



**WRITTEN TESTIMONY**

**ON**

**THE TEXAS INDIGENT DEFENSE COMMISSION**

**SUBMITTED BY MARY KATE BEVEL  
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**To**

**SENATE FINANCE  
COMMITTEE ON ARTICLE IV**

**FEBRUARY 9, 2017**

Dear Members of the Committee,

My name is Mary Kate Bevel. I am a Policy Associate at the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony on the Texas Indigent Defense Commission (the Commission).

TCJC ardently supports the Commission's efforts and mission; since its inception, it has been instrumental in improving indigent defense delivery throughout the state while promoting compliance with Texas law. Continued investments by the State are not only critical to ensuring that the Commission can accomplish its goals, but crucial to facilitating the right to counsel – guaranteed under the Constitution and state law – that Texas supports for its residents.

Investments in the Commission also better ensure that individuals' defense needs are effectively addressed on the front end of system involvement, which can reduce expenses at later points in the system.

#### INTRODUCTION: PAST SUCCESSES

For 15 years, the Commission has greatly improved indigent defense delivery services throughout Texas. Specifically, the Commission has been a key partner to counties as they have striven to provide counsel to indigent people accused of crimes, both through allocation of grant funds and by technical assistance to counties in their reporting duties.

Importantly, by assisting counties in their reporting on indigent defense efforts, Texas leads the nation in the collection of comprehensive data about indigent defense at the local level, which in turn enables informed decision-making by policy-makers and local practitioners.

Under the leadership of Commission Chair Sharon Keller (Presiding Judge, Court of Criminal Appeals) and Executive Director Jim Bethke, the Commission has facilitated a better indigent defense system across the entire State of Texas. The following are but a few examples of the Commission's impact on Texas and its counties during the last several years:

#### ***People Served:***

- The number of cases that received court appointed counsel has increased by 42%, from approximately 324,000 cases in Fiscal Year (FY) 2002 to more than 460,000 cases in FY 2015.
- Fifteen people in Texas have been exonerated through Commission-funded innocence projects at the state's public law schools since 2006.
- Over 24,000 people – including judges, lawyers, county officials, and other justice system stakeholders – have been trained through over 340 during the Commission's history.

#### ***Counties Served:***

- Each of Texas' 254 counties has received grants/funding from the Commission through the state grant program it developed, which distributes both formula-based and discretionary grants.
- As of Fiscal Year 2016, 178 counties throughout Texas are served by the Regional Public Defender Office for Capital Cases, which provides a well-qualified defense team to represent defendants charged with capital offenses.

### ***Open, Transparent, and Collaborative Government:***

- Each of Texas' 254 counties has its indigent defense expenditures and local plans posted on the Commission's interactive/integrative website. This site was recognized as the best in the country by indigent defense guru, Robert Spangenberg.
- The Commission's model forms, legislative proposals, and papers are written and promulgated with all interested stakeholders – state, county, judicial, and public interest groups – at the table.
- The Commission has published over 70 publications, reports and articles on issues ranging from determining indigence, to the feasibility of establishing public defender offices, to comprehensive system-wide indigent defense reviews ranging from the representation of a juvenile to an adult (including individuals with mental illness).

The Commission's success in helping counties meet their obligations to represent the indigent is grounded in its respect for local control, its commitment to collaboration and evidence-based strategies, and open, transparent operations.

### **RECOMMENDATIONS**

Texas must ensure that the momentum achieved through the tremendous efforts of the Commission and our counties is protected and strengthened. This is even more imperative as the State continues its efforts to ensure safer communities.

#### **➤ Continue to Ensure That the Commission Has a Stable Source of Revenue**

The Commission's primary revenue source is court fees and costs, which are allocated to the Fair Defense Account. Prior to Texas' 2011 Legislative Session, the Commission was permitted to roll forward the unexpended balance in that Account every biennium; however, after that point, the Commission's unexpended funds – intended for indigent defense – were held by the State as a means to balance the state budget. The Texas Legislature rectified the problem during the 2013 legislative session, releasing funding to the Commission that had accumulated in the Account; the funding, for use in FY 2014, was disbursed to counties in a special one-time payment (in addition to the typical formula grant payments).

Then, during the 2015 session, the Legislature allocated additional funding to the Commission, marking the first time general revenue had ever been appropriated for indigent defense in Texas. However, at only 25% of requested funding, the allocation was not enough to close counties' funding gap. In 2016, Texas counties paid approximately \$216.1 million compared to the State's \$31.4 million, just 14 cents on every dollar spent on indigent defense costs.

**TCJC strongly urges the continued and increased allocation of critical funding designated for indigent defense purposes to the Commission.** As counties continue to work with the Commission and its staff to improve efficiency and quality in the delivery of indigent defense services, state grants from the Commission can help to relieve the high burden on counties and ensure that more individuals are receiving counsel guaranteed under the Constitution and state law.

➤ **Support the Commission’s Requested Exceptional Items, Specifically Exceptional Item #3**

The Commission is requesting ongoing and additional support for early identification and specialized representation of defendants with mental illness. Annually, approximately 95,000 people with mental health problems are in need of appointed counsel in Texas. Current programs only meet 9% of that need, and mental health defender programs only exist in ten counties: Bexar, Collin, Dallas, El Paso, Fort Bend, Harris, Kaufman, Lubbock, Travis, and Wichita.

Individuals with mental health problems in the criminal justice system are particularly vulnerable, and it is critically important that they have attorneys with specialized knowledge. In part, this can help prevent them from continuing to cycle through the system at huge taxpayer expense. Indeed, the Meadow’s Foundation estimates that 14,000 people with mental illness cycle through Texas’ justice system each year. The Foundation also reports that over \$650 million is spent in local Texas justice systems each year due to inadequately treated mental illness and substance use disorders.

**TCJC supports the proposed Mental Health Specialized Defender Model that will link specialized counsel with social workers and caseworkers to properly represent defendants with mental illness.** This program will connect individuals with treatment and resources in order to stabilize them and address the primary issues that led to their involvement in the criminal justice system. The requested \$10 million over the biennium is a small investment that can have a significant, positive impact on Texans with mental health problems. Where such wraparound services have been implemented in other areas, they have reduced recidivism and saved taxpayer dollars. For instance, from 2010 to 2015, the Fort Bend County mental health public defender cut client jail bed days in half, saving the county \$2,500 per misdemeanor and \$7,000 per felony case. By providing representation at the very earliest stage in the case, these programs can identify and divert eligible nonviolent defendants from jail to appropriate treatment programs and community-based services that focus on long-term stabilization.

**TCJC strongly recommends that outcome performance measures are used to determine the effectiveness of the Mental Health Specialized Defender Model.** Recidivism cannot be a model’s sole measure of success. Intermediate outcomes (e.g., stable housing, community engagement, therapeutic progress) are absolutely necessary to determine whether the model is achieving what it was created to achieve: the long-term stabilization of defendants with mental illness. By constructing these measures in conjunction with the Commission’s goals and strategies, policy-makers can create a financial plan that guides the Commission down a successful path.

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Thank you for allowing me the opportunity to provide information to this Committee on the crucial role of the Commission in the provision of indigent defense services to those passing through Texas’ justice system. Not only has the Commission improved the ability of countless individuals to retain quality counsel, but throughout its efforts it has gained the respect and support of local stakeholders and practitioners, as well as numerous organizations and associations at the state and national level. **The Commission and local governments cannot fulfill their important duty to provide indigent defense without the financial support and commitment of our State’s key leadership.**