

❖ **THE FAIR DEFENSE REPORT** ❖

**FINDINGS AND RECOMMENDATIONS  
ON INDIGENT DEFENSE PRACTICES IN TEXAS**

**from the**

**TEXAS APPLESEED FAIR DEFENSE PROJECT**

**DECEMBER 2000**

## CONTENTS

Introduction .....	1
The Movement for Indigent Defense Improvement In Texas and the Nation .....	1
Why This Research By the Fair Defense Project Was Necessary .....	3
Methodology .....	5
Findings on Indigent Defense Systems in Texas .....	7
Findings on Indigent Defense Representation in Non-capital Felonies and Misdemeanors .....	7
Findings on Representation of Indigent Defendants Charged with Capital Offenses .....	17
Findings on Representation of Indigent Defendants With Mental Illness .....	21
Findings on Representation of Indigent Juveniles In Juvenile Court .....	26
Recommendations to Improve Indigent Defense in Texas .....	28
Appendix A: Texas Appleseed Fair Defense Project Counties in the On-Site Research Sample	
Appendix B: Texas Office of Court Administration Summary of Survey Results Indigent Criminal Defense Expenditure Survey for County FY 1999.	
Appendix C: Comparison of State Indigent Defense Expenditures	
Appendix D: Indigent Defense Representation in Capital Cases: A State by State Comparison	

**Fair Defense Investigative Team:**

Robert Spangenberg, Principal Investigator  
The Spangenberg Group

Marea Beeman, Vice President  
The Spangenberg Group

Bill Beardall, Fair Defense Project Director  
Texas Appleseed

Catherine Schaeffer  
The Spangenberg Group

Rangita daSilva  
The Spangenberg Group

Bill King  
The Spangenberg Group

Jenny Carroll  
Texas Appleseed

Amy Chen  
Texas Appleseed

**Community Involvement Team:**

Dominic Gonzales, Director  
Texas Appleseed

**Capital Defense Investigative Team:**

Raoul D. Schonemann, Principal Investigator  
Schonemann, Rountree & Owen

Robert C. Owen  
Schonemann, Rountree & Owen

John Niland  
Texas Defender Service

Meredith M. Rountree  
Schonemann, Rountree & Owen

**Mental Health Investigative Team:**

Chris Siegfried, Principal Investigator  
National Mental Health Association

**Juvenile Investigative Team:**

Cathryn E. Stewart, Principal Investigator  
Northwestern University School of Law

Gabriella Celeste  
Juvenile Justice Project of Louisiana

Ellen Marrus  
Southwest Juvenile Defender Center

Ilona Picou  
Southern Juvenile Defender Center

Patricia Puritz  
American Bar Association Juvenile Justice  
Center

David Utter  
Juvenile Justice Project of Louisiana

Forrest Deegan  
Texas Appleseed

Jessica Chapman  
Texas Appleseed

**With Additional Assistance From:**

Annette LoVoi, Executive Director  
Texas Appleseed

Malikah Gourrier  
Southwest Juvenile Defender Center

Stephanie Paul  
University of Houston Law Center

Jelpi Picou  
Louisiana Indigent Defense Assistance Board

Rosie Smith  
Southern Poverty Law Center

**Texas Appleseed** is a nonprofit, nonpartisan public interest law center organized to build social and economic fairness in Texas by providing an effective voice for individuals and groups that otherwise are unable to obtain adequate representation in the legal process. Texas Appleseed works through attorneys and civic leaders to achieve systemic improvements that promote the equal administration of justice, ensure the fair allocation of public resources, and advance the interests of social, economic and political equity.

Gregory Huffman, *Administrative Chair*  
Thompson & Knight, P.C.\*, Dallas

Annette LoVoi, *Executive Director*

J. Chrys Dougherty, *Administrative Vice Chair*  
Graves, Dougherty, Hearon & Moody, P.C.\*, Austin

Bill Beardall, *Legal Director*

Allan Van Fleet, *Administrative Vice Chair*  
Vinson & Elkins, LLP.\*, Houston

Dominic Gonzales, *Community  
Involvement Director*

\*affiliations listed for purpose of identification

Texas Appleseed  
512 E. Riverside Drive, Suite 212  
Austin, Texas 78704  
tel. (512) 804-1633  
fax (512) 804-1634  
[www.appleseeds.net/tx](http://www.appleseeds.net/tx)

© 2000, Texas Appleseed. All rights reserved. Any reproduction of the material herein must credit Texas Appleseed. The Fair Defense Report: Finding and Recommendations on Indigent Defense Practices in Texas - is available for free from Texas Appleseed at [www.appleseeds.net/tx](http://www.appleseeds.net/tx)

This report and the analysis of indigent defense systems in Texas being conducted by the Texas Appleseed Fair Defense Project are supported by a grant from the Center on Crime, Communities and Culture and the Program on Law & Society of the Open Society Institute. Additional generous support has been provided by The Arca Foundation, the Hogg Foundation for Mental Health, the National Mental Health Association, the Public Welfare Foundation, the Southern Poverty Law Center, the State Commissions Project (a project of the American Bar Association Bar Information Program and the U.S. Department of Justice, Bureau of Justice Assistance), and the Appleseed Foundation. Special thanks are also due to the Texas Appleseed officers and board of directors who have given their time and legal expertise to the project.

# INTRODUCTION

This report contains findings and recommendations from the most comprehensive study ever conducted of county-level indigent defense practices in Texas. Previous research and investigation by others have demonstrated that serious indigent defense failures occur in the state with alarming frequency. Where these previous reports can be viewed as identifying the symptoms of the malady affecting many Texas indigent defense systems, the research done by Texas Appleseed Fair Defense Project diagnoses the underlying causes of those symptoms and identifies potential cures. By comparing and evaluating the many different indigent defense systems found across the state, we have been able to clarify many of the structural weaknesses which result in substandard indigent defense. Just as important, we have been able to identify strengths within some Texas indigent defense systems. These strengths can serve as basis for building a healthier approach to indigent defense throughout the state.

Most important of all, we have encountered a large body of individual lawyers, judges, administrators, county commissioners, legislators, reform advocates and organizations representing the affected communities all willing to take part in an ongoing process to improve indigent defense in Texas. In particular, throughout the course of our extensive site work in connection with this study, we met with cooperative and dedicated professionals, many of whom are doing their best to see that justice is served, under less than ideal circumstances. We are optimistic that these individuals will join a growing groundswell of support working toward a better system of indigent defense in Texas. The recommendations outlined in this report are concrete steps which we believe should be considered and implemented by policy makers and criminal justice advocates who seek to improve indigent defense in Texas.<sup>1</sup>

## THE MOVEMENT FOR INDIGENT DEFENSE IMPROVEMENT IN TEXAS AND THE NATION

During the 1999-2000 period, the procedures used in Texas to provide defense counsel to indigent criminal defendants became the subject of vastly increased attention from the judiciary, the bar, the legislature, the media, researchers and the general public. In part this attention was driven by court decisions and media reports which spotlighted severe examples of inadequate indigent

---

<sup>1</sup> Additional background detail and reference data about indigent defense in the U.S., in Texas and in Texas counties will be found in the forthcoming Fair Defense Reference Report which is designed to accompany these findings and recommendations with further specific examples and technical detail.

defense counsel appointed to represent certain defendants in Texas trial proceedings.<sup>2</sup> But in addition to this anecdotal evidence there have been a growing number of reports which have raised serious questions about the overall quality of indigent defense procedures in Texas.<sup>3</sup> These developments have led to calls for indigent defense reform from many diverse quarters.<sup>4</sup>

Another factor giving impetus to the current scrutiny of indigent defense practices in Texas is a larger nationwide movement to improve indigent defense, especially in states where indigent defense procedures have not received adequate attention in many years. States which in just the last few years have started or completed programs to improve and modernize their indigent defense systems include: Alabama, Arkansas, Georgia, Indiana, Kentucky, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, Oregon, Tennessee, Vermont and West Virginia. Many other states have upgraded their indigent defense systems over the last 15 years. These upgrades involve an infusion of state funds, as well as the promulgation and enforcement of attorney qualification, performance, training, and other standards. As of 2000, indigent defense costs in 23 states are 100% state-funded at the trial level; counties in these 23 states have no indigent defense funding responsibility at all. In another five states, the states provide at least 75% of all indigent funds at the trial level. Nationwide, with very few exceptions, states with 100% state funding or predominant state funding have supported stronger support for their indigent defense budgets over time. This is due to several factors, including the greater authority and flexibility states have in their taxing policies, the wider variety of state revenue sources, and the state's ability to fund programs in both rich and poor counties to assure greater uniformity in services. In addition most of the states which have moved to state funding have accompanied that move with the development of some form of state oversight

---

<sup>2</sup> E.g., *Burdine v. Johnson*, 66 F.Supp.2d 854 (N.D. Tex. 1999); *Judge Says Inmate Wrongly Convicted*, Howard Swindle and Dan Malone, DALLAS MORNING NEWS (September 10, 2000); *Texas Case Highlights Defense Gap*, Steve Mills, CHICAGO TRIBUNE (June 19, 2000) at p. 1; *Judge Frees Texas Inmate Whose Lawyer Slept at Trial*, NEW YORK TIMES (March 2, 2000); *Man Freed After 13 Months in Jail*, Dallas Morning News article on Felipe Rodriguez *Death Penalty in Texas Case is Overturned, Citing Lawyer*, NEW YORK TIMES (August 31, 2000).

<sup>3</sup> E.g., *Muting Gideon's Trumpet: The Crisis in Indigent Defense in Texas*, STATE BAR OF TEXAS COMMITTEE ON LEGAL SERVICES TO THE POOR IN CRIMINAL MATTERS (September 22, 2000), *A State of Denial: Texas Justice and the Death Penalty*, TEXAS DEFENDER SERVICE (October 2000) (Chapter Six: The Right to Counsel in Texas: You Get What You Pay For).

