

# Annual and Expenditure Report

# 2013

[www.txcourts.gov/tidc](http://www.txcourts.gov/tidc)





January 24, 2014

Governor Rick Perry  
Lieutenant Governor David Dewhurst  
Speaker of the House Joe Straus  
Chief Justice Nathan Hecht  
Texas Judicial Council

Ladies and Gentlemen:

It is our privilege to submit this report concerning the duties, activities, and accomplishments of the Texas Indigent Defense Commission in fiscal year 2013.

Just as the states serve as laboratories of democracy in our federalist system, so too our counties are developing innovative strategies for delivering indigent defense services that can be shared and tailored to different circumstances in other counties. Because of the Commission's efforts in collaboration with local jurisdictions, Texas is becoming known as a national leader in indigent defense. A growing number of counties are implementing new evidence-based practices that not only improve indigent defense, but also benefit the operation of the criminal justice system as a whole. This report will demonstrate how local jurisdictions, with the support of this Commission, are achieving success.

The counties still pay the lion's share of the cost of indigent defense. Nevertheless, the Commission has successfully leveraged state funds to improve indigent defense services and to create more transparency and accountability. While we recognize the significant progress Texas has made, we continue to look for opportunities to build upon our success.

That success is due first and foremost to the efforts of local governments to meet constitutional and statutory standards. Many county officials across the state have gone above and beyond to help the Commission develop new strategies for improving indigent defense services. With the support of the Texas Legislature, the Office of the Governor, county governments, and the judiciary, the Commission will continue its statewide exchange of ideas with all indigent defense stakeholders. During the past year, as outlined in the following pages of this report, much of this dialogue has been turned into positive results.

Sincerely,

Sharon Keller





209 W. 14<sup>th</sup> Street, Room 202, Austin, Texas 78701  
 512-936-6994; fax: 512-463-5724  
[www.txcourts.gov/tidc](http://www.txcourts.gov/tidc)  
 (as of 8/31/13)

**OFFICERS:**

Honorable Sharon Keller	Chair – Presiding Judge, Court of Criminal Appeals
Honorable Olen Underwood	Vice-Chair – Presiding Judge, 2 <sup>nd</sup> Administrative Judicial Region of Texas

**EX OFFICIO MEMBERS:**

Honorable Sharon Keller	Austin, Presiding Judge, Court of Criminal Appeals
Honorable Wallace B. Jefferson	Austin, Chief Justice, Supreme Court
Honorable Roberto Alonzo	Dallas, State Representative
Honorable Abel Herrero	Robstown, State Representative
Honorable Sherry Radack	Houston, Chief Justice, First Court of Appeals
Honorable Linda A. Rodriguez	Hays County Court at Law #2
Honorable Royce West	Dallas, State Senator
Honorable John Whitmire	Houston, State Senator

**MEMBERS APPOINTED BY GOVERNOR:**

Honorable Jon Burrows	Temple, Bell County Judge
Mr. Don Hase	Arlington, Attorney, Ball & Hase
Mr. Anthony Odiorne	Burnet, Assistant Public Defender, Regional Public Defender Office for Capital Cases
Honorable Olen Underwood	Conroe, Presiding Judge, 2 <sup>nd</sup> Administrative Judicial Region of Texas
Honorable B. Glen Whitley	Hurst, Tarrant County Judge

**STAFF:**

James D. Bethke	Executive Director	512-936-6994	<a href="mailto:jbethke@tidc.texas.gov">jbethke@tidc.texas.gov</a>
Edwin Colfax	Project Manager	512-463-2508	<a href="mailto:ecolfax@tidc.texas.gov">ecolfax@tidc.texas.gov</a>
West Garrett	Research Specialist	512-936-7551	<a href="mailto:wgarrett@tidc.texas.gov">wgarrett@tidc.texas.gov</a>
Dominic Gonzales	Grant Program Specialist	512-463-2573	<a href="mailto:dgonzales@tidc.texas.gov">dgonzales@tidc.texas.gov</a>
Marissa Kubinski	Executive Assistant	512-936-6994	<a href="mailto:mkubinski@tidc.texas.gov">mkubinski@tidc.texas.gov</a>
Joel Lieurance	Policy Monitor	512-936-7560	<a href="mailto:jlieurance@tidc.texas.gov">jlieurance@tidc.texas.gov</a>
Wesley Shackelford	Deputy Director/Special Counsel	512-936-6997	<a href="mailto:wshackelford@tidc.texas.gov">wshackelford@tidc.texas.gov</a>
Joan Thomas	Fiscal Monitor	512-463-8015	<a href="mailto:jthomas@tidc.texas.gov">jthomas@tidc.texas.gov</a>
Sharon Whitfield	Budget and Accounting Analyst	512-936-6998	<a href="mailto:swhitfield@tidc.texas.gov">swhitfield@tidc.texas.gov</a>
Bryan Wilson	Grants Administrator	512-936-6996	<a href="mailto:bwilson@tidc.texas.gov">bwilson@tidc.texas.gov</a>
Allison Cunningham	Legal Intern	512-936-6994	<a href="mailto:acunningham@tidc.texas.gov">acunningham@tidc.texas.gov</a>
Brittany Long	Legal Intern	512-936-6994	<a href="mailto:blong@tidc.texas.gov">blong@tidc.texas.gov</a>

<b>Table of Contents</b>	
Executive Summary	1
Grant Program	2
Policies and Standards	4
Education, Publications, and Online Resources	6
Policy and Fiscal Monitoring	8
Innocence Program	9
Expenditure Report	10

# EXECUTIVE SUMMARY

---

The Texas Indigent Defense Commission (Commission) continues to build a meaningful infrastructure to support the right to counsel. To help counties ensure that poor persons accused of crime are treated fairly and in accordance with the rule of law, the Commission provided funding through formula and discretionary grants, monitored compliance, published research, offered trainings and provided technical support. Even with Commission fiscal assistance, counties continued to struggle to pay the overwhelming majority of costs of meeting right to counsel obligations under the Constitution and the Fair Defense Act.

- In FY13 counties spent \$217.1 million on indigent defense, and the state reimbursed \$27.4 million.
- In FY13 total indigent defense costs (state and county) increased 4.6% or \$9.6 million over the previous year.
- The number of cases that received court appointed counsel has increased from approximately 324,000 cases in FY02 to more than 471,000 cases in FY13.
- Total indigent defense costs have increased from \$91.4 million (FY01) to \$217.1 million (FY13).

In addition to the formula grant funding for which all counties are eligible, the Commission continued to encourage and fund new programs that deliver effective services at reasonable costs through discretionary grants. A number of evaluations of these funded programs were conducted during the year as part of the Commission's commitment to foster evidence-based practices. These included comprehensive assessments of the Regional Public Defender Office for Capital Cases and Bell County's electronic indigent defense process management system. These reports are available on the Commission's website as resources for local officials that can help them learn from the experiences of other jurisdictions and implement cost-effective indigent defense solutions.

