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TESTIMONY 2013

C.S.S.B. 592

Dear Members of the Committee,

Thank you for allowing me this opportunity to present testimony in favor of C.S.S.B. 592, an effective policy that will strengthen and improve the justice system through increased accountability and more effective attorney representation, while preserving local control.

### COUNTIES SHOULD ADOPT CASELOAD STANDARDS

Texas law currently requires that public defender, managed assigned counsel, and contract defender systems operate under maximum caseload standards. These safeguards encourage just and effective legal representation. Defender offices established prior to the passage of the Fair Defense Act and individual, private bar attorneys who agree to accept cases through a rotating appointed counsel (also known as a "wheel") system are exempt from any established caseload standards.

Lawyers have a duty to furnish competent representation,<sup>1</sup> yet increased demand for indigent defense services, along with a "wheel" process that does not adequately compensate attorney services or measure caseloads, creates an incentive for appointed private bar attorneys to carry excessive caseloads. **Taking on more cases than one can effectively and ethically provide meaningful representation for seriously compromises the constitutional protections afforded to indigent Texans who are accused of crimes.** To ensure lawyers are delivering consistent, quality representation to their clients, counties should create caseload standards for all appointed counsel.

### KEY FINDINGS

- **Per the state's Fair Defense Act, Texas counties providing indigent services through public defender offices must set a maximum caseload standard, yet the total number of cases handled by private defense attorneys who also receive assigned cases may far exceed such standards** – potentially violating standards for professional conduct and the Sixth Amendment,<sup>2</sup> while resulting in an inequity in the quality of defense services provided to Texas' indigent defendants.
- **Some Texas counties have already exceeded typical caseload standards.** For instance, one in five attorneys appointed to criminal cases in Harris County in 2011 carried caseloads that exceeded professionally recognized maximum caseload limits.<sup>3</sup> Twenty-three of these attorneys had appointed caseloads at least twice the caseload limit. A few attorneys had appointed caseloads three or four times the caseload limit, including one attorney who handled over 890 cases in one year, 383 of which were felonies.<sup>4</sup>
- **The American Bar Association's Fifth Principle for the delivery of indigent defense considers workload as a key factor impacting the level of quality for a defendant's representation** in the justice process.<sup>5</sup> It is important that counties paying for indigent defense services know the total number of cases that each appointed attorney agrees to accept, to better ensure accountability and adequate representation to its citizens.
- One contributing factor to increased defender caseloads is the tendency to make jail time an option for even minor offenses.<sup>6</sup> **Counties should have the ability to set maximum allowable caseloads to better track and adapt to growing requirements for providing indigent defense at the local level.**

*Continued on reverse.*

## COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT C.S.S.B. 592 BY SENATOR ELLIS

- **C.S.S.B. 592 will extend the requirement to adopt caseload standards fairly to all appointed counsel wheel systems**, thus encouraging consistent representation levels for all Texas defendants.
- **C.S.S.B. 592 will increase uniformity, transparency, and accountability** for the caseloads carried by lawyers who receive state and county funds to represent indigent defendants.
- **C.S.S.B. 592 will allow local jurisdictions to maintain control** over setting their caseload standards while still implementing best practices that improve representation and promote accountability.
- **C.S.S.B. 592 will direct the Texas Indigent Defense Commission to conduct and publish a study of appointed criminal defense attorney total caseloads**, which will include consultation with criminal defense lawyers and indigent defense policy organizations. The study will be based on applicable policies, performance guidelines, and known best practices to ensure effective representation for Texas defendants.

## CONCLUSION

Thank you again for allowing me the opportunity to testify on this bill. It is an effective policy that will improve accountability in the justice system, and the Texas Criminal Justice Coalition strongly urges you to support it.

## **Citations**

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<sup>1</sup> American Bar Association, *Model Rules of Professional Conduct, R.1*, [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html).

<sup>2</sup> Norman Lefstein notes that “defense programs have a mandatory duty to monitor the current workloads of their lawyers and decide whether their lawyers have adequate time to do all that is necessary to represent their clients competently and effectively.” See: Norman Lefstein, *Executive Summary and Recommendations: Securing Reasonable Caseloads: Ethics and Law in Public Defense*, Publication Sponsored by the American Bar Association Standing Committee on Legal Aid and Indigent Defendants, 2012, 36, [http://www.americanbar.org/content/dam/aba/publications/books/ls\\_sclaid\\_def\\_securing\\_reasonable\\_caseloads\\_supplement.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads_supplement.authcheckdam.pdf).

<sup>3</sup> The most widely recognized benchmark standards for appropriate limits on defense lawyer caseloads were established by the National Advisory Commission on Criminal Justice Standards and Goals (NAC). The NAC annual maximum caseload for felonies is 150 cases; for misdemeanors the maximum is 400 cases; for juvenile cases the maximum is 200; and 25 cases is the annual maximum for appeals.

<sup>4</sup> Data available upon request.

<sup>5</sup> American Bar Association, *Ten Principles of a Public Defense Delivery System*, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciples\\_booklet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciples_booklet.authcheckdam.pdf),

<sup>6</sup> Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, Publication Sponsored by the American Bar Association Standing Committee on Legal Aid and Indigent Defendants, 2011, 267, [http://www.americanbar.org/content/dam/aba/publications/books/ls\\_sclaid\\_def\\_securing\\_reasonable\\_caseloads.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf).