



Legislative Brief

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INDIGENT DEFENSE

WHAT COUNTIES ARE SAYING

Indigent defense expenditures are one of the major uncontrollable cost drivers in county budgets. The state should fully fund this under-funded mandate.

BACKGROUND

Texas counties are responsible for the expenses associated with appointed counsel for indigent defendants. Under state law, including provisions set forth in the Fair Defense Act enacted during the 77th Legislature, counties must comply with various standards and guidelines relating to the entitlement and appointment of counsel.

Counties are authorized to deliver indigent defense services through a system that best meets local needs. Current systems include public defenders, managed

Fair Defense Act:

The Fair Defense Act sets forth specific standards relating to the entitlement and appointment of counsel for indigent defendants in certain criminal adversarial judicial proceedings. The Act provides for mandatory time periods for appointments; representation in appellate and post conviction proceedings; establishment of minimum periods for counsel preparation; and procedures for waiver, withdrawal and reappointment.

The Texas Indigent Defense Commission, formerly known as the Task Force on Indigent Defense, was also established as part of the Fair Defense Act. The Commission provides financial and technical support to counties to develop and maintain indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

assigned counsel programs, contract defender programs and attorney appointment through a rotational appointment list.



The costs of providing court-appointed counsel for indigent defendants are significant and remain a major uncontrollable expense in county budgets. Since passage of the Fair Defense Act, indigent defense costs have increased 171 percent from \$91.4 million in 2001 to \$247.7 million in 2016. Additionally, cases that received court-appointed counsel increased from 324,000 in 2002 to about 460,000 in 2016, a 42 percent increase in caseloads. However, state grants distributed by the Texas Indigent Defense Commission have covered only a small proportion of total costs.

In FY 2016, the state funded only about \$31.6 million of the total statewide indigent defense costs, while counties contributed approximately \$216 million (about 87 percent of the total costs). This county funding has resulted in a primarily property tax-funded indigent defense system, which has placed a significant strain on county budgets and local property taxpayers. While current state funding is not exorbitant, Texas counties rely considerably on this funding to help offset some of the costs.

The 84th Legislative Session marked the first time that the Legislature appropriated new general revenue funds for indigent defense to supplement the existing dedicated fees and court costs that help fund the mandate. The \$7.5 million in new general revenue, which was appropriated for the FY 2016-2017 biennium, was an important step towards the state funding a larger share of indigent defense costs.

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However, Texas still trails other states in the amount of state funding for indigent defense. According to

the Texas Indigent Defense Commission, two-thirds of states nationwide provide more than 50 percent

in state funding for indigent defense. Specifically, 27 states provide 100 percent full funding for indigent defense, while an additional six states provide more than 50 percent. Only 17 states, including Texas, provide less than 50 percent in state funding for indigent defense.

Texas county governments are currently shouldering 87 percent of all indigent defense costs, and Texas is far behind most other states which fund indigent defense in far greater proportions. Additional state funding would assist counties and their local property taxpayers tremendously in offsetting the costs of this significant under-funded mandate. ★