The Commission remains committed to educating indigent defense stakeholders in order to equip them to administer effective systems. To that end the Commission hosted several major training events, including A Primer on the Texas Fair Defense Act, the 50<sup>th</sup> Anniversary Commemoration of the Gideon Decision, and the 2013 Indigent Defense Workshop for Texas Counties. Additionally, Commission staff gave 21 other educational presentations around the state totaling close to 30 hours of training to more than 1,800 judges, county officials and lawyers. Finally, the Commission continued to fulfill its statutory mission to monitor county compliance with both financial and substantive requirements of Texas law through site visits conducted across the state. The Commission approaches monitoring visits as opportunities to support county efforts to improve and maintain effective programs.

These activities are guided by the Commission's fundamental mission:

## **Mission Statement**

*The Texas Indigent Defense Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.*

Please visit the Commission website ([www.txcourts.gov/tidc](http://www.txcourts.gov/tidc)) for historical context on the agency and its purpose ([Who We Are and What We Do](#)), and [indigent defense data reported by all 254 counties](#) under the Fair Defense Act.

# GRANT PROGRAM

Since 2002, the Texas legislature has directed the Commission to provide technical support and grants to assist counties in improving their indigent defense systems and to promote compliance with the requirements of state law relating to indigent defense. The Commission developed a two-part grant policy that ensures funds are fairly distributed across the state while promoting compliance and more effective services. One program—which has benefitted all counties—provides formula-based grants throughout Texas. The other offers competitive funding to implement innovative programs or remedy non-compliance.

In FY13, the Commission awarded over \$30 million in grants to counties through two funding strategies. The formula grant program provided \$20 million to Texas counties and \$10 million was awarded to counties through the competitive grant program (see Expenditure Report for details).

## Counties' Commitment to Compliance

To receive a grant under either program, a county must demonstrate its commitment to compliance with the requirements of state law related to indigent defense. This is accomplished in part by submitting a locally-developed county plan that specifies how the county and courts will meet the minimum standards set by law in the areas of magistrate responsibilities, indigence determination, minimum attorney training, attorney appointment processes, and, where applicable, Commission-promulgated contract standards and policies. A county must also report its indigent defense appointments and expenditures to the Commission each year. A county, however, may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the Commission under either program.

## Formula Grant Program

Population and Expense-Based Formula Grants are determined based upon a county's percentage of state population and percentage of state indigent defense expenses multiplied by the Commission's budgeted amount for formula grants. Counties must meet minimum spending requirements and maintain a countywide indigent defense plan that complies with statutes and standards to qualify. Formula grants are detailed in the Expenditure Report.

## Discretionary Grants

In addition to formula-based grants, the Commission also has a discretionary grant program to encourage innovation, help counties facing financial hardship, and remedy non-compliance with the Fair Defense Act. To ensure that the money is distributed fairly and efficiently, the Commission distributes funding through four strategies.

## Competitive Discretionary Grants

are awarded to assist counties in developing new, innovative programs or processes to improve the delivery of indigent defense services. A committee reviews and scores counties' applications prior to presentation to the Grants and Reporting Committee and to the full Commission. The Commission has prioritized programs that provide direct services to indigent defendants, mental health defender services, and juvenile defenders, as well as those that establish public defender or regional public defender offices. Please see the Expenditure Report for details on payments made under this program.

FY13 Competitive Discretionary Grant Funded Programs	
County	Program Title
Bee	156 <sup>th</sup> District Legal Aid Program for Bee, Live Oak, and McMullen Counties
Bell	Mental Health Case Workers for Assigned Counsel System
Burnet	Burnet County Public Defender Office
Collin	Collin County Mental Health Managed Counsel Program
Dickens	Caprock Regional Public Defender Office
El Paso	Problem Solving Court Attorney
Fort Bend	Fort Bend County Mental Health Defender Program
Harris	Harris County Public Defender Office
Hidalgo	Hidalgo County Public Defender's Office – Juvenile Section
Kaufman	Mental Health Attorney/Advocate Team
Lubbock	Regional Public Defender Office for Capital Cases
Lubbock	Private Defender for Mental Health Offenders
Lubbock	Felony and Misdemeanor Managed Assigned Counsel Program
McLennan	McLennan County Indigent Defense Coordinator
Montgomery	Montgomery County Managed Assigned Counsel Program
Wichita	Mental Health Social Worker

## GRANT PROGRAM

---

**Extraordinary Disbursement Grants** are available to competing counties that demonstrate that indigent defense expenses in the current or immediately preceding fiscal year constitute a financial hardship for the county. In past years, events such as capital murder cases, hurricanes and other types of cases impacted counties and made them eligible for extraordinary funding. The Expenditure Report details the payments made under this program.

**Targeted Specific Grants** promote compliance and provide a funding strategy to assist a county that has a finding of non-compliance. Staff will work with the court and county officials to develop an action plan for the county to address the compliance related to the Fair Defense Act. No counties applied for Targeted Specific grants in FY13.

**Technical Support Grants** increase the knowledge base about indigent defense or establish a process or program that may be replicated by other jurisdictions. The Commission will assist any county with technical support requests. The following technical support projects were either carried forward or implemented in FY13. Please see the Expenditure Report for details on Technical Support payments.

Current and On-Going Technical Support Programs	
County	Program Title
Bell	Training, Mentoring and Evaluation for Appointed Attorneys (Completed)
Comal	Client Choice and Professional Development (On-going)
Fort Bend	Evaluation of Fort Bend Mental Health PDO (Completed)
Tarrant	Assessment of Technology Process Management Proposals (Completed)
Williamson	Williamson County Indigent Defense Evaluation (On-going)

# POLICIES AND STANDARDS

---

## **Legislative Appropriations**

The 83<sup>rd</sup> Texas Legislature considered the Commission's Legislative Appropriations Request (LAR) and ultimately approved its first exceptional item, which restored access to all dedicated funds for indigent defense by reinstating estimated appropriation authority and by reestablishing unexpended balance authority between biennia. These changes are estimated to generate an additional \$16.7 million above what was appropriated by the 82nd Legislature. With this additional revenue, the Commission's appropriation for the biennium is just under \$79 million for indigent defense. The Commission also requested an additional \$135.5 million in State funding out of General Revenue to offset the funding gap and share more equally with county government the costs associated with providing a fair defense. Although this request was given meaningful consideration, it was not granted.

## **New Reporting Requirements, Caseload Study, and Other Key Legislation**

HB 1318 by Representative Sylvester Turner was the most significant bill related to indigent defense passed by the 83<sup>rd</sup> Texas Legislature. It includes significant new reporting requirements related to caseloads handled by attorneys providing representation to indigent defendants. Counties that do not use the statutory default assignment system (the wheel) have added requirements. The bill requires each such county to submit to the Commission with its indigent defense plans beginning November 1, 2013 the plans of operation for the creation of a public defender's office or managed assigned counsel program, as well as a copy of any contract for indigent defense services maintained by the county. Each of these documents includes maximum allowable attorney caseloads. Beginning October 15, 2014, the bill requires all attorneys handling indigent defense cases to submit to the county annually information for the preceding fiscal year that describes the percentage of the attorney's practice time that was dedicated to appointed criminal and juvenile delinquency work in the county. In turn, starting November 1, 2014 the bill requires each county to submit to the Commission annually the information provided to the county by the attorneys described above, along with information that describes for the preceding fiscal year the number of appointments made to each attorney accepting appointments in the county.

