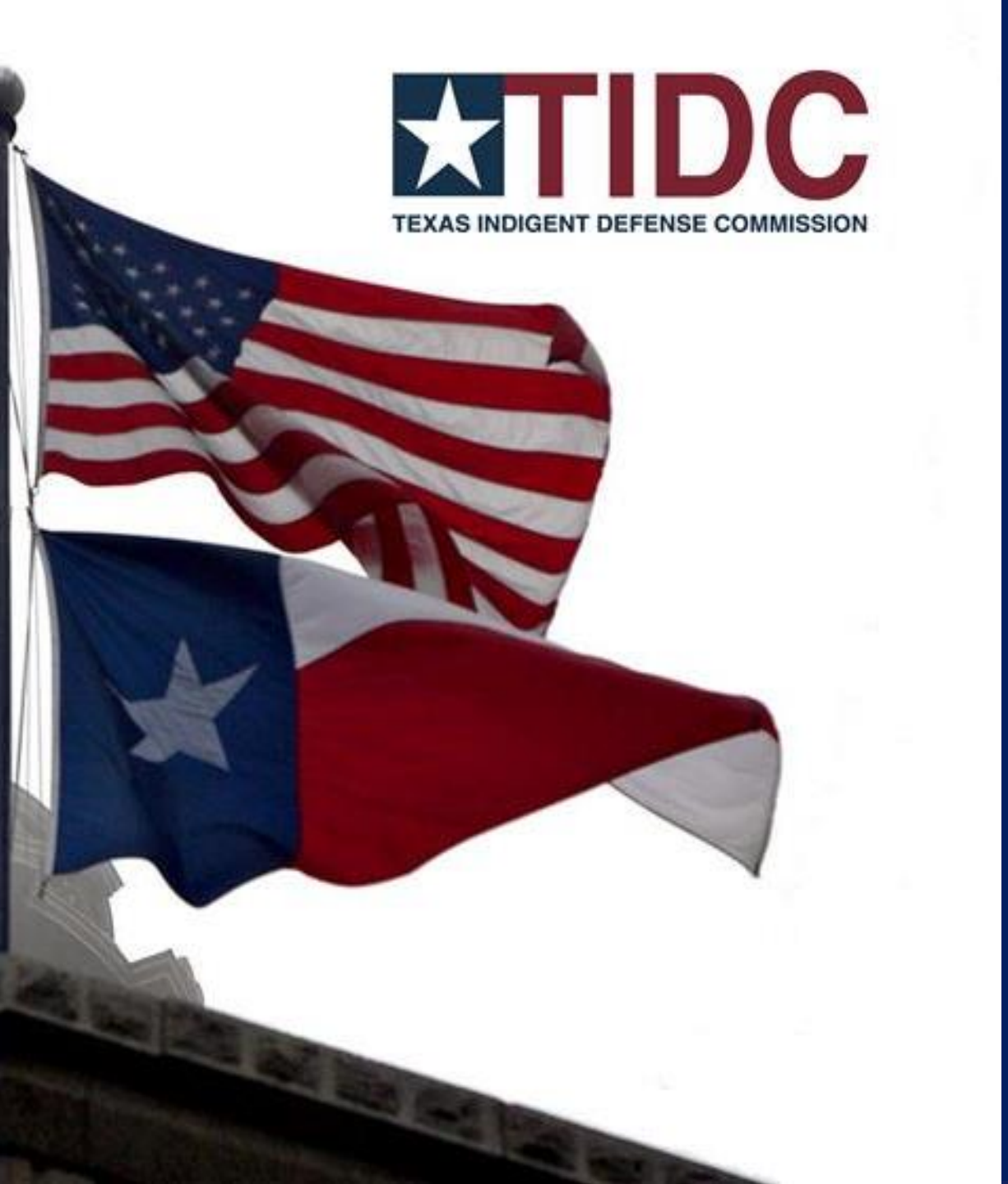


Ideas Worth Sharing:

What do we mean by a "good" lawyer?

Jim Bethke
Executive Director, TIDC

La Torretta Lake Resort & Spa
January 13, 2016

Montgomery, TX

Who We Are

Thirteen-member governing board administratively attached to the Office of Court Administration. Jim Bethke is the Executive Director. The Commission has eleven full-time staff.

OFFICERS:

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

EX OFFICIO MEMBERS:

Honorable Sharon Keller	Austin, Presiding Judge, Court of Criminal Appeals
Honorable Nathan Hecht	Austin, Chief Justice, Supreme Court of Texas
Honorable Sherry Radack	Houston, Chief Justice, First Court of Appeals
Honorable Brandon Creighton	Conroe, State Senator
Honorable John Whitmire	Houston, State Senator
Honorable Andrew Murr	Kerrville, State Representative
Honorable Abel Herrero	Robstown, State Representative

MEMBERS APPOINTED BY GOVERNOR:

Honorable Olen Underwood	Conroe, Presiding Judge, 2nd Administrative Judicial Region of Texas
Honorable Jon Burrows	Temple, Bell County Judge
Honorable Linda Rodriguez	Hays County
Anthony Odiorne	Burnet, Assistant Public Defender, Regional Public Defender Office for Capital Cases
Don Hase	Arlington, Attorney, Ball & Hase

What We Do

Our Purpose

Is to provide 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.

