



TEXAS CRIMINAL
JUSTICE COALITION

WRITTEN TESTIMONY

REGARDING HOUSE BILL 1, ARTICLE IV – JUDICIARY

***SPECIFICALLY RELATING TO
THE OFFICE OF COURT ADMINISTRATION, TEXAS JUDICIAL COUNCIL
PERTAINING TO THE TEXAS INDIGENT DEFENSE COMMISSION***

**SUBMITTED BY ANA YÁÑEZ-CORREA, PH.D.
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To

THE HOUSE COMMITTEE ON APPROPRIATIONS

FEBRUARY 13, 2013

Dear Members of the Committee,

My name is Ana Yáñez-Correa. I am the Executive Director of the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony on House Bill 1, Article IV, specifically as it relates to the Texas Indigent Defense Commission (Commission).

It is an honor for me to present this information to you. TCJC ardently supports the Commission's efforts and mission. Since its inception, the Commission has been instrumental in improving indigent defense delivery throughout Texas. Continued investments by the State are not only critical to ensuring that the Commission can accomplish its goals, but crucial to facilitating the constitutionally mandated right to counsel that Texas supports for its residents. Investments in the Commission also better ensure that individuals will be effectively managed at the front end of system involvement, which can reduce expenses at later points in the court and criminal justice systems.

INTRODUCTION: PAST SUCCESSES

The Commission (formerly known as the Task Force on Indigent Defense) was created in 2002 to fulfill several critical obligations: to distribute funds to counties for the implementation of defense delivery systems, to provide counties technical support in those efforts, to monitor county compliance with state standards and constitutional requirements, and to develop policies and standards related to indigent defense.

Over the past decade, the Commission has been crucial in helping Texas counties provide constitutionally required counsel to indigent people accused of crimes, due largely to its three guiding principles: respect for local control, commitment to meaningful collaboration, and focus on transparent operation.

Under the leadership of Commission Chair Sharon Keller (Presiding Judge, Texas Court of Criminal Appeals) and Executive Director Jim Bethke, the Commission has developed into an effective and invaluable resource for Texas counties, and it has facilitated a number of improvements in indigent defense:

People Served

- ✓ Texas has increased the number of indigent people provided constitutionally guaranteed defense representation by 45 percent (324,000 in 2002; 471,000 in 2011).
- ✓ Commission-funded innocence projects at Texas' public law schools have exonerated 10 people.
- ✓ The Commission has provided over 200 presentations and trainings to more than 15,000 people, including judges, lawyers, county officials, and other system stakeholders.

Counties Served

- ✓ The Commission has provided funding to each of Texas' 254 counties.
- ✓ Texas has expanded the number of counties being served by some form of public defender office from seven to more than 155, spanning all nine administrative judicial regions.
- ✓ Furthermore, Texas has increased the number of full-time public defender offices from seven to 19.
- ✓ Texas has 79 new defense-related programs – ranging from direct client services to technology

initiatives – that were created through Commission funding.

- ✓ The jail populations of several Texas counties have decreased, ranging from 12 percent in Taylor County to 50 percent in Hidalgo County. This brings with it cost savings and fewer lifelong collateral consequences for system-impacted individuals.

Open, Transparent, and Collaborative Government

- ✓ The Commission has created an interactive and integrative website that counties use to report indigent defense data to the Commission. Moreover, the website serves as a resource to legislators, the public, and the media by providing detailed information on state and local initiatives, access to publications and training videos, and county-specific indigent defense data. This site has been recognized as the best in the country by nationally known and respected indigent defense guru, Robert Spangenberg.
- ✓ The Commission has created model forms for indigency determinations and magistrate warnings, as well as sample adult and juvenile indigent defense plans and plan templates, all of which are adaptable to fit local needs.
- ✓ Furthermore, the Commission’s 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 55 publications on issues ranging from comprehensive indigent defense system reviews to guides on juvenile justice and mental health in the criminal justice system.

RECOMMENDATIONS

Our policy-makers must strive to protect and strengthen the momentum created by the tremendous efforts of the Commission and our counties. This is even more imperative as the State continues its efforts to ensure safer communities.

Below we offer two recommendations to address the Commission’s priority funding needs. These recommendations must serve as a critical consideration-point for policy-makers seeking to help counties provide adequate indigent defense, as guaranteed by laws of this state, while doing so in a cost-effective manner. The second recommendation – which requests resources to help counties manage the unfunded mandate to provide defense – is especially important, and will ease the current burden on counties struggling to meet local demand.

➤ Restore Funding and Authority to Use All Designated Sources of Revenue

Commission funding is not drawn from the state’s General Revenue, but rather from dedicated fees comprising a percentage of court costs collected by the counties, fees on surety bonds, and a portion of attorneys’ State Bar of Texas dues. These fees make up the state’s Fair Defense Account. Prior to Texas’ 2011 Legislative Session, the Commission was permitted to roll forward the unexpended balance in its Fair Defense Account every biennium; since then, the Commission’s unexpended funds – intended for indigent defense – have been held by the State as a means to balance the state budget.

TCJC strongly urges the restoration of all funding designated for indigent defense purposes. Designated revenue collected from court fees and costs are intended to support the Commission in

its efforts to allocate funds to counties for the improvement of indigent defense services. The impact of the artificial ceiling placed on the Commission's appropriation during the 2011 legislative session has resulted in a reduced revenue stream and adds to an already significantly under-funded constitutionally required program – shifting an even greater burden onto county taxpayers to provide indigent defense services. Currently, Texas counties pay approximately \$165 million per year in indigent defense costs (83% of costs) compared to state grants totaling \$33 million per year (17% of costs). Capping state support for the provision of constitutionally guaranteed indigent defense representation is not worth the **increased risk of lawsuits** that would further encumber scarce county and state resources or, worse, the **potential conviction of the innocent**. State grants are making a difference. Counties are working with the Commission and its staff to improve efficiency and quality in the delivery of indigent defense services.

➤ **Close the Unfunded Gap of Over \$150 Million with General Revenue**

TCJC asks the State to support the constitutional provision of the right to counsel with General Revenue. The right to counsel for those who cannot afford it is also grounded in Texas law, yet **NO General Revenue is appropriated for indigent defense**. The entire appropriation for indigent defense is derived from dedicated court fees and costs. As discussed above, these funds account for only 17 cents of every dollar spent.

At a minimum, the State should provide General Revenue to help counties meet the obligations to sufficiently cover the **increase in expenses** for indigent defense that they have shouldered since the passage of the Fair Defense Act (FDA) of 2001. Spending on indigent defense has more than doubled over 10 years, rising from \$91.4 million in 2001 to \$198.4 million in 2011 – meaning counties are now spending \$107 million more than they did in 2001. After accounting for the \$30 million contributed by the State (through court fees and costs), Texas counties are footing the bill for the \$77 million difference in spending (or \$154 million over the biennium).

Increased funding from the State, specifically designated for indigent defense, is essential to support county efforts to ensure that the right to counsel is provided to all Texans whose liberty is at stake and who cannot afford representation.

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Thank you for allowing me the opportunity to provide feedback to this body on the crucial role of the Commission in the provision of indigent defense services to those passing through our system of justice. 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.**