<sup>4</sup> E.g. *Judges' Resolution Seeks Upgrade of Legal Defense for the Poor in Texas*, FORT WORTH STAR-TELEGRAM (September 27, 2000); *Texas Needs to Provide More Competent Lawyers*, Editorial - Dallas Morning News (September 12, 2000); *Muting Gideon's Trumpet: The Crisis in Indigent Defense in Texas*, STATE BAR OF TEXAS COMMITTEE ON LEGAL SERVICES TO THE POOR IN CRIMINAL MATTERS (September 22, 2000); *Texas Needs to Provide More Competent Lawyers*, Editorial - Dallas Morning News (September 12, 2000); *The Cost of Poor Advice*, TIME at 36 (July 5, 1999).

and accountability through state agencies responsible for assuring the efficiency and quality of representation.

The national scope of this trend was emphasized in 1999 and again in 2000, when the U.S. Department of Justice, Office of Justice Programs convened two national symposiums on indigent defense. The symposiums brought together delegations of criminal justice leaders and policy makers from states across the nation to explore innovations and trends affecting the provision of legal services to poor people facing criminal charges. The program at both symposiums highlighted ways in which indigent defense providers and criminal justice agencies throughout the country are actively improving the fairness, reliability and integrity of their varied indigent defense systems. This national assessment of indigent defense practices can be expected to advance further when the U.S. Department of Justice publishes its forthcoming Compendium of State Indigent Defense Standards. This state-by-state comparison of indigent defense procedures will help states assess where they stand in relation to the rest of the country and enable them to build upon one another's efforts.

## **WHY THIS RESEARCH BY THE FAIR DEFENSE PROJECT WAS NECESSARY**

There is a widespread impression that Texas has one of the least fair and least efficient approaches to indigent defense in the nation. While many might contest this view, it is uncontested that the state of Texas does not conduct the kind of oversight, monitoring or systematic data collection which would enable anyone definitively to refute the claim. Indeed this very lack of information and self-assessment is itself a serious flaw in the Texas approach to indigent defense.

The problems caused by this information vacuum are compounded by the fact that Texas does not have a single "indigent defense system" in the sense of a coherent and consistent scheme built around unifying standards or principles. Rather legal representation for indigent criminal defendants in Texas is provided under independent systems that have evolved separately in each county, with little oversight or guidance from the state – and with no State funding. As a result there is an extraordinary variety of *different* indigent defense procedures utilized in the 254 different counties in Texas - including even differences among courts within the same county. We found that judges, administrators and practitioners in one county rarely have much familiarity with the local indigent defense procedures used in other counties. In fact they often have little or no familiarity with the practices in other courts within their own county, outside of those courts where they sit or practice. Without comprehensive, systematic information available about all these different local procedures it is not possible for anyone to fully evaluate the operation of indigent defense in Texas. Until now, the lack of information has made it difficult not only to assess the weaknesses in Texas indigent defense systems, but also to assess strengths where they exist. This in turn has been a severe obstacle to efforts to improve indigent defense in the state.



This study of Texas' indigent defense systems is important not only as a vehicle for improving the system, but also as a step toward establishing greater public accountability for the efficient expenditure of indigent defense funds in the state. It is estimated that Texas taxpayers pay between \$90 million and \$100 million dollars a year to support the current patchwork of indigent defense systems across the state.<sup>5</sup> While this is a low expenditure compared to what most other states spend per capita on indigent defense, it still represents a very large sum of public funds. The public has a right and need to know precisely how these monies are being spent, whether they are being spent efficiently and whether they are purchasing the kind of effective defense representation needed to ensure that the resulting outcome is both fair and accurate.

The research conducted by the Texas Appleseed Fair Defense Project was designed as an important next step to assemble a more complete picture of indigent defense systems in Texas counties and to use that information to foster a broad public dialogue aimed at building on the strengths of the current systems while improving on the weaknesses. We do not contend that the findings and recommendations in this report are the last word on the subject. Rather we hope and expect that this report will stimulate additional proposals and recommendations and a vigorous and continuous movement toward potential solutions.

At this moment in time, we have a unique, once-in-a-generation opportunity to modernize indigent defense in Texas. Interest in improving indigent defense is higher now than it has been in decades. The State Bar of Texas Judicial Section recently approved a series of resolutions recommending indigent defense improvements in a number of key areas. The State Bar of Texas Committee on Legal Services to the Poor in Criminal Matters is now working on recommendations after shedding new light on a range of indigent defense problems as reported by the state's criminal defense attorneys, criminal court judges, and prosecutors in extensive statewide surveys conducted by the committee. At the national symposium on indigent defense convened by the U.S. Department of Justice in June of 2000, the Texas delegation was the largest to attend from any state and included representatives from the judiciary, county commissions, the private criminal defense bar, juvenile defense bar, public defender offices and the prosecution. In December of 2000 a statewide Symposium on Indigent Defense in Texas will convene in Austin to discuss ways to improve indigent defense in the state. The information generated by the research of the Texas Appleseed Fair Defense Project and contained in this report was compiled precisely in order to make the most of discussions like those at the Symposium.

---

<sup>5</sup> Even this figure was not available until this year, when the Texas Office of Court Administration undertook a special *ad hoc* survey of individual county expenditures on indigent defense. The Texas Appleseed Fair Defense Project provided advice and consultation to OCA on the scope and methodology of this survey. It is hoped that this survey will prove to be a first step in regular and systematic collection of county indigent defense data by OCA or a similar agency.

## METHODOLOGY

With funding from the Open Society Institute, the Public Welfare Foundation and the State Commissions Project (a project of the Bar Information Program supported by the American Bar Association and the U.S. Department of Justice, Bureau of Justice Assistance), the Arca Foundation, the Southern Poverty Law Center, the Hogg Foundation and numerous individual donors, the Texas Applesed Fair Defense Project has undertaken systematic information gathering and analysis in a representative sample of 23 Texas counties, containing 61% of the state's population. *See Appendix A* for information about the sample counties. The Project studied indigent defense representation in four distinct but related categories of criminal cases:

- Non-capital felony and Class A and Class B misdemeanor<sup>6</sup>
- Capital felony
- Case involving mentally ill defendants
- Juvenile delinquency

To collect this information, the Project spent time in each of the sample counties in order to speak directly with the people who best know the indigent defense system there - the judges, court administrators, county officials, defense counsel and prosecutors who are responsible for the day to day operation of indigent defense in that county and representatives of the affected communities. The researchers conducted hundreds of interviews, reviewed county auditors' data on indigent cases and expenditures, and observed relevant court proceedings. Specialized research teams examined capital defense procedures, juvenile defense practices, and the treatment of indigent defendants who are mentally ill. The capital defense research team collected and examined data on all cases from the 23 counties in which the death penalty has been imposed since 1995. On the basis of all this research, the Project has produced a report containing objective description and analysis which will clarify Texas' multifaceted approach to indigent defense and will contribute to a thoughtful self-assessment.

At the same time, the Project has also launched public education efforts which will increase the public's understanding of how indigent defense works in Texas, why indigent defense is so central to the effectiveness of our criminal justice system, and how the public can become more involved in making indigent defense work fairly and efficiently.

Finally, the Project is actively promoting and participating in a collaborative public dialogue among the various stakeholders in Texas indigent defense. Included among these stakeholders are the judges, prosecutors, defense lawyers and criminal justice administrators who

---

<sup>6</sup> This study did not consider indigent defense representation in Class C misdemeanors for which defendants found guilty face a maximum penalty of \$500 and there is no possibility of a jail sentence. Under federal and state law, indigent defendants charged with Class C misdemeanors are not entitled to appointed counsel.

are charged with direct responsibility for processing criminal cases through the Texas criminal justice system. In addition, Texas Appleseed is working with other important stakeholders to make sure they are involved as well, including: county commissioners courts, public office holders, state bar members, community organizations and members of the public who have an indirect, but no less vital, interest in the fairness and effectiveness of indigent defense systems. Through a conscientious assessment of the many variations among systems, this dialogue may identify and promote some existing models which might be useful to other local communities while also meeting the requirements of the U.S. and Texas Constitutions and Texas state law. Such a dialogue can also encourage innovations which will enable indigent defense to function more efficiently and equitably throughout the state.

The ultimate objective of this research and of the overall Fair Defense Project is to ensure that our adversarial system of criminal justice fairly and efficiently enforces the law, without being skewed to disadvantage the poor. Our entire society benefits when a defendant who cannot afford a lawyer is provided counsel who assures adequate participation in the adversarial system. Not only does this safeguard our collective ideal of equal justice, it also ensures that both the verdict and any sentence are just, final and respected.

# FINDINGS ON INDIGENT DEFENSE SYSTEMS IN TEXAS

The findings below are divided into those related to (1) representation in non-capital felonies and misdemeanors; (2) representation of defendants charged with capital crimes; (3) representation of defendants who are mentally ill; and (4) representation of juveniles charged with delinquency offenses. These findings form the basis for the recommendations made at the end of this report.

## FINDINGS ON INDIGENT DEFENSE REPRESENTATION IN NON-CAPITAL FELONIES AND MISDEMEANORS<sup>7</sup>

1. **There is a complete absence of uniformity in standards and quality of representation among the indigent defense systems in the 23 Texas counties we studied.** We suspect this is equally true statewide among all of Texas' 254 counties. Disparities in indigent defense delivery systems are found not only from county to county but also from courtroom to courtroom in individual counties. Texas does not make counties or courts accountable for their indigent defense procedures either through reporting on their indigent defense programs or through any other form of state oversight.
2. **Lack of judicial accountability is a major problem in most of Texas' indigent defense systems.** The absence of consistent standards, guidelines or oversight means in most counties that each individual judge has largely unfettered discretion over the method for appointing defense counsel, the selection of the individual lawyers and the rate at which lawyers are paid for representing the defendant. Whether the judge uses that discretion wisely or poorly is subject to very little review, control or accountability.
3. **Texas counties are not accountable for the quality or structure of their indigent defense systems.** The absence of consistent standards, guidelines or oversight has allowed

---

<sup>7</sup> As detailed above, this study did not consider indigent defense representation in Class C misdemeanors.

and encouraged most counties to leave critical decisions about the structure of their indigent defense systems to the discretion of individual judges. The result is a patchwork quilt of inconsistent indigent systems over which many county officials feel they have little authority or responsibility.

