



WRITTEN TESTIMONY

REGARDING ARTICLE IV

**SUBMITTED BY ANA YÁÑEZ-CORREA, EXECUTIVE DIRECTOR
TEXAS CRIMINAL JUSTICE COALITION**

To

**THE HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON CRIMINAL JUSTICE**

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TEXAS CRIMINAL JUSTICE COALITION

The Texas Criminal Justice Coalition (TCJC) is committed to identifying and advancing real solutions to the problems facing Texas' juvenile and criminal justice systems. We provide policy research and analysis, form effective partnerships, and educate key stakeholders to promote effective management, accountability, and best practices that increase public safety and preserve human and civil rights.

TCJC'S PROJECTS

The Juvenile Justice Initiative: *Creating Avenues to Success for Troubled Youth and Their Families.*

The Public Safety Project: *Advocating for Fair, Effective Police Practices that Improve the Safety of Our Communities.*

The Fair Defense Project: *Ensuring a Just and Accountable Judicial System by Protecting the Right to Counsel.*

The Solutions for Sentencing & Incarceration Project: *Providing Proven and Cost-Effective Answers that Address Texas' Over-Reliance on Incarceration.*

Tools for Re-Entry: *Advocating for Policies that Enable the Previously Incarcerated to Live Responsibly.*

Tools for Practitioners: *Featuring Effective Criminal and Juvenile Justice Programs and Practices.*

Public Policy Center: *Providing Nonpartisan Criminal and Juvenile Justice Policy Recommendations.*

Contact Information

Ana Yáñez-Correa, Executive Director
Phone: (w) 512-441-8123, ext. 109; (m) 512-587-7010
acorrea@criminaljusticecoalition.org

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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 Article IV.

Below we have explained the current mechanism for indigent defense funding in Texas. We have also detailed the impact of budget cuts on the Task Force on Indigent Defense, as well as on the Office of Court Administration, under the filed version of House Bill 1. Finally, we have provided relevant policy recommendations that would protect the gains made in indigent defense delivery throughout the past decade.

INTRODUCTION

The concept and practice of ensuring indigent defense is a fundamental tenet of our criminal justice system, as envisioned by the framers of the Constitution,ⁱ established by the Supreme Court in *Gideon v. Wainwright*ⁱⁱ and its progeny, and implemented in Texas through the Fair Defense Act (FDA) of 2001.ⁱⁱⁱ Through the commitment and vision of Senator Rodney Ellis and with the support of other leadership, Texas passed the FDA to set the framework for improving indigent defense policies in Texas and, among other things, establish a Task Force on Indigent Defense (Task Force). This body is responsible for (a) developing statewide policies and minimum standards for the provision of indigent defense (e.g., appointment of qualified counsel, prompt magistration, indigency determinations), (b) distributing funds to supplement county indigent defense services, and (c) independently monitoring the compliance of Texas' 254 counties with set policies and standards.

The Task Force currently achieves its mandate with a small staff overseen by the Office of Court Administration.^{iv} This team, under the dedicated leadership of Executive Director Jim Bethke, serves as an excellent example of government transparency and collaboration, achieving balance and trust in partnerships with advocates, policy-makers, county officials, and other diverse groups, and furthering open communication to improve the understanding and implementation of the goals of the FDA at the state and local levels.

Indeed, since its inception, the Task Force has committed to bringing various interests to the table to support reforms that have significantly changed the landscape of indigent defense. Prior to passage of the FDA in 2001, only seven counties had some form of public defender office in operation. Now, there are 18 public defender offices, serving upwards of 90 counties and various specialized populations, that have either been awarded a grant or are in full operation in Texas.^v Another may soon follow, as Williamson County is considering an office to address the increasing costs posed by its court-appointed system.^{vi} Since passage of the FDA, from Fiscal Year 2002 to 2009, indigent defense delivery systems have assisted more than 470,000 individuals.^{vii}

