

INDIGENT DEFENSE



AN ISSUE BRIEF FROM LEGISLATIVE BUDGET BOARD STAFF

ID: 3113

JULY 2016

OBJECTIVE

Government-provided legal services are provided 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, juror pay collections, and state bar membership fees.

BUDGETARY IMPACT

The Texas Indigent Defense Commission (TIDC) is appropriated an estimated \$71.1 million in All Funds for the 2016–17 biennium. Estimated appropriation authority enables TIDC to spend all available amounts in the General Revenue–Dedicated Funds Fair Defense Account No. 5073 during the 2016–17 biennium.

STATUTORY REFERENCES

The Texas Code of Criminal Procedure, Chapters 1, 14, 15, 17, 26, and 102

The Texas Family Code, Chapter 51

The Texas Government Code, Chapter 71

The U.S. Constitution, Sixth Amendment, provides a defendant with the right to legal counsel for 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 Texas Fair Defense Act was passed by the Seventy-seventh Legislature in 2001. The Act required all courts in Texas to adopt formal procedures for providing court-appointed lawyers to indigent defendants. The Act also established the Task Force on Indigent Defense to oversee indigent defense services in Texas.

The Eighty-second Legislature, Regular Session, 2011, reorganized the Task Force as the Texas Indigent Defense Commission (TIDC). TIDC members include eight ex officio members and five members appointed by the Governor. This membership includes the Presiding Judge of the Court of Criminal Appeals and the Chief Justice of the Supreme Court of Texas. The commission is administratively attached to the Office of Court Administration, which supports purchasing, human resources, financial reporting, and other operations.

TIDC assists counties in establishing, developing, and maintaining cost-effective indigent defense services. Financial support is provided to counties through state-funded formula and competitive discretionary grants. 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.

INDIGENT DEFENSE AT THE COURT LEVEL

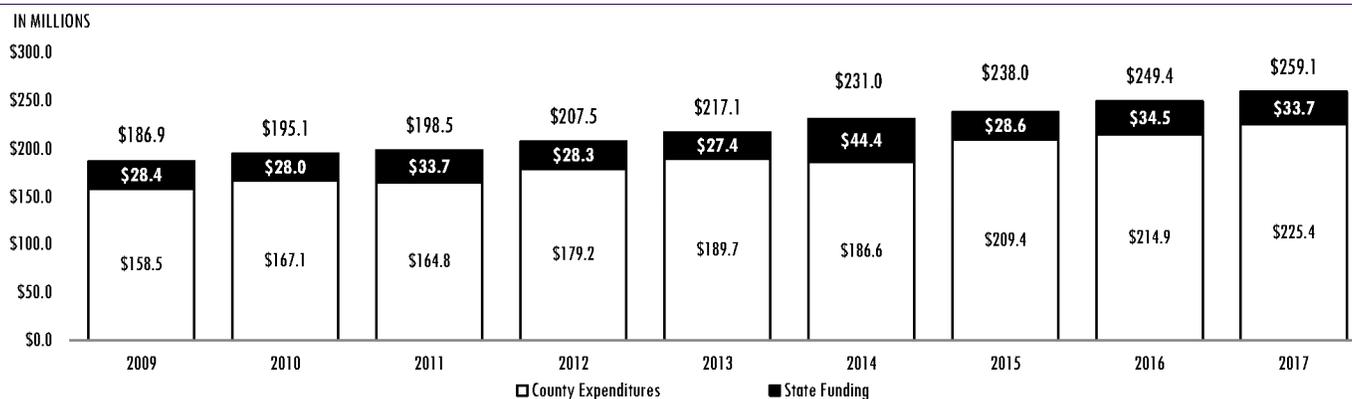
Courts have discretion in how attorneys are appointed to indigent defense cases. The methods most often used include:

- **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. Assigned counsel is the most commonly used program.
- **Managed Assigned Counsel:** Private attorney appointment by a county department or nongovernmental 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 that have mental illnesses. Three counties use managed assigned counsel programs as of fiscal year 2015.
- **Public Defenders Office:** Either a county department or a nongovernmental organization with full-time attorneys and other staff that represent indigent defendants. Nineteen counties have public defender offices as of fiscal year 2015.
- **Contract Defender:** Private attorneys 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 2015.

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. **Figure 1** shows indigent defense expended and budgeted spending from fiscal years 2009 to 2017. According to TIDC, the gradual increase in county expenditures during this time is due to increases in attorney's fees.

FIGURE 1
LOCAL AND STATE SHARE OF INDIGENT DEFENSE COSTS, FISCAL YEARS 2009 TO 2017



NOTES:

(1) Fiscal year 2014 includes a onetime disbursement of \$15.0 million from unexpended balances in the General Revenue–Dedicated Fair Defense Account No. 5073. Actual and budgeted amounts for fiscal years 2015 to 2017 provided by the agency as of February 2016.

(2) Amounts do not include grant funding awarded to institutions of higher education.

SOURCES: Legislative Budget Board; Texas Indigent Defense Commission.

State revenue sources to support indigent defense are deposited into the General Revenue–Dedicated Fair Defense Account No. 5073. Revenue sources include court costs, surety bond fees, juror pay collections, and state bar membership fees. Court costs account for the largest share of state revenue at 65.3 percent for the 2016–17 biennium. The Eighty-fourth Legislature, 2015, appropriated an estimated \$63.6 million from the Fair Defense Account and \$7.5 million in General Revenue Funds for the 2016–17 biennium. General Revenue Funds appropriations include \$3.1 million for the Regional Public Defender Office for Capital Cases to provide capital case defense for eligible clients within member counties. That amount includes \$500,000 to establish an office servicing Cameron and Hidalgo counties. An additional \$4.4 million in General Revenue Funds was appropriated to defray costs to counties for providing indigent defense services.

TIDC manages disbursement of indigent defense state funding through a mix of formula and discretionary grants. In the 2016–17 biennium, \$68.2 million is available for grants to eligible counties and to fund innocence projects and research at six of the state's public law schools. For fiscal year 2016, TIDC budgeted \$25.1 million for formula-based distribution to county indigent defense programs. Formula grant distribution to counties considers factors such as county population and the county's direct indigent defense expenditures for the previous fiscal year. TIDC budgeted an estimated remaining balance of \$9.4 million in discretionary grants to counties for fiscal year 2016. 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 and a client choice program;
- programs that address the specific needs of individual counties, such as mental health defender programs; and
- multicounty support to county indigent defense programs.

USEFUL REFERENCES

The Texas Indigent Defense Commission Annual Report for Fiscal Year 2015:

www.tidc.texas.gov/media/41870/2015-annual-and-expenditure-report_final.pdf

Texas Indigent Defense Commission clearinghouse of information on indigent defense: tidc.tamu.edu/public.net

Legislative Budget Board, *Financing the Judiciary in Texas, Legislative Primer*.

www.lbb.state.tx.us/Documents/Publications/Primer/1508_Financing_the_Judiciary.pdf

CONTACT

George Dziuk Contact: IssueBrief@lbb.state.tx.us