



**WRITTEN TESTIMONY**

**SUBMITTED BY ANA YÁÑEZ-CORREA, EXECUTIVE DIRECTOR  
TEXAS CRIMINAL JUSTICE COALITION**

**REGARDING H.B. 1754**

**CRIMINAL JURISPRUDENCE COMMITTEE**

**MARCH 22, 2011**

## TEXAS CRIMINAL JUSTICE COALITION

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The Texas Criminal Justice Coalition (TCJC) is committed to identifying and advancing real solutions to the problems facing Texas' juvenile and criminal justice systems. We provide policy research and analysis, form effective partnerships, and educate key stakeholders to promote effective management, accountability, and best practices that increase public safety and preserve human and civil rights.

### TCJC'S PROJECTS

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**The Juvenile Justice Initiative:** *Creating Avenues to Success for Troubled Youth and Their Families.*

**The Public Safety Project:** *Advocating for Fair, Effective Police Practices that Improve the Safety of Our Communities.*

**The Fair Defense Project:** *Ensuring a Just and Accountable Judicial System by Protecting the Right to Counsel.*

**The Solutions for Sentencing & Incarceration Project:** *Providing Proven and Cost-Effective Answers that Address Texas' Over-Reliance on Incarceration.*

**Tools for Re-Entry:** *Advocating for Policies that Enable the Previously Incarcerated to Live Responsibly.*

**Tools for Practitioners:** *Featuring Effective Criminal and Juvenile Justice Programs and Practices.*

**Public Policy Center:** *Providing Nonpartisan Criminal and Juvenile Justice Policy Recommendations.*

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Dear Members of the Committee,

My name is Ana Yáñez-Correa. I am the Executive Director of the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present testimony on H.B. 1754.

## INTRODUCTION

The concept and practice of ensuring indigent defense is a fundamental tenet of our criminal justice system, as envisioned by the framers of the Constitution,<sup>1</sup> established by the Supreme Court in *Gideon v. Wainwright*<sup>2</sup> and its progeny, and implemented in Texas through the Fair Defense Act (FDA) of 2001.<sup>3</sup> Through the commitment and vision of Senator Rodney Ellis and with the support of other leadership, Texas passed the FDA to set the framework for improving indigent defense policies in Texas and, among other things, establish a Task Force on Indigent Defense (Task Force). This body is responsible for (a) developing statewide policies and minimum standards for the provision of indigent defense (e.g., appointment of qualified counsel, prompt magistration, indigency determinations), (b) distributing funds to supplement county indigent defense services, and (c) independently monitoring the compliance of Texas' 254 counties with set policies and standards.

The Task Force currently achieves its mandate with a small staff overseen by the Office of Court Administration.<sup>4</sup> This team, under the dedicated leadership of Executive Director Jim Bethke, serves as an excellent example of government transparency and collaboration, achieving balance and trust in partnerships with advocates, policy-makers, county officials, and other diverse groups, and furthering open communication to improve the understanding and implementation of the goals of the FDA at the state and local levels.

Indeed, since its inception, the Task Force has committed to bringing various interests to the table to support reforms that have significantly changed the landscape of indigent defense. Prior to passage of the FDA in 2001, only seven counties had some form of public defender office in operation. Now, there are 18 public defender offices, serving upwards of 90 counties and various specialized populations, which have either been awarded a grant or are in full operation in Texas.<sup>5</sup> Another may soon follow, as Williamson County is considering an office to address the increasing costs posed by its court-appointed system.<sup>6</sup> Since passage of the FDA, from Fiscal Year 2002 to 2009, indigent defense delivery systems have assisted more than 470,000 individuals.<sup>7</sup>

We applaud and strongly support the Task Force's promotion of trust and consensus-building. It is a model for other agencies seeking to develop and implement policies that will strengthen communities and save taxpayers money. **The passage of H.B. 1754 is imperative to building on the Task Force's success and further strengthening its ability to assist counties in achieving the full implementation of the FDA.**

## POLICY RECOMMENDATIONS

As Texas continues to actively implement the principles of the FDA, gaining national, positive recognition for these efforts, our policy-makers must ensure that the momentum gained by the tremendous work of the Task Force is protected and strengthened. This is even more necessary as the state continues its efforts to ensure a level playing field between (a) the policies and practices that push Texans into jails and prisons, leaving them with an arrest, a possible conviction, and the

long-term, negative collateral consequences that accompany them, and (b) smart-on-crime policies that increase public safety, save taxpayer dollars, and improve communities.

