



TEXAS INDIGENT DEFENSE COMMISSION

Chair
The Honorable Sharon Keller
Presiding Judge, Court of Criminal Appeals

Vice Chair
The Honorable Olen Underwood

Ex Officio Members
The Honorable Roberto Alonzo
The Honorable Alfonso Charles
The Honorable Pete Gallego
The Honorable Wallace B. Jefferson
The Honorable Sherry Radack
The Honorable Jeff Wentworth
The Honorable John Whitmire

Members Appointed by Governor
The Honorable Jon Burrows
The Honorable B. Glen Whitley
Mr. Knox Fitzpatrick
Mr. Anthony Odiorne

Executive Director:
James D. Bethke

January 27, 2012

The Honorable Bert Cobb
Constitutional County Court
Hays County Courthouse
111 E. San Antonio St., Ste 300
San Marcos, Texas 78666

Re: Hays County Fiscal Monitoring

Dear Judge Cobb:

A monitoring visit of your county was conducted on September 27-28, 2011. The financial aspects of the county were monitored to adequately review fiscal records and documentation to ensure compliance with the Texas Indigent Defense Commission grant.

A copy of the final monitoring report including your county response is enclosed. The Texas Indigent Defense Commission would like to thank county officials and employees for their assistance and courtesy during the course of the monitoring visit. We greatly appreciated the time and cooperation of Hays County's staff.

If you have any questions or need further clarification, please do not hesitate to contact me at 512.936.7561.

Sincerely,

Carol Conner
Fiscal Monitor

cc: The Honorable Charles Ramsay, Local Administrative District Court
The Honorable Linda A. Rodriguez, Local Administrative Statutory County Court
The Honorable Robert Updegrove, County Court-at-Law No. 1
Mr. Bill Herzog, County Auditor
Ms. Jessica Carey, Grants Accountant
Mr. Steve Thomas, District Court Administrator
Mr. James D. Bethke, Executive Director, Texas Indigent Defense Commission
Mr. Wesley Shackelford, Deputy Director, Texas Indigent Defense Commission
Mr. Bryan Wilson, Grants Administrator, Texas Indigent Defense Commission

TEXAS INDIGENT DEFENSE COMMISSION
(formerly Texas Task Force on Indigent Defense)

Fiscal Monitoring of Indigent Defense Expenses

Hays County, Texas
on
September 27-28, 2011

Final
January 27, 2012

TABLE OF CONTENTS

I. INTRODUCTION	4
Commission Background	5
Objectives	5
Scope	5
Methodology	5
Summary of Findings	6
II. INDIGENT DEFENSE GRANT	6
A. Formula Grant.....	6
B. Indigent Defense Expenditure Reporting (IDER)	6
III. ACCOUNTING OPERATIONS	7
Accounting Procedures.....	7
IV. INDIGENT DEFENSE PAID VOUCHERS	8
A. Review of Assigned and Contract Attorneys Fee Payments	8
1. Fee Schedule.....	8
2. Reviewed Attorney Fee Vouchers	8
3. Summary of Investigations, Experts, and Other Direct Litigation Expenses	9
B. Public Appointment List.....	10
1. Approval of Qualified Attorneys by the Judges	10
2. Applied for Public Appointment List	10
3. Continuing Legal Education (CLE) Requirements	10
V. SUMMARY	11
General Comments	11
APPENDICES:	
A. Section 79.036, Texas Government Code	13
B. Section 79.037, Texas Government Code.....	14
C. Financial Management, UGMS	15
D. Article 26.04, Code of Criminal Procedure	16
E. Article 26.05, Code of Criminal Procedure	19
F. Chapter 174, Rule, 174.1, Texas Administrative Code.....	21

I. INTRODUCTION

Hays County on-site fiscal monitoring visit was conducted on September 27-28, 2011. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grant. Dominic Gonzales, grant program specialist, accompanied the fiscal monitor on September 27, 2011.

Hays County occupies 693.5 square miles between the Edwards Plateau and southern Black Prairie region in south central Texas. San Marcos, the county seat, is twenty-five miles south of Austin in the southeastern part of the county. The county has an estimated population of 157,800.