Our Grant Program

In FY 2015 $30.9 million awarded to Texas counties.
Formula grant awards totaled $24 million (254 Counties).
Discretionary grants totaled $6.9 million (18 Counties) .

Our Fiscal and Policy Monitoring Program

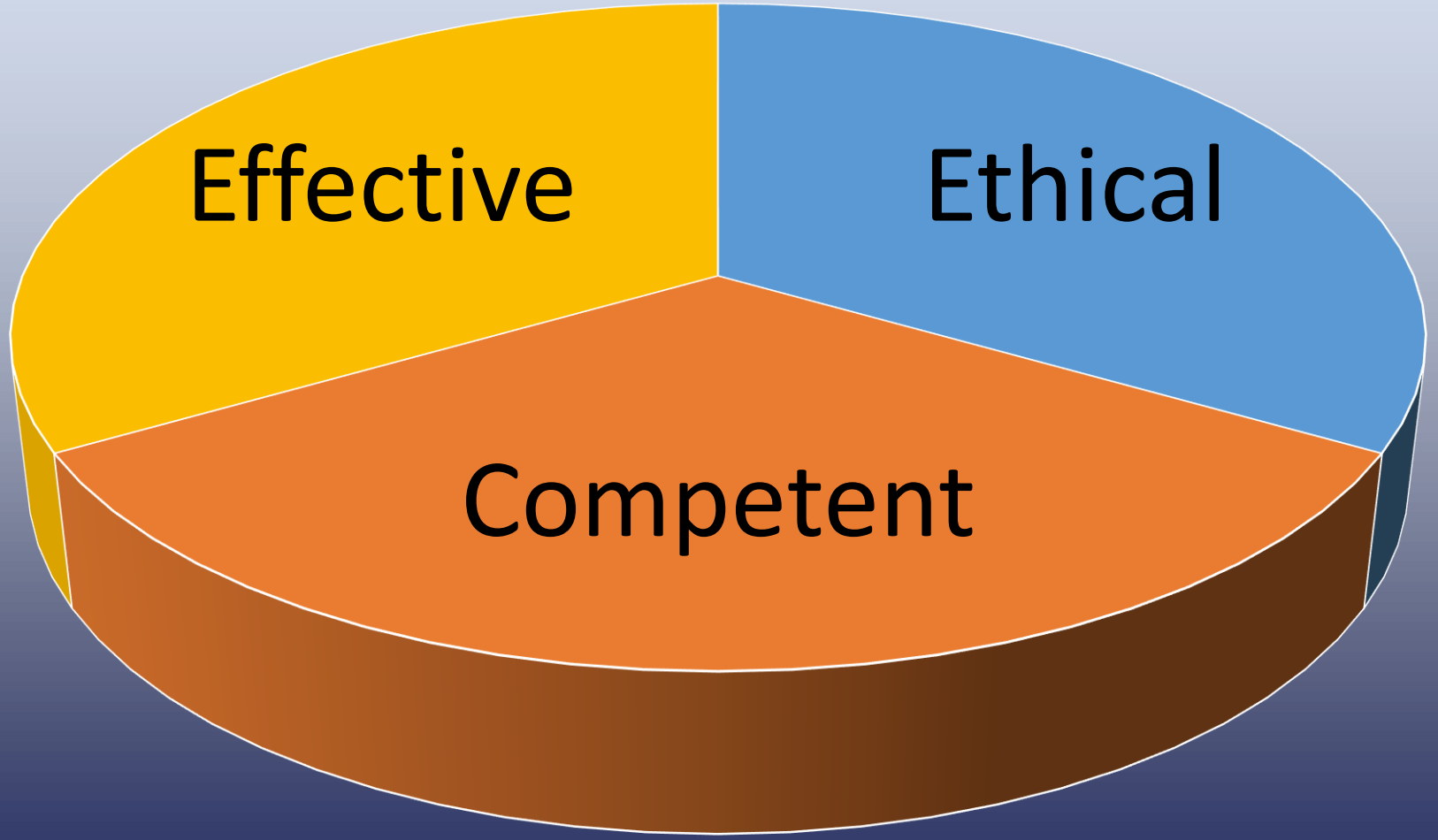
The Commission monitors each county that receives a grant to ensure state money is being properly spent and accounted for and to enforce compliance by the county with the conditions of the grant, as well as with state and local rules and regulations.

