

# INDIGENT DEFENSE



## AN ISSUE BRIEF FROM LEGISLATIVE BUDGET BOARD STAFF

ID: 1365

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### OBJECTIVE

Government-provided legal services for felony defendants unable to afford legal representation in a criminal case. Indigent defense is supported through state and local county funds.

### KEY FACTS

- ◆ Costs to provide indigent defense services are met through a combination of state and local funding, with counties absorbing a majority of these costs.
- ◆ Revenue to support indigent defense is provided through a combination of court costs, surety bond fees, and state bar membership fees.

### BUDGETARY IMPACT

The Texas Indigent Defense Commission (TIDC) was appropriated an estimated \$79 million for the 2014–15 biennium. Estimated appropriation authority enables TIDC to spend all available amounts in the Fair Defense Account during the 2014–15 biennium.

### STATUTORY REFERENCES

- ◆ Texas Code of Criminal Procedure, Chapters 1, 14, 15, 17, 26, and 102
- ◆ Texas Family Code, Chapter 51
- ◆ Texas Government Code, Chapter 71

The Sixth Amendment of the U.S. Constitution provides a defendant with the right to legal counsel for his or her defense in a criminal proceeding. In *Gideon v. Wainwright*, 1963, the U.S. Supreme Court ruled that counsel must be provided to indigent defendants in felony cases. This decision placed the cost for legal counsel on the government in instances where the defendant is unable to afford legal representation.

### FAIR DEFENSE ACT AND TEXAS INDIGENT DEFENSE COMMISSION

The Fair Defense Act was enacted by the Seventy-seventh Legislature in 2001. The legislation required all courts in Texas to adopt formal procedures for providing appointed lawyers to indigent defendants. The Act also established the Task Force on Indigent Defense to oversee indigent defense services in Texas. Task Force members included the Presiding Judge of the Court of Criminal Appeals and the Chief Justice of the Supreme Court of Texas. The Seventy-seventh Legislature, 2001, also appropriated state funding for indigent defense for the first time to supplement what had been county expenses. Funds were disbursed through formula grants and competitive discretionary grants.

The Eighty-second Legislature, Regular Session, 2011, reorganized the Task Force as the Texas Indigent Defense Commission (TIDC). TIDC assists counties in establishing, developing, and maintaining cost-effective indigent defense services. Assistance includes reviewing annual plans on indigent defense services submitted by counties, educating stakeholders on how to administer effective services, awarding competitive discretionary grants, and distributing formula grants to counties. TIDC is administratively attached to the Office of Court Administration, which provides support in the areas of purchasing, human resources, financial reporting and other operations.

### INDIGENT DEFENSE AT THE COURT LEVEL

Courts have flexibility in how attorneys are appointed to indigent defense cases. The methods most often used include:

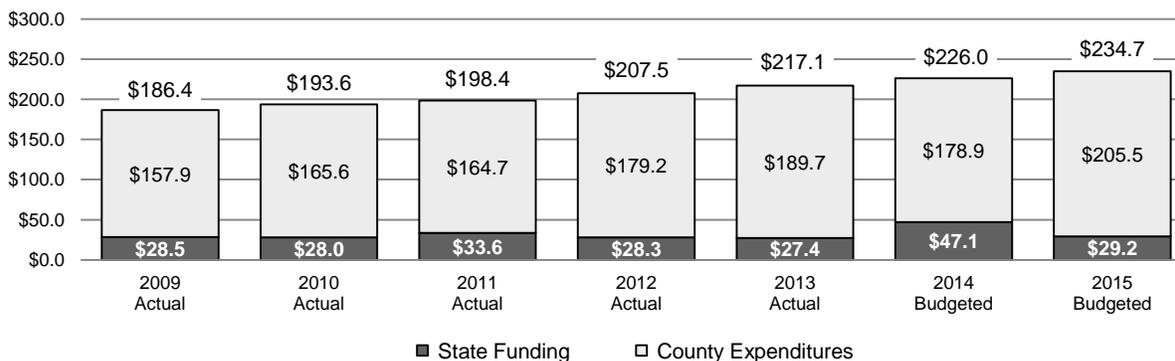
- **Assigned Counsel:** Private attorney appointment by a judge to represent an indigent defendant. The Court maintains a list of qualified attorneys and uses a rotation system to appoint attorneys from the list. This is the most commonly used program.
- **Managed Assigned Counsel:** Private attorney appointment by a county department or non-governmental organization permitted by the court to manage attorney appointments on its behalf. This appointment type can also take more specialized forms that relate to a particular issue, such as programs that focus on indigent defendants with mental illnesses. Three counties use managed assigned counsel programs as of fiscal year 2013.
- **Public Defenders Office:** Either a county department or a non-governmental organization with full-time attorneys and other staff that represent indigent defendants. Nineteen counties have public defender offices as of fiscal year 2013.
- **Contract Defender:** Private attorney engaged to provide representation to unspecified defendants before a court or group of courts. Twenty-four counties use contract defender programs as of fiscal year 2013.

