



Report from the Texas Indigent Defense Commission for October 28, 2016 Texas Judicial Council Meeting

Chair:
The Honorable Sharon Keller
Presiding Judge, Court of Criminal Appeals

Vice Chair:
The Honorable Olen Underwood

Ex Officio Members:
The Honorable Sharon Keller
The Honorable Nathan Hecht
The Honorable Sherry Radack
The Honorable Brandon Creighton
The Honorable John Whitmire
The Honorable Abel Herrero
The Honorable Andrew Murr

Members Appointed by Governor:
The Honorable Olen Underwood
The Honorable Jon Burrows
The Honorable Linda Rodriguez
Mr. Anthony Odiorne
Mr. Don Hase

Executive Director:
James D. Bethke

Since the Texas Indigent Defense Commission's last report to the Judicial Council on August 19, 2016, the Commission had a [full board meeting](#) on August 30th. A Policies and Standards Committee meeting is planned for Thursday, December 1st, and the next Commission meeting is scheduled for Tuesday, December 13th, 2016. Earlier this month staff completed and released its assessment of the Harris County indigent defense system and response to a legislative inquiry. The County has until December 9th to respond.

Legislative Appropriations Request

At its August 30th meeting, the Commission directed staff to amend the Legislative Appropriations Request (LAR) for Fiscal Years 2018 and 2019 to request full state funding for indigent defense. Immediately after the August 30th Commission meeting, Judge Keller and Jim [presented](#) the Commission's Legislative Appropriations Request (LAR) at a joint hearing of the Governor's Office of Budget, Planning and Policy and the Legislative Budget Board. On September 12, 2016, staff submitted our [amended LAR](#) to LBB. Exceptional items 1, 2, and 3 were unchanged, and Exceptional item 4 was amended as stated below:

4. Provide Local Property Tax Relief to Texas Counties by Fully Funding Criminal Indigent Defense

DESCRIPTION/JUSTIFICATION:

The Commission seeks full state funding (100%) for criminal indigent defense, but suggests a stepped-up funding approach over a six-year period. Currently, counties bear most of the financial burden of complying with constitutional and state law in funding criminal indigent defense, with the state providing only about 12 percent of the costs through Commission grant programs. In an effort to both accommodate the state's transition to fully funding these constitutionally mandated expenses and also allow for the Commission to properly prepare for transition in administering a fully-state funded criminal indigent defense system, the Commission requests 50% funding for the next biennium, with a goal of recommending 75% funding for FY20/21, and 100% funding for FY22/23.

*In 1963, the United States Supreme Court held in *Gideon v. Wainwright* that all criminal defendants charged with a felony had the right to be represented by counsel, regardless of their ability to afford an attorney. This federal constitutional mandate was left to the states to implement and finance. In turn, the State delegated its responsibility to provide and pay for these services to counties and the local property taxpayer.*

Revenues received from this exceptional item would be distributed through the Commission's formula and discretionary grant programs. These grants would help address access to counsel, attorney workload, and quality of representation issues across the State. This exceptional item would also provide for a fiscal analyst (1.0 FTE), and three policy analysts (3.0 FTEs), one with mental health expertise, associated expenses, and funding to conduct a study on how best to transition to full state funding. If this exceptional item is fully funded, then exceptional items #1, 2, and 3 would be paid out of this revenue.

On October 6th, the Texas Association of Counties published this story: [Commission seeks full state funding for indigent defense costs](#) .

Recent Commission Publications

Staff worked closely with Commission member Representative Andrew Murr to prepare and finalize six new or revised model forms as a resource to assist counties in implementing the front end processes necessary for an effective appointment of counsel system. The Magistrate Warning Form, Adult and Juvenile Affidavits of Indigence, and the Juvenile Intake Form replace prior forms and are intended to streamline and simplify procedures for counties. The Appointment of Counsel for Out-of-County Warrant Arrestees, Waiver of Counsel to Speak with the Prosecutor, and Waiver of Counsel to Plea or Proceed to Trial are new forms based on changes to the law and issues encountered during policy monitoring. Staff also sought input from various stakeholders in developing the new and revised forms, which are available at [Model Forms & Procedure](#) on our website.

Other Commission publications since our last report include:

[Special Edition Newsletter: Attorney Practice-Time Report due October 15th](#) (September 2016)

[FY 2016 Indigent Defense Expenditure Report \(IDER\) Manual](#) (September 2016)

[FY 2016 Indigent Defense Expenditure Report \(IDER\) Manual Public Defender Office Supplement](#) (September 2016)

[FY 2017 Formula Grant Program Request for Applications \(RFA\)](#) (September 2016)

Indigent Defense Trainings and Events

[Indigent Defense: Funding and Other Challenges](#), Texas Association of Counties Legislative Conference (August 2016)

[Ethics Seminar Panel](#) at Travis County (September 2016)

[Reporting Requirements](#), Texas Association of County Auditors Conference (October 2016)

[Fiscal Monitor 2016 Findings](#), Texas Association of County Auditors Conference (October 2016)

Recent Articles and Media

Across the State

[Kaufman County left with \\$475K tab after mass murder trial](#) (August 2016)

[Texas plan to jail fewer poor people infuriates some court officers](#) (August 2016)

[Alex Bunin receives Champion of Public Defense Award from NACDL](#) (August 2016)

[Lawyers reopen criminal case files across Texas](#) (September 2016)

[Judges sued as part of Harris County federal court bail challenge](#) (September 2016)

[First Amended Class Action Complaint](#)

[Bell County calls for legislature to act](#) (September 2016)

[Commishes to Austin, 'Lay off counties'](#) (September 2016)

[Racial testimony helped send black man to Texas' death row; will Supreme Court let him appeal?](#) (October 2016)

[New report shows poor, mentally ill face disadvantage in Harris County Courts](#) (October 2016)

[Harris County's system for defending the poor is still woefully inadequate, state audit finds](#) (October 2016)

Around the Nation

National Legal Aid and Defender Association (NLADA):

[The Interdisciplinary Defense Team & Confidentiality: What Defenders Need to Know](#) (August 2016)

[50-State Survey of Child Abuse Mandatory Reporting Statutes](#) (August 2016)