Our Innocence Program

Since 2005 the Commission has provided up to $100,000 annually to the University of Texas School of Law, the Texas Tech University School of Law, the Thurgood Marshall School of Law at Texas Southern University, and the University of Houston Law Center to operate innocence clinics.. In 2015 the 84th Legislature expanded funding to include $100,000 per year for two new public law schools at the University of North Texas Dallas College of Law and the Texas A&M University School of Law in Fort Worth. This funding has contributed towards 11 exonerations.

State of Texas	Felony	Misdemeanor	Total
NEW Cases Added FY15	271,744	503,298	775,042
Cases Paid FY15	193,560	222,408	415,968
Cases Paid / Cases Added FY15	71%	44%	54%

What do we mean by a “good” lawyer?



The “Rule Book” / Bridge of Spies

The Rule Books

United States Constitution

Texas Constitution

Fair Defense Laws

Texas Disciplinary Rules of Professional Conduct

ETHICAL

MOVIECLIPS.COM

The Texas Lawyer's Creed

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

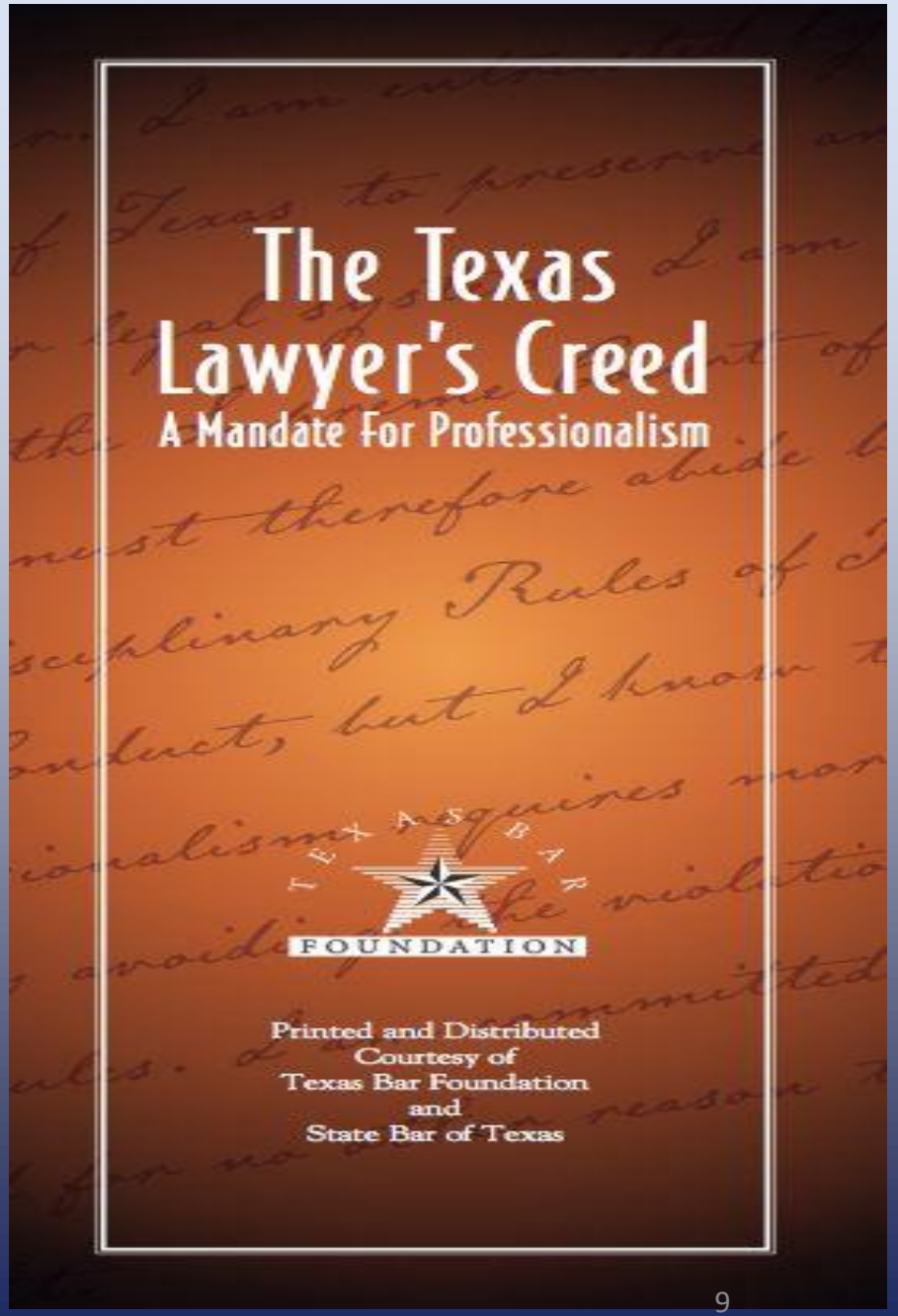
A mandate for professionalism:

To Our Legal System

From Lawyer to Client

From Lawyer to Lawyer

Between Lawyer and Judge



Texas Disciplinary Rules of Professional Conduct

Requires that lawyers provide competent and diligent representation. Adequate communication with clients, prompt investigation, appropriate investigation, and study of the case facts prior to acceptance of a plea arrangement.