The Commission worked with stakeholders including counties, courts, and the criminal defense bar to implement these new provisions in a seamless manner while providing meaningful information to policymakers. The Commission adopted a concise [form](#) and reporting instructions for attorneys to report their practice time. As a way to make the reporting easier, the Commission is working with our partners at Texas A&M's Public Policy Research Institute (PPRI) to develop an online portal for attorneys to report the required information simultaneously for all counties in which they work. Since the reports will go directly to the Commission, county or court staff will not have to collect paper forms submitted by the attorneys and then report to the Commission. As to the new county reporting of case and fee data by attorney, the Commission decided based on its consultation with stakeholders to build on the existing reporting infrastructure in the annual Indigent Defense Expenditure Report (IDER). The IDER already requires county auditors (or treasurers) to report the aggregate number of cases paid by case type (Juvenile, Capital Murder, Adult Felony, Adult Misdemeanor, Juvenile Appeals, Felony Appeals, and Misdemeanor Appeals) and by court along with the amount paid each year by November 1st (the same date as the new reporting requirement). The new report will require this information to be broken down by attorney. County auditors have indicated that they already collect this information as part of the attorney payment process. The reports will provide a wealth of information on the caseloads carried by attorneys who represent the poor.

HB 1318 also requires the Texas Indigent Defense Commission to conduct and publish a study by January 1, 2015 "for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney...." At its final meeting of the year, the Commission decided to partner with researchers at PPRI to conduct the study. The study will include a careful examination of actual criminal defense practice to shed light on the time it takes to provide appropriate representation in different kinds of cases.

Lastly, the bill requires juvenile courts to appoint counsel to represent children prior to their initial detention hearing if a child is unrepresented and qualifies for appointed counsel unless the court finds that the appointment of counsel is “not feasible due to exigent circumstances.” Previously some counties did not regularly appoint counsel prior to initial detention hearings.

Information and summaries on other legislation passed by the 83<sup>rd</sup> Legislature is available on the Commission's legislative information [webpage](#).

### **Williamson County Litigation Update**

During FY13, the Texas Fair Defense Project (TFDP) and Williamson County reached a settlement agreement in the *Heckman v. Williamson County* case, in which TFDP alleged that the county and its judges provided misdemeanor defendants inaccurate information about the right to counsel, failed to make timely rulings on requests for counsel, and denied appointed counsel to financially eligible defendants.

The defendants previously won a ruling at the 3<sup>rd</sup> District Court of Appeals dismissing the case holding that none of the named plaintiffs had standing to pursue all of the proposed classes’ claims and thus never had standing to litigate certification. TFDP later won a unanimous ruling from the Supreme Court of Texas to reinstate the litigation. In reversing the 3<sup>rd</sup> District Court of Appeals decision, the Supreme Court recognized in its **ruling** that, "A criminal defendant's right to counsel--enshrined in both the United States and Texas Constitutions--ranks among the most important and fundamental rights in a free society." The settlement agreement:

- Requires the magistrate and judges in Williamson County to abide by the provisions of the Code of Criminal Procedure related to accepting, transferring, and timely ruling upon requests for counsel;
- Creates several new ways for defendants to obtain information on the status of counsel requests once submitted and requires judges to timely notify defense lawyers of appointments once made;
- Requires the courts to follow the provisions of Art. 1.051, Code of Criminal Procedure, related to waivers of counsel;
- Provides for an enforcement mechanism that permits TFDP to monitor on a quarterly basis the county’s compliance with the settlement agreement;
- Provides TFDP access to records maintained by the sheriff, jail, and courts, as well as to newly collected records maintained by the magistrate to facilitate review of attorney appointment procedures in the county;
- Relies on the benchmarks for substantial compliance in Texas Indigent Defense Commission’s Rule 174.28, Texas Administrative Code, concerning prompt rulings on requests for counsel; and
- Expires after four years or earlier as to any County Court at Law that completes eight consecutive quarters in which no action for enforcement or notice of non-compliance has been filed against that Court.



# EDUCATION, PUBLICATIONS, AND ONLINE RESOURCES

The Commission serves as a clearinghouse for indigent defense information that enhances understanding of the Fair Defense Act and makes available tools and resources that can help improve indigent defense in Texas. The Commission serves this function in a number of ways, including through its website, trainings, presentations, site visits, studies, e-newsletters and other outreach described below.

## Indigent Defense Training Events

**Indigent Defense Workshop: Preview of the 83<sup>rd</sup> Legislature and Recent Developments** was held in the Capitol Extension Auditorium on November 13, 2012. This two-hour event provided an overview of recent developments and future opportunities to improve the state's indigent defense system.

**A Primer on the Fair Defense Act of 2001 for Newly Elected Officials and Staff** was presented on January 17, 2013 in the Capitol Extension Auditorium. The Commission reviewed the core requirements of the Fair Defense Act and addressed requirements for a county to receive state funding through the Commission's grant program.

## **Texas Commemoration of the 50<sup>th</sup> Anniversary of Gideon**

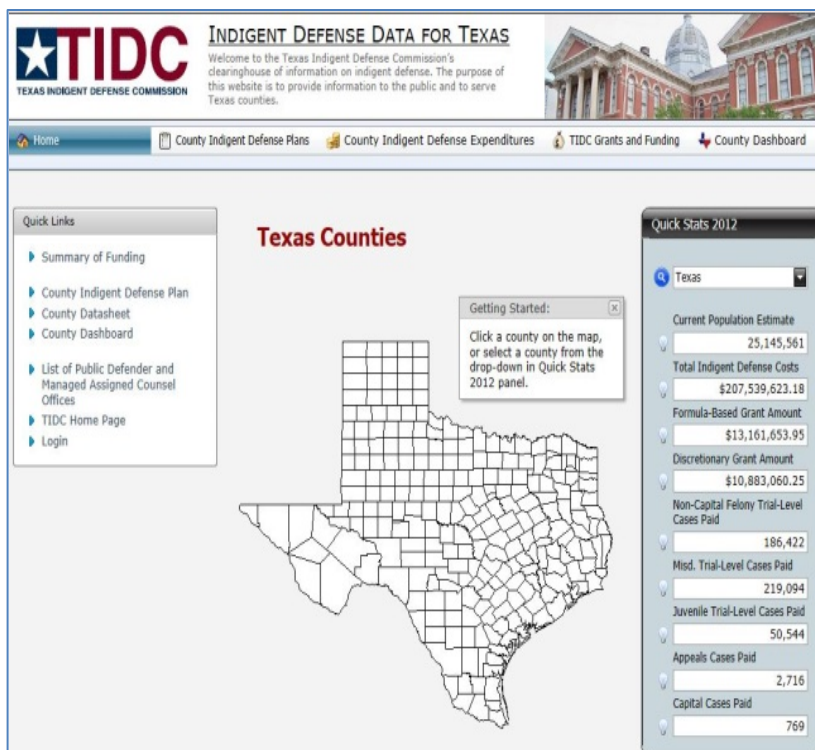
Exactly 50 years to the date, on March 18, 2013, close to 200 people gathered in person and many watched live streaming on the internet as the 50<sup>th</sup> anniversary of *Gideon v. Wainwright* was celebrated at the State Capitol. The Commission, along with **Senator Rodney Ellis**, the Texas Court of Criminal Appeals, the National Association of Criminal Defense Lawyers, the Texas Criminal Defense Lawyers Association, and the State Bar of Texas, hosted the event. *Gideon v. Wainwright* is the landmark Supreme Court decision requiring states to provide counsel to those too poor to hire counsel when charged with a felony offense. Of special note regarding the anniversary of *Gideon*, Judge **Sharon Keller**, Chair and **Jim Bethke**, Executive Director authored an article "[Justice For All](#)" that was published in the *Texas Bar Journal* in March 2013.

## **Other Presentations**

In addition to the major events above, Commission staff gave 21 other educational presentations around the state totaling close to 30 hours of training to more than 1,800 judges, county officials and lawyers.

## **Commission Website**

The Commission has continued to augment and expand its website in order to provide public access to all county indigent defense plans and expenditure reports, as well as guides, model forms, rules, publications, e-newsletters and press releases. The Commission's main website address is [www.txcourts.gov/tidc](http://www.txcourts.gov/tidc). Comprehensive indigent defense data by county is available at <http://tidc.tamu.edu/public.net>.



# EDUCATION, PUBLICATIONS, AND ONLINE RESOURCES

---

## **Publications**

### **Texas Fair Defense Laws**

The Commission updated and issued [Texas Fair Defense Laws 2013-2015](#), a comprehensive reference for statutes, administrative rules and case law regarding indigent defense in Texas.

## **Program Evaluations**

In order to promote evidence-based indigent defense practices, the Commission is committed to evaluating funded programs to help build the knowledge base on what works in indigent defense. Studies issued by Commission staff and its research partners in FY13 are listed below. Full reports are available on the Commission's website at <http://www.txcourts.gov/tidc/resourcesresearchstudies.asp>.

- [Wichita County Public Defender](#), October 2012 (PPRI)
- [Kaufman County Public Defender](#), December 2012
- [Willacy County Public Defender](#), March 2013
- [Regional Public Defender for Capital Cases](#), June 2013 (PPRI)
- [Montgomery Mental Health Managed Assigned Counsel Program](#), August 2013 (interim report)
- [Bell County Fair Indigent Defense Online Program](#), August 2013

## **E-Newsletters**

The Commission distributes an e-Newsletter to approximately 2,000 recipients. The newsletter is distributed via email after each board meeting (typically four times a year) to inform counties of indigent defense developments that they need to be aware of. It also highlights county success stories and Commission studies and publications. The newsletter also has a national audience. [Newsletters are archived](#) on the Commission's website.

## **Technical Assistance**

The Commission makes technical assistance available to county personnel regarding the requirements of the Fair Defense Act. The assistance may be via phone or on-site. Staff members, including the Executive Director, traveled to many jurisdictions across the state during the year. Visits were related to program improvements, grant funding, and expenditure reporting. The Commission places a high priority on communication, training, and educating all stakeholders in the indigent defense process. This assistance may be in the form of a presentation or an informal meeting requested by a county grappling with spikes in spending, process-related challenges, and other related issues.

## **Commission Law Student Interns**

The Commission thanks Thalia Dubose, Texas Legislative Intern, for her assistance during FY13. Ms. Dubose is a rising third year law student at Thurgood Marshall School of Law in Houston, and she is from Birmingham, Alabama. Ms. Dubose was one of 67 students who were selected to participate in Senator Rodney Ellis' Texas Legislative Internship Program this session. Ms. Dubose worked on various projects including conducting extensive research on attorney caseload standards and limits in other states, as well as expenditures and appointment rates in other states. Over the summer the Commission was also pleased and grateful to have Allison Cunningham and Brittany Long as University of Texas School of Law interns.

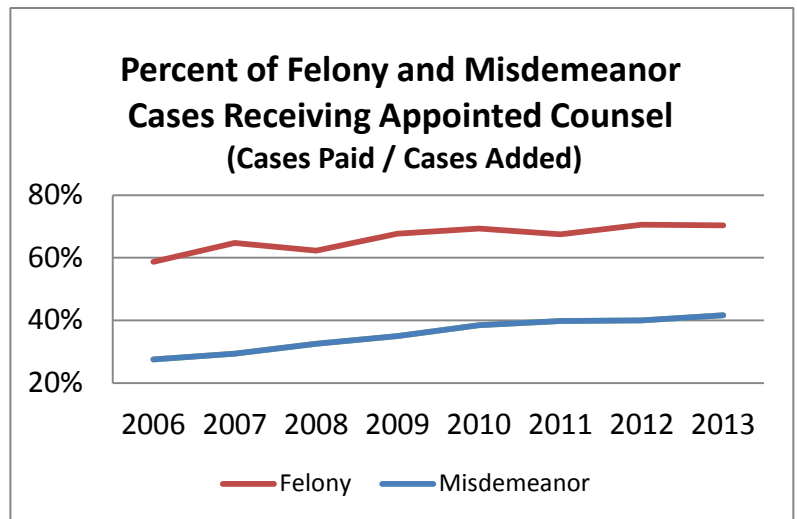
# POLICY AND FISCAL MONITORING

## Policy Monitoring

Texas Government Code Section 79.037 directs the Commission to monitor local jurisdictions' compliance with the Fair Defense Act (FDA). Counties are selected for a policy monitoring review through an objective risk assessment. These reviews focus on the core requirements of the FDA. The monitoring process is designed to ensure that jurisdictions meet the requirements of state law relating to indigent defense, including methods ensuring that: Article 15.17 hearings are held within 48 hours of arrest; the county's indigent defense plans set a standard of indigence; the jurisdiction is tracking continuing legal education (CLE) hours of attorneys on the appointment list; counsel is appointed within statutorily required times; appointments are distributed in a fair, neutral, and non-discriminatory manner; and attorneys are paid according to a standard payment process. The monitoring process focuses on a records-based examination of indigent defense data but can also comprise interviews with relevant persons, court observations, and surveys of the local criminal defense bar. Commission staff performed on-site policy monitoring visits in 17 counties in FY13, including four full policy reviews, three follow-up reviews regarding previous findings, and informal examination of misdemeanor records in ten counties.

### **Indigent Defense Appointment Trends**

As a result of the Fair Defense Act (FDA), jurisdictions have adjusted their methods for appointing counsel. Under Article 26.04(l) of the Code of Criminal Procedure, local procedures for appointing counsel and the financial standards for determining indigence are to apply to each defendant equally, regardless of whether the defendant has been released on bail. Furthermore, under Article 1.051(c) counsel is to be appointed within one or three working days (depending on the county population) of the court receiving the defendant's request for counsel. Since the first year of the FDA, the number of cases that received court appointed counsel has increased from approximately 324,000 cases in 2002 to more than 471,000 cases in 2013. Spending on indigent defense has increased from \$91.4 million in 2001 to \$217.1 million in 2013. According to data reported to the Texas Indigent Defense Commission and to the Office of Court Administration, the percent of misdemeanor cases receiving appointed counsel rose from 28% in 2006 to 42% in 2013. For felony cases, the percent of persons receiving appointed counsel has risen from 59% in 2006 to 70% in 2013. See the above graph showing the percent of felony and misdemeanor cases receiving appointed counsel since 2006.



## Fiscal Monitoring

The standards used to conduct fiscal monitoring reviews are based on state law and administrative rules. The Commission is required by Texas Government Code Section 79.037 to monitor counties that receive grant funds and to enforce compliance by the county with the conditions of the grant. The Uniform Grant Management Standards (UGMS) and grant rules set the monitoring criteria and priorities for counties. Counties are selected for a monitoring visit based on a combination of objective risk assessment scores and geographical distribution. The review process considers a number of factors in determining the county's risk level related to the adequacy and type of financial management system, administrative costs, and equipment expenditures.

The annual Indigent Defense Expenditure Report (IDER) provides a thorough snapshot of all county indigent defense expenditures. This data provides the basis for eligibility in all of the Commissions' grant programs, both formula and discretionary, as well as whether a fiscal review may be warranted. It also provides policymakers at the state and local levels with a clear and reliable picture of indigent defense services, evidence of funding needs, and whether statutory and state standards are being fulfilled.

## POLICY AND FISCAL MONITORING

---

The fiscal monitors serve as valuable resources to counties by providing technical assistance to county employees regarding the tracking and reporting of indigent defense expenses. By helping counties proactively identify and rectify reporting issues and providing technical assistance, the fiscal monitors fill a critical role. This effort helps ensure the overall integrity of the local and state indigent defense expenditure report.

Commission staff conducted desk reviews of all 254 counties' expenditure reports. In cases where a desk review raises questions, staff contacts counties to verify reported figures and confirm that the Commission's reporting guidelines were followed. In addition to these desk reviews, on-site fiscal visits were conducted in Johnson, Smith and DeWitt counties. The Commission always strives to make monitoring reviews constructive, not punitive. It is in both the county's and the state's interest to have the limited state resources allocated for indigent defense used for the intended purposes and for the expenditure data reported to the state to accurately reflect the financial state of indigent defense in each county.

## INNOCENCE PROGRAM

---

In 2005 the Texas Legislature directed the Commission to contract with the four public law schools in Texas to operate innocence projects. These projects organize law students who work with attorneys to review claims of actual innocence from Texas inmates.

### **FY13 Case Statistics**

The four projects received a total of 2,575 requests for assistance, of which 1,191 contained a claim of actual innocence. The projects screened 1,026 inmate questionnaires during the year to determine if an investigation should proceed. At the end of the fiscal year, the projects reported 730 cases with open investigations and 1,479 cases that have undergone screening and are awaiting full investigation. A total of 103 Texas public law school students participated in these clinical programs and worked a total of 13,083 hours. An additional 29 students at the four public universities worked a total of 1,560 hours reviewing cases.

### **Exoneration Report**

During FY 2013 the Innocence Project of Texas, which operates the innocence program for the Texas Tech Law School, submitted an Exoneration Report as required under a statute passed by the Legislature in 2011. The report analyzed the cases of co-defendants Darryl Washington, Shakara Robertson and Marcus Lashun Smith, who were granted habeas relief based on innocence in FY 2012.

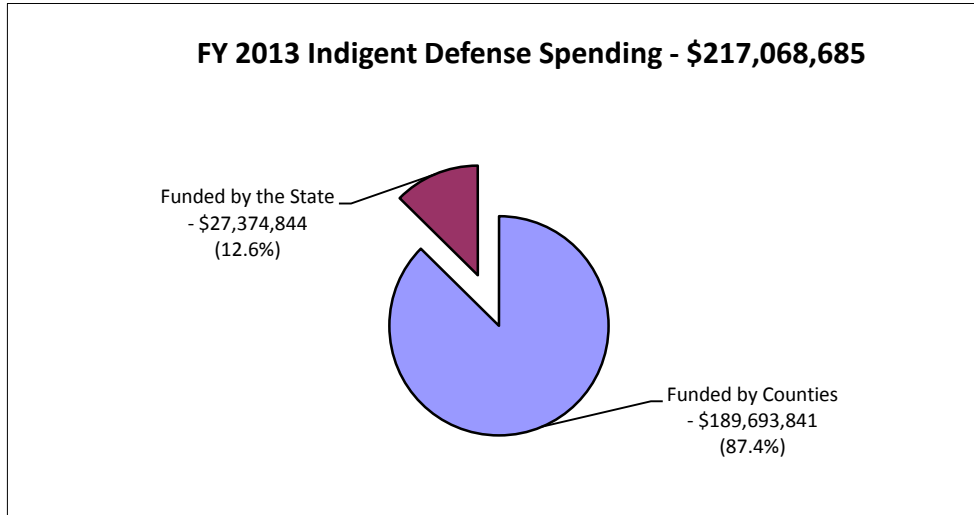
The complete annual reports filed by the participating innocence projects, as well as the filed Exoneration Reports and other information on the innocence program, are available on the Commission's website at [http://www.txcourts.gov/tidc/TIDC\\_Innocence\\_Projects.asp](http://www.txcourts.gov/tidc/TIDC_Innocence_Projects.asp).

# EXPENDITURE REPORT

## FY13 State and County Spending on Indigent Defense

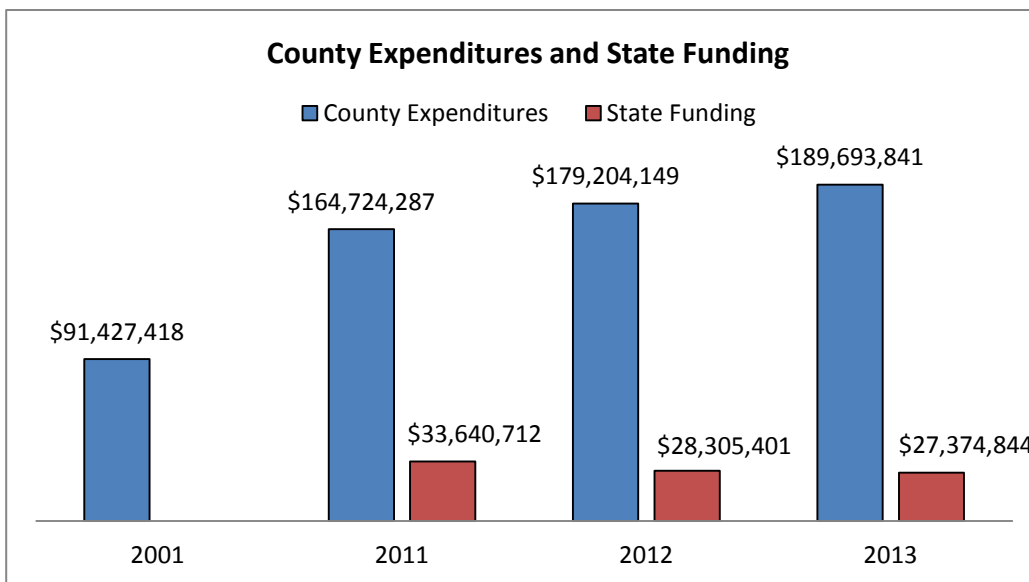
Total indigent defense expenditures in FY13 were \$217,068,685. Of that amount counties funded \$189,693,841 and the State funded \$27,374,844 through the Commission's grant programs. See Chart 1 below.

Chart 1



Total FY13 expenditures of \$217,068,685 represent a 4.5% increase over FY12 expenses of \$207,509,520. The Commission provided funding in the amount of \$27,374,844 in FY13, \$28,305,401 in FY12 and \$33,640,712 in FY11. See Chart 2 below.

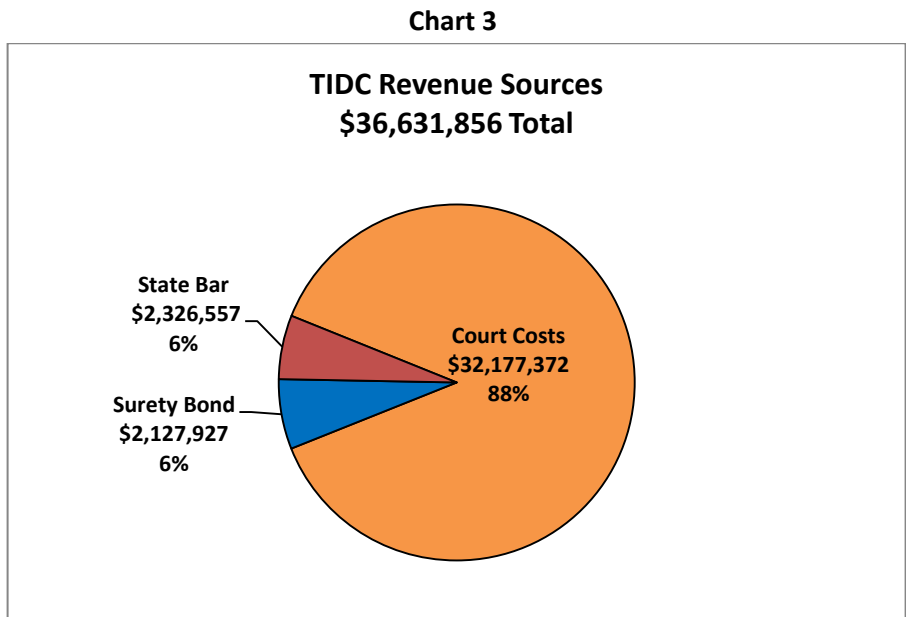
Chart 2



## Commission Revenue Sources

The primary sources of state funding for indigent defense in Texas are court costs and fees. The total revenue received by the Commission in FY13 from these sources was \$36,631,856. Court costs are the largest source of revenue and are amounts paid by a defendant upon conviction for a range of offenses from fine only misdemeanors to felonies. This fiscal year, \$32,177,372 in total court costs was collected for the purpose of indigent defense.<sup>1</sup>

The Commission also receives funding from Surety Bond Fees and State Bar Fees. A \$15 fee is assessed when posting a surety bond (bail bond). One-third of that fee goes to the Fair Defense Account, and the remaining balance goes to support longevity pay for prosecutors. This year the Commission received \$2,127,927 from Surety Bond Fees. A \$65 fee is also assessed by the State Bar of Texas as part of each attorney's bar dues. One-half of the fee collected is allocated to the Fair Defense Account, and this fiscal year the Commission received \$2,326,557 from this fee. See Chart 3 below.



Two changes to the Commission's appropriations were made by the 82<sup>nd</sup> Legislature: no unexpended balance between biennia and appropriations for FY12-13 were capped at a sum-certain amount, which eliminated the estimated appropriation authority for Fair Defense Account funds that the Commission had since its inception. As a result, there was approximately \$19 million in cash from FY11 – FY13 accumulated in the Fair Defense Account that could not be spent in those years. The 83<sup>rd</sup> Legislature gave the Commission the authority to expend any unexpended balances from the Fair Defense Account from previous years and removed the sum-certain cap, restoring the Commission's estimated appropriation authority for FY14-15.

---

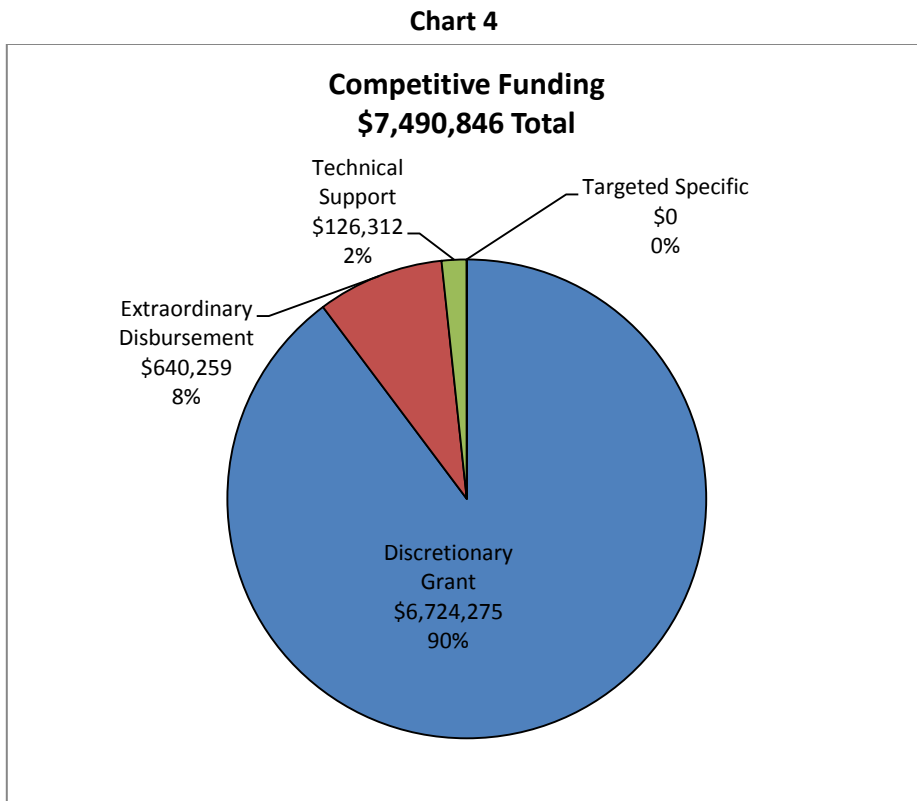
<sup>1</sup> Court costs consist of two different types of courts costs that have been implemented incrementally since the passage of the Fair Defense Act: original court costs and juror pay court costs.

