

BASIC CIVIL LEGAL SERVICES



AN ISSUE BRIEF FROM LEGISLATIVE BUDGET BOARD STAFF

ID: 440

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OBJECTIVE

Provide civil legal services to indigent defendants.

KEY FACTS

- ◆ Texas legal aid organizations dispose of approximately 100,000 cases annually.
- ◆ An individual cannot have an income greater than \$13,963 annually to qualify for basic civil legal services aid.

BUDGETARY IMPACT

For the 2012–13 biennium, expenditures for the Texas Supreme Court for the Basic Civil Legal Services program are estimated to total \$59.1 million in All Funds; or an increase of \$7 million from 2010–11 spending levels.

STATUTORY REFERENCES

Texas Government Code, Chapter 51, Section 51.943

The Sixth Amendment of the United States Constitution provides, among other things, that in all criminal prosecutions, the right to have assistance of counsel for one's defense. If the defendant cannot afford an attorney, one will be appointed at no cost to the defendant. Although not constitutionally guaranteed, the State of Texas, through the establishment of the Basic Civil Legal Services (BCLS) program, provides grants to nonprofit organizations that provide free civil legal services to low-income Texans.

In 1997 the Legislature, established a BCLS account in the Judicial Fund No. 573. This account is administered by the Texas Supreme Court and funds may only be used for the support of basic civil legal services to the indigent. The legislation increases civil court filing fees to fund the account and funds are in turn distributed to nonprofit organizations that provide basic civil legal services to the indigent. Based on the legislation, 5 percent of revenue produced by the fees is retained by counties as payment for collecting and remitting fees to the Comptroller of Public Accounts.

The Supreme Court established the criteria for eligibility for basic civil legal services and appointed the Texas Access to Justice Foundation (TAJF) in 1984 to administer the program. The Foundation receives 3.5 percent of funds received by the program as a service fee. Using all sources of funding, Texas legal aid organizations dispose of approximately 100,000 cases each year. To qualify for basic civil legal services aid, an individual cannot have an income of greater than \$13,963 per year, or a family of four may not earn more than \$28,813 per year. However, certain victims of crime seeking civil legal services in relation to a specific injury may earn up to \$20,944 per year.

For the 2012–13 biennium, all state expenditures by the Supreme Court for Basic Legal Services for low-income Texans total \$59.1 million. (See Fig. 1, Basic Civil Legal Services Funding within and outside the General Appropriations Act.) In addition to this amount, 2012–13 state appropriations included an increase of \$4 million from 2010–11 spending levels contingent on the outcome of litigation and the collection of revenues in excess of the Comptroller's *2012–13 Biennial Revenue Estimate* from the Adult Entertainment Fee. As of November 2012, this amount had not been received.

Also included in expenditures is an estimated \$40,000 from the Texas Young Lawyers License Plate receipts (see Transportation Code, Section 504.604) that is deposited into Judicial Fund No. 573. Late in fiscal year 2012, BCLS received one-time funding of \$10 million from the \$428 million awarded to the State of Texas due to the settlement between 49 states and the country's five biggest mortgage lenders related to mortgage servicing practices. Pursuant to Government Code 402.007, an amount not to exceed \$10 million per biennium was allocated to the Supreme Court for basic civil legal services for the indigent.

State BCLS funding is only one component of total funds available for indigent civil legal services in Texas. On behalf of the Supreme Court, the TAJF manages both state BCLS grants and additional funding collected through the Texas Interest on Lawyers' Trust Accounts (IOLTA) program. The IOLTA program, established by the Supreme Court in 1984, generates revenue for legal aid by collecting interest earned on trust accounts. These accounts are comprised of retainers, filing and expert witness fees, deposits, settlements, or any receipts belonging to the client, rather than the attorney. Due to low interest rates, the Texas IOLTA program is raising less revenue than in past years. Based on Supreme Court rules, these trust accounts may not earn less than the Federal Funds Target Interest Rate. An additional source of income to the account is provided by Membership Fees and Additional Fees, Section 81.054 of the Government Code. Of the \$65 paid annually by each active member of the state bar under Section 81.054(j), 50 percent of those funds shall be credited to BCLS. All funds available to support BCLS in the 2012–13 Biennium are shown in Fig. 1.

FIG. 1
BASIC CIVIL LEGAL SERVICES (BCLS) FUNDING WITHIN AND OUTSIDE THE GENERAL APPROPRIATIONS ACT (GAA)

| FUNDING SOURCE | 2012–13 ESTIMATED / BUDGETED |
|--|---------------------------------|
| General Revenue Funds | \$17,567,567 |
| Judicial Fund No. 573 | 36,549,729 |
| Interagency Contract (Crime Victims Compensation Fund No. 469) | 5,000,000 |
| Total State BCLS Contribution | \$59,117,296 |
| Interest on Lawyers Trust Accounts | \$8,900,000 |
| Legal Services Corporation and Other Federal Funds | 77,740,000 |
| Other funds (Donations and Grants from Foundations) | 39,276,000 |
| Total BCLS Funding Outside the GAA | \$125,916,000 |
| Estimated Total BCLS Funding from All Sources | \$185,033,296 |

SOURCE: Supreme Court, Texas Access to Justice Foundation.

FEDERAL FUNDS

Federal funds to support BCLS are outside the General Appropriations Act (GAA).

Federal funding appropriated by Congress is granted directly to three large legal service corporations, including the Legal Services Corporation (LSC). LSC, founded in 1974, is a federally funded, nonprofit organization that administers federal funds for legal services to the poor.

LSC funding nationally in fiscal year 2011 was \$404 million, with \$34.9 million awarded to the State of Texas; however, funding for fiscal year 2012 decreased by just over 9 percent to \$31.8 million. These amounts are included within the Legal Services Corporation and Other Federal Funds in Fig. 1.

USEFUL REFERENCES

Each biennium the Legislative Budget Board produces a Legislative Primer titled, *Financing the Judiciary in Texas*. The current edition may be found at http://www.lbb.state.tx.us/Other_Pubs/Judiciary_Leg_Primer.pdf.

Additional information may be found in the *Fiscal Size-Up*, produced at the conclusion of a legislative session, and found here: http://www.lbb.state.tx.us/Fiscal_Size-up/Fiscal%20Size-up%202012–13.pdf.

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