Hays County's court system is comprised of two statutory county courts and four district courts with criminal jurisdiction. In 2010, the county received \$68,346 in formula grant funds. In addition, the county received \$9,663 in equalization disbursement for the increased cost of indigent defense services. The county also collected \$97,093 for reimbursement of attorney fees from defendants.

Hays County Indigent Defense Expenditures			
Expenditures	2008	2009	2010
Population Estimate	142,310	142,310	157,800
Juvenile Assigned Counsel	\$23,736	\$26,308	\$21,114
Adult Misdemeanor Assigned Counsel	\$172,182	\$205,698	\$205,374
Adult Misdemeanor Assigned Counsel Appeals	\$151	0	0
Adult Felony Assigned Counsel	\$406,217	\$383,124	\$470,696
Adult Felony Assigned Counsel Appeals	\$19,209	\$27,791	\$10,101
Licensed Investigation	\$17,825	\$9,376.10	\$11,382
Expert Witness	\$4,770	\$2,803	\$22,140
Other Direct Litigation	\$37,578	\$50,429	\$28,886
Total Court Expenditures	\$681,671	\$705,531	\$770,696
Formula Grant Disbursement	\$65,118	\$67,100	\$68,346
Equalization Disbursement	0	\$14,647	\$9,663
Reimbursement of Attorney Fees	\$32,151	\$33,100	\$97,093
Total Assigned Counsel Cases	1,638	1,782	2,136

Source: Texas Indigent Defense Commission records

Commission Background

In January 2002, the 77th Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82nd Texas Legislature changed the name of the Texas Task Force on Indigent Defense to the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council and administratively attached to the Office of Court Administration (OCA). The Commission provides 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. The purpose of the Commission is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and Texas. As a result of the legislative requirement, the promulgated Section 173.401(a), Texas Administrative Code, which provides, “the Commission or its designees will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.”

Objectives

The objectives of this review were to:

- determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.
- validate policies and procedures of fiscal departments relating to indigent defense services.
- provide recommendations regarding operational efficiency.
- assist with any questions or concerns on the indigent defense program requirements.

Scope

The county’s indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grant during fiscal year 2010. The fiscal monitor reviewed records located in the Hays County Courthouse.

Methodology

To accomplish the objectives, the fiscal monitor met with statutory county court judges, first assistant auditor, grants accountant, and district court administrator. The fiscal monitor reviewed:

- random samples of paid attorney fee vouchers, licensed investigations, expert witnesses, other direct litigation for verification of expenses;
- general ledger transactions, financial spreadsheets, and invoices;
- indigent defense expenditure report and attorney fee schedule;
- public appointment list, attorney applications, and attorney criminal continuing legal education training; and
- county’s local indigent defense plan.

The expenditure period of October 1, 2009 to September 30, 2010 (FY 2010) was reviewed during the fiscal monitoring visit.

Hays County's Criminal Courts			
Courts	Courts		Sampled
	Total	Reviewed	
County Court-at-Law	2	2	100%
District Court	4	4	100%

Percent Sampled: courts reviewed / courts total

Summary of Findings

- The county did not report indigent defense expenditures and case information associated with those expenditures in the manner prescribed by Section 79.036, Government Code.
- The county incorrectly placed 7 other direct litigation expenses (\$274.11) in the attorney fee category of services.
- The continuing legal education hours were not documented for 12 of the 69 court appointed attorneys on the public appointment list in accordance with Title 1, Chapter 174, Texas Administrative Code.

II. INDIGENT DEFENSE GRANT

A. Formula Grant

The county submitted the FY 2010 indigent defense online grant application to assist in the provisions of the Fair Defense Act. Hays County met the formula grant eligibility requirements.

Monitor Comment

After reviewing the FY 2010 general ledger and financial transactions, the county maintained records which identified the application of the formula grant and source documents of indigent defense expenditures.

