

***Legislative Appropriations Request***

for Fiscal Years 2022 and 2023

Submitted to the  
Office of the Governor, Budget Division,  
and the Legislative Budget Board

by

Texas Indigent Defense Commission

September 18, 2020

**FY 2022 - 2023 LEGISLATIVE APPROPRIATIONS REQUEST**  
**Texas Indigent Defense Commission, Texas Judicial Council**

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## Administrator's Statement

The Texas Indigent Defense Commission safeguards liberty by ensuring that Texas and its 254 counties provide counsel as guaranteed by the United States and Texas Constitutions. TIDC oversees, funds, and improves indigent defense throughout the State of Texas:

(1) **Oversight** (monitoring indigent defense in all 254 counties)

- Indigent Defense Expenditure Reports – Collect, analyze, and publish financial data from 254 counties
- Indigent Defense Plans – Collect, analyze, and publish policies and procedures from 254 counties
- Fiscal Monitoring – Audit financial data in select counties
- Policy Monitoring – Audit constitutional and statutory compliance in select counties
- Complaints – Field complaints from lawyers, judges, and defendants

(2) **Funding** (investing in counties to meet constitutional and statutory requirements)

- Formula Grants – Fund a portion of indigent defense representation in all 254 counties
- Improvement Grants – Fund select projects that improve performance or accountability
- Innocence Program – Fund innocence projects at six Texas public law schools

(3) **Improvement** (creating more efficient and effective indigent defense systems)

- Training – Educate lawyers, judges, and magistrates
- Publications – Create guides that help ensure effective and efficient representation
- Presentations – Speak about indigent defense at conferences and events
- Technical Assistance – Serve as a resource to county, regional, and state officials
- Policy – Advise policymakers on legislation and rulemaking

### LAR Summary

TIDC requests 1 exceptional item: restore estimated appropriation authority.

TIDC requests 2 rider revisions: modify and clarify Rider 18 and eliminate Rider 19.

## **Governing Board**

TIDC operates under the direction of a 13-member governing board:

- The Honorable Sharon Keller, Presiding Judge, Court of Criminal Appeals – Austin (Chair)
- The Honorable Nathan Hecht, Chief Justice, Texas Supreme Court – Austin
- The Honorable John Whitmire, State Senator – Houston
- The Honorable Brandon Creighton, State Senator – Conroe
- The Honorable Nicole Collier, State Representative – Fort Worth
- The Honorable Reggie Smith, State Representative – Van Alstyne
- The Honorable Sherry Radack, Chief Justice, Texas First Court of Appeals – Houston
- The Honorable Vivian Torres, Medina County Court at Law Judge (retired) – Hondo
- The Honorable Missy Medary, Presiding Judge, Fifth Administrative Judicial Region – Corpus Christi
- Mr. Alex Bunin, Chief Public Defender, Harris County Public Defender – Houston
- Mr. Gonzalo Rios, Criminal Defense Attorney, Tom Green County – San Angelo
- The Honorable Valerie Covey, County Commissioner, Williamson County – Georgetown
- The Honorable Richard Evans, County Judge, Bandera County – Bandera

## Significant Changes

COVID-19 has affected TIDC funding:

- TIDC is funded primarily through collected court costs deposited in the Fair Defense Account (GR-D 5073). In recent years, those deposits have fallen approximately 2% annually, driven by decreases in misdemeanor cases filed and traffic tickets issued.
- COVID-19 accelerated this decline. Fair Defense Account revenue fell more than 15% (\$5.8m.) in FY20.
- When combined with the elimination of TIDC's GR funding last session (\$3.75m. per year), total TIDC program funding fell 20% (\$9.4m.).

COVID-19 and the resulting 5% budget cut have impacted TIDC's ability to pursue its mission:

- TIDC has left 3 positions—20% of its workforce—vacant.
- TIDC policy and fiscal monitors have, where possible, transitioned from in-person to remote monitoring.
- TIDC canceled a planned office buildout.
- TIDC has reduced grants to counties by more than \$3.5 million.

COVID-19 has affected Texas indigent defense:

- Texas counties—which pay approximately 90% of indigent defense costs—are facing decreased budgets.
- Most court proceedings have moved online, and jury trials have become rare.
- In-person attorney-client communication has declined.

TIDC has helped plan and fund public defender offices in more than a dozen counties this biennium.

- Increasingly, counties want to build public defender offices to attract high-quality attorneys and ensure budget predictability.
- Public defender offices improve efficiency, effectiveness, and accountability.

## Legislative Appropriations Request

TIDC requests 1 exceptional item: Restore estimated appropriation authority.

- Fair Defense Account funds (GR-D Fund 5073) are collected for indigent defense and may only be spent on indigent defense.
- TIDC has normally had estimated appropriation authority.
- Estimated appropriation authority will help TIDC remedy constitutional and statutory deficiencies:
  - Although defendants have a constitutional right to counsel in A and B misdemeanor cases, over half of rural misdemeanor defendants proceed without counsel.
  - While professional standards require investigation of the facts in each case, in FY19, 52% of counties reported no investigative expenditures.
  - Half of Texas defendants are represented by an attorney whose annual caseload exceeds TIDC caseload guidelines.
  - Only 39 counties have established defender offices to ensure oversight, accountability, and quality representation.

TIDC requests 2 rider revisions: modify and clarify Rider 18 and eliminate Rider 19.

Modify and clarify Rider 18.

- Rider 18 dedicates \$2,500,000 per year to indigent defendants with mental illness served by “existing public defender offices.”
- The scope should be modified so that the funds have the greatest impact:
  - Because new public defender offices are built each year, the funds would have a greater impact if the Rider included both new and existing public defender offices.
  - Managed assigned counsel systems are like public defender offices but appoint private attorneys. The funds would have a greater impact if the Rider also included managed assigned counsel.
- Rider 18 also includes discrepancies—such as limiting funds to “a pilot project” and later allowing funding on a “continuing basis”—that should be clarified.

Eliminate Rider 19.

- Rider 19 is superfluous. Funds appropriated are included in the FY22-23 baseline budget.
- It dedicates \$5,000,000 of TIDC funds for “grants to counties for indigent defense.”
- TIDC has always dedicated more than \$5,000,000 for grants to counties for indigent defense.

**Office of Capital and Forensic Writs**

TIDC also supports the Office of Capital and Forensic Writs' legislative appropriation request.

**Conclusion**

TIDC requests 1 exceptional item: restore estimated appropriation authority. TIDC requests 2 rider revisions: modify and clarify Rider 18 and eliminate Rider 19. These requests are limited to TIDC's most basic needs, so that Texas can meet its constitutional duties. TIDC staff is happy to discuss this request.

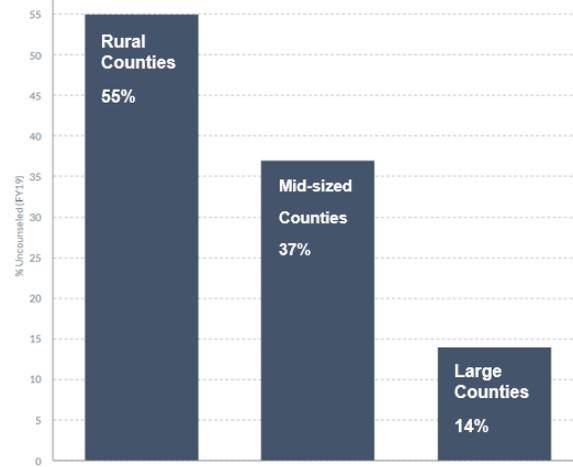
Respectfully submitted,

Geoff Burkhart

Executive Director, Texas Indigent Defense Commission

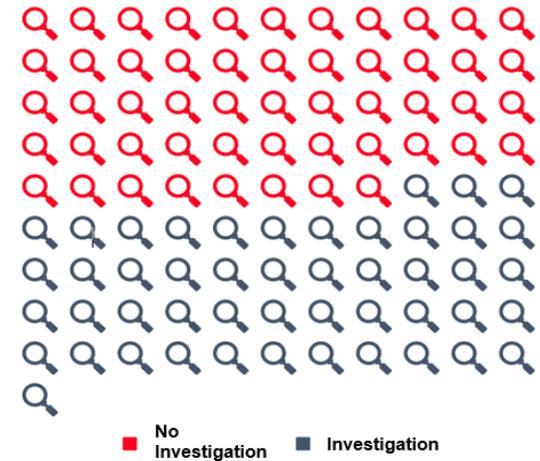
# Texas Indigent Defense at a Glance

## Uncounseled Misdemeanor Defendants



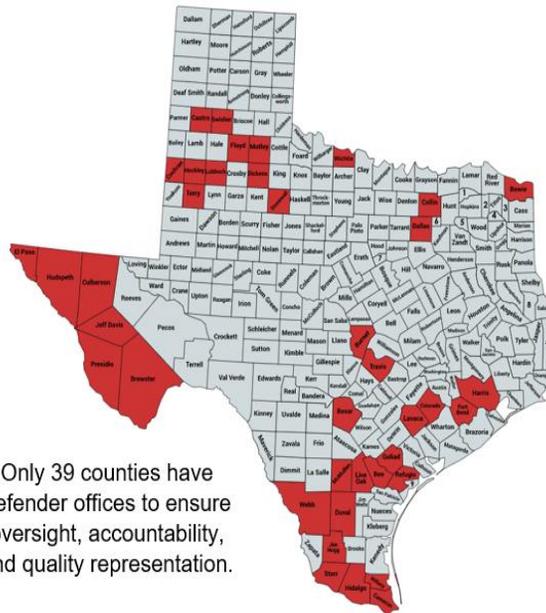
Access to counsel varies widely across Texas. Defendants in rural counties are much more likely to proceed without an attorney.

## Investigators Used in Only Half of Counties



Professional standards require investigation of the facts in each case. In FY19, 52% of counties reported no investigative expenditures.

## Texas Counties with Defender Systems



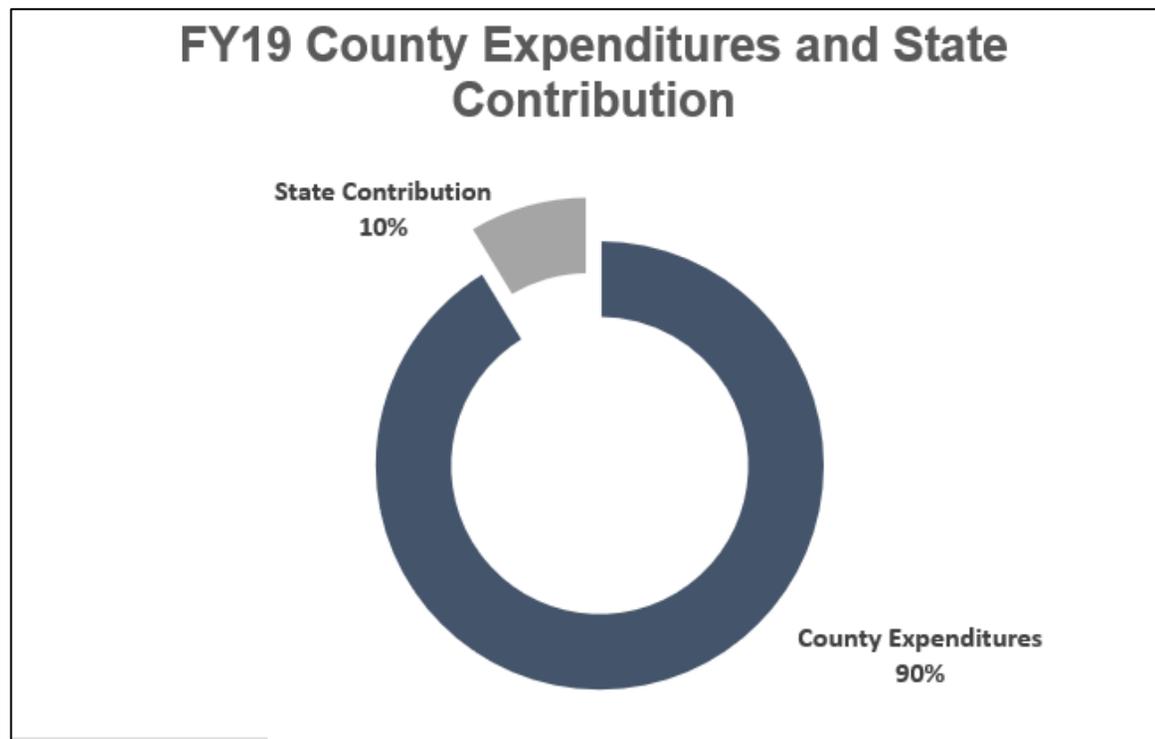
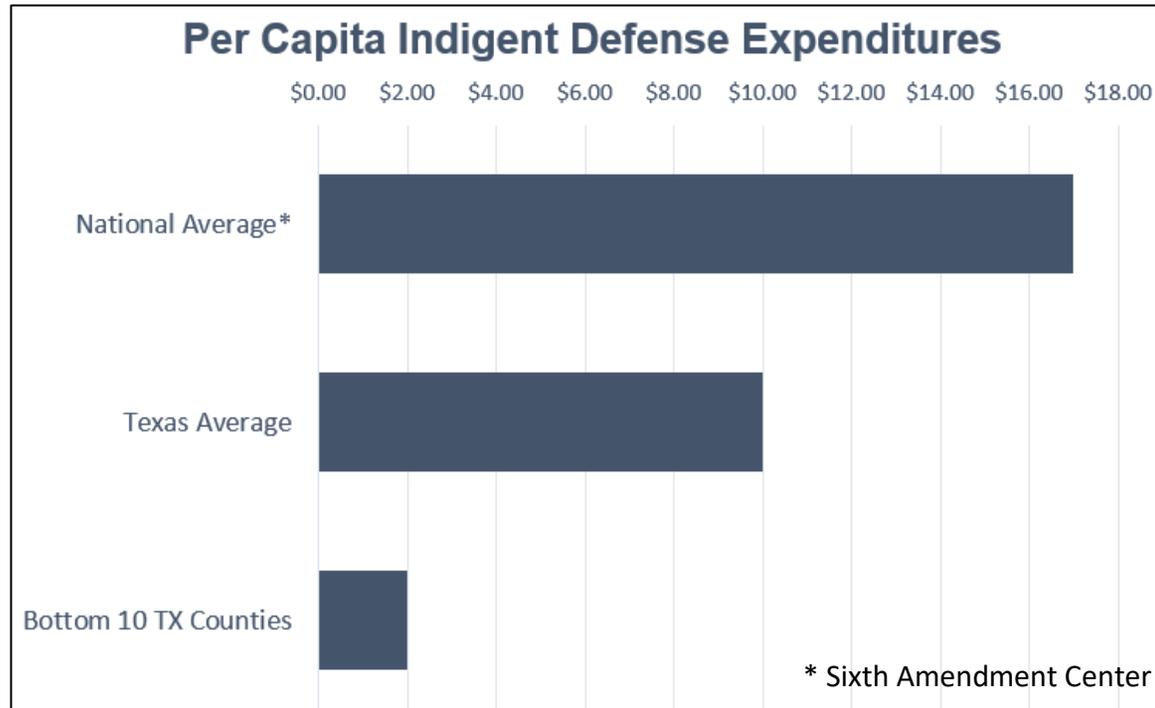
Only 39 counties have defender offices to ensure oversight, accountability, and quality representation.

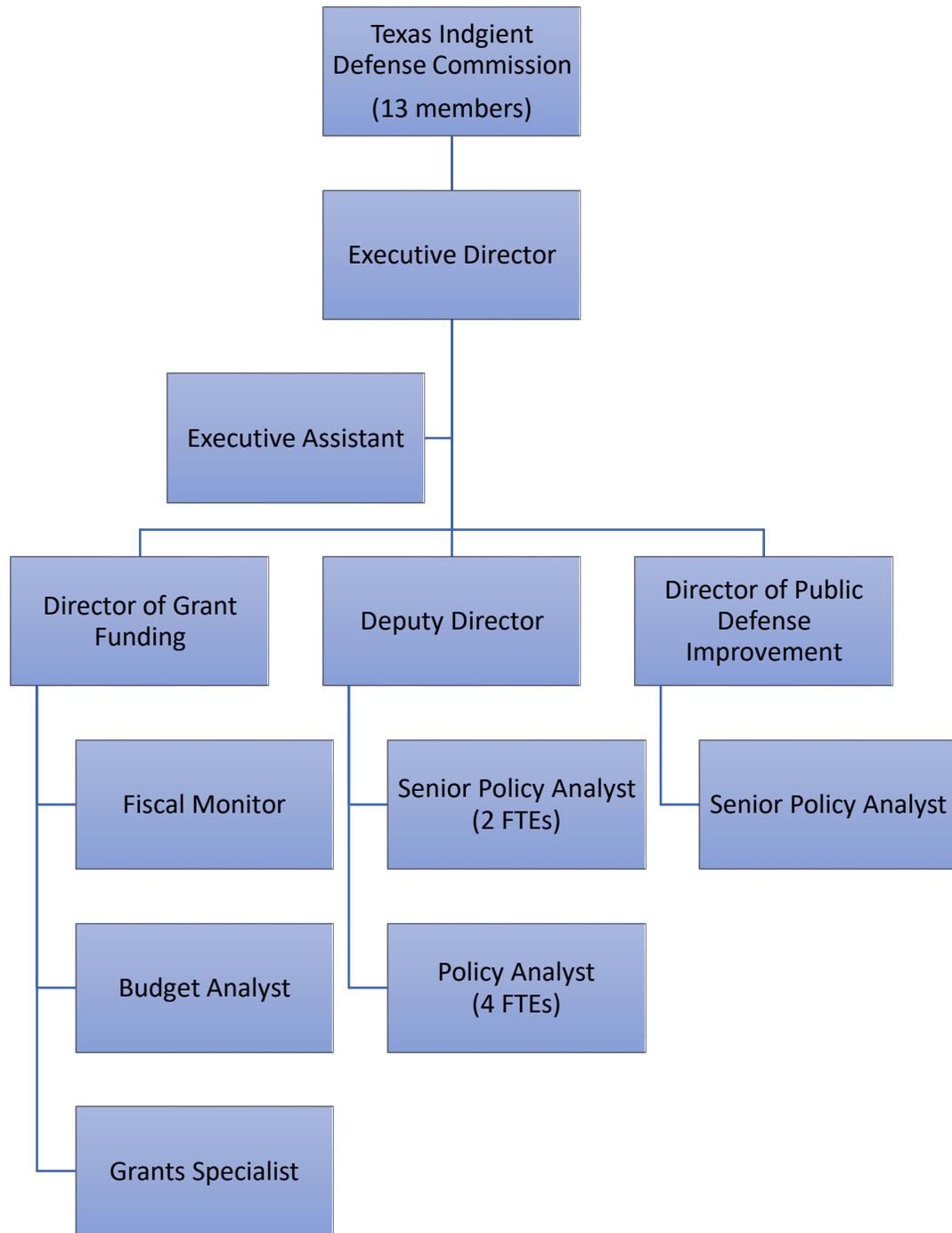
## Half of Defendants are Represented by Attorneys with Caseloads Exceeding TIDC Guidelines



When attorneys have too many cases, they often jettison core legal tasks, like investigation, research, client communication, or filing motions.

# Texas Indigent Defense Costs







## CERTIFICATE

**Agency Name** Office of Court Administration/Texas Judicial Council

This is to certify that the information contained in the agency Legislative Appropriation Request filed with the Legislative Budget Board (LBB) and the Governor's Office Budget Division (Governor's Office) is accurate to the best of my knowledge and that the electronic submission to the LBB via the Automated Budget and Evaluation System of Texas (ABEST) and the PDF file submitted via the LBB Document Submission application are identical.

Additionally, should it become likely at any time that unexpended balances will accrue for any account, the LBB and the Governor's Office will be notified in writing in accordance with Article IX, Section 7.01 (2020-21 GAA).

**Chief Executive Officer or Presiding Judge**

*David Slayton*

Signature

David Slayton

Printed Name

Administrative Director

Title

September 18, 2020

Date

**Board or Commission Chair**

Signature

Printed Name

Title

Date

**Chief Financial Officer**

*Jennifer Henry*

Signature

Jennifer Henry

Printed Name

Chief Financial Officer

Title

September 18, 2020

Date

**2.A. SUMMARY OF BASE REQUEST BY STRATEGY**  
87th Regular Session, Agency Submission, Version 1  
Automated Budget and Evaluation System of Texas (ABEST)

**212 Texas Indigent Defense Commission, Texas Judicial Council**

Goal/Objective/STRATEGY	Exp 2019	Est 2020	Bud 2021	Req 2022	Req 2023
4 Improve Indigent Defense Practices and Procedures					
1 Improve Indigent Defense Practices and Procedures					
1 INDIGENT DEFENSE	\$33,992,495	\$46,882,103	\$43,221,108	\$44,981,963	\$44,981,963
TOTAL, GOAL     4	<b>\$33,992,495</b>	<b>\$46,882,103</b>	<b>\$43,221,108</b>	<b>\$44,981,963</b>	<b>\$44,981,963</b>
<b>TOTAL, STRATEGY REQUEST</b>	<b>\$33,992,495</b>	<b>\$46,882,103</b>	<b>\$43,221,108</b>	<b>\$44,981,963</b>	<b>\$44,981,963</b>
METHOD OF FINANCING					
<b>General Revenue Funds:</b>					
0001	\$3,739,888	\$0	\$0	\$0	\$0
<b>SUBTOTAL</b>	<b>\$3,739,888</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Other Funds:</b>					
0444 CJD Grants	\$0	\$139,285	\$0	\$0	\$0
<b>SUBTOTAL</b>	<b>\$0</b>	<b>\$139,285</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>General Revenue Dedicated Funds:</b>					
5073 Fair Defense	\$30,252,607	\$46,742,818	\$43,221,108	\$44,981,963	\$44,981,963
<b>SUBTOTAL</b>	<b>\$30,252,607</b>	<b>\$46,742,818</b>	<b>\$43,221,108</b>	<b>\$44,981,963</b>	<b>\$44,981,963</b>
<b>TOTAL, METHOD OF FINANCING</b>	<b>\$33,992,495</b>	<b>\$46,882,103</b>	<b>\$43,221,108</b>	<b>\$44,981,963</b>	<b>\$44,981,963</b>

**2.B. SUMMARY OF BASE REQUEST BY METHOD OF FINANCE**

87th Regular Session, Agency Submission, Version 1  
Automated Budget and Evaluation System of Texas (ABEST)

**212 Texas Indigent Defense Commission, Texas Judicial Council**

<b>METHOD OF FINANCE</b>	<b>Exp 2019</b>	<b>Est 2020</b>	<b>Bud 2021</b>	<b>Req 2022</b>	<b>Req 2023</b>
<b>GRAND TOTAL</b>	<b>\$33,992,495</b>	<b>\$46,882,103</b>	<b>\$43,221,108</b>	<b>\$44,981,963</b>	<b>\$44,981,963</b>

**2.B. SUMMARY OF BASE REQUEST BY METHOD OF FINANCE**

87th Regular Session, Agency Submission, Version 1  
Automated Budget and Evaluation System of Texas (ABEST)

**212 Texas Indigent Defense Commission, Texas Judicial Council**

<b>METHOD OF FINANCE</b>	<b>Exp 2019</b>	<b>Est 2020</b>	<b>Bud 2021</b>	<b>Req 2022</b>	<b>Req 2023</b>
<b>GENERAL REVENUE FUND</b>					
0001 General Revenue					
<i>REGULAR APPROPRIATIONS:</i>					
Regular Appropriations from MOF Table (2018-19 GAA)	\$3,750,000	\$0	\$0	\$0	\$0
Regular Appropriations from MOF Table (2020-21 GAA)					
Regular Appropriations from MOF Table (2022-23 GAA)					
<i>LAPSED APPROPRIATION:</i>					
Regular Appropriations from MOF Table (2018-19 GAA)	(\$10,183)	\$0	\$0	\$0	\$0
<i>UNEXPENDED BALANCES AUTHORITY:</i>					
Art IX, Sec 14.05, UB Auhority within the Same Biennium (2018-19 GAA)	\$71				
<b>TOTAL General Revenue Fund - 0001</b>	<b>\$3,739,888</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>GENERAL REVENUE FUND - DEDICATED</b>					
5073 GR Dedicated - Fair Defense Account No. 5073					
<i>REGULAR APPROPRIATIONS:</i>					
Regular Appropriations from MOF Table (2018-19 GAA)	\$28,892,588	\$0	\$0	\$0	\$0
Regular Appropriations from MOF Table (2020-21 GAA)	\$0	\$49,717,856	\$44,717,856		
Regular Appropriations from MOF Table (2022-23 GAA)				\$44,981,963	\$44,981,963
<i>LAPSED APPROPRIATION:</i>					
Regular Appropriations from MOF Table (2018-19 GAA)	(\$55,201)	\$0	\$0		
Lapsed Appropriation for the 5% reduction		(\$490,016)	(\$3,981,770)		
<i>UNEXPENDED BALANCES AUTHORITY:</i>					
Art. IX, Sec.14.05, UB Authority within the Same Biennium (2018-19 GAA)	\$1,415,220	\$0	\$0	\$0	\$0
Art. IX, Sec.14.05, UB Authority within the Same Biennium (2020-21 GAA)	\$0	(\$2,485,022)	\$2,485,022	\$0	\$0
<b>TOTAL GR Dedicated - Fair Defense Account No. 5073</b>	<b>\$30,252,607</b>	<b>\$46,742,818</b>	<b>\$43,221,108</b>	<b>\$44,981,963</b>	<b>\$44,981,963</b>
<b>OTHER FUNDS</b>					
0444 Interagency Contracts - Criminal Justice Grants					
<i>RIDER APPROPRIATION:</i>					
Art.IX, Sec. 8.01, Acceptance of Gifts of Money - Justice Defense Training Grant		\$139,285			
<b>TOTAL Interagency Contracts - Criminal Justice Grants</b>	<b>\$0</b>	<b>\$139,285</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**2.C. SUMMARY OF BASE REQUEST BY OBJECT OF EXPENSE**  
87th Regular Session, Agency Submission, Version 1  
Automated Budget and Evaluation System of Texas (ABEST)

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**212 Texas Indigent Defense Commission, Texas Judicial Council**

<b>OBJECT OF EXPENSE</b>	<b>Exp 2019</b>	<b>Est 2020</b>	<b>Bud 2021</b>	<b>Req 2022</b>	<b>Req 2023</b>
1001 Salaries & Wages	\$897,977	\$1,085,459	\$1,137,891	\$1,347,000	\$1,347,000
1002 Other Personnel Costs	\$84,192	\$13,280	\$13,280	\$13,280	\$13,280
2001 Professional Fees & Services	\$2,488	\$311	\$402	\$402	\$402
2003 Consumables	\$941	\$1,385	\$3,100	\$3,100	\$3,100
2004 Utilities	\$1,723	\$2,187	\$4,400	\$4,400	\$4,400
2005 Travel	\$41,498	\$20,883	\$38,000	\$58,000	\$58,000
2006 Rent- Building	\$727	\$75	\$620	\$620	\$620
2007 Rent-Machine & Other	\$2,341	\$2,799	\$3,000	\$3,000	\$3,000
2009 Other Operating Expense	\$900,170	\$782,282	\$779,294	\$786,294	\$786,294
4000 Grants	\$32,060,438	\$44,973,442	\$41,241,121	\$42,765,867	\$42,765,867
<b>OOE Total (Excluding Riders)</b>	\$33,992,495	\$46,882,103	\$43,221,108	\$44,981,963	\$44,981,963
<b>OOE Total (Riders)</b>					
<b>Grand Total</b>	\$33,992,495	\$46,882,103	\$43,221,108	\$44,981,963	\$44,981,963

**2.F. Summary of Total Request by Strategy**  
 87th Regular Session, Agency Submission, Version 1  
 Automated Budget and Evaluation System of Texas (ABEST)

DATE : 11/19/2020  
 TIME : 1:38:20PM

Agency code: 212 Agency name: Office of Court Administration, Texas Judicial Council

<b>Goal/Objective/STRATEGY</b>	<b>Base 2022</b>	<b>Base 2023</b>	<b>Exceptional 2022</b>	<b>Exceptional 2023</b>	<b>Total Request 2022</b>	<b>Total Request 2023</b>
<b>4</b> Improve Indigent Defense Practices and Procedures						
<b>1</b> <i>Improve Indigent Defense Practices and Procedures</i>						
1 TX INDIGENT DEFENSE COMM	\$44,981,963	\$44,981,963	\$0	\$0	\$44,981,963	\$44,981,963
<b>TOTAL, GOAL 4</b>	<b>\$44,981,963</b>	<b>\$44,981,963</b>	<b>\$0</b>	<b>\$0</b>	<b>\$44,981,963</b>	<b>\$44,981,963</b>
<b>TOTAL, AGENCY STRATEGY REQUEST</b>	<b>\$97,293,910</b>	<b>\$96,502,716</b>	<b>\$1,210,890</b>	<b>\$901,128</b>	<b>\$98,504,800</b>	<b>\$97,403,844</b>
<b>TOTAL, AGENCY RIDER APPROPRIATIONS REQUEST</b>						
<b>GRAND TOTAL, AGENCY REQUEST</b>	<b>\$97,293,910</b>	<b>\$96,502,716</b>	<b>\$1,210,890</b>	<b>\$901,128</b>	<b>\$98,504,800</b>	<b>\$97,403,844</b>

**Budget Overview - Biennial Amounts**  
 87th Regular Session, Agency Submission, Version 1  
 Automated Budget and Evaluation System of Texas (ABEST)

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**212 Texas Indigent Defense Commission, Texas Judicial Council**  
**Appropriation Years: 2022-23**

	GR DEDICATED		OTHER FUNDS		ALL FUNDS	
	2020-21	2022-23	2020-21	2022-23	2020-21	2022-23
Goal: 4. Improve Indigent Defense Practices and Procedures						
4.1.1 Tx Indigent Defense Comm	\$89,963,926	\$89,963,926	\$139,285		\$90,103,211	\$89,963,926
<b>Total</b>	<b>\$89,963,926</b>	<b>\$89,963,926</b>	<b>\$139,285</b>		<b>\$90,103,211</b>	<b>\$89,963,926</b>
<b>Total FTEs</b>					<b>11.1</b>	<b>15.0</b>

**3.A. Strategy Request**  
87th Regular Session, Agency Submission, Version 1  
Automated Budget and Evaluation System of Texas (ABEST)

11/19/2020 1:38:20PM

**212 Office of Court Administration, Texas Judicial Council**

GOAL: 4 Improve Indigent Defense Practices and Procedures  
OBJECTIVE: 1 Improve Indigent Defense Practices and Procedures  
STRATEGY: 1 Improve Indigent Defense Practices and Procedures

Service Categories:

Service: 07      Income: NA      Age: NA

CODE	DESCRIPTION	Exp 2019	Est 2020	Bud 2021	BL 2022	BL 2023
<b>Output Measures:</b>						
KEY 1	Number of Site Visits, Trainings, and Reports Issued	106.00	100.00	100.00	100.00	100.00
KEY 2	Percentage of Counties Receiving State Funds for Indigent Defense	99.00 %	98.00 %	98.00 %	98.00 %	98.00 %
<b>Objects of Expense:</b>						
1001	SALARIES AND WAGES	\$897,977	\$1,085,459	\$1,137,891	\$1,347,000	\$1,347,000
1002	OTHER PERSONNEL COSTS	\$84,192	\$13,280	\$13,280	\$13,280	\$13,280
2001	PROFESSIONAL FEES AND SERVICES	\$2,488	\$311	\$402	\$402	\$402
2003	CONSUMABLE SUPPLIES	\$941	\$1,385	\$3,100	\$3,100	\$3,100
2004	UTILITIES	\$1,723	\$2,187	\$4,400	\$4,400	\$4,400
2005	TRAVEL	\$41,498	\$20,883	\$38,000	\$58,000	\$58,000
2006	RENT - BUILDING	\$727	\$75	\$620	\$620	\$620
2007	RENT - MACHINE AND OTHER	\$2,341	\$2,799	\$3,000	\$3,000	\$3,000
2009	OTHER OPERATING EXPENSE	\$900,170	\$782,282	\$779,294	\$786,294	\$786,294
4000	GRANTS	\$32,060,438	\$44,973,442	\$41,241,121	\$42,765,867	\$42,765,867
<b>TOTAL, OBJECT OF EXPENSE</b>		<b>\$33,992,495</b>	<b>\$46,882,103</b>	<b>\$43,221,108</b>	<b>\$44,981,963</b>	<b>\$44,981,963</b>

**Method of Financing:**

**3.A. Strategy Request**  
 87th Regular Session, Agency Submission, Version 1  
 Automated Budget and Evaluation System of Texas (ABEST)

**212 Office of Court Administration, Texas Judicial Council**

GOAL: 4 Improve Indigent Defense Practices and Procedures  
 OBJECTIVE: 1 Improve Indigent Defense Practices and Procedures  
 STRATEGY: 1 Improve Indigent Defense Practices and Procedures

Service Categories:

Service: 07      Income: NA      Age: NA

CODE	DESCRIPTION	Exp 2019	Est 2020	Bud 2021	BL 2022	BL 2023
1	General Revenue Fund	\$3,739,888	\$0	\$0	\$0	\$0
<b>SUBTOTAL, MOF (GENERAL REVENUE FUNDS)</b>		<b>\$3,739,888</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Method of Financing:</b>						
5073	Fair Defense	\$30,252,607	\$46,742,818	\$43,221,108	\$44,981,963	\$44,981,963
<b>SUBTOTAL, MOF (GENERAL REVENUE FUNDS - DEDICATED)</b>		<b>\$30,252,607</b>	<b>\$46,742,818</b>	<b>\$43,221,108</b>	<b>\$44,981,963</b>	<b>\$44,981,963</b>
<b>Method of Financing:</b>						
444	Interagency Contracts - CJG	\$0	\$139,285	\$0	\$0	\$0
<b>SUBTOTAL, MOF (OTHER FUNDS)</b>		<b>\$0</b>	<b>\$139,285</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>TOTAL, METHOD OF FINANCE (INCLUDING RIDERS)</b>					<b>\$44,981,963</b>	<b>\$44,981,963</b>
<b>TOTAL, METHOD OF FINANCE (EXCLUDING RIDERS)</b>		<b>\$33,992,495</b>	<b>\$46,882,103</b>	<b>\$43,221,108</b>	<b>\$44,981,963</b>	<b>\$44,981,963</b>
<b>FULL TIME EQUIVALENT POSITIONS:</b>		<b>10.6</b>	<b>11.5</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>
<b>STRATEGY DESCRIPTION AND JUSTIFICATION:</b>						

**212 Office of Court Administration, Texas Judicial Council**

GOAL:	4	Improve Indigent Defense Practices and Procedures	
OBJECTIVE:	1	Improve Indigent Defense Practices and Procedures	Service Categories:
STRATEGY:	1	Improve Indigent Defense Practices and Procedures	Service: 07      Income: NA      Age: NA

CODE	DESCRIPTION	Exp 2019	Est 2020	Bud 2021	BL 2022	BL 2023
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The Texas Indigent Defense Commission (TIDC) safeguards liberty by ensuring that Texas and its 254 counties provide counsel as guaranteed by the United States and Texas Constitutions. Established in Section 79.002 of the Government Code, TIDC oversees, funds, and improves indigent defense throughout the State of Texas. Specifically, the Commission monitors indigent defense in all 254 counties through data collection and in-person audits; funds all 254 counties to help ensure constitutional and statutory compliance; and creates more efficient and effective indigent defense systems through training, publications, presentations, technical assistance, policies, and standards. Despite significant progress over the past 20 years, TIDC continues to observe and remedy constitutional and statutory deficiencies in counties across the State. TIDC is administratively attached to the Office of Court Administration.

**EXTERNAL/INTERNAL FACTORS IMPACTING STRATEGY:**

TIDC is funded through the Fair Defense Account (GR-D 5073), primarily from court cost collections. TIDC received no GR in FY20-21. In recent years, Fair Defense Account deposits have fallen about 2% annually, driven by decreases in misdemeanor cases filed and traffic tickets issued. Total program funding fell 20% (\$9.4 million) in FY20, due largely to COVID-19.

Since passage of the Fair Defense Act of 2001, annual statewide indigent defense costs have risen from \$91 million to nearly \$300 million—a 228% increase. In FY19, costs rose nearly 10%. TIDC has identified four cost drivers: inflation, population growth, increased felony case filings, and improvements to meet constitutional and statutory requirements. Although costs have risen, Texas’s indigent defense expenditures are below the national average. National average per capita expenditure is \$17. In Texas, that figure is \$10. Some Texas counties spend less than \$1 per capita.

Texas counties continue to struggle to meet constitutional and statutory requirements. For example, although defendants have a constitutional right to counsel in A and B misdemeanors, over half of rural misdemeanor defendants proceed without counsel. Similarly, while professional standards require investigation of the facts in each case, 52% of counties report no investigative expenditures. Half of Texas defendants are represented by an attorney with an annual caseload that exceeds TIDC caseload guidelines. And only 39 counties have defender offices that ensure oversight, accountability, and quality representation.

**3.A. Strategy Request**  
 87th Regular Session, Agency Submission, Version 1  
 Automated Budget and Evaluation System of Texas (ABEST)

11/19/2020 1:38:20PM

**212 Office of Court Administration, Texas Judicial Council**

GOAL: 4 Improve Indigent Defense Practices and Procedures  
 OBJECTIVE: 1 Improve Indigent Defense Practices and Procedures  
 STRATEGY: 1 Improve Indigent Defense Practices and Procedures

Service Categories:

Service: 07      Income: NA      Age: NA

CODE	DESCRIPTION	Exp 2019	Est 2020	Bud 2021	BL 2022	BL 2023
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**EXPLANATION OF BIENNIAL CHANGE (includes Rider amounts):**

<u>STRATEGY BIENNIAL TOTAL - ALL FUNDS</u>		BIENNIAL	<u>EXPLANATION OF BIENNIAL CHANGE</u>	
Base Spending (Est 2020 + Bud 2021)	Baseline Request (BL 2022 + BL 2023)	CHANGE	\$ Amount	Explanation(s) of Amount (must specify MOFs and FTEs)
\$90,103,211	\$89,963,926	\$(139,285)	\$(139,285)	IAC-CJG-No FTEs-Edward Byrne Memorial Justice Assistance Grant Program funding for Juvenile Defense Training awarded during the 2020-2021 biennium. Not awarded in the 2022-2023 biennium.
			<b>\$(139,285)</b>	<b>Total of Explanation of Biennial Change</b>

Agency Code: 212		Agency: Texas Indigent Defense Commission			Prepared By: Sharon Whitfield					
Date: 9/18/2020		Program #	Program Name	Legal Authority	2020-21 Base	Requested 2022	Requested 2023	Biennial Total 2022-23	Biennial Difference	
Strategy	Strategy Name								\$	%
D.1.1	Texas Indigent Defense Commission	1	TIDC Administration	Government Code, Ch.79, Sec. 79.033.	\$2,688,648	\$1,616,096	\$1,616,096	\$3,232,192	\$543,544	20.2%
D.1.1	Texas Indigent Defense Commission	2	TIDC Grant Programs	Government Code, Sec. 79.037, General Appropriations Act (2020-2021), Art, IV, OCA Rider 19, Fair Defender Account 5073 Appropriation. General Appropriations Act, 86th Legislature, Regular Session 2019, Rider 7(b), Texas Indigent Defense Commission (TIDC).	\$86,214,563	\$42,765,867	\$42,765,867	\$85,531,734	(\$682,829)	-0.8%
D.1.1	Texas Indigent Defense Commission	3	TIDC Innocence Projects	General Appropriations Act, 86th Legislature, Regular Session 2019, Rider 10, Innocence Projects.	\$1,200,000	\$600,000	\$600,000	\$1,200,000	\$0	0.0%
<b>Total</b>					\$90,103,211	\$44,981,963	\$44,981,963	\$89,963,926	(\$139,285)	-0.2%
<b>Program Prioritization:</b> Indicate the methodology or approach taken by the agency, court, or institution to determine the ranking of each program by priority.										
Texas Indigent Defense Commission reviewed the impact of the programs on meeting our mission and critical functions.										

### 3.B Rider Revisions and Additions Request

<b>Agency Code:</b> 212	<b>Agency Name:</b> Office of Court Administration, Texas Indigent Defense Commission	<b>Prepared By:</b> Sharon Whitfield	<b>Date:</b> 9/18/20	<b>Request Level:</b> Baseline
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Current Rider Number	Page Number in 2020-21 AA	Proposed Rider Language
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1	IV-27	Performance Measure Targets
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**D. Goal:** INDIGENT DEFENSE

**D.1.1. Strategy:** TX INDIGENT DEFENSE COMM

**Output (Volume):**

Number of Site Visits, Trainings and Reports Issued	100	100
Percentage of Counties Receiving State Funds <u>Grants</u> for Indigent Defense	98%	98%

*Updating the rider to adjust the titles.*

7	IV-29	Texas Indigent Defense Commission (TIDC).
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- a. Amounts appropriated above from the General Revenue-Dedicated Fair Defense Account No. 5073 in Strategy D.1.1., Texas Indigent Defense Commission, include court costs pursuant to Code of Criminal Procedure, Art. 102.0045, Fee for Jury Reimbursement to Counties (estimated to be ~~\$6,100,000~~ \$5,900,000 in fiscal year ~~2020~~ 2022 and ~~\$6,100,000~~ \$5,900,000 in fiscal year ~~2021~~ 2023).
- b. Also, out of the amounts appropriated above in Strategy D.1.1., TIDC shall make grants to counties from the General Revenue-Dedicated Fair Defense Account No. 5073 in accordance with all uses authorized by Government Code, Chapter 79, with funds being disbursed by the Comptroller. Of this amount, \$2,566,528 in fiscal year ~~2020~~ 2022 and \$2,474,370 in fiscal year ~~2021~~ 2023 shall be distributed to counties that implement cost containment initiatives designed to limit local indigent defense cost increases. No portion of the appropriation governed by this subsection shall be used to offset the Office of Court Administration's administrative support provided to the TIDC except by mutual agreement of the TIDC and the Office of Court Administration. In addition to the amounts appropriated above in Strategy D.1.1., Texas Indigent Defense Commission, are all unobligated and unexpended balances remaining in the General Revenue Fair Defense Account No. 5073 as of August 31, 2021 (estimated to be \$0). Any amounts deposited in excess of \$44,981,963 in fiscal year 2022 and \$44,981,963 in fiscal year 2023 are hereby appropriated to the Office of Court Administration, Texas Judicial Council, in Strategy D.1.1., Texas Indigent Defense Commission, to

### 3.B. Rider Revisions and Additions Request (continued)

assist counties in the improvement of indigent defense.

TIDC shall submit a report to the Legislature no later than December 1, ~~2020~~2022, detailing the effectiveness of various cost containment measures implemented by counties and proposing additional measures to reduce county operating costs with respect to indigent defense.

*Updating rider to adjust the years for the 2022-2023 biennium. The Fee for Jury Reimbursement to Counties revenue estimate has been updated to reflect recent historical trends. TIDC is requesting estimated appropriation authority for Fund 5073 in order to issue grants to counties for indigent defense.*

10

IV-29

**Innocence Projects.** Out of amounts appropriated above in Strategy D.1.1., Texas Indigent Defense Commission, \$600,000 in each year of the biennium from the General Revenue-Dedicated Fair Defense Account No. 5073 shall be used by the Commission to contract with law schools at the University of Houston, the University of Texas, Texas Tech University, Texas Southern University, University of North Texas and Texas A&M University to support innocence project screening, investigation and litigation activities regarding claims of actual innocence in non-capital cases in Texas and associated expenses necessary to conduct those activities. Funding shall be used to provide direct assistance to investigate actual innocence cases post-conviction and pursue relief for defendants with credible claims of actual innocence and shall not be used for legal clinic expenses, teaching and student supervision. The amount of each contract with each university shall be \$100,000. Any unobligated and unexpended balances remaining from the \$600,000 in funds designated for innocence projects as of August 31, ~~2018~~2022 are appropriated to Strategy D.1.1., Texas Indigent Defense Commission, for the same purpose for the fiscal year beginning September 1, ~~2018~~2022.

*Updating the rider to adjust the year for the 2022-23 biennium.*

### 3.B. Rider Revisions and Additions Request (continued)

18 IV-31 **Indigent Defense with Mental Illness.** Out of the amounts appropriated above in Strategy D.1.1., Texas Indigent Defense Commission, \$2,500,000 in General Revenue-Dedicated Fair Defense Account No. 5073 each fiscal year shall be used to provide funding to ~~existing~~ public defender offices **and managed assigned counsel programs** ~~for a pilot project~~ for the early identification and specialized representation of indigent defendants with a mental illness. The Commission shall use the funds to provide grants to public defender offices **and managed assigned counsel programs** to expand the capacity of existing mental health defender programs, ~~and to establish mental health defender programs in the public defender offices~~ **counties** currently without these programs, ~~or~~ ~~The Commission shall provide grants to public defender offices on a continuing basis to sustain effective mental health defender programs.~~

*Requesting modification and clarification of Rider 18 to include new public defender offices and managed assigned counsel systems.*

19 IV-31 ~~**Fair Defense Account 5073 Appropriation.** Out of the amounts appropriated above in Strategy D.1.1., Texas Indigent Defense Commission, \$5,000,000 in General Revenue-Dedicated Fair Defense Account No. 5073 is appropriated in fiscal year 2020 for the purpose of providing grants to counties for indigent defense.~~

*Requesting elimination of Rider 19. Funds appropriated in 2020 are included in the baseline budget for 2022-2023.*

20 IV-31 **Contingency for Behavioral Health Funds.** Notwithstanding appropriation authority granted above, the Comptroller of Public Accounts shall not allow the expenditure of General Revenue-Related behavioral health funds for the Office of Court Administration in Strategy D.1.1., Texas indigent Defense Commission, in fiscal year ~~2020~~**2022** or fiscal year ~~2024~~**2023**, as identified in Art. IX, Sec. 10.04, Statewide Behavioral Health Strategic Plan and Coordinated Expenditures, if the Legislative Budget Board provides notification to the Comptroller of Public Accounts that the agency's planned expenditure of those funds in fiscal year ~~2020~~**2022** or fiscal year ~~2024~~**2023** does not satisfy the requirements of Art. IX, Sec. 10.04, Statewide Behavioral Health Strategic Plan and Coordinated Expenditures.

*Updating the rider to adjust the years for the 2022-23 biennium.*

**6.E. Estimated Revenue Collections Supporting Schedule**  
87th Regular Session, Agency Submission, Version 1  
Automated Budget and Evaluation System of Texas (ABEST)

Agency Code: **212** Agency name: **Office of Court Administration, Texas Judicial Council**

<b>FUND/ACCOUNT</b>	<b>Act 2019</b>	<b>Exp 2020</b>	<b>Est 2021</b>	<b>Est 2022</b>	<b>Est 2023</b>
<b><u>5073</u> Fair Defense</b>					
Beginning Balance (Unencumbered):	\$18,094,691	\$30,621,064	\$20,473,605	\$15,396,672	\$8,754,573
Estimated Revenue:					
3195 Additional Legal Services Fee	2,394,568	2,238,438	2,000,000	2,000,000	2,000,000
3704 Court Costs	34,354,656	29,018,786	31,000,000	31,000,000	31,000,000
3858 Bail Bond Surety Fees	1,929,558	1,635,109	1,850,000	1,850,000	1,850,000
3972 Other Cash Transfers Between Funds	5,949,841	5,900,000	5,900,000	5,900,000	5,900,000
Subtotal: Actual/Estimated Revenue	44,628,623	38,792,333	40,750,000	40,750,000	40,750,000
<b>Total Available</b>	<b>\$62,723,314</b>	<b>\$69,413,397</b>	<b>\$61,223,605</b>	<b>\$56,146,672</b>	<b>\$49,504,573</b>
<b>DEDUCTIONS:</b>					
Expended/Budgeted/Requested-Baseline TIDC	(30,252,607)	(46,742,818)	(43,221,108)	(44,981,963)	(44,981,963)
Expended/Budgeted/Requested-Baseline OCFW	(1,338,588)	(1,561,889)	(1,963,267)	(1,762,578)	(1,762,578)
Transfers - Employee Benefits TIDC	(234,756)	(259,581)	(267,054)	(272,054)	(272,054)
Transfers - Employee Benefits OCFW	(276,299)	(375,504)	(375,504)	(375,504)	(375,504)
<b>Total, Deductions</b>	<b>\$(32,102,250)</b>	<b>\$(48,939,792)</b>	<b>\$(45,826,933)</b>	<b>\$(47,392,099)</b>	<b>\$(47,392,099)</b>
<b>Ending Fund/Account Balance</b>	<b>\$30,621,064</b>	<b>\$20,473,605</b>	<b>\$15,396,672</b>	<b>\$8,754,573</b>	<b>\$2,112,474</b>

**REVENUE ASSUMPTIONS:**

**6.E. Estimated Revenue Collections Supporting Schedule**  
87th Regular Session, Agency Submission, Version 1  
Automated Budget and Evaluation System of Texas (ABEST)

Agency Code: **212** Agency name: **Office of Court Administration, Texas Judicial Council**

<b>FUND/ACCOUNT</b>	<b>Act 2019</b>	<b>Exp 2020</b>	<b>Est 2021</b>	<b>Est 2022</b>	<b>Est 2023</b>
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TIDC assumed the following in estimating revenue collection:

- Fair Defense Account (GR-D 5073) revenue declined more than 15% (\$5.8m.) in FY20, driven primarily by decreased misdemeanor cases filed and traffic tickets issued. TIDC program funding as a whole fell 20% (\$9.4m.) in FY20, due in part to loss of GR from a partial funding swap in the 86th Legislature. TIDC assumes that court costs will slowly recover in FY21, as COVID-19 restrictions are lifted and criminal court filings, including misdemeanors and traffic-related offenses, slowly rise.
- TIDC assumes the pre-COVID trend of 2% annual decline in court cost collections (3704) will continue.
- TIDC assumes that bail bond surety fees (3858) and juror pay (3972) will remain relatively stable.
- TIDC assumes that accumulated funds in the Fair Defense Account (Fund 5073) will be nearly sufficient to absorb revenue losses in FY20-21 and FY22-23.
- TIDC assumes that state or federal litigation will not mandate additional indigent defense provisions or expenditures.

TIDC supports OCFW's LAR. Restoring TIDC's estimated appropriation authority will not affect OCFW's sum certain appropriation.

**CONTACT PERSON:**

Sharon Whitfield

### 6.J. Summary of Behavioral Health Funding

212

TIDC/OCA	Edwin Colfax
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Date: 9/10/2020

#	Program Name	Service Type (drop down)	Agency Strategies	Summary Description	Target Population(s)	Fund Type	2020-21 Base		2022-23 Baseline Request		2022-23 Exceptional Item		Additional Information				Methodology / Notes				
							FY 2020 Base	FY 2021 Base	FY 2022 Baseline Request	FY 2023 Baseline Request	FY 2022 Requested	FY 2023 Requested	Requested for Mental Health Services	Requested for Substance Abuse Services	2021 FTEs	2023 FTEs		Statewide Strategic Plan Strategies			
1	Grants to Counties for Mental Health Public Defenders	Mental Health Services - Other	D.1.1 Improve Indigent Defense Practices & Procedures	Create/expand mental health public defender programs in existing public defender offices. Specialized attorneys & social workers represent defendants with mental illness and provide jail release planning, service referrals, mitigation investigations, and other support and advocacy to help stabilize defendants and improve outcomes.	Persons charged with criminal offenses who are experiencing mental illness.	GR													Expenditures dependent on counties applying for grants that meet requirements of OCA Budget Rider #18		
						GR-D	2,500,000	2,500,000	2,500,000	2,500,000											
						FF															
						IAC															
						Other															
						Subtotal	2,500,000	2,500,000	2,500,000	2,500,000	-00	-00	-00	-00							
2						GR															
						GR-D															
						FF															
						IAC															
						Other															
						Subtotal	-00	-00	-00	-00	-00	-00	-00								
3						GR															
						GR-D															
						FF															
						IAC															
						Other															
						Subtotal	-00	-00	-00	-00	-00	-00	-00								
4						GR															
						GR-D															
						FF															
						IAC															
						Other															
						Subtotal	-00	-00	-00	-00	-00	-00	-00								
5						GR															
						GR-D															
						FF															
						IAC															
						Other															
						Subtotal	-00	-00	-00	-00	-00	-00	-00								
6						GR															
						GR-D															
						FF															
						IAC															
						Other															
						Subtotal	-00	-00	-00	-00	-00	-00	-00								
<b>Total</b>							<b>2,500,000</b>	<b>2,500,000</b>	<b>2,500,000</b>	<b>2,500,000</b>	<b>-00</b>	<b>-00</b>	<b>-00</b>	<b>-00</b>	<b>0.0</b>	<b>0.0</b>					

6.J. Summary of Behavioral Health Funding

212		TIDC/OCA					Edwin Colfax			
Date: 9/10/2020										
#	Program Name	Service Type	Summary Description	Fund Type	2020-21 Base	2022-23 Total Request	Biennial Difference	Percentage Change	2022-23 Requested for Mental Health Services	2022-23 Requested for Substance Abuse Services
1	Grants to Counties for Mental Health Public Defenders	Mental Health Services - Other	Create/expand mental health public defender programs in existing public defender offices. Specialized attorneys & social workers represent defendants with mental illness and provide jail release planning, service referrals, mitigation investigations, and other support and advocacy to help stabilize defendants and improve outcomes.	GR	-00	-00	-00		-00	-00
				GR-D	5,000,000	5,000,000	-00	0.0%		-00
				FF	-00	-00	-00		-00	-00
				IAC	-00	-00	-00		-00	-00
				Other	-00	-00	-00		-00	-00
				Subtotal	5,000,000	5,000,000	-00	0.0%		-00
2				GR	-00	-00	-00		-00	-00
				GR-D	-00	-00	-00		-00	-00
				FF	-00	-00	-00		-00	-00
				IAC	-00	-00	-00		-00	-00
				Other	-00	-00	-00		-00	-00
				Subtotal	-00	-00	-00		-00	-00
3				GR	-00	-00	-00		-00	-00
				GR-D	-00	-00	-00		-00	-00
				FF	-00	-00	-00		-00	-00
				IAC	-00	-00	-00		-00	-00
				Other	-00	-00	-00		-00	-00
				Subtotal	-00	-00	-00		-00	-00
4				GR	-00	-00	-00		-00	-00
				GR-D	-00	-00	-00		-00	-00
				FF	-00	-00	-00		-00	-00
				IAC	-00	-00	-00		-00	-00
				Other	-00	-00	-00		-00	-00
				Subtotal	-00	-00	-00		-00	-00
5				GR	-00	-00	-00		-00	-00
				GR-D	-00	-00	-00		-00	-00
				FF	-00	-00	-00		-00	-00
				IAC	-00	-00	-00		-00	-00
				Other	-00	-00	-00		-00	-00
				Subtotal	-00	-00	-00		-00	-00
6				GR	-00	-00	-00		-00	-00
				GR-D	-00	-00	-00		-00	-00
				FF	-00	-00	-00		-00	-00
				IAC	-00	-00	-00		-00	-00
				Other	-00	-00	-00		-00	-00
				Subtotal	-00	-00	-00		-00	-00
				<b>Total</b>	<b>5,000,000</b>	<b>5,000,000</b>	<b>-00</b>	<b>0.0%</b>	<b>-00</b>	<b>-00</b>

Agency code: **212**

Agency name: **Office of Court Administration, Texas Judicial Council**

Strategy	Exp 2019	Est 2020	Bud 2021	BL 2022	BL 2023
<b>4-1-1</b>	<b>Improve Indigent Defense Practices and Procedures</b>				
<b>OBJECTS OF EXPENSE:</b>					
1001 SALARIES AND WAGES	\$897,977	\$1,085,459	\$1,130,891	\$1,347,000	\$1,347,000
1002 OTHER PERSONNEL COSTS	84,192	13,280	13,280	13,280	13,280
2001 PROFESSIONAL FEES AND SERVICES	2,488	311	402	402	402
2003 CONSUMABLE SUPPLIES	941	1,385	3,100	3,100	3,100
2004 UTILITIES	1,723	2,187	4,400	4,400	4,400
2005 TRAVEL	41,498	20,883	38,000	58,000	58,000
2006 RENT - BUILDING	727	75	620	620	620
2007 RENT - MACHINE AND OTHER	2,341	2,799	3,201	3,000	3,000
2009 OTHER OPERATING EXPENSE	300,170	182,282	186,294	186,294	186,294
<b>Total, Objects of Expense</b>	<b>\$1,332,057</b>	<b>\$1,308,661</b>	<b>\$1,380,188</b>	<b>\$1,616,096</b>	<b>\$1,616,096</b>
<b>METHOD OF FINANCING:</b>					
5073 Fair Defense	1,332,057	1,308,661	1,380,188	1,616,096	1,616,096
<b>Total, Method of Financing</b>	<b>\$1,332,057</b>	<b>\$1,308,661</b>	<b>\$1,380,188</b>	<b>\$1,616,096</b>	<b>\$1,616,096</b>
<b>FULL-TIME-EQUIVALENT POSITIONS (FTE):</b>	<b>0.0</b>	<b>0.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>
<b>DESCRIPTION</b>					

Represents administrative and support costs are operating expenses incurred by the agency that are associated with the implementation of a specific strategy.

Agency code: 212

Agency name: Office of Court Administration, Texas Judicial Council

	Exp 2019	Est 2020	Bud 2021	BL 2022	BL 2023
<b>GRAND TOTALS</b>					
<b>Objects of Expense</b>					
1001 SALARIES AND WAGES	\$897,977	\$1,085,459	\$1,130,891	\$1,347,000	\$1,347,000
1002 OTHER PERSONNEL COSTS	\$84,192	\$13,280	\$13,280	\$13,280	\$13,280
2001 PROFESSIONAL FEES AND SERVICES	\$2,488	\$311	\$402	\$402	\$402
2003 CONSUMABLE SUPPLIES	\$941	\$1,385	\$3,100	\$3,100	\$3,100
2004 UTILITIES	\$1,723	\$2,187	\$4,400	\$4,400	\$4,400
2005 TRAVEL	\$41,498	\$20,883	\$38,000	\$58,000	\$58,000
2006 RENT - BUILDING	\$727	\$75	\$620	\$620	\$620
2007 RENT - MACHINE AND OTHER	\$2,341	\$2,799	\$3,201	\$3,000	\$3,000
2009 OTHER OPERATING EXPENSE	\$300,170	\$182,282	\$186,294	\$186,294	\$186,294
<b>Total, Objects of Expense</b>	<b>\$1,332,057</b>	<b>\$1,308,661</b>	<b>\$1,380,188</b>	<b>\$1,616,096</b>	<b>\$1,616,096</b>
<b>Method of Financing</b>					
5073 Fair Defense	\$1,332,057	\$1,308,661	\$1,380,188	\$1,616,096	\$1,616,096
<b>Total, Method of Financing</b>	<b>\$1,332,057</b>	<b>\$1,308,661</b>	<b>\$1,380,188</b>	<b>\$1,616,096</b>	<b>\$1,616,096</b>
<b>Full-Time-Equivalent Positions (FTE)</b>	<b>0.0</b>	<b>0.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>