4. **In most of Texas' indigent defense systems, there are few mechanisms to guarantee that defense lawyers are consistently held accountable for the quality of representation they provide to indigent defendants.** In most counties there are no consistent standards, guidelines or oversight regarding training and experience, caseloads, performance or other facets of effective representation. A great many attorneys do work hard to provide high quality representation and many judges choose to exercise some discretionary oversight of attorneys in their courts. But in most counties this is entirely voluntary and there are no established procedures to guarantee that adequate representation is consistently provided in every case and in every court.
5. **Lack of consistency and accountability result in wide and unjustifiable disparities in the treatment received by indigent defendants and their defense counsel, from county to county and court to court.** The disparities include:
  - Wide differences in how quickly defense counsel is appointed, ranging from a few days following arrest to six months or more.
  - Wide differences in the compensation rate paid to appointed attorneys and hence in the lawyers' incentive to fully represent their clients. For example, in the counties we visited, the standard fee for entry of a guilty plea typically ranges from \$50 to \$350.
  - Wide variations in how courts determine whether a defendant is indigent - and hence whether the defendant even gets appointed counsel at all - especially where the defendant has been able to post bond. Some judges follow the requirements of the law which state that court appointed counsel shall not be denied to a defendant solely because of his ability to post bond. Some judges refuse to appoint counsel for defendants who have bonded out, believing that a defendant who can afford to post bond can afford to hire counsel. Other judges pressure defendants to hire counsel if they are out on bond. In the most extreme situations, we were told some judges revoke bond of defendants who repeatedly show up at court saying they cannot afford an attorney; then, once the defendant is returned to jail, the judge appoints counsel.
6. **The wide and uncontrolled discretion given to judges over attorney selection and compensation at the very least creates the potential for conflicts of interest and the appearance of conflicts of interest.**

- A number of court-appointed attorneys expressed concern that if they were viewed by some judges as zealous advocates -- e.g., they filed several motions in one case or demanded trials -- they ran the risk of being removed from the ad hoc counsel appointment list. Most judges denied these charges and said removal was usually because the attorneys were not competent or because they filed frivolous motions.
  - A number of court-appointed attorneys commented that making political contributions to judges' election campaigns was a requirement for getting on the appointment list. A larger number of attorneys stated that it was not clear to them that contributions were necessary, but they felt a need to make them "just in case."
7. **The majority of judges we spoke with firmly believe that judges should have the exclusive authority to select attorneys for appointment to individual cases and to determine their compensation.** These judges profess they alone can evaluate each attorney's level of experience and qualification to handle certain types of cases. However, in some counties, where judges exercise complete authority over appointments, there is an undeniable appearance of favoritism or cronyism.
8. **District and county courts in Travis county and district courts in Denton county have addressed the problem of attorney selection in a way which both preserves the defense counsel's independence from the judge and allows for judicial supervision of attorney qualifications.** The judges meet as a group to collectively decide which attorneys are qualified to accept certain types of cases, and appointments are made in a blind rotating order from a master list of those qualified attorneys.
9. **Delay in appointing counsel soon after arrest is a pervasive and serious problem in a number of counties we visited, particularly in more rural counties.**
- In some counties defendants can wait in jail from two weeks to more than six months before counsel is appointed. This is a special problem in a few counties in our sample where some felony courts do not appoint counsel until after indictment, even for defendants who are in custody.
  - In many of the 23 counties in our sample, indigent felony defendants who are out on bond are not appointed counsel until after indictment which may take many weeks or months. This deprives the defendant of counsel during the critical initial period when an attorney's investigation is likely to be most productive because evidence is still fresh and witnesses are most easy to locate. In addition, prior to indictment a defense attorney often can provide important forms of representation which become more difficult or irrelevant after indictment.

- In some counties the delay in appointing counsel for defendants who are in-custody for minor felonies and misdemeanors but cannot make bail results in a wasteful expenditure of public tax dollars. These are not defendants who pose a threat to the community. For the most part, they are indigent defendants who will likely be released on personal bond almost immediately after they receive a court-appointed attorney. The county incurs a substantial cost each day to house and feed inmates in jail. A small investment in counsel after arrest could save counties thousands of dollars and may even avoid the prospect of building a new jail. We are certain that these positive fiscal results can be obtained since they have already been achieved in several counties.
  - A further problem was found in several counties where district attorneys are slow in filing cases with the grand jury. Indigent defendants who cannot make bond may ultimately give up their right to an appointed lawyer and plead guilty for time served just to get out of jail, sometimes with the belief that if they wait until they are finally indicted and get an appointed lawyer, they may be sentenced to less time than they have already served.
10. **Some defendants are urged to forego counsel.** We were told that in some counties, especially in misdemeanor cases, when an indigent out-of-custody defendant comes to court for a hearing, they are advised to speak with the district or county attorney to see if they can first “work out a deal” in the interest of “getting on with their lives” without the advice of counsel.
  11. **The process for setting the indigent defense budget varies widely from county to county and is often characterized as a tug of war between the judges and the county commissioners courts.** Many commissioners and county judges feel they have little control over how much is spent and how it is spent by the judges. Many judges feel pressure from the county to maintain strict control over their indigent defense budget. Overall, because of the political and fiscal relationship between judges and commissioners courts, the judges alone cannot be effective advocates for a reasonable indigent defense budget. The result is insufficient funds to adequately pay court-appointed counsel their fees and other appropriate expenses.
  12. **In conjunction with this study, the Office of Court Administration (OCA) agreed to survey each of the 254 counties to determine indigent defense expenditures for FY 1999.** Texas does not ordinarily collect data on indigent defense spending in the state. This is the first time that such a survey was undertaken in Texas. We believe it provides the basis for a reasonable estimate of the cost of indigent defense in the state.  
The subtotal reported statewide were as follows:

## TEXAS COUNTY INDIGENT DEFENSE EXPENDITURES

Legal Representation:	
Assigned Counsel Systems	\$60,417,833
Contract Programs	\$ 4,529,685
Public Defender Programs	\$ 5,987,981
Harris County <sup>8</sup>	<u>\$11,521,801</u>
TOTAL - LEGAL REPRESENTATION:	\$82,457,299

Other Services:	
Investigation	\$ 1,447,734
Interpreters	\$ 953,450
Transcripts	\$ 6,347,628
Experts	\$ 1,028,597
Other	<u>\$ 873,625</u>
TOTAL OTHER SERVICES:	\$10,651,042

**TOTAL LEGAL REPRESENTATION  
& OTHER SERVICES: \$93,108,342**

13. **Based upon the above OCA data, the cost per capita for indigent defense in Texas for FY 1999 is approximately \$4.65, placing Texas near the bottom level of funding for indigent defense in all 50 states.**<sup>9</sup> The state's minimal expenditures on investigative services and expert witness services, at just over and just less than 1 percent of total indigent defense expenditures, respectively, evidence a particularly alarming trend which was confirmed in our site work. Too many attorneys representing indigent defendants in Texas are not requesting and/or not being given access in appropriate cases to basic tools of effective lawyering.

Lack of uniform data reporting methods among counties prevented the OCA survey from collecting indigent defendant caseload data, either statewide or by county. Thus, it is not possible, with the state's current data reporting system, to make accurate comparisons with other states on the average cost per case.

14. **None of the 23 counties we visited provide sufficient funds to assure quality representation to all indigent defendants.** While some counties clearly are better off than others, we did not find any that were adequately funded. This funding shortfall manifests itself in the following ways:

---

<sup>8</sup> Harris County was not able to separate the three programs and instead reported an aggregate figure.

<sup>9</sup> See Appendix B for additional OCA data and Appendix C for indigent defense expenditure data for other states.



- The majority of judges we spoke to pay counsel a flat fee for a particular type of case or event, e.g., \$200 for a guilty plea in a felony case. Others courts compensate attorneys based on a flat fee for each day in court, e.g., \$65 or \$130 per day. As a result, court-appointed counsel are often not paid for the work they perform out of court. Such uncompensated out of court activities include: visiting clients in jail, conducting legal research, and interviewing possible witnesses.<sup>10</sup>
  - When authorized, counsel is frequently subject to a presumptive cap of \$500 for investigators and/or expert witnesses.
  - Many attorneys told us that when they are permitted to submit itemized vouchers for the actual amount of work performed, their compensation claims are routinely reduced.
15. **Major problems were found surrounding requests for investigators or expert witnesses.** Some court appointed lawyers no longer ask for either because their requests have been denied so often in the past. In some instances, judges will only agree on experts selected from their own lists. Some requests can only be made in open court with the possibility that the district attorney may object. A common practice is for judges to approve requests for investigators or experts, but only up to a cap of \$500, which proves to be inadequate in cases, for example, involving a great deal of scientific evidence. Many judges say they will pay more if the attorneys can justify the added expense.
16. **The vast majority of county officials, judges, defense counsel and court administrators agreed that state funding is acutely needed to supplement county indigent defense funding.** Some county commissioners courts in particular tend to feel that even though they would like to improve indigent defense systems, they lack the ability to raise additional revenues without state assistance. Texas is one of only four remaining states which still place the entire burden of trial-level indigent defense funding on the counties.<sup>11</sup>
17. **There is an imbalance of resources between prosecution and indigent defense in Texas.** This imbalance is evident in both available support services, such as investigators and expert witnesses, and compensation paid to defense counsel. The imbalance in available support services limits defense counsel's ability to effectively represent clients. The imbalance in compensation serves as a disincentive to providing zealous representation. In many cases, it is simply not financially feasible for qualified counsel to handle court-appointed cases. The

---

<sup>10</sup> The Harris County fee schedule specifically *excludes* routine jail visits, interviews and telephone calls from attorney compensation.

<sup>11</sup> The others are North Dakota, Pennsylvania and Utah.

imbalance is most prominent when evaluating the in-kind resources available to the prosecution, such as the investigatory services of all local law enforcement agencies and scientific data made available by the state and federal government.

