



WRITTEN TESTIMONY

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

ON

**THE OFFICE OF COURT ADMINISTRATION, TEXAS JUDICIAL COUNCIL
LEGISLATIVE APPROPRIATIONS REQUEST
FY 2012 AND 2013**

TO

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

SEPTEMBER 15, 2010

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 Office of Court Administration (OCA).

As you know, this LAR reduces the baseline budget for OCA by 5%, which will critically impact the efficacy of key programs and, among other things, require the agency to reduce grant funding to counties for indigent defense. Although TCJC is concerned about the negative implications that budget cuts will have on OCA's ability to fully realize its mission, this testimony will focus on the portions of the LAR pertaining to indigent defense, as the right to counsel is mandated by both the state and national constitutions.

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,¹ established by the Supreme Court in *Gideon v. Wainwright*² and its progeny, and implemented in Texas through the Fair Defense Act (FDA) of 2001.³ Through the commitment and vision state leadership, Texas passed the FDA, thereby establishing a Task Force on Indigent Defense (Task Force). This body is responsible for setting basic standards for the provision and delivery of indigent defense services.

More specifically, the Task Force, as a standing committee of the Texas Judicial Council, is charged with (a) developing statewide policies and standards for the provision of indigent defense, (b) distributing funds to supplement county indigent defense services, and (c) monitoring counties' compliance with set policies and standards. The Task Force currently achieves its mandate with a 10-member staff overseen by the OCA. 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 the FDA's passage in 2001, only seven counties had some form of public defender office in operation. Now, there are 16 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. Throughout this time, the Task Force has also provided critical technical assistance to counties in need.

However, the Task Force can only do so much with the resources currently allocated to it. The state must sufficiently support counties, via the Task Force, as they undertake their responsibility to provide indigent defense services to Texans who are facing jail time but lack the means to afford an attorney. Equally important to the appointment and availability of an attorney is the need for zealous and meaningful representation. When defendants fail to receive the early appointment of well-qualified and independent counsel, the state and county incur unnecessary expenses related to delayed case processing and pre-trial jail expenses. Likewise, the criminal justice system is overloaded with defendants awaiting hearings, inmates who have received poorly scrutinized plea deals, and wrongfully convicted individuals.

INDIGENT DEFENSE FUNDING

In the first year of the Fair Defense Act, the state – through the leadership and determination of Senator Rodney Ellis – appropriated \$7 million (taken from court costs on convictions) to the Task Force for distribution among Texas counties to supplement local indigent defense delivery. In ensuing years, the Legislature has authorized the collection of additional fees⁴ to increase the funding that the Task Force distributes to counties for indigent defense programs (now at over \$28 million).

Unfortunately, that funding comprises only 15% of the current total indigent defense expenditures by counties (approximately \$186 million, up from \$91 million in 2001).⁵ Indigent defense costs to counties have more than doubled since the FDA's passage, and although funding generated by fees are providing more financial support to counties than they have received previously, it is simply not enough to keep up with the growing demand for services. Let's not forget that Texas still ranks 48th in the nation in per capita funding for indigent defense,⁶ and we are at the bottom (ranked 10th) of the ten largest states.⁷

RECOMMENDATIONS

Our policy-makers must ensure that, despite our current budget shortfall, the momentum gained by the tremendous work of the Task Force and our counties is protected and strengthened. This is even more imperative as the state continues its efforts to ensure safer communities.

➤ **Fully Restore the 5% Budget Cut**

TCJC strongly urges the full restoration of the 5% budget cut to support the Task Force. **The 5% reduction would cut allocations to already-underfunded programs, in turn severely burdening Texas counties.** Indeed, since 2001, the Task Force has helped develop award-winning and innovative programs, which have provided thousands more people with appointed counsel. Restoring funding would promote the continued development, maintenance, and expansion of good programs that help fulfill a constitutional duty, minimize the burden borne by the counties, and increase confidence in Texas' justice system.

➤ **Provide Additional Help to Counties**

In light of the many improvements to indigent defense since the passage of FDA, policy-makers must seriously consider any requests for additional funding proposed by the Task Force, even if incremental, to assist counties in maintaining well-run public defender offices and other successful indigent defense programs. Again, Texas does not provide financial assistance to counties from its General Review: that funding is solely derived from fees. It is the state's responsibility to Texans to ensure that their right to counsel is protected at all cost, regardless of their income.

➤ **Solutions to the Budget Cuts**

Instead of harmful budgetary cuts to critical programs, the Legislature must take advantage of the Rainy Day Fund, which could provide over \$9 billion for the 2012-2013 state budget.

Additionally, policy-makers must maximize the use of available federal funding, including any additional stimulus aid or new matching funds made available by health care reform. Finally, the Legislature must create new sources of revenue that are equitable and can grow with the need for public services, including cost savings through the elimination of unproductive tax breaks.

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Thank you for allowing me the opportunity to provide feedback to this body 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 countless 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 financial support of our state’s key leadership.**

NOTES

¹The Sixth Amendment states, “In all criminal prosecutions, the accused shall enjoy the right to . . . the assistance of counsel for his defense.”

² 372 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.

³Texas Fair Defense Act, Senate Bill 7, 77th Legislature, Regular Session, 2001.

⁴TFID, “Task Force on Indigent Defense 2009 Annual and Expenditure Report,” pgs. 21-22. See Funding (Revenue) discussion of court costs and fees upon conviction, Surety Bond Fees, and State Bar Fees that are disbursed through the Task Force to support counties in providing indigent defense services.

⁵ *Ibid.*

⁶ Texas Task Force on Indigent Defense, “State Spending: 2008, 2005” spreadsheet, compiled in 2010.

⁷ 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.