B. Indigent Defense Expenditure Reporting (IDER)

The county submitted the FY 2010 indigent defense expenditure report by November 1. However, court expenditures were not reported in the manner prescribed by Section 79.036, Government Code. The 207th, 274th and 428th District Courts total number of cases and associated expenses were incorrectly reported under the 22nd District Court on the indigent defense expenditure report. In November 2010, the Commission grants administrator informed the county auditor that the FY 2010 IDER was not reported in the manner prescribed by Section 79.036, Government Code. The grants accountant stated that the necessary changes will be made to capture and report amount paid for each court, and cases associated with those expenditures on the FY 2011 IDER. The county is required to accurately capture and report amount paid, cases disposed associated with the amount paid in each court in which the cases were disposed with case type. Case types include misdemeanor, felony, juvenile, appeal-felony, appeal-misdemeanor, appeal-juvenile, no charges filed-adult, and no charges filed-juvenile in accordance with Section

79.036, Government Code. Please refer to the Procedure Manual for the Indigent Defense Expenditure Report FY 2011.

Monitor Comment

The Commission appreciates the county’s cooperation for capturing the necessary indigent defense expenditures on the FY 2011 IDER. The accurate reporting of indigent defense expenditures (amount paid, cases disposed associated with the amount paid in each court in which the cases were disposed with case type) is used as the basis for policy evaluation and decisions of the Commission. Please refer to the Procedure Manual for the Indigent Defense Expenditure Report FY 2011, page 3 at <http://www.txcourts.gov/tidc/pdf/FY11IDERManual.pdf>.

Hays County Response

The County Auditor’s Office changed the chart of accounts in order to capture the required categories of expenditures in the following courts: County Courts-at-Law No. 1 and No. 2, and the 22nd, 207th, 274th, and 428th District Courts. These changes were implemented in fiscal year 2011 and were reported accordingly on the FY 2011 IDER.

III. ACCOUNTING OPERATIONS

Accounting Procedures

Hays County has written accounting procedures relating to criminal indigent defense expenses. Written procedures provide instruction and guidance; uniformity and completeness; and ensure correct and secure processing of fiscal information. The Uniform Grant Management Standards (UGMS) requires grantees financial systems to provide an “effective control and accountability of funds, property and assets...” (para 20, page 68). See Appendix C.

Reimbursement of Expenses

The court-appointed attorney that represents an indigent defendant submits an itemized voucher with court services performed to the presiding judge for approval and signature. The district court and county court coordinators review attorney fee vouchers for accuracy. The coordinators submit the attorney fee vouchers to the accounts payable department in the auditor’s office. Article 26.05(c), Code of Criminal Procedure, provides in part that “no payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.”

At the auditor’s office, the administrative assistant reviews and verifies attorney fee vouchers. The accounts payable clerk enters the attorney fee vouchers or invoices and amount of payment for itemized services with each case into the general ledger. The accounts payable department creates reports from the attorney fee vouchers and invoices. After posting, the checks are submitted to the Commissioner’s Court for approval. The approved checks are disbursed to the court-appointed attorney or service provider.

Monitor Comment

The grant team reviewed the effectiveness of local procedures for tracking indigent defense expenses and completing the indigent defense expenditure report. Based on a review of local procedures, the auditor’s office records indicate that indigent defense expenditures are accurate.

IV. INDIGENT DEFENSE PAID VOUCHERS

A. Review of Assigned and Contract Attorneys Fee Payments

1. Fee Schedule

The attorney fee vouchers reviewed were paid in accordance with the fee schedule adopted by the formal action of the judges hearing criminal cases. In FY 2010, the attorney fee annual payments ranged from \$150 to \$28,297 per attorney with an average of \$5,166 and a median of \$3,122.

2. Reviewed Attorney Fee Vouchers

A total of 110 paid attorney fee vouchers (40 county court-at-law and 70 district court) were reviewed for the period of October 1, 2009 to September 30, 2010. The attorney fee vouchers reviewed captured the specific data elements (defendant name, case/cause number, court number, type of offense, amount paid, attorney signature, and presiding judge signature) as required in Section 79.036(e), Government Code.

Hays County Courts				
28 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
County Court-at-Law No. 1	1,092	\$233,734	40	\$13,572
22nd District Court	615	\$474,552	70	\$84,008
Total	1,707	\$708,286	110	\$97,580

County Court-at-Law = juvenile expenses + adult misdemeanor expenses
\$233,734 = \$22,115 + \$211,619

District Court = capital murder expenses + adult felony expenses + felony appeal expenses
\$474,552 = \$4,060 + \$460,392 + \$10,100

Monitor Comment

All attorney fee vouchers reviewed met the statutory requirements for payment, which states, “no payment shall be made until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and approves the payment” in accordance with Article 26.05(c), Code of Criminal Procedure. The attorney fee vouchers reviewed captured the specific data elements (defendant name, case/cause numbers, court number, offense, amount paid, attorney signature, and presiding judge signature).

