



WRITTEN TESTIMONY

REGARDING SENATE BILL 2, ARTICLE IV – JUDICIARY

SPECIFICALLY RELATING TO THE TEXAS INDIGENT DEFENSE COMMISSION

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TO

THE SENATE COMMITTEE ON FINANCE

FEBRUARY 2, 2015

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 SB 2, Article IV, specifically as it relates to 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, which is required under the Constitution and state law.

Investments in the Commission also better ensure that individuals' defense needs are effectively addressed on the front end of criminal justice system involvement, which can reduce such expenses as costly appeals, retrials, and compensation for wrongful convictions.

INTRODUCTION: PAST SUCCESSES

For more than a decade, 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 45%, from approximately 324,000 cases in Fiscal Year (FY) 2002 to more than 471,000 cases in FY 2013.
- Eleven people in Texas have been exonerated through Commission-funded innocence projects at the state's public law schools.
- Over 23,000 people – including judges, lawyers, county officials, and other justice system stakeholders – have been trained through over 340 presentations.

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.
- The number of counties being served by some form of public defender office or managed assigned counsel program has grown from 7 to more than 180 (23 programs in 188 counties), spanning all nine administrative judicial regions.

- Eighty-two new programs in Texas counties, ranging from direct client services to technology initiatives, were created through Commission funding.

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 has been recognized as the best in the country by nationally known and respected indigent defense expert, 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 68 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 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). **TCJC strongly urges the continued allocation of critical funding designated for indigent defense purposes to the Commission.**

Over the past four years, Texas counties paid approximately \$887 million compared to the State's \$161 million. In other words, the State spent 15 cents on the dollar for every dollar spent by the counties on indigent defense. 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.

- **Close the Funding Gap Being Borne by Counties with Additional General Revenue**

TCJC asks the State to support the right to counsel with General Revenue. As discussed above, dedicated court fees and costs account for only 15 cents of every dollar spent by counties, creating a lopsided ratio of funding for indigent defense.

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 of 2001. Spending on indigent defense has more than doubled since 2001, increasing from \$91.4 million (all of which was borne by counties) to \$217.1 million in 2013 (\$189.7 million of which was borne by counties). In other words, counties are now spending \$98.3 million more than they did in 2001.

Increased funding from the State will help equalize the currently disproportionate contribution scheme for indigent defense, and will enable the Commission to increase grant disbursements to counties. This is essential to supporting county efforts to ensure that the right to counsel is provided to all Texans whose liberty is at stake and who cannot afford representation.

- **Support the Commission's Requested Exceptional Items, Which Ensure the Continuation of Successful Existing Programs**

The Commission is requesting ongoing support for two programs:

- (1) ***A statewide Regional Public Defender's Office (RPDO) for capital cases***, an award-winning regional program founded in 2009. The RPDO enables dues-paying member counties to assemble a defense team for capital cases; this system offsets significant county expenses associated with capital cases, enables county budget predictability, and ensures a quality defense.
- (2) ***A multi-county indigent defense technology grant program***, initially developed by Bell County in 2011. This cloud-based electronic process management tool has helped Bell County administer its indigent defense system and monitor data regarding compliance with state law and local rules; other counties are interested in this tool, which will require additional funding for its expansion, and will increase transparency, efficiency, and consistency in the administration of defense.

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Thank you for allowing me the opportunity to provide feedback 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.**