

# Improving Indigent Defense Through Research & Data

- [Features](#) [1]

[Jim Bethke](#) [2]

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[Improving Indigent Defense Through Research & Data](#) [3]

Fifty years after *Gideon* and twelve years after the Texas Fair Defense Act, there is no question that Texas has made real strides in protecting the rights of poor persons accused of crime. To realize the full promise of *Gideon*, we must not rest on our laurels but continue to seek out opportunities to do things better and smarter. To take our indigent defense system to the next level will require a deeper understanding of how the system works. This means collecting and analyzing data to provide policymakers (funders) with objective information that can drive decisions based on evidence instead of anecdote. Texas criminal defense lawyers have an important opportunity to help make indigent defense in Texas more effective, and to make policy and funding decisions more evidence-based.

## The Need for Research

Many lawyers who defend indigent clients, both public defenders and private counsel, have complained of being under-resourced. In Texas, the state funds pennies on the dollar for indigent defense, and budget pressures at the local level have held down fee schedules for indigent cases. When defenders try to make the case for more resources to cover the costs of appropriate defense services, they are often forced to rely on hunch. Sometimes national caseload standards are cited, such as National Advisory Commission on Criminal Justice Standards and Goals (NAC Standards),<sup>1</sup> but even these figures are not based on science or research. Rather they reflect a consensus of a group of experts four decades ago. Increasingly, legislators and local officials are telling advocates for indigent defense to “show us the data.”

The importance of understanding resources needs and monitoring caseloads has been well documented. Professor Norman Lefstein, in his book *Securing Reasonable Caseloads: Ethics and Law in Public Defense*<sup>2</sup> has made a compelling case that effectively managing defender workloads is essential to quality control. If lawyers are spread too thin, the ability of defenders to effectively protect the rights of the accused will be compromised. This can happen in public defender offices when staffing levels are inadequate, and in assigned counsel jurisdictions when low fee schedules for appointed cases put pressure on attorneys to take on a very high caseload.

## The Texas Weighted Caseload Study

Last session, State Senator Rodney Ellis and House of Representative Sylvester Turner led the passage of HB 1318,<sup>3</sup> which among other things directed the Texas Indigent Defense Commission (TIDC) to conduct a weighted caseload study. The goal is to provide policymakers with an objective analysis of the time required to represent different types of court-appointed cases in order to ensure that attorneys “give each indigent defendant the time and effort necessary to ensure effective representation.”<sup>4</sup> The research will yield a valuable management and budgeting tool for public defenders, managed assigned counsel programs, and

counties that operate assigned counsel programs.

This kind of study has not been done in Texas before, but jurisdictions around the country have undertaken similar research because they have recognized the value of understanding data and its power to help them improve their justice systems. Studies are underway in Missouri and Washington, while New Mexico, Maryland, and Virginia have completed weighted caseload studies in the past.

TIDC is partnering with the Public Policy Research Institute at Texas A&M University (PPRI) to conduct the weighted caseload study. This fall, attorneys will be recruited to document and categorize their time spent on cases for twelve weeks. Simple timekeeping software developed by JusticeWorks, the maker of Defender Data case management software, will be used to enter time data on a computer, tablet, or smartphone. At the conclusion of the data collection phase, a panel of experts will review the time data together with survey data and make recommendations regarding the time demands of various types of cases. PPRI will be offering some incentives and "thank you" gifts for attorneys who complete the timekeeping study, but the real incentive is building a better foundation to raise the quality of justice in our state.

### **The Critical Role and Support of TCDLA**

This study is an opportunity for criminal defense attorneys to help advance justice by demonstrating *what it really takes* to provide appropriate representation. The success of this project depends on the participation of hundreds of criminal defense lawyers, both public defenders and private assigned counsel. As the preeminent professional association of defense lawyers in Texas, TCDLA is a crucial partner in this effort. We are grateful to have the support of TCDLA's board leadership and staff, who appreciate the opportunity the study provides.

While this study will not be the last word on indigent defense needs in Texas, it is an important first step in providing a more rational understanding of how our system operates and what its needs are. The fruits of study will be a management tool to guide decision making for public defenders and managed assigned counsel systems. For assigned counsel systems, the study will provide objective information to the courts about the resources different types of cases typically demand. In short, this project will produce a more objective basis for providing criminal defense attorneys with the tools they need to do their jobs and be fairly compensated for their work. When defense lawyers come together, we can do big things. I hope you will join us in this project, which ultimately is about ensuring fairness for all Texans in our criminal courts. To learn more about this research or to volunteer to participate, please visit the study website at <http://texaswcl.tamu.edu> [4].

### **Notes**

1. National Advisory Commission on Criminal Justice Standards and Goals: Courts 276 (1973).
2. Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* (2011).
3. H.B. 1318, 83rd Leg., Reg. Sess. (Tex. 2013).
4. *Id.*

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### **Links:**

- [1] <http://www.voiceforthedefenseonline.com/channel/1/stories>
- [2] <http://www.voiceforthedefenseonline.com/source/jim-bethke>
- [3] <http://www.voiceforthedefenseonline.com/image/improving-indigent-defense-through-research-data>
- [4] <http://texaswcl.tamu.edu>