Hays County Response

Paying attorney fee vouchers in accordance with the fee schedule is made possible through the coordination and cooperation of the County Courts at Law, District Courts, Accounts Payable, and the Auditor’s office.

3. Summary of Investigations, Experts, and Other Direct Litigation Expenses

Investigations, Experts, and Other Direct Litigation Expenditures				
Expenditures	Total Vouchers			
	Paid	FY 2010	Reviewed	Reviewed Value
Investigation	20	\$11,382	20	\$11,382
Expert Witness	21	\$22,140	13	\$13,540
Other Direct Litigation	26	\$28,886	14	\$10,833

The county incorrectly placed 7 other direct litigation expenses (\$274.11) in the attorney fee category of services. Other direct litigation expenses include “money paid by the county to a person or entity for materials, supplies, or services determined by the attorney or court necessary for the licensed attorney to prepare an adequate defense for an indigent defendant” (Procedure Manual for the Indigent Defense Expenditure Report FY 2011).

Placed in Attorney Fee Category of Services				
No.	Court	Date	Amount	Services
1	22 nd District Court	12/22/2009	\$3.61	copies, postage
2	22 nd District Court	12/22/2009	\$4.25	copies, postage
3	22 nd District Court	12/22/2009	\$14.25	copies, discovery
4	22 nd District Court	4/20/2010	\$9.25	copies, discovery
5	22 nd District Court	7/13/2010	\$81.25	copies, discovery
6	22 nd District Court	8/3/2010	\$105.25	copies, postage, telephone bills
7	22 nd District Court	8/3/2010	\$56.25	copies, discovery
Total			\$274.11	

Recommendation

The Commission recommends that the county develop and implement internal procedures to identify and report other direct litigation expenses in the appropriate category of services pursuant to Section 79.036(e), Government Code. Other direct litigation expenses are services other than counsel that may include but not necessarily limited to, postage, photos, copies, and travel mileage. The correct classification of expenses is the precursor to accurate reporting under the Fair Defense Act. Please

refer to Procedure Manual for the Indigent Defense Expenditure Report FY 2011, page 3-5 at: <http://www.txcourts.gov/tidc/pdf/FY11IDERManual.pdf>.

Hays County Action Plan

The County Auditor’s Office changed the chart of accounts during fiscal year 2012 to separate other litigation expenses from attorney fees.

Contact person: Bill Herzog, CPA, County Auditor

Completion date: Completed January 2012

B. Public Appointment List

1. Approval of Qualified Attorneys by the Judges

A majority of the judges approved the attorneys on the public appointment list.

Monitor Comment

Hays County maintained support documents that indicated a majority of the judges approved the attorneys on the public appointment list pursuant to Article 26.04(d), Code of Criminal Procedure.

2. Applied for Public Appointment List

Courts	Number of Attorneys		Sampled
	public appointment list	applications reviewed	
County Courts-at-Law and District Courts	69	69	100%

Percent Sampled: applications reviewed / number on public appointment list

Monitor Comment

Hays County criminal courts maintained attorney applications for placement on the public appointment list in accordance with Article 26.04(d)-(e), Code of Criminal Procedure.

3. Continuing Legal Education (CLE) Requirements

The continuing legal education hours were not documented for 12 of the 69 court appointed attorneys on the public appointment list. Attorneys accepting appointments are required to obtain 6 hours of criminal and/or juvenile law during each 12-month reporting period as indicated in Hays County’s local indigent defense plan, and per Title 1, Chapter 174, Texas Administrative Code. Without CLE documentation for court appointed attorneys on the public appointment list, the county auditor may not make proper payments consistent with Sections 174.1 and 174.2 of the Texas Administrative Code.

Courts	Number of Attorneys			
	public appointment list	criminal/juvenile CLE documents reviewed	met minimum hours	
			Yes	No
County Courts-at-Law and District Courts	69	69	57	12

Recommendation

The Commission recommends that the county develop a system to document the continuing legal education hours for all court appointed attorneys on the public appointment list.