18. **Texas counties rely overwhelmingly on ad hoc assigned counsel systems and there are very few public defender programs.** This stands in contrast to the majority of states which have a mixed system of public defenders and assigned counsel, with most of the large urban areas having a primary public defender system. El Paso County and Dallas County have the only large public defender programs in Texas with approximately 18 and 50 lawyers respectively. Both programs operate as part of mixed public defender and assigned counsel systems. On balance, our review of both the El Paso County and Dallas County public defender systems was positive. In both counties, we heard praise for the current chief public defenders from county commissioners, most judges and many private lawyers.
19. **Although there is considerable interest in many parts of the state in greater use of public defender programs, there are reservations about the logistics of creating additional public defender offices.** Reservations include worry that counties will not be able to adequately fund a public defender office and fears that salaries would be too low and caseloads too high. In small rural counties, there are questions about how to create a viable multi-county defender program. Some of these reservations in part stem from having so few public defender programs in Texas for counties to look to as models. Other counties are deterred by the necessity of obtaining specific legislative authorization to create a public defender system.
20. **In some counties, there is a slow but sure movement toward replacing ad hoc assigned counsel systems with contract lawyer defense systems.** At least eight of the 23 counties we visited have some form of contracting system, in addition to an assigned counsel system and, in a few counties, a public defender system. For many reasons, including the fact that the contracts are entered into by the judge and the attorneys rather than the county and the attorneys, the contracts we encountered do not conform to the American Bar Association's *Standards for Criminal Justice: Providing Defense Services*, Chapter 5 (1990) or the National Legal Aid & Defender Association's *Guidelines for Negotiating and Awarding Indigent Defense Contracts* (1984). Where the contract indigent defense attorney is beholden directly to the judge for his livelihood, it is very difficult to guarantee the attorney's independence or the appearance of independence.
21. **In most of the counties we visited, there are no minimum eligibility criteria for attorneys who wish to accept court-appointed cases.** In some counties, new lawyers are only assigned to relatively uncomplicated misdemeanor cases so they can gain experience before getting assigned to more serious cases. In a number of counties, it is very rare for lawyers to be appointed in any misdemeanor cases unless the defendants are detained pre-

trial. The result is that some new lawyers “cut their teeth” on felony cases, the only appointed cases that are available.

Travis County presents an exception to this practice, as no lawyers are allowed to take even misdemeanor appointments unless they have at least one year of criminal law experience and have served as lead counsel in a minimum of three trials (experience as a second-chair in a felony case may substitute for one misdemeanor trial). Less extensive minimum requirements are found in Harris and Lubbock counties.

22. **In the majority of counties we visited, there are no requirements that attorneys taking court-appointed cases participate in continuing legal education programs in criminal law.** While there is an overall low participation rate in general skills training for defense lawyers, we found even fewer attorneys participate in training in specialty areas, such as working with defendants who have mental illnesses or on the immigration consequences of criminal convictions. Such CLE programs are not as widely available as attorneys need and want. Assigned counsel programs in Harris, Lubbock and Travis counties are exceptions to this.
23. **Defendants who have legally emigrated into the United States need to be advised by counsel familiar with the very serious and specialized immigration consequences of criminal convictions.** It was reported that some judges, prosecutors and attorneys do not fully understand these consequences themselves, or at least do not adequately convey them to defendants.
24. **Many indigent defendants in Texas do not speak English; thus, access to trained professional interpreters is crucial.** Some counties had extensive interpreter services available for indigent defendants appearing in court. Many, however, rely on a variety of non-professionals to come “pinch hit” when a non-English speaking defendant appears in court.
25. **In considering improvements to indigent defense in Texas, it is important to recognize that some problems facing the indigent defense systems in predominantly rural counties differ from those in predominantly metropolitan counties.** For example, in general, delay in indictment and in appointment of counsel in indigent cases is more of a problem in smaller counties. Rural counties sometimes have a scarcity of attorneys who are qualified to handle certain types of cases. There is no one-size fits-all solution to the problems in Texas indigent defense. However there is a great need for state assistance and technical support to help fashion solutions which are tailored to the needs of different size counties.
26. **Prosecutors’ open file policies vary significantly.** The open file policy is designed to streamline the discovery process, and encourage and expedite early disposal in appropriate

cases. Some prosecutors are very cooperative in regard to sharing their case files with defense counsel; others are less so, with the consequence of hindering the efficiency and fairness of indigent defense representation.

27. **While we found many indigent defense practices that concern us, we found a number of practices that deserve favorable mention.** These practices should be reviewed by other counties and by the state to determine whether they form an appropriate basis for improving indigent defense, locally or statewide. Most of these practices were developed to address problems in the local indigent defense or criminal case processing systems.

- In Harris County, within 24 hours of arrest, a defendant charged with a felony or misdemeanor has a probable cause hearing before a hearing officer. Here, the defendant is read his statutory rights and bail is reviewed. Within the following 24 hours, an initial appearance takes place where counsel is appointed for indigent felony and misdemeanor defendants who are in custody, as well as for indigent felony defendants who have bonded out.
- In the early 1990s, Harris County adopted a certification program for attorneys seeking appointments in capital, felony and misdemeanor cases. To qualify for appointment to represent indigent misdemeanor defendants, an attorney must attend a three day seminar on criminal practice in Harris County. To qualify to take appointments for felony defendants, the attorney must attend the seminar and pass a test. An additional course and test on capital defense are required to qualify for appointment in capital cases.
- In Dallas County, pursuant to local district court rule adopted in the early 1990s, if the charging agency fails to file charges within 72 hours of arrest, the defendant is released.
- In Dallas County, a recent decision by the County Commissioners Court, set public defenders salaries in parity with those of district attorneys.
- In Lubbock County, the courts recently enacted local rules for courts hearing criminal matters. One requires that an initial appearance be conducted pursuant to article 15.17 of the Code of Criminal Procedure for all defendants in jail within 24 - 48 hours of their arrest. Another rule provides that an indigent defendant in jail longer than 72 hours is to be appointed an attorney within the next 24 hours.
- In Comal County, if a misdemeanor defendant has been detained for more than a week, the county court at law judge will grant a personal recognizance bond.

- Jefferson County has a very pro-active pre-trial services agency, which has been in place for over 25 years.
- In Travis County, all attorneys who wish to accept court appointments to non-capital cases of defendants who are detained pre-trial must meet certain minimum criteria and attend at least 10 hours of criminal CLE each year. In the vast majority of indigent defendant cases, counsel is not appointed by judges sitting in the individual cases. Rather, new appointments are made in alphabetical order off lists of qualified lawyers maintained by the Criminal Courts Administration Office. To ensure that the lawyer has the expertise to handle the cases to which she is appointed, the Criminal Courts Administration Office maintains several lists, including a misdemeanor list, a felony list, and an appeals list. The felony list is divided into three tiers. Those attorneys on the A list are deemed qualified to accept first degree felonies. Those on the B list can accept second and third degree felonies, while those on the C list are eligible to accept state jail felonies and probation revocations.

The county and district criminal court judges meet twice a year to review attorney applications to be on one of the lists or to move up a category. The judges must agree that each attorney meets the qualifications and skill level to handle cases in the category for which she has applied. The judges may also remove an attorney from one of the qualification lists. The judges maintain the ability to make specific appointments for particular cases, but they only exercise it in about 10% of all indigent defendant cases. Typically appointments of attorneys are only made directly by judges in the uncommon cases where a defendant who has posted bond appears at court and requests appointed counsel.

- El Paso County's Criminal Law Magistrate Court at the county jail has jurisdiction over offenses allegedly committed in all parts of the county, save one town. The Jail Magistrate is a central figure in the County's efforts to expedite the processing of cases in which defendants are detained pre-trial. The jail magistrate: makes probable cause determinations for the issuance of arrest warrants and for individuals who have been detained following arrest without a warrant; sets bonds for individuals detained in the jail; appoints counsel for indigent defendants in the jail; informs defendants of their *Miranda* rights and other admonishments required under Texas laws; and conducts examining trials. This procedure ensures prompt appointment of counsel for indigent defendants held in custody, typically within two to seven days.

## FINDINGS ON REPRESENTATION OF INDIGENT DEFENDANTS

### CHARGED WITH CAPITAL OFFENSES

28. **Texas’ regional qualification standards for capital defense counsel are insufficient to guarantee appointment of lawyers with the necessary high levels of skill and expertise.** Texas’ regional standards for appointment of counsel are generally not stringent enough to guarantee that only the most highly qualified attorneys will be appointed in death penalty cases. In seven of the nine regions, an attorney with as few as five years experience practicing criminal law may be qualified to be appointed lead counsel in a death penalty trial. In those regions that have established separate standards for appointment of second chair counsel, almost any criminal defense lawyer with minimal professional experience will qualify. Our impression that the regional qualification standards are insufficiently strict was confirmed by trial judges and experienced defense lawyers who told us that the lists include attorneys who do not have the degree of skill and expertise necessary to represent defendants in death penalty cases.
29. **Appropriately skilled and experienced capital defense lawyers are unequally distributed around the state.** We found that most of the well-qualified and experienced criminal defense lawyers are concentrated in the major metropolitan areas, with some smaller counties wholly lacking attorneys with the necessary skills or expertise to represent defendants in capital cases.
30. **The adequacy of attorney compensation varies dramatically from county to county, with the vast majority of counties failing to provide sufficient compensation to enable capital defense counsel to “break even” and cover basic overhead expenses.** Texas law requires courts to pay “a reasonable attorney’s fee” for time spent in court on behalf of the defendant, for “reasonable and necessary” time spent out of court preparing the case, and for preparation of an appellate brief to the appeals court. Other than this broad admonition, however, Texas law provides no further guidance to judges about what constitutes a “reasonable” fee. It is important to repeat that under state law, it is the individual judge who determines each fee and not the county. As a result, the adequacy of attorney compensation in Texas varies dramatically from county to county – and even from judge to judge within a given county – with the vast majority of counties failing to compensate attorneys even sufficiently to cover basic overhead costs.

31. **Severe limitations or “caps” on compensation create financial incentives for counsel to “cut corners” in the representation; conscientious counsel have to subsidize the representation from their own pockets.** In a number of counties a number of judges in a significant number of cases impose limits or “caps” on the number of hours of “out-of-court” investigation and trial preparation work for which appointed counsel may be compensated. Limiting the number of hours of out-of-court work for which appointed counsel may be paid results in compensation at intolerably low rates; in one case, for example, counsel was compensated for only 60 of the 346 hours of out-of-court work he performed, amounting to an hourly out-of-court rate of \$6.94 an hour.
32. **Caps on out-of-court compensation - even if discretionary with the court -- have a “chilling effect” on pre-trial preparation and investigation.** We found reason to believe that presumptive caps on out-of-court compensation discourage at least some lawyers from investing any more time and effort in the case than the maximum amount that will be compensated by the court; thus, in counties that impose a cap on out-of-court compensation, we found a number of cases where the amount of documented out-of-court work closely approximated the maximum number of hours compensated under the cap.
33. **Counsel appointed in Texas capital cases spend a significantly sub-average amount of time preparing for trial, relative to national benchmarks.** Texas defense attorneys performed significantly fewer total hours of work than their peers in capital cases elsewhere, averaging about 400-600 total hours per case, in contrast to higher numbers reported in recent, reliable studies from other jurisdictions (e.g., Indiana, which reported 1,050 hours per case from 1989-1995, or the federal system, averaging 1,880 total attorney hours per capital case from 1990-1997).
34. **Some counties employ fixed fixed or “flat” fee compensation arrangements (i.e., a pre-set fee for the entire case regardless of the number of hours of work actually performed), which have been expressly disapproved by the American Bar Association.** These flat fee schemes are disfavored because they create an unacceptable risk that appointed counsel will limit the amount of time invested in the representation in order to maximize the return or minimize any potential loss on the fixed fee.<sup>12</sup> Moreover, because counsel working for a “flat fee” is not required to document her actual work in those counties that employ a flat fee compensation system, it is impossible for the court or the

---

<sup>12</sup> The counties in our research sample where flat fees are used to compensate capital trial counsel include Harris County and Grimes County. However, Harris County alone accounts for a very large proportion of the death sentences imposed each year in Texas.

public to monitor or review the quantity of effort expended by defense counsel, resulting in a lack of oversight and accountability.

35. **Despite the existence in most counties of formal fee schedules setting rates of pay, judges retain and exercise broad discretion to cut documented fee requests which accord with published fee schedules, paying counsel for a fraction of their time.** Because no mechanism exists for reviewing the reasonableness of such decisions, trial judges remain unaccountable for the degree of care with which they discharge this important duty. Moreover, unfounded judicial decisions to reduce reasonable fee requests adversely affect the quality of attorneys willing to accept appointment, and may contribute indirectly to eventual reversals of death verdicts in post-trial proceedings.
36. **Defense counsel's use of investigative and expert assistance, both of which are seriously underfunded, does not comport with the applicable national standard of practice.** The total amounts which appear to have been paid by various courts in our sample counties for investigative and/or expert services give rise to fundamental doubts whether most Texas attorneys defending capital cases are meeting the national standard of practice in this area, which demands that counsel conduct an extensive pretrial social history investigation to uncover all potentially relevant facts about the defendant's life and his involvement in the offense. This type of comprehensive, time-consuming investigation is not simply logistically complex, but requires specialized skills and training which very few working investigators in Texas possess. Texas lawyers' under-utilization of such services is likely due to inadequate specialized training and experience regarding the comprehensive roles experts and investigators are expected to play in capital trials, especially at the punishment phase and the unavailability of adequate funds to obtain them.
37. **It also appears that many Texas district judges resist granting funds sufficient for defense counsel to obtain the type and extent of expert assistance which is demanded by the applicable national standard of practice, despite the fact that the prosecution has routine and unconditional access to such expert assistance through its own resources.** Defense counsel thus sometimes must resort to experts who are not appropriately qualified or whose impartiality may fairly be questioned due to their ongoing relationship with the local prosecutors, law enforcement, or courts.
38. **As a consequence of chronically inadequate funding for such investigation, properly qualified capital defense investigators in Texas increasingly choose to work in other jurisdictions (e.g., other states or the federal system) where fair compensation is assured.**



39. **Among all the states which actively impose the death penalty, Texas is the only state in which capital cases are defended almost exclusively by members of the private bar rather than by public defender programs or some combination of private counsel and public defenders or capital trial support units.** *See*, Appendix D. The absence of such programs, at least as an adjunct to private appointed counsel, has several far-reaching consequences. Among other things, lack of such support increases the cost of capital defense for the counties and lowers the quality of representation. Currently, most attorneys who defend death cases are private attorneys with small practices, often solo practices, with no particular expertise in capital litigation at the outset of their representation. If death cases were handled solely by a cadre of trained specialists, certain costs (such as legal research) would be spread over a number of cases, and thus the cost of providing meaningful representation in death cases would probably decrease. A 1990 survey of capital trial lawyers in six Southern states, including Texas, found “near unanimity” supporting the use of specially trained lawyers to handle death penalty trials.<sup>13</sup>
40. **The practicality and efficiency of a capital support unit have been demonstrated in other jurisdictions, such as Oklahoma, Louisiana, Kentucky, and Georgia, which have created such specialized capital defense offices.** These units staff some cases in their entirety, but in many cases one lawyer from the statewide capital trial office serves as co-counsel, teaming up with local counsel from the community where the case will be tried. This permits the statewide office to assist in a significantly larger number of cases than it could handle exclusively on its own. The practice gives local counsel access to extensive specialized knowledge and experience, while preserving for the defendant the advantages of local counsel’s familiarity with the community, the prosecutor’s office and other law enforcement agencies, and the potential jury pool. For example, the office could conduct specialized training programs across the state to enhance the quality of capital defense representation. A statewide capital trial defense office could also contribute greatly to solving the acute shortage of appropriately trained and experienced capital defense investigators in Texas. The office could maintain a regularly updated database of experts of all types, to which local appointed defense counsel could have ready access. In these ways, an adequately funded statewide capital trial defense office could help meet the statewide need for specialized training programs and expert and investigative assistance in capital cases.
41. **Our research indicates that many of the decisions being made by Texas trial judges about funding for defense services in capital cases (whether for attorneys’ fees, investigation, or experts) are affected by pressure they feel about costs.** Under the

---

<sup>13</sup> Douglas W. Vick, *Poorhouse Justice: Underfunded Indigent Defense Services and Arbitrary Death Sentences*, 43 Buff. L. Rev. 329, 372 n. 181 (1995) (citation omitted).

current system, all costs associated with funding indigent defense services are borne exclusively by the local (county) government. This is true both in large urban counties (with large budgets), and in smaller counties with fewer resources. Making financial considerations dispositive in determining what services to provide a defendant on trial for his life is unfair and short-sighted.

## FINDINGS ON REPRESENTATION OF INDIGENT DEFENDANTS WITH MENTAL ILLNESS

42. **There are a variety of ways that a defendant’s mental illness and/or mental retardation can impact his or her legal defense and the disposition of a case within the criminal justice process.** For example, mental illness can impair a defendant’s reasoning, volition, comprehension, memory, judgment and emotions. It can interfere with the ability to work and function independently, to appropriately interpret and respond to situations, and to make decisions.
  
43. **Interviews conducted around the state revealed that many defense attorneys, prosecutors and judges seem to have a very limited interest in or awareness of the effect that mental illness may have on legal proceedings or a defendant’s ability to participate in his/her own defense.** Most often when asked about mental illness, judges and attorneys refer solely to issues of competence to stand trial. Yet competence issues are relevant in only a very small number of criminal cases, including only a small proportion of cases in which the defendant suffers from mental illness. Some attorneys and judges think mental illness is synonymous with mental retardation.
  
44. **Attorneys’ and judges’ lack of familiarity with mental illness just mirrors the lack of public understanding and awareness of mental illness generally.** People who have mental illness are frequently thought to be untruthful, unpredictable, or more violent than others. Not only does this stereotype disadvantage people as defendants but also as witnesses in the courtroom. Many defense attorneys reported that juries tend to think the use of mental illness as a defense or in mitigation of punishment is “hocus pocus.” A judge who conducts competence hearings for other courts said, “A significant percentage of jurors have a problem with mental illness. They have a preconceived notion that people are just trying to ‘get off.’ It is difficult for them to understand. Lawyers need to go into the voir dire (interview of possible jurors) very carefully.”

45. **A significant number of judges, defense lawyers and court administrators recognize the serious challenge which mental illness presents in indigent defense representation, but feel they lack the expertise, training and support services to adequately deal with that challenge.** Most indigent defense systems we investigated experience serious deficiencies related to: (a) identification of mentally ill defendants; (b) attorney qualifications and training; (c) handling of competency proceedings; (d) use and availability of mental health experts; (e) mitigation and sentencing alternatives for mentally ill defendants, as further specified below.

46. **Common Indigent Defense System Deficiencies Related to Identification of Mentally Ill Defendants**

- Attorneys, prosecutors and judges lack familiarity with the variety of ways that a defendant's mental illness can impact the legal process and the fair administration of justice.
- Often the pressure of moving cases off the court docket quickly supersedes efforts to get a defendant's mental illness identified.
- Information collected on a defendant's mental illness during the arrest, incarceration and pre-trial phases of the justice process is not routinely shared with attorneys and judges. Texas law allows information to be shared between mental health professionals and officers of the court to benefit the defendant.
- Attorneys appear to be doing little pre-trial work or work to reduce the length of stay of defendants with mental illness behind bars.

47. **Common Indigent Defense System Deficiencies Related to Attorney Qualifications and Training for Attorneys and Judges to Represent Mentally Ill Defendants**

- Few attorneys have received any training or have any special qualifications for representing mentally ill or mentally retarded defendants.
- Few judges have received sufficient training or have access to training about dealing with mentally ill and mentally retarded defendants or about appropriate diversion options and sentencing alternatives which could reduce recidivism among mentally ill defendants.