We applaud and strongly support the Task Force's promotion of trust and consensus-building. It is a model for other agencies seeking to develop and implement policies that will strengthen communities and save taxpayers money. However, the Task Force can only do so much with the resources provided to it. Despite impressive gains made throughout these past 10 years, ongoing weaknesses in court and conviction practices in Texas continue to lead to unequal sentencing rates and fill jail and prison beds. In large part, this is due to Texas' narrow funding for indigent defense. In fact, according to recent data, Texas ranks 48th in per-capita indigent defense spending,^{viii} placing

tenth out of the ten most populated states.^{ix} Although spending levels have increased dramatically in Texas since the passage of the FDA,^x they remain far below what other states spend on indigent defense today.^{xi}

INDIGENT DEFENSE FUNDING

In the first year of the FDA, the state appropriated \$7 million to the Task Force,^{xii} taken from court costs on convictions,^{xiii} for distribution among Texas counties to supplement local indigent defense delivery that is otherwise paid for with property taxes. In ensuing years, the Legislature has authorized the collection of additional fees^{xiv} to increase the funding that the Task Force distributes to counties, which is now at over \$28 million.^{xv}

Unfortunately, that funding comprises only 15% of counties' current total indigent defense expenditures. Indigent defense costs to counties have more than doubled since the FDA's passage, from approximately \$95 million in 2001 to \$186 million in 2009,^{xvi} and the funding generated by fees is not enough to keep up with the growing demand for services.

With the projected cuts to the Task Force under H.B. 1, counties would be even more hard-pressed to guarantee representation for anyone who is at risk of incarceration and unable to hire an attorney.

BUDGET CUTS TO THE TASK FORCE ON INDIGENT DEFENSE

Per H.B. 1, the Task Force will face a 15% cut to the grants it gives to counties for indigent defense (A.2.1), both for general support and startup funds for public defender offices. It will also face a 10% cut to administration, which will cost the agency 1 FTE^{xvii}/Staff position reduction. (The Task Force's board will decide how those cuts would be allocated, if they occur.)

Further squeezing the Task Force's grant funds, General Revenue funding for the Office of Capital Writs is eliminated, and that agency will now be funded (with a 20% cut) from the Task Force's fair defense account (\$800,000).^{xviii}

Again, Texas has only been providing state funds to help support indigent defense since 2001, when the FDA placed new requirements on counties while the state, in return, agreed to support indigent defense through Task Force grants. However, because county indigent defense costs have consistently gone up at greater rates than the Task Force's budget, these cuts are tantamount to unfunded mandates for county grantees whose share is reduced.

BUDGET CUTS TO THE OFFICE OF COURT ADMINISTRATION

As noted above, the Office of Court Administration (OCA) oversees the Task Force's Executive Director and staff, while also making budget requests and providing budget administration for the Task Force. Cuts to the OCA, therefore, will have significant ramifications on the Task Force's ability to assist counties with indigent defense provision.

Under H.B. 1, the OCA faces a 15% reduction: \$712,121 and 4.4 FTEs for the biennium. The agency already has 2 of 31 positions vacant and will leave those unfilled.

OCA has said that additional cuts will require cutting core services, including the court collections program, which generates over \$28 million in revenue each biennium for the state.^{xix} Due to the latest census data, OCA will be adding about 20 more mandatory jurisdictions to its collections program workload in FY 2012-13, which will be subject to this mandatory program. This revenue will be lost.

The Office of the State Prosecuting Attorney will be moved to OCA to save on administrative overhead.^{xx}

The Assistance to Administrative Judicial Regions line item is zeroed out (previously having been allotted about \$200,000 per year). These costs will have to be absorbed by the counties and administrative judicial regions.

OCA's specialty courts programs (Child Support Courts and Child Protection Courts) are left intact at their FY 2010-11 levels.

Arguably the most problematic proposed cut at OCA is to its Information Technology (IT) division, which H.B. 1 will reduce by almost 60% from the FY 2010-11 appropriated amount. OCA has said its IT division is "prepared to live with the reduction of almost all of our capital projects (about \$3.1 million of our \$10.2 million baseline request, which equals a 30% reduction to our IT shop)." However, "What we absolutely must have back for IT to continue to perform the core functions of maintaining the court infrastructure, including case management and the first phase of the judicial data recovery system that is being implemented this year, is \$839,634." OCA also requires some restored funding for maintenance on existing IT equipment, since its budget for new computer equipment was zeroed out.

Finally, OCA must cut its already lean administrative costs at the same time that it is being asked to take on the Office of the State Prosecuting Attorney, and after new certification boards were added to its jurisdiction in each of the last three sessions. At some point, OCA cannot continue to accept additional administrative duties with fewer funds.

POLICY RECOMMENDATIONS

As Texas continues to actively implement the principles of the FDA, gaining national, positive recognition for these efforts, our policy-makers must ensure that despite the state's current budget shortfall, the momentum gained by the tremendous work of the Task Force is protected and strengthened. This is even more imperative as the state continues its efforts to ensure a level playing field between (a) the policies and practices that push Texans into jails and prisons, leaving them with an arrest, a possible conviction, and the long-term, negative collateral consequences that accompany them, and (b) smart-on-crime policies that increase public safety, save taxpayer dollars, and strengthen communities.

➤ Provide Additional Help to Counties

The state must sufficiently support counties in their collective responsibility to offer adequate indigent defense services to Texans facing jail time without the means to afford an attorney.

Especially as the economy continues at this level, individuals are less likely to pay the fees that fund Task Force allotments and assist county governments in efforts to provide indigent defense. Making matters worse is policy-makers' continual passage of laws that increase penalties for crimes and lengthen the stay of confinement. Without simultaneously allocating additional funds through the state's general revenue to support these mandates, counties will continue to shoulder the majority of the financial burden associated with supporting indigent defense services, and they will continue to forego critical indigent defense programming due to budget difficulties.

The ramifications of such a practice are severe. When defendants fail to receive the early appointment of well-qualified and independent counsel, counties incur unnecessary expenses related to delayed case processing and pre-trial jail expenses. If defendants in felony cases fail to receive effective legal representation and end up in prison, the state pays for the costs of incarceration. Over time, the criminal justice system becomes overloaded with defendants awaiting hearings, inmates who have received poorly scrutinized plea deals, and wrongfully convicted individuals.

TCJC fully supports the Task Force in any request for additional funding, even if incremental, to (1) assist counties in establishing and maintaining well run public defender offices in the long term, (2) support the success of other cost-effective, evidence-based indigent defense programs,^{xxi} and (3) effectively handle the numerous other responsibilities placed upon the Task Force by law.

Indeed, strengthened funding would promote the continued development, maintenance, and expansion of award-winning and innovative programs that help fulfill a constitutional duty, minimize the burden borne by the counties, and increase confidence in Texas' justice system. Ultimately, these delivery systems are crucial to counties seeking to provide the **greatest quality of service to the greatest number of clients**. Defense systems, when incorporating recognized best practices, can also improve cost savings,^{xxii} reduce pre-trial detention lengths,^{xxiii} increase independence from the judiciary,^{xxiv} and more effectively address the needs of specialized defendant populations, including the mentally ill and youth.

Note: Where possible, the state should also make every effort to support public defender systems beyond allotments provided under current state funding mechanisms. Presently, Texas funds public defender programs over a four-year span, with the percentage of state funding decreasing incrementally each year (80% of the program's funds coming from the state in year 1, 60% in year 2, 40% in year 3, and 20% in year 4); the remaining funds are contributed by counties themselves. By the conclusion of the fourth year, the program should be sufficiently operational. However, this is not the case in counties struggling with budget deficits and other local conflicts. For instance, the Val Verde Regional Public Defender Office, which served four counties, has recently shut down.^{xxv} The State should increase its investment in indigent defense delivery systems to ensure long-term success.

➤ **Provide Continued State Support to Sustain Effective Programs**

(a) Policy-makers should instruct the Task Force to prioritize discretionary grant funding to incentivize the implementation of public defender offices and other best practices.

Discretionary grants are highly sought-after funds. Over \$18 million has been awarded to 38 counties since 2003, and in FY 2011 alone, the Task Force has received over \$12 million in grant requests. The competitive grant program is open to any new and innovative programs designed to improve indigent defense. Single-year grants fund programs dedicated to technology and process improvements that will significantly impact the day-to-day indigent defense operations in a county (e.g., video-conferencing, indigent defense coordinators, etc.). Multi-year grants fund direct client service projects;^{xxvi} for instance, funding can help offset the initial start-up cost of a public defender office, which can be significant and may present an overwhelming barrier to counties otherwise inclined to transition to this system.

