Texas

Primary Indigent Defense Delivery System: Assigned Counsel/Contract*
Population in 2002: 21,779,893**
Percentage of State Plus County Expenditures in FY 2002 Attributable to State vs. Counties:
6.6% from State; 93.4% from Counties**


During the 40th anniversary year of the U.S. Supreme Court’s decision in Gideon v. Wainwright, the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants (ABA SCLAID) in 2003 held a series of public hearings to examine the implementation of the right to counsel in state court proceedings for poor persons accused of crimes. In January 2005, ABA SCLAID published its final report based on the testimony provided at the hearings, entitled “Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice.” This information sheet contains a short summary of the “Problems in Indigent Defense” and “Recent Reform Efforts” that were reported by one of the hearing witnesses. For the complete information regarding each of the statements listed below (including references to hearing transcripts, reports, and other supporting materials), please see “Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice,” available at http://www.indigentdefense.org/brokenpromise.

Problems in Indigent Defense

The following problems were reported by the hearing witness:

• There is no provision for formal, systematic training of indigent defense attorneys or support staff at either the state or local levels in Texas, despite the recommendations of national standards that such training be provided at public expense.

• Eligibility for indigent defense services often is unduly restricted in Texas. In a substantial number of Texas counties, defendants who are released on bond are presumed not to be indigent and either are denied appointed counsel or strenuously pressured to retain counsel, in direct violation of state law. In some cases, appointed counsel is withdrawn once a defendant posts bond.

• National standards recommend that indigent defense counsel should be subject to judicial supervision only in the same manner and to the same extent as are attorneys in private practice and should be assigned to specific cases by administrators of indigent defense programs, not by judges or elected officials. However, almost none of the indigent defense systems in Texas use an independent authority or agency to qualify, appoint, and compensate counsel. Although recent reform legislation has required counties to adopt neutral rotation systems for appointing counsel, several judges have retained unregulated
discretion to appoint any attorney they choose, and some judges depart regularly from the rotation system without good cause. As in much of the United States, defense counsel is normally dependent upon the judge who heard the case to approve the services of expert witnesses and investigators, as well as approve attorney compensation, and the judge’s discretion is not subject to effective review.

- Despite the prohibitions contained in ethics rules and national standards, witnesses testified that judges in Texas sometimes encourage prosecutors to improperly seek waivers of counsel, and subsequent pleas of guilty, from unrepresented indigent defendants. In a number of Texas counties, judges direct misdemeanor defendants to confer with the prosecutor about a possible plea before the defendants have a meaningful opportunity to request appointed counsel.

- Although national standards recommend the use of public defender programs wherever the population and caseload are sufficient to support such organizations, currently, only seven of the 254 counties in Texas have either a partial or full-time public defender office. Virtually all of the other counties rely upon an assigned counsel system. The witness from Texas explained why public defenders are not used: “We have to overcome judicial fear about their loss of control over attorneys, we have to overcome the private defense lawyer’s fear that a public defender office will result in a loss of business, and we have to overcome a widespread set of myths among judges and defense lawyers about what they have heard are the weaknesses of public defender programs.”

**Recent Reform Efforts**

The following recent reform efforts were reported by the hearing witness:

- In 2001, Texas enacted landmark legislation, known as the Texas Fair Defense Act, providing for statewide standards and oversight of defense services through a new Texas Task Force on Indigent Defense. The Fair Defense Act also provides partial state funding of indigent defense services, for the first time ever. This enactment was the product of a unique collaboration among political, community, bar, and advocacy groups.

- In 2000, following a year of study, the Fair Defense Coalition—led by Texas Appleseed and including public interest and civil rights organizations, faith-based social justice organizations, and bar associations—issued a comprehensive report about indigent defense in Texas containing 48 recommendations for change. Shortly thereafter, the Fair Defense Coalition worked with allies in the state legislature to draft a bill that would eventually become the Texas Fair Defense Act of 2001. Over the past few years, the Fair Defense Coalition, led by the Equal Justice Center and in cooperation with the Texas Task Force on Indigent Defense, has sought to monitor county compliance with the requirements of the Fair Defense Act.

- Also, in 2000, the State Bar of Texas added its considerable support to the growing momentum for change by accepting a report from its Committee on Legal Services to the Poor in Criminal Matters, which was based on surveys of defense lawyers, judges and prosecutors throughout the state. The report concluded that the state’s system for providing indigent defense services was “in serious need of reform.” In addition, the State Bar of Texas convened a statewide conference of judges, lawyers, and criminal justice policymakers to discuss indigent defense reform.