2.01 Advisor

"In advising or otherwise representing a client, a *lawyer shall exercise independent professional judgment* and render *candid advice*." Rule " A client is entitled to *straightforward advice expressing the lawyer's honest assessment*. Comment

"Simply put an is an advisory whose duty it is to his client's ability to arrive at informed decision". *Smith v. Texas* 223 S.W.3rd 396, 398 (Tex. App.—Amarillo 2006)

Advisor vs. Advocate

Exposes the difference between the role of the lawyer acting as an advisor with respect to events yet to unfold, and that of a lawyer advocate with respect to zealous representation—"entire devotion to the interests of the client."

3.09 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause;
- (b) refrain from conducting or assisting in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- **(c) not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pre-trial, trial or post-trial rights;**
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and
- (e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07. **Rule**
- **A prosecutor has the responsibility to see that justice is done, and not simply to be an advocate. Comment**

The Prosecutor's Duty: Justice, Not Convictions

"It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, ***not to convict, but to see that justice is done.*** They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused. "

Art. 2.01, Code of Criminal Procedure

Perry Mason and Hamilton Burger

In the 329 criminal prosecution cases "aired on Saturdays" for TV viewers, Los Angeles District Attorney Hamilton Burger ***twice*** secured convictions against Perry Mason-defended defendants.

Both convictions were reversed.

Even Burger — despite his record against Mason — recognized that "there is no winning or losing in the true administration of justice."

Competent

SBOT Performance Guidelines For Criminal Defense Representation

- Role of Defense Counsel
- Education, Training, and Experience of Defense Counsel
- General Duties of Defense Counsel
- General Obligations of Counsel re: Pretrial Release
- **Initial Interview**
- Initial Appearance before Magistrate and Pretrial Release Proceedings
- Examining Trial
- Competency to Stand Trial
- Prosecution Requests for Non-Testimonial Evidence
- Investigation
- **Formal and Informal Discovery**
- Theory of the Case
- Arraignment
- The Decision to File Pretrial Motions
- Filing and Arguing Pretrial Motions
- Subsequent Filing of Pretrial Motions
- The Plea Negotiation Process and the Duties of Counsel
- The Contents of the Negotiations
- The Decision to Enter a Guilty Plea
- Entry of the Plea before the Court
- General Trial Preparation
- Voir Dire and Jury Selection
- Opening Statement
- Confronting the Prosecution's Case
- Presenting the Defense Case
- Closing Argument
- Jury Instructions

Performance Guidelines for Non-Capital Criminal Defense Representation (Cont.)

- Obligations of Counsel in Sentencing
- Sentencing Options, Consequences and Procedures
- Preparing for Sentencing
- The Official Presentence Report
- The Prosecution's Sentencing Position
- The Defense Sentencing Memorandum
- The Sentencing Process
- Self-Surrender
- Expungement of Record

- Duties of Defense Counsel in Post-Trial Proceedings
- Education, Training and Experience of Defense Counsel in Post Trial Proceedings
- Motion for a New Trial
- Protecting the Right to Appeal
- Direct Appeal
- Right to File a Petition for Discretionary Review
- Petition for Discretionary Review
- Right to File a Petition for Certiorari to the United States Supreme Court

Effective

The Effective Attorney

Effective.

Producing a result that is wanted; having an intended effect

There is no substitute for preparation. Every criminal case presents legal and factual problems that can only be solved through time, effort, and expense.

Legislative Charge: HB 1318

Not later than January 1, 2015, the Texas Indigent Defense Commission <u>SHALL</u> conduct and <u>publish a study</u> for the purpose of <u>determining guidelines</u> for establishing a <u>maximum allowable caseload</u> for a criminal defense attorney that… allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation.