**Distribution of Funds by Type of Grant**

The Commission disbursed \$19,883,998 in formula grants. The Commission also awarded \$10 million in competitive-based discretionary grants, of which \$7,490,846 was disbursed, bringing the total statewide distribution to \$27,374,844.

**Formula Grants** are calculated based on a combination of population and county indigent defense expenditures. The amount is based upon a county’s percentage of state population and percentage of state indigent defense expenses multiplied by the Commission’s budgeted amount for formula grants. In FY13, 249 counties qualified and received disbursements totaling \$19,883,998. Formula grants represent 73% of total grant funding. Appendix A lists all counties that received a formula grant.

**Competitive-based discretionary grants** include the four types of grants on Chart 4 below.



**Discretionary Grants.** In FY13, \$6,724,275 was disbursed to fund 17 discretionary grant programs, which represents 90% of total competitive grant funding. A summary of disbursements for each funded program is shown in Table 1 below.

**Table 1: FY13 Discretionary Grants**

County	Program Title	Disbursement
Collin	Mental Health Managed Counsel	\$99,439
El Paso	Specialty Court for Public Defender	\$45,295
Kaufman	Mental Health Attorney/Advocate Team	\$31,648
Wichita	Mental Health Social Worker	\$48,108
	<b>Sub-Total (New Multi-Year)</b>	<b>\$224,490</b>
Bee	Regional Public Defender	\$48,988
Bell	Mental Health Defense Campaign	\$138,353
Burnet	Central Texas Regional Public Defender Office	\$286,666
Dickens	Caprock Regional Defender Office	\$314,888
Fort Bend	Mental Health Public Defender	\$146,741
Harris	Public Defender Office	\$1,619,916
Hidalgo	Public Defender Office – Juvenile Section	\$159,886
Lubbock	Regional Public Defender for Capital Cases	\$2,760,706
Lubbock	Mental Health Private Defender Program	\$14,507
Lubbock	Felony and Misdemeanor Managed Assigned Counsel Program	\$744,465
Montgomery	Regional Mental Health Court	\$231,098
	<b>Sub-Total (Continued Multi-Year)</b>	<b>\$6,466,214</b>
McLennan	Indigent Defense Coordinator	\$33,571
	<b>Sub-Total (New Single Year)</b>	<b>\$33,571</b>
	<b>Total</b>	<b>\$6,724,275</b>

**Extraordinary Disbursement Grants.** In FY13, the Commission distributed \$640,259 in extraordinary disbursement funding to six counties. Table 2 details the funds disbursed under this program.

**Table 2: FY13 Extraordinary Disbursements**

County	Amount Disbursed
Austin	\$223,434
Dimmit	\$100,000
Donley	\$ 12,151
Kleberg	\$104,674
Smith	\$100,000
Willacy	\$100,000
<b>Total</b>	<b>\$640,259</b>



## EXPENDITURE REPORT

---

**Technical Support Grants.** In FY13, the Commission disbursed \$126,312 to Tarrant County under this program. A grant was also awarded to Comal County, but at the time of this report no expenses were claimed by the county.

**Targeted Specific Grants.** For FY13, the Commission did not receive any applications for a targeted specific grant, therefore no grants were issued.

### ***Innocence Projects***

In addition to its core mission of supporting county indigent defense systems, the Commission also administers legislatively directed grants to Texas public law schools to operate innocence projects. For the FY 2012-2013 biennium the Texas Legislature appropriated \$640,000, or \$160,000 per law school per biennium.

<b>Law School</b>	<b>FY 2012</b>	<b>FY 2013</b>
University of Houston	\$74,292	\$52,356
University of Texas	\$76,605	\$83,395
Texas Southern University	\$80,000	\$40,000
Texas Tech University	\$66,667	\$93,333
Total Expended	\$297,564	\$269,084

# EXPENDITURE REPORT

## FY13 TIDC Operating Budget

This fiscal year the Commission expended \$935,001 for administrative costs from the Fair Defense Account. Administrative costs represent 3.2% of the total amount expended. These expenses included salaries for eleven full-time staff, travel for board members and staff, an on-line data system that provides public access to county indigent defense plans and expenditures through the internet, and other administrative functions as shown in chart below.

Budget Category	FY13 Total Expended	FY12 Comparative Total
Salaries & Wages	\$664,855	\$689,275
Other Personnel Costs	\$37,656	\$21,940
Benefit Replacement Pay	\$2,310	\$2,054
Payroll Related Costs	\$6,455	\$6,893
Professional Fees & Services	\$461	\$223
Computer/Programming Services	\$6,800	\$0
In-State Travel	\$24,642	\$30,156
Out-of State Travel	\$3,693	\$2,823
Training	\$3,260	\$2,728
Postage	\$3,547	\$2,108
Materials & Supplies	\$26,125	\$9,083
Printing & Reproduction	\$519	\$954
Maintenance & Repairs	\$1,253	\$1,436
Telecommunications	\$7,915	\$10,795
Rentals & Leases	\$3,285	\$4,286
Other Operating Expenses	\$142,225	\$160,523
Innocence Project	\$269,084	\$297,564
Formula Grant	\$19,883,998	\$11,963,264
Discretionary Grant	\$6,724,275	\$11,458,736
Equalization Disbursement Grant	\$0	\$4,300,000
Extraordinary Disbursement Grant	\$640,259	\$300,000
Direct Disbursement Grant	\$0	\$143,401
Technical Assistance/Targeted Specific Grant	\$126,312	\$140,000
<b>Total Expended</b>	<b>\$28,578,929</b>	<b>\$29,548,212</b>

Method of Finance Category	FY13 Method of Finance	FY12 Method of Finance
Fund 5073, Fair Defense Account, Court Costs	\$23,135,251	\$22,768,186
Surety Bond Fee	\$2,127,927	\$2,066,453
State Bar Fee	\$2,326,557	\$2,181,383
Juror Pay Fee	\$9,042,121	\$7,620,331
<b>Total Revenue</b>	<b>\$36,631,856</b>	<b>\$34,636,353</b>
FY12/FY13 Employee Benefits	(\$150,312)	(\$143,794)
FY12 Carryforward – Appropriated	\$226,739	(\$226,739)
FY12 Carryforward – Unappropriated	\$4,717,608	(\$4,717,608)
FY13 Carryforward – Appropriated	(\$4,118,963)	
FY13 Carryforward	(\$8,727,999)	
<b>Total MOF</b>	<b>\$28,578,929</b>	<b>\$29,548,212</b>

<sup>(1)</sup> Cash received above the appropriated cap of \$32,512,893 set by the Legislature.