The Task Force's enabling statute, Government Code, Sec. 71.062, allows the organization to be flexible when allocating funds among its grant programs. Policy-makers should require the Task Force to prioritize discretionary grant funding for public defender offices, independent assigned counsel programs, and counties that use best practices or implement programs that meet or exceed the requirements of the FDA. Funding for regional programs and underserved areas is especially scarce and should also be a primary concern.

This funding emphasis would promote more effective practices, more cost-efficient solutions, and accountability in establishing and improving indigent defense systems.

(b) Policy-makers should also instruct the Task Force to revamp its current grant allocation structure to better ensure the sustainability of successful programs.

Approximately 90% of current grant funds issued by the Task Force are state formula grants, while approximately 10% are targeted (i.e., discretionary) grants for specialized programs.^{xxvii} For a more effective distribution of funding, one-third of the Task Force's available grant funds should be allocated to counties in compliance with standards set by the Task Force to offset their costs of indigent defense. One-third should be designated for discretionary grants, which in part provide funding for the expansion and implementation of new indigent defense programs. The final one-third should be used to help counties sustain successful, cost-effective defense-delivery programs.

Note: Discretionary grants have been shown to create a great return on the initial investment. The specialized programs they fund target the unique needs of counties and facilitate localized defense services to address particular populations. However, recipients of discretionary grants are the most vulnerable to loss due to funding expiration. Because discretionary grants are the most productive method to ensure efficiencies and innovation that support best practices and effective representation, their allocation must be strengthened.

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Thank you for allowing me the opportunity to provide feedback to this Committee on the crucial role of the Task Force on Indigent Defense in the provision of services to those passing through

our criminal justice system. Not only has the Task Force improved the ability of numerous individuals to retain quality counsel, but throughout its efforts it has gained the respect and support of numerous organizations and associations. TCJC feels especially fortunate to have worked so closely with the Task Force throughout the past eight years – and as much as we have been willing to assist the Task Force in furthering its critical mission, the Task Force team has continually done what it can to assist stakeholders and advocates throughout the state in realizing their own important indigent defense goals.

The Task Force deserves and requires the ongoing support of our state’s key leadership. During this 82nd legislative session – the tenth anniversary of Texas’ passage of the historic Fair Defense Act – the state should renew its commitment to that legislation and the protection of individuals’ rights.

