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FACT SHEET

## THE PUBLIC DEFENDER OFFICE: AN EFFECTIVE INDIGENT DEFENSE SYSTEM FOR URBAN COUNTIES

### BACKGROUND

The concept of indigent defense is a fundamental tenet of our criminal justice system. It reflects public support for a fair process and establishes standards that ensure access to adequate representation for anyone accused of a crime, at risk of incarceration, and unable to hire an attorney.

Texas seeks to fulfill the principles for a fair judicial process – as envisioned by the framers of the Constitution<sup>1</sup> and established by the Supreme Court in *Gideon v. Wainwright*<sup>2</sup>– through the Fair Defense Act (FDA, passed in 2001).<sup>3</sup> The FDA established the State Task Force on Indigent Defense and set basic standards for the provision of indigent defense services, while allowing for flexibility among Texas’ 254 counties. Currently, the majority of Texas counties provide defense services through a rotational system of court-assigned private attorneys. However, over 15 counties have established public defender offices in order to better handle high-volume caseloads or provide specialized services to poor defendants.<sup>4</sup>

Recent criticism of rotational and contract methods of assigning counsel include problems with inconsistent quality in representation, unfair denial of appointed counsel, and gaps in providing services which leave some (even innocent) defendants waiting extended periods in jail before being charged or released.<sup>5</sup> On the other hand, public defender offices – for instance, in Dallas and El Paso – set examples for other major metropolitan counties to implement and improve upon their system of indigent defense delivery. Experts suggest public defender offices provide independence and quality in indigent defense services, bridge gaps in oversight and administration of services, and save valuable county resources.<sup>6</sup>

### FACTS

***Public defender offices are a cost-effective means of ensuring that high-population counties comply with Texas’ Fair Defense Act.*** Public defender offices provide budget predictability and overall cost savings through lower per-case expenses.<sup>7</sup> Public defenders also streamline the appointment process and increase consistent case management, thereby decreasing court administrative costs and pre-trial jail expenses for defendants waiting for appointment or bond.<sup>8</sup> Savings from increased efficiency in appointment and processing may lead to substantial savings in jail costs (\$50 per person, per day) in high-population counties already struggling with jail overcrowding.<sup>9</sup>

***Public defender offices improve overall quality of representation to indigent defendants.*** Effective public defender offices provide organizational structure for training and shared institutional knowledge, proper oversight and accountability mechanisms, and necessary resources for investigation, case management, and administrative support.<sup>10</sup> The National Legal Aid and Defender Association warns that an excessive number of cases diminishes quality of representation,<sup>11</sup> an issue that public defender offices are able to effectively monitor and address. Furthermore, public defender offices serve as a valuable resource to the local criminal defense bar – they provide continuing legal education and legal assistance to private attorneys and function as an institutional “voice” for indigent defense issues.<sup>12</sup>

***Public defender offices increase public trust and confidence in our criminal justice system.*** Public defender offices bring increased independence and opportunity for a cohesive and zealous defense, essential to a balanced system of justice. Defender offices also bring institutional structure, which ensures adherence to the American Bar Association’s Ten Principles of a Public Defense Delivery system (specifically, the first principle in which the ABA urges independence from the judiciary<sup>13</sup>).

## RECOMMENDATIONS

- ***County Commissioners should look to public defender offices in similar counties to provide models for effective and efficient indigent defense delivery services in their jurisdictions.*** Nationwide, 90 of the 100 most populous counties incorporate public defender programs.<sup>14</sup> In Texas, 6 of the 15 most populous counties (Bexar, Cameron, Dallas, El Paso, Hidalgo, and Travis) provide services to at least some segment of the population through a public defender office. The State Task Force on Indigent Defense provides free technical assistance and consultation to county officials who are considering the feasibility of a public defender office.
- ***County Commissioners should pursue state resources to support strong public defender offices in order to level the playing field between defenders and prosecutors and ensure a fair system of justice.*** A county interested in establishing a public defender office may apply for a state grant through the Task Force on Indigent Defense. A county receiving one of these grants is eligible for 80% of their county's public defender costs in the first year of establishment.<sup>15</sup>
- ***The local defense bar should organize support for a public defender office by informing their members of the shared advantages of achieving the overall goals for quality indigent defense services.*** Public defender offices in Texas operate in cooperation with private defense attorneys by providing institutional support for training and advocacy, as well as by ensuring a share of cases which might otherwise pose a conflict of interest or excessive caseload.
- ***State and county officials should ensure a balanced system of justice as state funding for defenders and prosecutors is not equal.*** State appropriations for the 2006-07 biennium provided only \$26.4 million toward indigent defense grants to counties, as compared to \$63.3 million toward prosecutor salaries and expenses.<sup>16</sup> Adequate and sustained state funding to support mandates for improved indigent defense is necessary to protect Texans against wrongful prosecution and incarceration resulting from an imbalanced justice system.