## Appendix A

### FY 2013 Formula Grant Disbursements

County	Grant Disbursement
Anderson	\$49,277
Andrews	\$18,499
Angelina	\$78,739
Aransas	\$22,113
Archer	\$10,118
Armstrong	\$6,331
Atascosa	\$40,076
Austin	\$24,161
Bailey	\$9,553
Bandera	\$19,959
Bastrop	\$59,687
Baylor	\$7,137
Bee	\$27,742
Bell	\$239,877
Bexar	\$1,213,140
Blanco	\$9,896
Borden	\$4,000
Bosque	\$14,378
Bowie	\$81,161
Brazoria	\$204,188
Brazos	\$171,673
Brewster	\$10,152
Briscoe	\$5,946
Brooks	\$11,727
Brown	\$46,242
Burleson	\$18,592
Burnet	\$32,258
Caldwell	\$34,074
Calhoun	\$17,396
Callahan	\$12,645
Cameron	\$264,012
Camp	\$13,720
Carson	\$11,140
Cass	\$27,210
Chambers	\$27,449
Cherokee	\$34,535
Childress	\$11,865
Clay	\$11,514
Cochran	\$6,564
Coke	\$6,677
Coleman	\$11,290
Collin	\$481,602
Collingsworth	\$7,238
Colorado	\$20,636
Comal	\$76,473
Comanche	\$13,286
Concho	\$7,497
Cooke	\$30,529
Coryell	\$48,537
Cottle	\$2,686
Crane	\$7,178
Crockett	\$10,957

County	Grant Disbursement
Crosby	\$8,414
Culberson	\$2,612
Dallam	\$10,466
Dallas	\$2,075,190
Dawson	\$12,105
Deaf Smith	\$18,546
Delta	\$7,429
Denton	\$422,578
DeWitt	\$17,732
Dickens	\$6,664
Dimmit	\$10,516
Donley	\$9,969
Duval	\$14,903
Eastland	\$19,363
Ector	\$97,741
Edwards	\$6,427
El Paso	\$737,851
Ellis	\$114,270
Erath	\$25,551
Falls	\$19,160
Fannin	\$35,610
Fayette	\$20,195
Fisher	\$6,939
Floyd	\$8,612
Foard	\$5,898
Fort Bend	\$442,319
Franklin	\$10,727
Freestone	\$18,914
Frio	\$17,385
Gaines	\$14,012
Galveston	\$224,719
Garza	\$8,733
Gillespie	\$17,771
Glasscock	\$4,000
Goliad	\$9,257
Gonzales	\$17,550
Gray	\$30,721
Grayson	\$87,320
Gregg	\$108,436
Grimes	\$23,263
Guadalupe	\$81,643
Hale	\$32,123
Hall	\$8,119
Hamilton	\$10,176
Hansford	\$8,405
Hardeman	\$7,594
Hardin	\$47,396
Harris	\$2,720,662
Harrison	\$56,753
Hartley	\$9,995
Haskell	\$9,629
Hays	\$104,998

County	Grant Disbursement
Hemphill	\$7,481
Henderson	\$67,544
Hidalgo	\$566,496
Hill	\$35,560
Hockley	\$19,237
Hood	\$44,607
Hopkins	\$24,227
Houston	\$28,988
Howard	\$25,440
Hudspeth	\$7,416
Hunt	\$117,656
Hutchinson	\$28,871
Irion	\$5,959
Jack	\$10,553
Jackson	\$17,780
Jasper	\$37,740
Jeff Davis	\$6,509
Jefferson	\$182,704
Jim Hogg	\$4,630
Jim Wells	\$31,489
Johnson	\$142,385
Jones	\$16,737
Karnes	\$13,134
Kaufman	\$89,123
Kendall	\$26,312
Kenedy	\$6,556
Kent	\$5,745
Kerr	\$46,548
Kimble	\$8,633
King	\$1,000
Kinney	\$6,679
Kleberg	\$37,205
Knox	\$6,940
La Salle	\$9,049
Lamar	\$47,384
Lampasas	\$17,119
Lavaca	\$14,481
Lee	\$17,292
Llano	\$17,165
Loving	\$5,326
Lubbock	\$248,484
Lynn	\$8,369
Madison	\$15,859
Marion	\$12,945
Martin	\$7,553
Mason	\$7,171
Matagorda	\$28,260

County	Grant Disbursement
McCulloch	\$11,197
McLennan	\$243,430
McMullen	\$5,602
Medina	\$32,464
Menard	\$7,905
Midland	\$104,036
Milam	\$26,180
Mills	\$7,648
Mitchell	\$11,269
Montague	\$20,336
Montgomery	\$372,309
Moore	\$28,775
Morris	\$13,957
Motley	\$5,215
Nacogdoches	\$45,283
Navarro	\$48,049
Newton	\$14,294
Nolan	\$20,334
Nueces	\$282,754
Ochiltree	\$12,240
Oldham	\$8,567
Orange	\$52,589
Palo Pinto	\$22,070
Panola	\$23,342
Parker	\$97,821
Parmer	\$10,596
Pecos	\$17,990
Polk	\$46,740
Potter	\$134,657
Presidio	\$8,667
Rains	\$11,418
Randall	\$99,529
Reagan	\$7,355
Real	\$6,948
Reeves	\$16,102
Refugio	\$9,546
Roberts	\$3,823
Robertson	\$18,288
Rockwall	\$50,672
Runnels	\$11,967
Rusk	\$35,187
Sabine	\$11,278
San Augustine	\$10,519
San Jacinto	\$20,894
San Patricio	\$43,488
San Saba	\$7,969
Schleicher	\$6,653
Scurry	\$15,397
Shackelford	\$6,890
Shelby	\$27,687
Sherman	\$7,500
Smith	\$166,899

County	Grant Disbursement
Somervell	\$9,512
Starr	\$34,137
Stephens	\$12,928
Sterling	\$5,956
Stonewall	\$6,114
Sutton	\$10,192
Swisher	\$9,585
Tarrant	\$1,393,532
Taylor	\$118,274
Terrell	\$3,003
Terry	\$13,427
Titus	\$26,391
Tom Green	\$97,022
Travis	\$810,429
Trinity	\$15,279
Tyler	\$16,778
Upshur	\$31,459
Upton	\$8,578
Uvalde	\$21,471
Val Verde	\$33,349
Van Zandt	\$44,941
Victoria	\$67,771
Walker	\$56,208
Waller	\$41,199
Ward	\$13,941
Washington	\$28,245
Webb	\$251,743
Wharton	\$28,674
Wheeler	\$9,120
Wichita	\$135,021
Wilbarger	\$14,900
Willacy	\$39,667
Williamson	\$246,082
Wilson	\$30,316
Winkler	\$9,695
Wise	\$44,117
Wood	\$15,848
Yoakum	\$9,350
Young	\$28,429
Zapata	\$14,793
Zavala	\$10,700
<b>TOTAL</b>	<b>\$19,883,998</b>