Rep. Sylvester Turner
District 139

Rep. Armando Walle
District 140

Sen. John Whitmire
District 15

Sen. Rodney Ellis
District 13

Sen. Sylvia Garcia
District 6

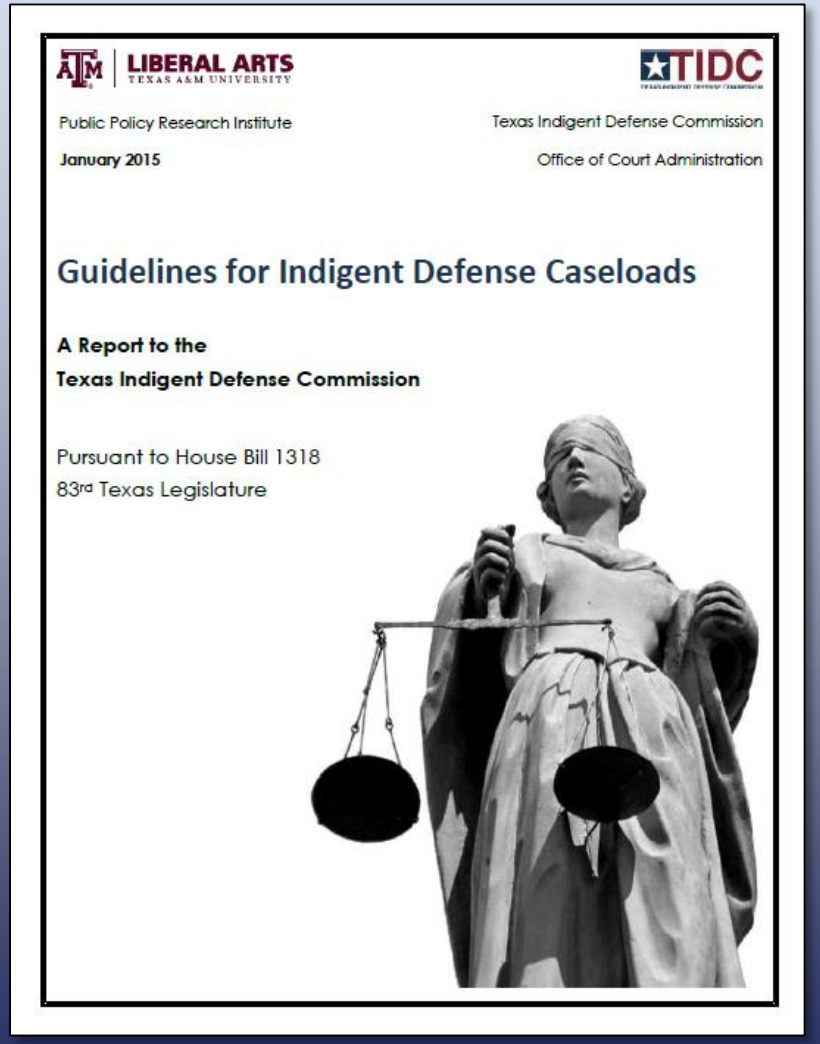
Texas Path to Indigent Defense Caseloads