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<sup>1</sup> The Sixth Amendment states, "In all criminal prosecutions, the accused shall enjoy the right to . . . the assistance of counsel for his defense."

<sup>2</sup> 372 U.S. 335, 342 (1963). The Court established the Sixth Amendment right to counsel is a fundamental right which transfers to the States through the Fourteenth Amendment.

<sup>3</sup> Texas Fair Defense Act, 77<sup>th</sup> Legislature, Regular Session, 2001.

<sup>4</sup> Texas Task Force on Indigent Defense (TFID) and The Spangenberg Group, *Blueprint for Creating a Public Defender Office in Texas*, Second Edition, June 2008. Since the publication of the Blueprint, TFID has assisted in the development of additional public defender offices.

<sup>5</sup> Several local news articles highlight specific problems with rotation and contract systems of appointment: Lisa Falkenberg, "An Idea Whose Time has Come?" *Houston Chronicle*, Commentary, March 12, 2008. Falkenberg notes criticism of biased appointments, a lack of performance standards, and problems funding investigations in Harris County. Rick Casey, "Supremes May Slap Texas Again," *Houston Chronicle*, Commentary, March 13, 2008. Casey covers the Rothgery case currently being considered by the Supreme Court. Rothgery was jailed for five days on erroneous charges, depleted his savings for bond, and filed several requests for an appointed attorney – who, once appointed six months later, quickly cleared Rothgery's name. Jim Getz, "New Public Defender Works to Prevent Mix-ups." *Dallas Morning News*, January 21, 2007. Getz notes a problem in Kaufman County, prior to the establishment of a public defender office, in which one man placed on probation sat in jail for a year because his court appointed attorney had no obligation to follow up.

<sup>6</sup> TFID, *Blueprint*. See also: State Sen. Rodney Ellis and Barry Scheck, "Create a Harris County Public Defender," *Houston Chronicle*, Op-ed., March 15, 2008.

<sup>7</sup> Texas Task Force on Indigent Defense (TFID) and the Public Policy Research Institute at Texas A&M University (PPRI), *Evidence for the Feasibility of Public Defender Offices in Texas*, November 9, 2006. The report cites the advantages of economies of scale and states, "where judges rely more heavily on public defenders for indigent defense, costs per case are substantially lower." Furthermore, the report uses data from Dallas County to illustrate this point; theoretically, if every case were assigned to a public defender office the county could save \$7.2 million dollars annually.

<sup>8</sup> TFID, *Blueprint*. The Blueprint notes a significant cost savings to counties results from decreased pretrial incarceration.

<sup>9</sup> Bill Murphy, "Harris County Jail Filled Beyond Capacity," *Houston Chronicle*, News, April 1, 2008. This year, the Harris County Jail held about 10,400 inmates, already overcrowded by 1,000 inmates, at an anticipated cost of \$192 million.

<sup>10</sup> TFID, *Evidence*. Furthermore, the report notes the added benefit of relieving the court's administrative burden in assigning attorneys and processing vouchers, typical in a rotational system of providing indigent defense.

<sup>11</sup> James R. Neuhard, *The Ten Commandments of Public Defense Delivery Systems*, National Legal Aid and Defender Association.

<sup>12</sup> TFID, *Blueprint*.

<sup>13</sup> American Bar Association, *The Ten Principles of a Public Defense Delivery System*, Resolution adopted February 5, 2002.

<sup>14</sup> U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. *Indigent Defense Services in Large Counties, 1999*, by Carol J. DeFrances and Marika F.X. Litras. November 2000.

<sup>15</sup> TFID, *Blueprint*. TFID continues to provide funding at 60%, 40%, and 20% respectively through the 4<sup>th</sup> year of establishing a public defender office.

<sup>16</sup> Texas Legislative Budget Board, *Financing the Judiciary in Texas Legislative Primer*, January 2007, pp. 17, 24. These figures represent appropriations over a two-year period.