- Many attorneys lack awareness of Texas statutes enacted in the last ten years to assist in identifying, diverting, and treating offenders with mental illness.
- Most jurisdictions we examined do not comply with the Texas law requiring magistrates to release on bond certain mentally ill detainees who have committed minor offenses and most attorneys and judges appear to be unfamiliar with that law.<sup>14</sup>
- In several jurisdictions, include Bexar, Dallas and Tarrant Counties, some efforts are underway to improve the skills of attorneys and judges at recognizing and responding to mental illness.

48. **Common Indigent Defense System Deficiencies Related to Competency Determinations for Mentally Ill Defendants**

- Many attorneys and judges believe that competency evaluations are too time consuming and expensive to conduct for misdemeanants. Some judges discourage the filing of motions for competency evaluations.
- Only a few mental health professionals are being used for competency work in most jurisdictions. Some of these professionals have reputations and records of favoring the state, but few attorneys request other experts.
- Some jurisdictions use the same mental health professionals who provide treatment to indigent defendants in the jail to provide consultation and court testimony, creating the potential for conflicts of interest.
- The quality of some competency reports to the court are incomplete and substandard.
- Texas competency statutes are complex and cumbersome, especially for inexperienced attorneys and juries.

---

<sup>14</sup> Article 17.032, Texas Code of Criminal Procedure

- Some defendants cycle back and forth for months or years between jails, courts and state hospitals trying to attain competence to stand trial on charges. Some remain locked up in state locked up in state facilities far longer than they would have if they had pleaded guilty to the offense and been sent to prison.

49. **Common Indigent Defense System Deficiencies Related to Competency Determinations for Mentally Ill Defendants**

50. There are many occasions when it would be appropriate to use mental health experts for mitigation or sentencing work related to serious felonies, some kinds of sex offenses, non capital murder, other homicide offenses, and other violent offenses.
51. In most jurisdictions, however, indigent defense attorneys almost never request a mental health expert in non-capital cases except for competence issues and, except for competence, courts almost never appoint one.
52. The \$500 cap on expert fees in most jurisdictions appears to be one factor deterring use of mental health experts.
53. Another factor which hinders attorneys' use of mental health experts is the difficulty of locating and evaluating an independent expert. Many attorneys said they would need help finding a mental health expert. Typically they are forced to draw from the same small pool of professionals used regularly by the courts in competency matters, the pool also used by prosecutors, which often consists of doctors with records and reputations for favoring the prosecution.
54. The skills and knowledge required of experts for other matters, such as mitigation, may be quite different from skills needed to evaluate competence or sanity, and indigent defendants may be better served by an expert with more specialized knowledge and training than the traditional county psychiatrists who handle competency evaluations.

55. **Common Indigent Defense System Deficiencies Related to Mitigation and Sentencing Alternatives for Mentally Ill Defendants**

- Few court-appointed attorneys seem to work to develop appropriate mitigation evidence or sentencing alternatives for indigent defendants.
- No jurisdiction studied had a centralized place to assist defense attorneys locate community programs, treatment, and residential alternatives that could serve as alternatives to incarceration.
- Inappropriate court dispositions are commonly made for defendants with both a mental illness and substance abuse problem.
- The fast-paced plea bargain process for misdemeanants found in some counties may not serve the longer-term interests of the defendant to keep from re-offending.
- There are some indications that mentally ill defendants remain incarcerated for longer periods of time than do other defendants.

**FINDINGS ON REPRESENTATION OF  
INDIGENT JUVENILES IN THE JUVENILE COURTS<sup>15</sup>**

56. Texas lacks a uniform and consistent system for providing representation to juveniles who can't afford to hire an attorney. Each county determines its own approach as to how and when a minor receives counsel. There are no guiding standards common from one jurisdiction to the next.

---

<sup>15</sup> The findings and recommendations from the Fair Defense Project study of juvenile defense are also available in greater detail in *Selling Justice Short: Juvenile Indigent Defense in Texas*, TEXAS APPLESEED FAIR DEFENSE PROJECT (October 2000) [www.appleseeds.net/tx](http://www.appleseeds.net/tx).

57. The process of appointing counsel to represent juveniles is fraught with numerous disincentives to effective attorney advocacy. Compensation rates are very low and attorneys are rarely compensated for out-of-court work. In some counties, courtroom cultures and the compensation rate structures contribute to excessively quick dispositions.
58. There are some juvenile courts that do attempt to provide children with prompt, competent counsel who represent their clients conscientiously and vigorously. However, there are no common standards, guidelines or oversight procedures to ensure that this is the norm in every court.
59. Many children have court appointed attorneys who lack expertise in the area of juvenile law. Many counties fail to provide sufficient training, resources and support services.
60. Many judges feel pressured by the county to control their budgets and to move cases quickly. Many attorneys report feeling unduly pressured to process cases quickly.
61. In the vast majority of cases, the juvenile client and his attorney meet for the first time only minutes before the child first appears before the judge on the delinquency charge. These meetings often occur in the courtroom or hallways. In some counties, it is common for the juvenile to enter a plea of guilty at this first court appearance.
62. There is very little advocacy at disposition (sentencing) hearings. Attorneys rarely seek, or are provided with, experts with whom to consult regarding the rehabilitative, educational or mental health needs of juveniles. Instead, attorneys rely almost exclusively on probation officers for dispositional recommendations and rarely present the court with alternative plans.
63. The role of probation officers varies significantly across jurisdictions. In a majority of the counties visited, the probation officers assume, to varying degrees, what is traditionally defined as prosecutorial and/or defense attorney functions.
64. In every jurisdiction visited, attorneys, judges and probation officers agree that there are insufficient pre and post dispositional services.
65. Children often do not understand their legal rights and the existing procedures fail to provide most juveniles with adequate representation at certain critical stages of the juvenile justice process.

## **RECOMMENDATIONS**

### **TO IMPROVE INDIGENT DEFENSE SYSTEMS IN TEXAS**

1. In September 2000, the Judicial Section of the State Bar of Texas adopted a resolution setting forth recommended policies and procedures to achieve the goal of quality representation to indigent persons involved in criminal matters. We support four of the Judicial Section's recommendations, which read:
  - The appointment of criminal defense counsel for indigent defendants and the amounts paid to counsel should be reported to an appropriate state agency.
  - Appointment procedures should be reduced to writing and copies sent to an appropriate entity for dissemination.
  - Minimum standards for proficiency in criminal law should be established in each local jurisdiction as a prerequisite to eligibility for placement on a list of attorneys eligible for appointments.
  - Funding for appointed counsel and related services should be appropriated by the Texas Legislature from state funds, and the Legislature should adopt compensation standards.

We also support finding 2 of the Judicial Section resolution, which addresses timing of appointment of counsel for defendants in custody, except we believe the recommended 20-day maximum time to appointment should be reduced to 3 days from the time of arrest.

2. The State Legislature should require that counsel be appointed to indigent defendants promptly following arrest. Delay in appointment of counsel to indigent defendants has been recognized by a number of legal groups in the state, including the Committee for Indigent Defendant Representation of the Judicial Section of the State Bar of Texas, as a serious



problem. We recommend that counsel be appointed to all indigent defendants within 72 hours of arrest or detention. We recognize that it may be difficult in smaller counties to meet this standard in the short term. Therefore, we urge that appointment be required within 72 hours, unless circumstances documented in writing show this to be impossible. In that case counsel should be appointed within at least 10 days of arrest or detention and affirmative steps should be taken by the state to assist the county in developing a process to ensure appointment of counsel within 72 hours. Counsel should be provided within this time frame to all indigent defendants, whether they are in custody or released on bond.

3. Each county should, in consultation with the judiciary, the defense bar and appropriate members of the community:

- Adopt a consistent system or mix of systems for providing indigent defense in the county.
- Establish minimum qualification standards for *ad hoc* assigned counsel, contract counsel and public defenders in misdemeanor, non-capital felony, capital felony, and juvenile cases.
- If it elects to use a contract defense system as all or a part of its indigent defense services delivery system, a court should comply with the American Bar Association's *Standards for Criminal Justice: Providing Defense Services*, Chapter 5 (1990) and the National Legal Aid & Defender Association's *Guidelines for Negotiating and Awarding Indigent Defense Contracts* (1984).
- Review court-appointed fee schedules on a biannual basis.
- Offer incentives and opportunities to attend criminal practice continuing legal education training seminars, including topics such as criminal implications of immigration law, representation of mentally ill defendants and preserving the record for appeal - three particularly weak practice spots we identified during our site work.
- Establish consistent, objective standards and procedures for determining whether defendants who are in custody or out on bond, are indigent and thus eligible for appointment of counsel.

4. The state should provide technical assistance and financial support to help counties meet the objectives outlined in Recommendation 3.
  
5. A state-funded, statewide indigent defense oversight entity should be established during the 2001 state legislative session. This entity should be a component of the judicial branch of Texas state government (possibly within the Office of Court Administration), and should be charged with the following responsibilities:
  - Providing financial assistance and technical support to help counties improve their indigent defense systems.
  
  - Establishing statewide minimum qualification standards for ad hoc assigned counsel, contract counsel and public defenders in misdemeanor, non-capital felony, capital felony, mental health and juvenile cases. These standards should set minimum thresholds for the experience levels of appointed attorneys based upon the seriousness of the offense
  
  - Establishing statewide standards for contracting for indigent defense services. These standards should comply with the American Bar Association's *Standards for Criminal Justice: Providing Defense Services*, Chapter 5 (1990) and the National Legal Aid & Defender Association's *Guidelines for Negotiating and Awarding Indigent Defense Contracts* (1984).
  
  - Establishing statewide minimum standards for determining indigency of defendants and compensation of counsel.
  
  - Collecting standardized indigent defense data to from each county. In order to make informed decisions about structuring, funding and improving indigent defense services in Texas, it is critical that key data be collected from each county on an annual basis.
  