TIDC
TEXAS INDIGENT DEFENSE COMMISSION

STATE BAR of TEXAS

Texas Criminal Defense Lawyers Association

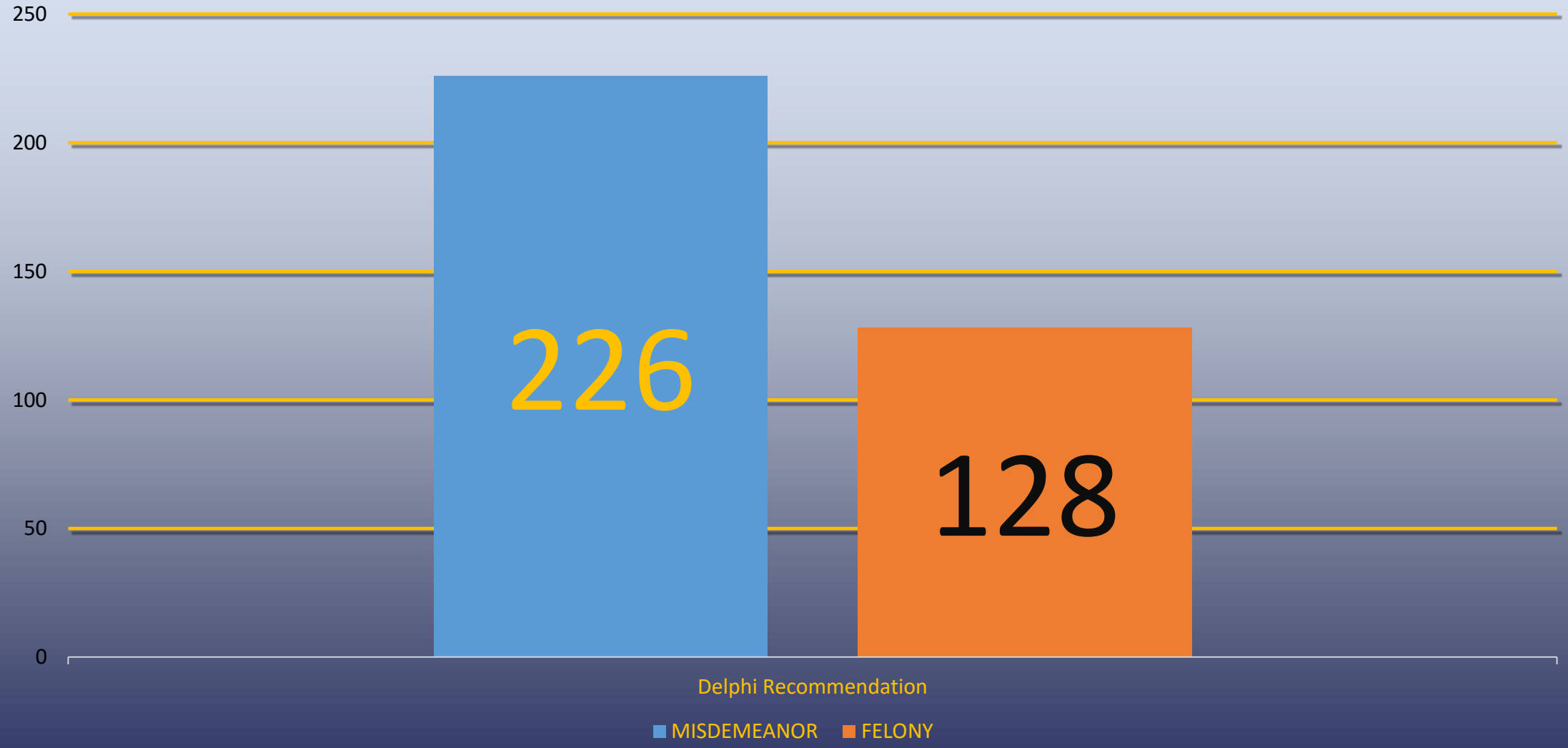
LIBERAL ARTS
TEXAS A&M UNIVERSITY
PUBLIC POLICY RESEARCH INSTITUTE



Weighted Caseload Study

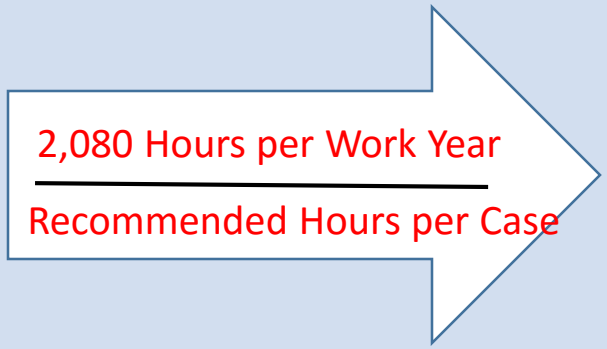
FINAL RESULTS

Weighted Caseload Study

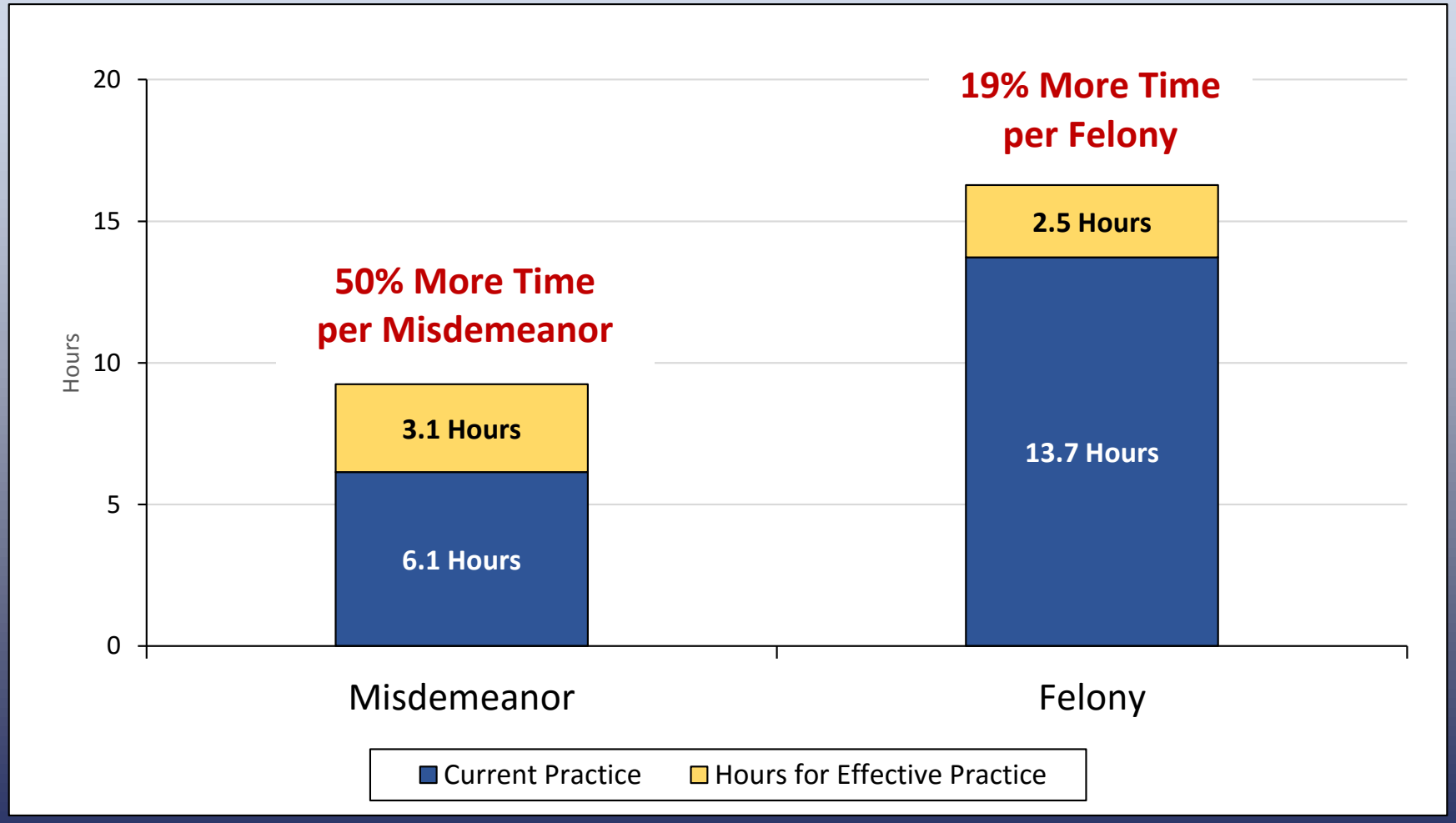