Hays County Action Plan

Response from County Courts at Law No. 1 and No. 2:

Each attorney that does not have the required continuing legal education hours currently documented will receive a letter requesting that they comply by the date listed below. Non-compliance will result in being removed from the public appointment list immediately.

Contact person: The Honorable Linda A. Rodriguez, Local Administrative Statutory County Court

Completion date: March 31, 2012

Response from the 22nd, 207th, 274th, and 428th District Courts:

The District Courts intend to monitor all court appointed continuing legal education hours on a yearly basis. This will be accomplished by notifying those attorneys on the court appointed list to submit their hours no later than the date listed below. Furthermore, consideration will be taken in incorporating this procedure into the Hays County District Court Indigent Defense Plan.

Contact person: The Honorable Charles R. Ramsay, Local Administrative District Court

Completion date: March 1, 2012

V. SUMMARY

General Comments

The Commission wishes to express its appreciation to local county officials and employees of Hays County for the time and courtesy extended during the fiscal monitoring visit. In particular, my gratitude extends to Judge Bert Cobb, Constitutional County Court; Judge Charles Ramsay, Local Administrative District Court; Judge Linda A. Rodriguez, Local Administrative Statutory County Court; Judge Robert Updegrove, County Court-at-Law No 1; Mr. Steve Thomas, District Court Administrator; Mr. Bill Herzog, County Auditor; Ms. Marisol Alonzo, First Assistant Auditor; and Ms. Jessica Carey, Grants Accountant, for accommodating the fiscal monitor activities. These activities included providing workspace,

allocating employee time, and exercising flexibility in meeting the schedule of the fiscal monitor. Thank you for your time and cooperation during the monitoring visit.

Hays County Response

Hays County thanks Ms. Conner and the Texas Indigent Defense Commission for their attention and guidance during this fiscal monitoring visit.

Appendix A

Texas Government Code, Section 79.036. Indigent Defense Information

(a) In each county, not later than November 1 of each odd-numbered year and in the form and manner prescribed by the commission, the following information shall be prepared and provided to the commission:

- (1) a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code;
- (2) any revisions to rules or forms previously submitted under this section; or
- (3) verification that rules and forms previously submitted under this section still remain in effect.

(b) Except as provided by Subsection (c):

- (1) the local administrative district judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the district courts trying felony cases in the county; and
- (2) the local administrative statutory county court judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county.

(c) If the judges of two or more levels of courts described by Subsection (b) adopt the same formal and informal rules and forms, the local administrative judge serving the courts having jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, shall perform the action required by Subsection (a).

(d) The chair of the juvenile board in each county, or the person designated by the chair, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the juvenile board.

(e) In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the commission in the form and manner prescribed by the commission and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county:

- (1) in each district, county, statutory county, and appellate court;
- (2) in cases for which a private attorney is appointed for an indigent defendant;
- (3) in cases for which a public defender is appointed for an indigent defendant;
- (4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and
- (5) for investigation expenses, expert witness expenses, or other litigation expenses.

(f) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the commission under this section.

This section replaced Sec. 71.0351 effective Sept. 1, 2011 (HB 1754, §20).

Appendix B

Texas Government Code, Section 79.037. Technical Support; Grants

- (a) The commission shall:
 - (1) provide technical support to:
 - (A) assist counties in improving their indigent defense systems; and
 - (B) promote compliance by counties with the requirements of state law relating to indigent defense;
 - (2) to assist counties in providing indigent defense services in the county, distribute in the form of grants any funds appropriated for the purposes of this section; and
 - (3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by:
 - (A) withdrawing grant funds; or
 - (B) requiring reimbursement of grant funds by the county.
- (b) The commission shall distribute funds as required by Subsection (a)(2) based on a county's compliance with standards adopted by the board and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.
- (c) The board shall adopt policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a fair manner.
- (d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the commission under this section.

Addition of this Section effective Sept. 1, 2011 (HB 1754, §20).