6. The statewide indigent defense oversight entity should be appropriated sufficient funds to develop a state-funded indigent defense grant program. Such a program would provide incentive to counties that wish to make improvements to their local indigent defense system but find it difficult to do so because of budget constraints. Counties would have the option

to apply for supplemental funds. Awards should be available to counties demonstrating the following factors (as developed by the commission):

- An objective procedure for upholding the independence of counsel;
- Prompt appointment of counsel in misdemeanor and felony cases, whether defendants are in-custody or detained pre-trial;
- A consistent procedure to determine indigency of persons in custody and out on bond and appoint them counsel within 72 hours of incarceration;
- A procedure for determining that attorneys representing indigent defendants are competent in the practice of criminal law;
- An adequate rate of compensation and schedule of allowable expenses to be paid for indigent defense services; and
- Availability of and attorney participation in relevant training programs.

Georgia, Indiana and Louisiana offer excellent models for Texas to look to in developing a state grant program for county-funded indigent defense services.

7. Efforts should be made to reduce the delay, sometimes extremely lengthy, in presenting criminal cases to the grand jury to secure an indictment. If counties address the resource and scheduling issues surrounding timely indictments, this effort will result in significant cost saving in their county jail budgets.
8. In accordance with statutory law, a defendant's ability to post bond should not serve as the litmus test for eligibility for appointed counsel. Contrary to statutory law, in the vast majority of counties in the sample, judges and others given authority to make indigency determinations and appoint counsel do just this.
9. Counsel should be available at first appearance to advise indigent defendants in Class A and Class B misdemeanor and all felony cases who wish to enter a guilty plea. Counties should be required to develop systems to ensure that indigent defendants are not encouraged to enter uncounseled pleas of guilt.

10. District and County Attorneys should make every effort to be fully cooperative in regard to their open file policy. Prosecutors' full-fledged cooperation - through, for example, providing defense counsel with access to a photocopier in addition to access to case files - will lead to resource savings for all.
11. Counsel should be compensated for both in-court and out-of-court time devoted to indigent defense representation. The approach of only paying for counsel's in-court time, employed in the majority of the sample counties, is both unfair and acts as a serious disincentive for counsel to visit their clients in jail, conduct legal research, interview potential witnesses, etc. Fee schedules should be modified to provide a reasonable, fair market rate of compensation for both in-court and out-of-court time.
12. State and county standard procedures should provide that where a trial court cuts fee request, an explanation should be placed in the record and appointed counsel should be able to appeal to an indigent defense commission.
13. The \$500 presumptive cap for investigator and expert services contained in the vast majority of the counties' fee schedules should be increased to reflect the fair market value for provision of these services, which are both fundamental to the effective assistance of counsel and required, in appropriate cases, under state and federal law. Additional funds should be provided by either the state (through the proposed indigent defense oversight entity, or possibly through a separate line item in the state budget), or, if necessary, through additional county funds.
14. Each of Texas' 254 counties should establish a pre-trial services agency (PSA) to gather and provide information about all arrestees charged with criminal offenses in a particular county. The PSA should provide judicial officers with verified information for bail setting purposes. In addition, the PSA should monitor defendants' compliance with their conditions of release, notify them of future court dates, and assist them with court appearance matters. This is particularly important in rural counties, where problems associated with delay are most serious. We believe that the costs of expanding or establishing PSAs will pay for themselves through jail expenditure savings.
15. The majority of judges have an awareness of the importance of assuring the fair and impartial adjudication of all cases in their courtroom. State statutory law establishes some general framework for processing indigent defense cases. However, more structure (for example,

through standards and guidelines relating to the provision of indigent defense services) and additional education is required.

16. Trial court judges should consider relinquishing primary responsibility for selecting, monitoring and compensating counsel who handle indigent defense representation in their courtrooms. They should carefully consider alternate methods for ensuring attorney qualifications which are used successfully in Texas and in other jurisdictions. This approach would better ensure the independence of counsel and would make substantial strides in relieving overworked judges of some of their administrative responsibility. Additionally, this approach would reassure the public by removing many of the political and ethical questions raised by the appointment process used in the vast majority of the state's courtrooms.
17. The state should provide resources and assistance for capital trial defense comparable to the resources it currently provides for the investigation and prosecution in capital murder trials.
18. Texas should establish a specialized statewide capital defense support unit to assist appointed counsel. This capital support unit should have the capacity to:
  - Provide the specially trained attorney staff necessary to represent indigent capital defendants at trial in appropriate cases.
  - Provide expert attorney staff to co-counsel, in appropriate cases, with local appointed counsel from the community where the case will be tried.
  - Provide other forms of assistance to private capital defense counsel, including: specialized training programs across the state to enhance the quality of capital defense representation; trained and experienced capital defense investigators; and maintenance of a regularly updated database of experts of all types, to which local appointed defense counsel could have ready access.
19. The state should create a source of state funding for indigent capital defense to relieve the financial pressure on county governments. Each county should have fair access to this supplemental funding. The Legislature has already chosen to provide supplemental funding to support capital *prosecutions* in counties where resources are limited, earmarking nearly \$2.5 million for the current biennium for that purpose, and authorizing expenditures of up to \$100,000 per capital murder trial. While the \$2.5 million falls substantially short of what the

counties need to assure adequate representation in capital cases, it identifies a beginning source of revenue for this purpose.

20. The state should develop statewide standards and procedures for appointment of private capital defense counsel. To promote reliability and fairness, uniform standards and procedures for appointment of counsel should apply throughout the state. Each administrative judicial region would enjoy the latitude to impose additional requirements for attorneys to accept appointments within that region, but the statewide standards would establish the minimum qualifications which all regions would be required to enforce. The statewide minimum standards should include training and experience which are particularized to capital defense, such as an annual requirement that counsel complete a minimum number of CLE hours in programs focusing primarily on capital defense, and qualitative measures such as peer review.
21. The state should develop statewide standards for compensation of appointed counsel. These should include a statewide minimum hourly compensation rate for defense representation in capital cases and should eliminate compensation by flat fee contracts in capital cases which tend to discourage or penalize comprehensive investigation and pre-trial preparation. The minimum hourly rate should be calculated to ensure that in all regions of the state, and in both rural and urban communities, counsel is paid enough to defray the average overhead costs associated with maintaining a law practice.
22. As with compensation for counsel, a minimum hourly compensation rate should be established on a statewide basis for experts and private investigators in capital cases, based on criteria comparable to those used to set compensation rates for defense counsel. Arbitrary caps on fees and expenses related to experts and investigators should be eliminated.
23. The state and counties should strengthen and standardize pre-trial release programs to achieve early identification of mental illness.
24. The state, counties, judiciary and defense bar should develop a method for training court-appointed attorneys around the state on mental illness and mental retardation. Training should include signs and symptoms of mental illness and mental retardation, skills for communicating effectively with defendants, dual diagnosis issues, and Texas statutes that relate to mentally ill and mentally retarded offenders.

25. There should be a basic educational course to be offered in all Texas law schools and an advanced education course for attorneys who want to specialize in the representation of persons having mental illness.
26. The state, counties and courts should promote incentives for attorneys to accept court-appointed cases of indigent mentally ill and retarded defendants, including perhaps a higher rate of pay or free CLE.
27. Texas should establish a statewide oversight entity such as an indigent defense commission and with responsibility to review and evaluate the quality of competency reports and expert witness testimony for indigent defendants.
28. Texas should establish a centralized source, such as an indigent defense commission, where indigent defense attorneys can get assistance with competency issues, information about expert witnesses, assistance or referrals for mitigation work.
29. The state, counties and courts should develop a state or regional capacity to assist indigent defense attorneys with locating diversion options, alternatives to incarceration and sentencing alternatives.
30. Encourage county probation departments and the state to develop facilities and programs for offenders with dual diagnoses.
31. The special needs offender programs of the Texas Council on Offenders with Mental Impairments, should be supported and expanded.
32. The State of Texas should conduct further study into whether mentally ill defendants get harsher sentences than other defendants, ways to improve the competency statutes, the effectiveness of policies and practices for juveniles with mental health disorders, the resources available to defense attorneys for securing experts and mitigation help, and ways to expand the pool of mental health experts.
33. Independent oversight and monitoring of the juvenile indigent defense system should be established, supported, and maintained

34. The appointment of attorneys to assist children should be guided by standardized, fair, and uniform procedures that consider both the nature of the case and the expertise of the attorney. Judges, who should continue to play an important judicial role in the selection and appointment of qualified counsel, should not have unlimited control over the selection process.
35. The State of Texas should develop an independent indigent juvenile defense oversight body to structure an appointment process and compensation structure that will ensure the independence of the defense counsel. There should be safeguards that protect the integrity of the attorney's representation of the juvenile against political pressures, financial disincentives, and conflicts of interest with the judge.
36. The inequitable funding structure of the justice system has directly contributed to the poor defense practices uncovered in this assessment. The State of Texas should provide adequate funding for the juvenile defense function as a whole—based not on present practice, but best practice.
37. Statewide guidelines and objective criteria should be developed that establish minimum qualifications and standards of representation for children in the justice system.
38. All children should be presumed indigent for purposes of the appointment of counsel.
39. Standards should be adopted to ensure that Probation officers should serve as a neutral party and provide information to the court, without assuming the duties of the police, prosecutor and defense attorneys. It should be the duty of the judge to ensure that defense counsel and probation officers are fulfilling their appropriate role.
40. Attorneys should be appointed as early as possible in all juvenile cases.
41. Attorneys should have meaningful access to independent, qualified investigators, experts and other support.
42. Attorneys should have access to training and professional development opportunities.
43. Client consultation should be private, immediate, and ongoing throughout the judicial process.



44. Attorneys should be compensated for all reasonable work including—but not limited to—client meetings, pre-trial investigation, legal research, motions practice, and dispositional planning.
45. Continuity of representation should be encouraged where feasible or appropriate.
46. Further systemic study should be conducted regarding the representation of children in the adult system.

