** entitled "Metrics and Workloads: Guidelines for Indigent Defense Caseloads" at the American Bar Association's 2015 Midyear Meeting in Houston.

Grants Update

The Commission published its [FY 2016 Discretionary Grant Request for Applications \(RFA\)](#). The deadline for the first step in the application process, the Intent to Submit Application (ISA), is 5 p.m. on March 13, 2015. Full applications are due at 5 p.m. on May 8, 2015. A Grant Application Training webinar will be conducted on February 27, 2015 at 2 p.m. CST and can be accessed at <https://global.gotomeeting.com/join/530208901>.

At its December 12, 2014 meeting the Commission awarded \$24 million in FY 2015 formula grants. Counties are eligible to receive formula grants based on their compliance with the central requirements of the Fair Defense Act. The amount of a county's formula grant is calculated based on a combination of population and indigent defense expenditure figures. In January the Commission issued the *2015 Formula Grant* award letters. Payments will be issued in four regular quarterly payments in January, April, July, and October. Please note that some counties have special conditions placed on their formula grant awards pending resolution of outstanding issues.

Indigent Defense Expenditure Reports

Counties across Texas were required to submit their annual Indigent Defense Expenditure Reports by November 3, 2014. Statewide summary totals indicate that Texas counties spent \$230 million on indigent defense services in FY 2014 compared to \$217.1 million in FY 2013. This represents a total increase in costs of \$13 million over FY 2013, or a 6 percent increase. As of December 15, 2014, counties also reported appointing attorneys in over 464,000 cases compared to 471,000 cases in FY 2013. Counties reported collecting over \$12.4 million from defendants in attorney fee recoupments.

Staff members reviewed the submitted expenditure reports and contacted county officials to ask questions about any apparent anomalies.

Comal County Client Choice Begins

On February 2nd **Comal County** kicked off its first-in-the-nation Client Choice pilot project. Indigent defendants are now given the option to choose their attorney from the lawyers who have been qualified by the courts to handle indigent cases. The program aims to enhance the independence of indigent defense, foster more effective attorney-client relationships, and create new and stronger incentives for attorneys to provide good quality representation. Not all defendants wish to exercise the choice option, so the county reverts to the attorney rotation system when defendants decline. The project includes an impact assessment report, which should be completed next year. The program has generated significant interest in the press. On December 28, 2014 the *Associated Press* published the news story [Indigent Defense Idea to Get First Test in U.S.](#), which was picked up by dozens of media outlets around the country.

Capital Area Private Defender Service (CAPDS)

The **Travis County** Managed Assigned Counsel program began operations on January 1st. The program is called [Capital Area Private Defender Service \(CAPDS\)](#) and is a non-profit organization that provides services to Travis County under a contract and a memorandum of understanding with the county and its judiciary. The program is carried out by a staff of six led by an executive director and including a full-time investigator. The office qualifies and provides administrative oversight to a roster of approximately 250 criminal defense attorneys. While the CAPDS office will not be responsible for making payments to attorneys and experts, it will still be responsible for making an independent determination of payment amounts, and the county auditor's office will continue to make the actual payments as in the past. The program's oversight committee includes judges, court and county administrators, and leaders of the county's two specialized public defender offices. Oversight will be provided through an annual contract review and quarterly meetings with the CAPDS board of directors.

Recent Commission Publications

[FY 2014 Annual and Expenditure Report](#)

[Guidelines for Indigent Defense Caseloads](#)

[Fair Defense Law: A Primer for Texas Officials](#)

[FY 2016 Discretionary Grant Request for Applications \(RFA\)](#)

[The Fair Defense Act and the Role of the Magistrate](#)

[Winter 2015 Newsletter](#)

Articles and Media Featuring the Commission

[Justice Is Swift as Petty Crimes Clog Courts](#) (November 2014)

[Texas commission finds irregularities in El Paso's indigent defense appointment process](#) (November 2014)
[Commissioners deal with unfunded mandates](#) (November 2014)
[Indigent Defense Idea to Get First Test in U.S.](#) (December 2014)
[El Paso county officials to prepare coordinated response to indigent defense report](#) (December 2014)
[Problems found with county indigent defense system](#) (December 2014)
[Victoria County declines to hire public defender group](#) December 2014)
[Panel recommends case limits for attorneys defending the indigent](#) (January 2015)
[Lawyers should reduce caseloads](#) (January 2015)
[Senator Ellis responds to indigent defense caseloads study](#) (January 2015)
[Houston Matters interview on indigent caseloads](#) (January 2015)

Indigent Defense Trainings and Events

2014 National Legal Aid and Defender Association Annual Conference
 and the ABA's Standing Committee on Legal Aid and Indigent Defendants – Indigent Defense Advisory Group (IDAG)
 Collin County Commissioner's Court – Overview of indigent defense appointment systems
 Third Annual Conference of Urban Counties' TechShare Conference
 American Society of Criminology Conference – Criminology at the Intersections of Oppression
 Telicon Legislative Seminar
 TCDLA 34th Annual Prairie Dog Advanced Criminal Law Seminar – [Ethical Indigent Defense: Systems & Clients](#)
 Children's Commission Legal Representation Workgroup
 New Judges Orientation – [Appointment of Counsel/Fair Defense Act](#)
 American Bar Association 10th Annual Summit on Indigent Defense Improvement – [Metrics & Workloads](#)
 Federalist Society podcast – [Public Defenders and Client Choice](#)

Staff Updates

Joel Lieurance. Mr. Lieurance has been promoted to Senior Policy Analyst.

Jamie Dickson. Ms. Dickson was recently hired to serve as Policy Analyst. In this position, she is responsible for assisting jurisdictions in meeting the requirement of the Fair Defense Act through review of county systems and procedures and collaboration with officials to promote local compliance. Her previous legal experience includes serving as First Assistant Public Defender in the Bee County Regional Public Defender and post-conviction capital work at the Habeas Corpus Resource Center in California. Following law school, she served as the Mental Health Law & Policy Fellow at the Hogg Foundation for Mental Health. Jamie received a B.A. from Wellesley College and a J.D. from The University of Texas. She is licensed to practice law in California, New York, and Texas.

Ashley Indelicato. The Commission was fortunate to be selected for the second time to participate in the Texas Tech University School of Law Regional Externship Program. Ms. Indelicato joined staff in January and will be with us through the end of April. Ashley is an articles editor on the *Business & Bankruptcy Law Journal* and previously served as a staff editor. Originally from Houston, Ashley hopes to start her legal career in Austin after graduation in May 2015.

Around the Nation

[City Broadens Its Evaluation of Indigent Criminal Defense](#)
[U.S. Study Faults Philadelphia Indigent Defense](#)