Case Weight Recommendations

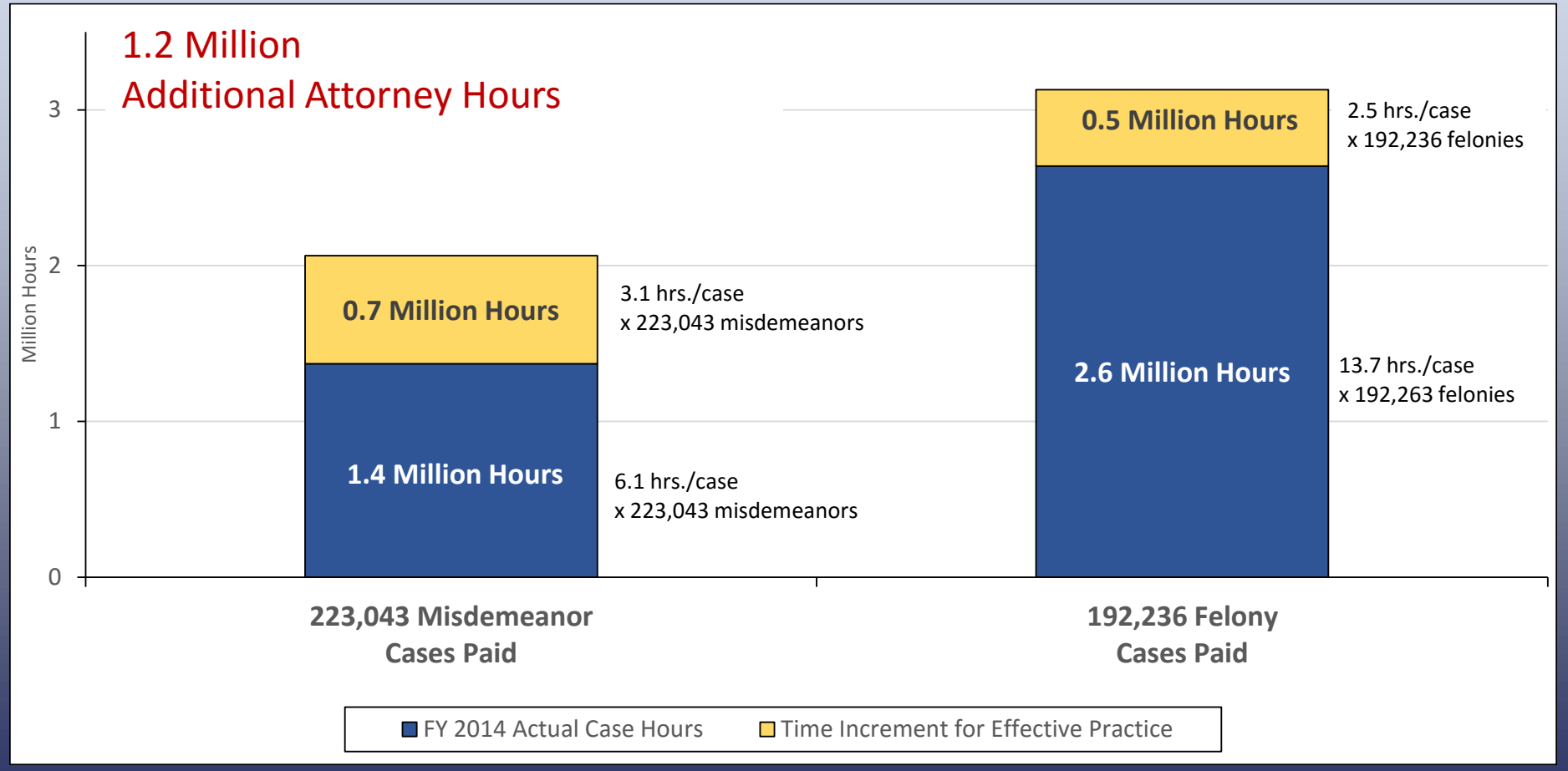
	Recommendations		Number of Cases for 100% FTE
Misd. B	8.8 hours per case		236 cases
Misd. A	9.6 hours per case		216 cases
SJ Felony	12 hours per case		174 cases
Felony 3	14.5 hours per case		144 cases
Felony 2	20 hours per case		105 cases
Felony 1	27.1 hours per case		77 cases