Texas Appleseed Fair Defense Project  
Counties in the On-Site Research Sample<sup>16</sup>

APPENDIX A

	County	Population (1999)	Comptroller Region	Administrative Judicial Region	Principal City
500,000+	Harris	3,229,026	Gulf Coast	2	Houston
	Dallas	2,069,094	Metroplex	1	Dallas
	Tarrant	1,368,734	Metroplex	8	Fort Worth
	Bexar	1,359,993	Central Texas	4	San Antonio
	Travis	717,925	Central Texas	3	Austin
	El Paso	694,666	Upper Rio Grande	6	El Paso
	Hidalgo	527,726	South Texas	5	McAllen
200-500,000	Denton	400,878	Metroplex	8	Denton, sub.-DFW
	Nueces	311,978	South Texas	5	Corpus Christi
	Jefferson	247,354	South East Texas	2	Beaumont
	Lubbock	234,689	High Plains	9	Lubbock
	Brazoria	228,166	Gulf Coast	2	Lk. Jackson, sub.-Houston
	McLennan	204,589	Central Texas	3	Waco
	Smith	168,888	Upper East Texas	1	Tyler
50-200,000	Tom Green	105,648	West Texas	7	San Angelo
	Comal	74,308	South Texas	3	New Braunfels
	Hunt	70,265	Metroplex	1	Greenville
	Bastrop	52,516	Central Texas	2	Bastrop
	Brown	37,187	Northwest Texas	7	Brownwood
25-50,000	Titus	26,703	Upper East Texas	1	Mount Pleasant
	Shelby	22,528	South East Texas	1	Center
	Grimes	22,434	Central Texas	2	Navasota
	Terry	13,406	High Plains	9	Brownfield

<sup>16</sup> The sample was constructed to (1) include the seven most populous counties in the state, and (2) add other smaller counties to produce an overall sample representative of the state as a whole. The methodology to achieve this was designed by Dr. Steve Murdock, Director of the Texas State Data Center at Texas A&M. The methodology creates a stratified random sample, proportionate to population and to geographic distribution among the standard economic regions defined by the state Comptroller's office. The sample counties include 61% of the state's total population.

**Texas Office of Court Administration**  
**Indigent Criminal Defense Expenditure Survey for County Fiscal Year 1999**  
**(Includes Actual and Estimated Expenditures)**

**SUMMARY of SURVEY RESULTS**

**Total Expenditures by County Population**

	<b>Small Counties (Under 50,000 Population)</b>	<b>Medium Counties (50,000 - 200,000 Population)</b>	<b>Large Counties (Over 200,000 Population)</b>	<b>All Counties</b>
Total Number of Counties	203	36	15	254
Total Indigent Criminal Defense Expenditures (Percent of Total)	\$13,339,008 (14.3%)	\$19,025,915 (20.4%)	\$60,743,419 (65.2%)	<b>\$93,108,342</b> (100%)

- Notes: 1. Population estimates per 1990 U.S. Census.  
2. Some numbers may not total due to rounding.

**Top Ten Counties by Total Expenditures**

<b>County (Population)</b>	<b>Indigent Criminal Defense Expenditures</b>			<b>Percent of State Total</b>
	<b>Legal Representation</b>	<b>Other Services</b>	<b>Total</b>	
Dallas (1,852,810)	\$16,125,794	\$1,297,810	\$17,423,604	18.7%
Harris (2,818,199)	11,521,801	1,026,000	12,547,801	13.5%
Tarrant (1,170,103)	5,629,555	672,985	6,302,540	6.8%
Bexar (1,185,394)	4,637,046	834,364	5,471,410	5.9%
El Paso (591,610)	3,644,168	472,187	4,116,355	4.4%
Travis (576,407)	3,263,991	467,471	3,731,462	4.0%
Hidalgo (383,545)	1,847,546	175,774	2,023,319	2.2%

Galveston (217,399)	1,545,582	27,980	1,573,562	1.7%
Potter (97,874)	1,142,404	298,275	1,440,678	1.5%
Nueces (291,145)	1,269,738	169,656	1,439,394	1.5%
<b>Totals</b>	\$50,627,625	\$5,442,502	<b>\$56,070,125</b>	<b>60.2%</b>

Notes: 1. Population estimates per 1990 U.S. Census.

2. Some numbers may not total due to rounding.

July 2000

COMPARISON OF STATE INDIGENT DEFENSE EXPENDITURES<sup>1</sup>

Table 1				
Cost-Per-Capita Comparison for States that Fund 100% of Indigent Defense Services <sup>2</sup>				
State	Population (1999)	State Expenditure	Fiscal Year	Cost-Per-Capita
Oregon	3,316,154	\$76,556,738	2000	\$23.09
Alaska <sup>3</sup>	619,500	\$9,500,000	2001	\$15.33
New Mexico	1,739,844	\$26,606,000	2001	\$15.29
Massachusetts	6,175,169	\$90,848,761	2000	\$14.71
West Virginia	1,806,928	\$25,498,806	2001	\$14.11
Wisconsin	5,250,446	\$66,000,000	2001	\$12.57
Vermont	593,740	\$7,033,557	2001	\$11.85
New Hampshire	1,201,134	\$13,019,891	2001	\$10.84
Delaware	753,538	\$8,001,500	2001	\$10.62
Iowa	2,869,413	\$29,373,684	1998	\$10.24
Minnesota	4,775,508	\$47,000,000	1998	\$9.84
Maryland	5,171,634	\$49,500,000	2001	\$9.57
Colorado	4,056,133	\$37,980,369	2001	\$9.36
Connecticut	3,282,031	\$30,512,677	2001	\$9.30
New Jersey	8,143,412	\$70,460,000	2001	\$8.65
North Carolina	7,650,789	\$62,680,384	1999	\$8.19
Maine	1,253,040	\$9,563,326	2001	\$7.63
Hawaii	1,185,497	\$6,917,000	1999	\$5.83
Rhode Island	990,819	\$5,340,142	1997	\$5.39
Missouri	5,468,338	\$28,202,699	1999	\$5.16
Alabama	4,369,862	\$29,886,452	2000	\$6.84
Arkansas	2,551,373	\$12,333,561	2001	\$4.83
North Dakota	633,666	\$1,704,742	2001	\$2.69

<sup>1</sup> The tables in Appendix C were prepared by The Spangenberg Group on behalf of the American Bar Association Bar Information Program © September 2000 The Spangenberg Group, 1001 Watertown Street, West Newton, MA 02465 (617) 969-3820.

<sup>2</sup> The Spangenberg Group did not get reliable expenditure data from Virginia for this memorandum. Though Alabama relies on a fair trial tax in addition to state funds, the state has been included on this list because no county funds are used for indigent defense services.

<sup>3</sup> Alaska's state expenditure does not include monies budgeted for the Office of Public Advocacy. The Office of Public Advocacy handles criminal conflict of interest cases, domestic violence, termination of parental right and juvenile dependency cases. The state indigent defense cost-per-capita is therefore somewhat higher than what is depicted in Table 1.

Table 2

**Cost-Per-Capita Comparison for States that Fund Less than 100%  
of Indigent Defense Services**

State	Population (1999)	State Expenditure	County Expenditure	Total Expenditure	Fiscal Year	Total Expenditure Per-Capita	Percentage of State Funds
Florida	15,111,244	\$141,797,462	\$35,000,000	\$176,797,462	2000	\$11.70	80.2%
Kentucky	3,960,825	\$25,845,330	\$2,987,000	\$28,832,330	2000	\$7.28	89.6%
Kansas	2,654,052	\$15,438,502	\$3,859,625	\$19,298,127	2000	\$7.27	80.0%
Tennessee	5,483,535	\$24,640,500	\$4,788,783 <sup>4</sup>	\$29,429,283	2001	\$5.37	83.7%
Ohio	11,256,654	\$26,382,690	\$29,362,262	\$55,744,952	2000	\$4.95	47.3%
Oklahoma	3,358,044	\$15,917,390	\$6,026,526	\$21,943,916	2000	\$6.53	72.5%
South Carolina	3,885,736	\$9,723,703	\$6,488,362.75	\$16,212,066	2000	\$4.17	60.0%
Louisiana	4,372,035	\$7,500,000	\$37,017,000	\$44,517,000	2000	\$10.18	16.8%
Georgia	7,788,240	\$4,900,000	\$40,581,423	\$45,481,423	1999	\$5.84	10.18%
Nevada	1,809,253	\$541,885	\$22,930,543	\$23,472,428	1999	\$12.97	2.3%

---

<sup>4</sup> Davidson and Shelby County FY 97 expenditure. Additional counties not included.

**INDIGENT DEFENSE REPRESENTATION IN CAPITAL CASES  
A STATE-BY-STATE COMPARISON**

**States which Most Actively Impose the Death Penalty**

<b>STATE</b> (# executions as of July 1, 2000)	<b>State Funding</b>	<b>Statewide Oversight Commission</b>	<b>Statewide or Local Public Defender Agencies</b>	<b>Statewide Capital Trial Unit</b>
<b>TEXAS (223)</b>	<b>NO</b>	<b>NO</b>	<b>NO</b>	<b>NO</b>
<b>VIRGINIA (79)</b>	YES	NO	YES	<b>NO</b>
<b>FLORIDA (49)</b>	YES	NO	YES	<b>NO</b>
<b>MISSOURI (45)</b>	YES	NO	YES	YES
<b>LOUISIANA (26)</b>	YES	YES	YES	YES
<b>SOUTH CAROLINA (24)</b>	YES	YES	YES	<b>NO</b>
<b>GEORGIA (23)</b>	YES	YES	YES	YES
<b>ALABAMA (23)</b>	YES	<b>NO</b>	YES	<b>NO</b>
<b>ARKANSAS (22)</b>	YES	YES	YES	YES
<b>ARIZONA (21)</b>	<b>NO</b>	<b>NO</b>	YES	<b>NO</b>
<b>NORTH CAROLINA (15)</b>	YES	YES	YES	<b>NO</b>
<b>ILLINOIS (12)</b>	YES	<b>NO</b>	YES	<b>NO</b>