ENDNOTES

- ⁱ The Sixth Amendment states, “In all criminal prosecutions, the accused shall enjoy the right to . . . the assistance of counsel for his defense.”
- ⁱⁱ 372 U.S. 335, 342 (1963). The Court held that the Sixth Amendment right to counsel is a fundamental right which transfers to the States through the Fourteenth Amendment.
- ⁱⁱⁱ Texas Fair Defense Act, Senate Bill 7, 77th Legislature, Regular Session, 2001.
- ^{iv} Texas Courts Online, “Office of Court Administration (OCA),” <http://www.courts.state.tx.us/oca/>. The OCA is a state agency in the judicial branch that operates under the direction and supervision of the Supreme Court of Texas. OCA provides support to a various judicial organizations, including TJC and the Task Force. Specifically, OCA provides resources (including technical assistance, training, research, fiscal consultation, and other support) and information (statistics, analysis, and reports) for the efficient administration of the judicial branch of Texas.
- ^v Task Force on Indigent Defense (TFID), “18 Public Defender Offices in Texas (revised January 6, 2011),” pgs. 2, 3; <http://www.courts.state.tx.us/tfid/pdf/webpagepdomac.pdf>.
- ^{vi} “Williamson County Considering Public Defender System,” *Texas Government Insider*, Volume 8, Issue 33, August 20, 2010; <http://www.spartnerships.com/newsletter/tgi%208-20-10/tgi.html>.
- ^{vii} “Overview,” 2010, pg. 4; <http://www.courts.state.tx.us/tfid/ebookhousecrim051310/Overview.pdf>.
- ^{viii} Texas Task Force on Indigent Defense, “State Spending: 2008, 2005” spreadsheet, compiled in 2010.
- ^{ix} John Reynolds, “Though Underfunded, Indigent Legal Defense Much Improved: State May End Up Cost-Shifting More of the Burden Back to the Counties,” *Quorum Report*, May 13, 2010.
- ^x The Spangenberg Group, “State and County Expenditures for Indigent Defense Services in Fiscal Year 2005,” prepared for the American Bar Association, December 2006, pg. 29.
- ^{xi} Texas is one of only 18 states that requires counties to provide the majority of funding for such defense services. On the other hand, 32 states’ public defense systems are either 100% state funded (26 states) or majority state funded (6 states). From *Overview*, pg. 2.
- ^{xii} Texas Judicial Council, Office of Court Administration, Committee on Information Technology, and Task Force on Indigent Defense, “Annual Report of the Judicial Support Agencies: 2002 Fiscal Year,” 2002, pg. 24.
- ^{xiii} *Overview*, pg. 1.
- ^{xiv} These include court costs and fees upon conviction, surety bond fees, and State Bar fees. From Task Force on Indigent Defense, “Task Force on Indigent Defense 2009 Annual and Expenditure Report,” pgs. 21-22.
- ^{xv} *Overview*, pg. 2.
- ^{xvi} Brandi Grissom, “Advocates: Texas Indigent Defense Nearing Crisis,” *The Texas Tribune*, May 19, 2010.
- ^{xvii} An FTE is a full-time equivalent employee position.
- ^{xviii} Email from Jim Bethke, January 19, 2011.
- ^{xix} Email from Glenna Bowman, Chief Financial Officer of OCA, January 28, 2010.
- ^{xx} Legislative Budget Board (LBB) House Summary, pg. 136.
- ^{xxi} Dr. Tony Fabelo, “Texas Indigent Defense Summit: Summary of Issues and Strategic Challenges,” The Justice Center, February 24, 2010, slide 10.
- ^{xxii} Texas Task Force on Indigent Defense and The Spangenberg Group, “Blueprint for Creating a Public Defender Office in Texas, Second Edition,” June 2008, pgs. 5, 7.
- ^{xxiii} Bureau of Justice Assistance, “A Second Look At Alleviating Jail Crowding: A Systems Perspective,” U.S. Department of Justice – Office of Justice Programs, October 2000, pg. 63. Note additionally: In Kaufman County, the public defender office reduced the average jail population from 306 to 246 within its first year by clearing a backlog of cases. Likewise, Val Verde County’s Regional Public Defender Office reduced the regional jail population by 20% in 11 months, from 78 to 61 inmates, by resolving cases more quickly than the private bar. From Texas Fair Defense Project (TFDP), “Benefits of a Public Defender Office: Increasing Accountability and Cost Effectiveness in Harris County’s Indigent Defense System,” September 2009, pg. 12.
- ^{xxiv} “Justice lite: Harris County should beef up its pilot public defender program,” *Houston Chronicle – Editorial*, June 19, 2010, citing an evaluation by The Spangenberg Project of Harris County’s proposal for a public defender program.
- ^{xxv} David Carroll, “Gideon Alert: Policies of prosecutor and judges close doors of Val Verde County (Del Rio, Texas) public defender,” National Legal Aid & Defender Association, October 24, 2010: “Texas policymakers should note that it was the former Val Verde Sheriff who said [Texas Rio Grande Legal Aide, of which the public defender office was a division] was a ‘positive program’ that saved the county money (over \$1 million) by keeping people out of jails”; <http://www.nlada.net/jscri/blog/gideon-alert-policies-prosecutor-and-judges-close-doors-val-verde-county-del-rio-texas-pu>.
- ^{xxvi} Task Force on Indigent Defense, “Discretionary Grant Program” informational brochure, August 2010.
- ^{xxvii} Senate Committee on Criminal Justice, “Senate Committee on Criminal Justice Interim Report to the 82nd Legislature,” December 15, 2010, pg. 31.