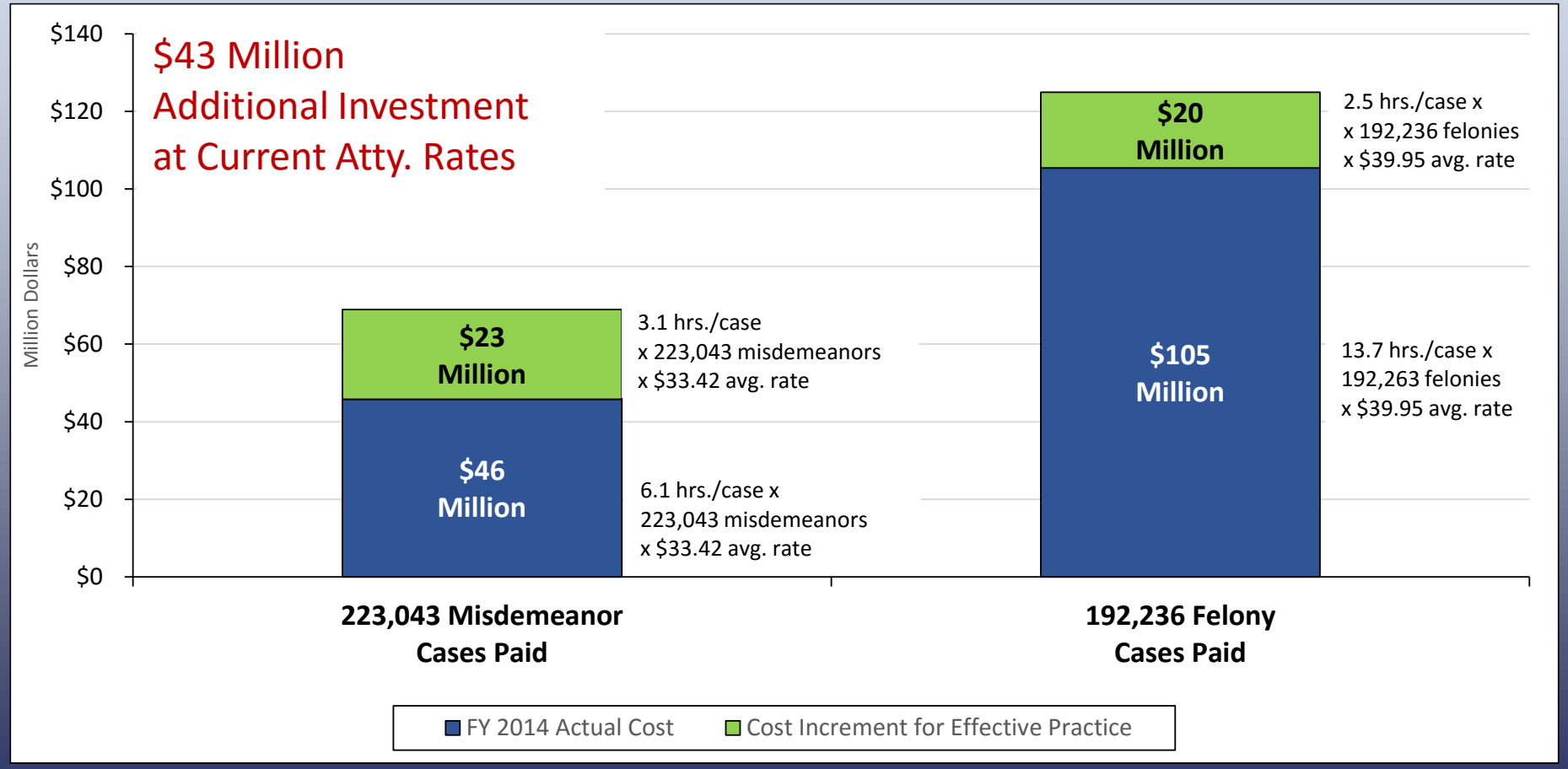
Gap / Actual vs Recommended



Additional Time Required



Fiscal Impact



Plight of the Public Defender

The End

TIDC
TEXAS INDIGENT DEFENSE COMMISSION