Appendix C

Uniform Grant Management Standards (As adopted June 2004)

paragraph 20, page 68. Standards for Financial Management Systems *[This section does not apply to procurement contracts.]*

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

- (1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
- (2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
- (3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- (4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- (5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
- (6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

Appendix D

Art. 26.04. [494] [558] [547] Procedures for Appointing Counsel

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(b) Procedures adopted under Subsection (a) shall:

- (1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;
- (2) apply to each appointment of counsel made by a judge or the judges' designee in the county;
- (3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;
- (4) require appointments for defendants in capital cases in which the death penalty is sought to comply with any applicable requirements under Articles 11.071 and 26.052;
- (5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and
- (6) ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.

(c) Whenever a court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines that a defendant charged with a felony or a misdemeanor punishable by confinement is indigent or that the interests of justice require representation of a defendant in a criminal proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to defend the defendant in accordance with this subsection and the procedures adopted under Subsection (a). If the court or the courts' designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the court or the courts' designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.

Art. 26.04. Procedures for Appointing Counsel (Continued)

(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:

- (1) applies to be included on the list;
- (2) meets the objective qualifications specified by the judges under Subsection (e);
- (3) meets any applicable qualifications specified by the Texas Indigent Defense Commission; and
- (4) is approved by a majority of the judges who established the appointment list under Subsection (e).

(e) In a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) shall:

- (i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; and
- (ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications; and

(2) the judges of the district courts trying felony cases in the county, by formal action:

(A) shall:

- (i) establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and
- (ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications.

(f) In a county in which a public defender is appointed under Article 26.044, the court or the courts' designee may appoint the public defender to represent the defendant in accordance with guidelines established for the public defender.

(g) A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An

Art. 26.04. Procedures for Appointing Counsel (Continued)

alternative program for appointing counsel in felony cases may be established in the manner provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

- (1) the alternative program may:
 - (A) use a single method for appointing counsel or a combination of methods; and
 - (B) use a multicounty appointment list using a system of rotation; and
- (2) the procedures adopted under Subsection (a) must ensure that:
 - (A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement:
 - (i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in misdemeanor cases punishable by confinement; and
 - (ii) are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;
 - (B) attorneys appointed using the alternative program to represent defendants in felony cases:
 - (i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in felony cases; and
 - (ii) are approved by a majority of the judges of the district courts trying felony cases in the county;
 - (C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052; and
 - (D) appointments are reasonably and impartially allocated among qualified attorneys.

(h) In a county in which an alternative program for appointing counsel is established as provided by Subsection (g) and is approved by the presiding judge of the administrative judicial region, a court or the courts' designee may appoint an attorney to represent an indigent defendant by using the alternative program. In establishing an alternative program under Subsection (g), the judges of the courts establishing the program may not, without the approval of the commissioners court, obligate the county by contract or by the creation of new positions that cause an increase in expenditure of county funds.

(i) A court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused of a felony may appoint an attorney from any county located in the court's administrative judicial region.

Appendix E

Art. 26.05. Compensation of Counsel Appointed to Defend

(a) A counsel, other than an attorney with a public defender's office or an attorney employed by the office of capital writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county.

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

Art. 26.05. Compensation of Counsel Appointed to Defend (Continued)

(d) A counsel in a non-capital case, other than an attorney with a public defender's office, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).

(e) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as costs of court.

(g) If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

(h) Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

Amendment to (a), (c), and (d) effective Sept. 1, 2011 (HB 1754 §20).

Appendix F

Texas Administrative Code

<u>Title 1</u>	Administration
<u>Part 8</u>	Texas Judicial Council
<u>Chapter 174</u>	Indigent Defense Policies And Standards
<u>Subchapter A</u>	Minimum Continuing Legal Education Requirements
Rule §174.1	Appointment In Criminal Cases

An Attorney who meets the requirements of this rule may be appointed to represent an indigent person arrested for or charged with a crime, if the attorney is otherwise eligible under the procedures developed under Article 26.04, Code of Criminal Procedure. Crime has the meaning assigned by §173.2(2). An attorney may be appointed under this rule only if an attorney:

- (1) Completes a minimum of six hours of continuing legal education pertaining to criminal law during each 12-month reporting period. The judges of criminal courts of the county shall set the 12-month reporting period applicable to the jurisdiction. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. The judges may require attorneys to complete more than the minimum number of hours of continuing legal education in criminal law in the procedures developed under Article 26.04, Code of Criminal Procedure; or
- (2) Is currently certified in criminal law by the Texas Board of Legal Specialization.