



WRITTEN TESTIMONY

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

**THE TEXAS INDIGENT DEFENSE COMMISSION
LEGISLATIVE APPROPRIATIONS REQUEST
FY 2014 AND 2015**

TO

**THE GOVERNOR'S OFFICE OF BUDGET, PLANNING AND POLICY
AND THE LEGISLATIVE BUDGET BOARD**

AUGUST 28, 2012

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 public comments on the Legislative Appropriations Request (LAR) of the Texas Indigent Defense Commission (the Commission).

It is an honor for me to present this information to you at the first budget hearing for the Commission. TCJC ardently supports the Commission's efforts and mission; since its inception, it 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 addressed on the front end of system involvement, which can reduce expenses at later points in the system.

INTRODUCTION: PAST SUCCESSES

Over the past decade, the Commission (formerly known as the Task Force on Indigent Defense) 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 constitutionally required counsel to indigent people accused of crimes. 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 indigent people provided constitutionally guaranteed defense representation has increased by 45% (324,000 in 2002; 471,000 in 2011).
- ✓ Ten people in Texas have been exonerated through Commission-funded innocence projects at the state's public law schools.
- ✓ Over 20,000 people – including judges, lawyers, county officials, and other justice system stakeholders – have been trained through 298 presentations.

Counties Served:

- ✓ Each of Texas' 254 counties has received state grants/funding from the Commission.
- ✓ The number of counties being served by some form of public defender office has grown from 7 to more than 155, spanning all nine administrative judicial regions.
- ✓ Seventy-nine new programs in Texas counties, ranging from direct client services to technology initiatives, were created Commission funding.

Open, Transparent, and Collaborative Government:

- ✓ Each of Texas' 254 counties has their 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 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 55 publications 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 the mental illness).

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

RECOMMENDATIONS

Our policy-makers must ensure that, despite our current budget shortfall, the momentum gained by 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.

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

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 \$168 million per year compared to the State's \$30 million per year, or about 15 cents on every dollar spent on indigent defense 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 15 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.**