

The background of the slide is a close-up, slightly blurred image of the Texas state flag, showing the white star on a blue field and the red and white stripes.

Ethics: Texas Defense Act

Professor Robert O. Dawson Juvenile Law Institute

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Wesley Shackelford

Special Counsel, Department on Indigent Defense

e-mail: wesley.shackelford@courts.state.tx.us

Good Defense = Good Government

Indigent Defense Work as Public Service:

“A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations. . . .”

-Rule 6.1 of the Model Rules of Professional Conduct

Good Defense = Good Government

General Concepts:

- *System of private assigned counsel means that the private defense bar is providing a key government function*
- *Adversarial judicial system relies on zealous representation to see justice is done*
- *Same level of commitment is owed to paying clients as to indigent clients even though pay may be lower*
- *Defense attorneys must carefully balance public appointments and retained clients*

Good Defense = Good Government

General Concepts:

- *Public defense is successful where component parts of the system work together*
- *Zealous advocacy in court must be balanced with cooperation on system of public defense*

Good Defense = Good Government

Role of Defense Attorneys

- *Organize the local criminal/juvenile defense bar into formal or informal associations to be represented in public defense discussions*
- *Advocate for additional resources or procedures needed to provide high quality public defense services (locally and at state level)*
- *Report problems or grievances about system to local policymakers and the Task Force*

Good Defense = Good Government

Role of Defense Attorneys

- ***Build public support for indigent defense services through community groups, public officials, and media***
- ***Private defense attorneys play important role to assure the system meets their needs and those of indigent defendants***
- ***Role is more important when no public defender office exists as institutional representative for defense interests***

Good Prosecution = Good Government

Role of Prosecutors

“It shall be the primary duty of all prosecuting attorneys ... not to convict, but to see that justice is done.”

-Article 2.01, Code of Criminal Procedure

Good Prosecution = Good Government

Role of Prosecutors

- *Work with defense bar, courts, and others to improve system of providing justice*
- *Work effectively with probation department (especially initial case processing)*
- *Assure that law enforcement officers files reports in a timely manner*
- *Promptly review cases that are filed in your office*

Good Judiciary = Good Government

Role of Judges

- Responsible for system of indigent defense to assure capable representation is provided to indigent juveniles
- Actions Judges can take to get highly qualified counsel:
 - *Actively recruit qualified attorneys*
 - *Act on attorney fee vouchers promptly*
 - *Schedule hearings so that attorneys can handle multiple cases with one trip to juvenile court (esp. if away from courthouse)*

Good Judiciary = Good Government

Role of Judges

Task Force study found best indigent defense systems included:

- ***Active judicial leadership with approach that includes stakeholder involvement***
- ***Problem-solving mindset***
- ***Use of field experiments to test different approaches***
- ***Networking with other counties for new ideas***

Good Probation = Good Government

Role of Juvenile Probation Officer

- *Dedicated court probation officer(s) can facilitate communication about cases between defense and prosecution*
- *Probation officers may explain court process and the role of probation prior to counsel being appointed*
- *Probation officers can assist court in notifying juveniles and their parents about appointment of counsel process*



Bottom Line

**Efforts of Everyone is Needed for
an Effective Indigent Defense
System**

State Reporting Requirements

- 1. Report Indigent Defense Plan Information–
*Annually by January 1st***
- 2. Report County Indigent Defense Expenditure
Data- *Annually by November 1st***

Juvenile Plan Requirements

- **Establish Attorney Qualifications**
- **Establish Attorney Selection Method**
- **Prompt Access to Counsel**
- **Standards for Determining Indigence**
- **Process to Pay Fees/Expenses**

Task Force Duties

- **Collect indigent defense plans and expenditure reports from counties**
- **Distribute state grant funds to counties**
- **Develop policies and standards related to indigent defense services**
- **Provide technical support to improve indigent defense systems and compliance with state laws**

Expenditures on Indigent Defense Services

Total Direct Court Expenditures:

FY 01 - \$82 million

FY 02- \$102 million (\$9 million Juvenile Court)

FY 03- \$117 million (\$12 million Juvenile Court)

FY 04- \$124 million (\$13 million Juvenile Court)

Increased Number of Indigent Defense Cases

Juvenile Cases:

- *Cases increased 22% from FY 2002-2004*
 - *FY 2002 = 43,375 cases*
 - *FY 2004 = 53,097 cases*

Criminal Cases:

- *Cases increased 33% from FY 2002-2004*
 - *FY 2002 = 278,479 cases*
 - *FY 2004 = 371,167 cases*

Projects on the Horizon

Potential Projects:

- **Develop best practices/guidelines in following areas:**
 - *Contract Counsel Systems*
 - *Performance standards*
 - *Caseload standards*
- **Create substantive monitoring program**
- **Create annual conference on indigent defense practices**

Trends in Indigent Defense

- *New public defender offices with Task Force grants:*
 - *Bexar County (criminal appeals)*
 - *Hidalgo County (misdemeanor criminal)*
- *Mental Health Issues*
 - *New Mental Health units in El Paso and Dallas public defender offices*

Task Force's Website

- **Information Available by County:**
 - *All Indigent Defense Plans and Forms*
 - *Indigent Defense Expenditure data*
(including number of cases appointed)
 - *Grant Award amounts*
 - *Population, Poverty Rate,*
Demographic Data

Task Force's Website

- **Other Information:**

- ***Model Forms***

- ***CLE rules***

- ***Task Force and staff members***

- ***Annual Report***

- ***Other indigent defense-related resources***

Where to Get More Information

- **Task Force website-**

www.courts.state.tx.us/TFID

- **Texas Criminal Defense Lawyers Association website-**

www.tcdla.com

- **ABA- Standing Committee on Legal Aid & Indigent Defendants**

www.abanet.org/legalservices/sclaid/defender/

- **National Legal Aid & Defender Association**

www.nlada.org/Defender/

- **The Spangenberg Group-**

www.spangenberggroup.com/