## INDIGENT DEFENSE REVENUES AND EXPENDITURES

The costs to provide indigent defense services are met through a combination of state and local funding, with counties absorbing a majority of these costs. Fig. 1 shows a breakdown of indigent defense expended and budgeted spending from fiscal years 2009 through fiscal year 2015.

**FIG. 1**  
**LOCAL AND STATE SHARE OF INDIGENT DEFENSE COSTS**  
**FISCAL YEARS 2009 TO 2015**

IN MILLIONS



NOTE: Fiscal Year 2014 includes a one-time disbursement of \$15 million from unexpended balances in the Fair Defense Account. Actual and budgeted amounts for fiscal years 2013–2015 provided by the agency as of March 2014.

SOURCE: Texas Indigent Defense Commission.

State revenue sources to support indigent defense are deposited into the General Revenue–Dedicated Fair Defense Account. Revenue sources include a combination of court costs, surety bond fees, and state bar membership fees. Court costs account for the largest share of the total state revenue at 83.4 percent for the 2014–15 biennium.

TIDC manages disbursement of indigent defense state funding through a mix of formula and discretionary grants. The Eighty-third Legislature, Regular Session, 2013, provided an estimated appropriation of \$79.0 million from the General Revenue–Dedicated Fair Defense Account for the 2014–15 biennium, which is an increase of nearly 27 percent from 2012–13 biennial funding levels. In the 2014–15 biennium, \$76.5 million is available for grants to eligible counties. TIDC uses the remaining balance to pay administrative costs and fund innocence projects at four of the state’s public law schools.

For fiscal year 2014, TIDC budgeted \$37.0 million for formula-based distribution to county indigent defense programs. This includes a one-time disbursement of \$15.0 million from unexpended balances in the Fair Defense Account from prior fiscal years. Formula grant distribution to counties takes into consideration factors such as county population and the county’s direct indigent defense expenditures for the previous fiscal year.

TIDC budgeted \$11.1 million in discretionary grants to 21 counties for fiscal year 2014. Discretionary grant awards include:

- Funding to reimburse counties for actual extraordinary expenses of providing indigent defense services in a case or series of cases;
- Programmatic funding to improve indigent defense services such as case management software;
- Programs that address the specific needs of individual counties, such as mental health defender programs; and
- Multi-county support to county indigent defense programs, such as the Regional Public Defender for Capital Cases.

### USEFUL REFERENCES

Texas Indigent Defense Commission’s website: <http://www.courts.state.tx.us/tidc/>

Texas Indigent Defense Commission’s publication: Fair Defense Law, A Primer for Texas Officials: [http://www.txcourts.gov/tidc/pdf/FairDefenseLawAPrimerforTexasOfficials2012Updated\\_103012.pdf](http://www.txcourts.gov/tidc/pdf/FairDefenseLawAPrimerforTexasOfficials2012Updated_103012.pdf)

Texas Indigent Defense Commission’s clearinghouse of information on indigent defense: <http://tidc.tamu.edu/public.net>

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