H.B. 1754 is a prime example of how cost-free policies can produce significant, tangible results that will positively impact both counties and the state. Members, the Task Force – with its varied responsibilities – has outgrown its name and current structure. The least Texas can do is provide the Task Force an improved structure that best enables it to fulfill its important mandate and assist counties in the provision of indigent defense.

#### **H.B. 1754 accomplishes exactly this on two levels:**

- At the *state level*, it increases the independence of the defense function in several ways:
  - It removes the Task Force from the Texas Judicial Council, the policy-making body of the state judiciary, under which the Task Force is currently a standing committee. This will allow for greater authority and independence of the Task Force from the judiciary.
  - It streamlines the process for creating new public defender offices, which are critical in achieving budget predictability and cost-savings through lower per-case expenses, reducing pre-trial detention lengths, and increasing the quality of indigent defense services.
- At the *county level*, it provides guidance and authority to counties seeking to establish a Managed Assigned Counsel Program, sometimes referred to as a private defender, which will create greater independence among attorneys and the judiciary by moving decisions to a neutral administrator, and thus reducing potential bias.

Under H.B. 1754, the Task Force would also be subject to the Sunset process, which will create accountability, fiscal responsibility, and effective oversight.

Ultimately, in a state as large and diverse as Texas, local administration of indigent defense delivery is essential to ensure its adequate provision and address local interests. However, **the state must ensure that each model adopted by local counties or regions protects the rights of Texans and guarantees justice in the courts.** With a strong, independent, well-resourced Task Force on Indigent Defense to oversee and provide assistance to counties implementing indigent defense efforts, the state can ensure that discrete offices are collectively providing a system of defense that is effectively meeting the needs of defendants.

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Thank you for allowing me the opportunity to provide feedback to this Committee on the crucial role of the Task Force on Indigent Defense in the provision of services to those passing through our criminal justice system. Not only has the Task Force improved the ability of numerous individuals to retain quality counsel, but throughout its efforts it has gained the respect and support of numerous organizations and associations. TCJC feels especially fortunate to have worked so closely with the Task Force throughout the past eight years – and as much as we have been willing to assist the Task Force in furthering its critical mission, the Task Force team has continually done what it can to assist stakeholders and advocates throughout the state in realizing their own important indigent defense goals.

The Task Force deserves and requires the ongoing support of our state’s key leadership. During this 82<sup>nd</sup> legislative session – the tenth anniversary of Texas’ passage of the historic Fair Defense Act – the state should renew its commitment to that legislation and the protection of individuals’ rights through passage of H.B. 1754.

## ENDNOTES

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<sup>1</sup> The Sixth Amendment states, “In all criminal prosecutions, the accused shall enjoy the right to . . . the assistance of counsel for his defense.”

<sup>2</sup> 372 U.S. 335, 342 (1963). The Court held that the Sixth Amendment right to counsel is a fundamental right which transfers to the States through the Fourteenth Amendment.

<sup>3</sup> Texas Fair Defense Act, Senate Bill 7, 77<sup>th</sup> Legislature, Regular Session, 2001.

<sup>4</sup> Texas Courts Online, “Office of Court Administration (OCA),” <http://www.courts.state.tx.us/oca/>. The OCA is a state agency in the judicial branch that operates under the direction and supervision of the Supreme Court of Texas. OCA provides support to a various judicial organizations, including TJC and the Task Force. Specifically, OCA provides resources (including technical assistance, training, research, fiscal consultation, and other support) and information (statistics, analysis, and reports) for the efficient administration of the judicial branch of Texas.

<sup>5</sup> Task Force on Indigent Defense (TFID), “18 Public Defender Offices in Texas (revised January 6, 2011), pgs. 2, 3; <http://www.courts.state.tx.us/tfid/pdf/webpagepdomac.pdf>.

<sup>6</sup> “Williamson County Considering Public Defender System,” *Texas Government Insider*, Volume 8, Issue 33, August 20, 2010; <http://www.spartnerships.com/newsletter/tgi%208-20-10/tgi.html>.

<sup>7</sup> “Overview,” 2010, pg. 4; <http://www.courts.state.tx.us/tfid/ebookhousecrim051310/Overview.pdf>.