



TEXAS INDIGENT DEFENSE COMMISSION

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Executive Director:
James D. Bethke

May 11, 2012

The Honorable Thomas Head
Constitutional County Court Judge
Lubbock County Courthouse
P.O. Box 10536
Lubbock, TX 79408

Re: Lubbock County Fiscal Monitoring Visit

Dear Judge Head:

A monitoring visit of your county was conducted on October 11-14, 2012. 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 Lubbock 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 Bradley S. Underwood, Local Administrative District Court
The Honorable Drue Farmer, Local Administrative Statutory County Court
Mr. Dean B. Stanzione, Director of Court Administration
Ms. Jacqueline Latham, CPA, Lubbock County Auditor
Ms. Robin Wilmot, Grants Auditor
Mr. James D. Bethke, Executive Director, Texas Indigent Defense Commission
Mr. Wesley Shackelford, Deputy Director/Special Counsel, Texas Indigent Defense Commission
Mr. Bryan Wilson, Grants Administrator, Texas Indigent Defense Commission

TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring of Indigent Defense Expenses

Lubbock County, Texas

on

October 11-14, 2011

Final

May 11, 2012

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I. INTRODUCTION

Lubbock County on-site fiscal monitoring visit was conducted on October 11-14, 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 grants. Dominic Gonzales, grant program specialist, accompanied the fiscal monitor on the visit.

Lubbock County is located in the South Plains regions of West Texas with a population of approximately 273,574. Lubbock, the county seat, is on Interstate Highway 27, 327 miles northwest of Dallas and 122 miles south of Amarillo.

Lubbock County's court system is comprised of three statutory county courts and six district courts with criminal jurisdiction. In 2010, the county received \$122,369 in formula and \$922,065 in discretionary grant disbursements. The county also received \$133,657 in equalization disbursement for the increased cost of indigent defense services. Additionally, the county collected \$172,282 for reimbursement of attorney fees from defendants.

The fiscal monitor reviewed Lubbock County's comprehensive annual financial report for the fiscal year ended September 30, 2010. Robison Johnston & Patton, LLP, licensed certified public accountants firm, audited Lubbock County's basic financial statements. The independent auditor's report indicated that the audit was conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.

The Government Finance Officers Association (GFOA) of the United States and Canada awarded Lubbock County a Certificate of Achievement for Excellence in financial reporting for the FY 2009 comprehensive annual financial report (CAFR). The county has received a Certificate of Achievement for the last five consecutive years. The CAFR must satisfy both accounting principles generally accepted in the United States and applicable legal requirements.

Additionally, Lubbock County received the GFOA's Distinguished Budget Presentation Award for its annual budget document for the 2010 fiscal year beginning October 1, 2009. The county's budget documents were judged proficient in several areas, including a policy statement, financial plan, operations and communication device.

Lubbock County was awarded a 2010 Leadership Circle of Gold by the Texas Comptroller of Public Accounts. The leadership circle recognized local governments across Texas that strived to meet a high standard for financial transparency online by opening books to the public, providing clear, consistent pictures of spending, and sharing information in a user-friendly format.

Lubbock County Indigent Defense Expenditures			
Expenditures	2008	2009	2010
Population Estimate	263,675	265,550	273,574
Felony Attorney Fees	\$1,319,820	\$1,253,987	\$1,478,396
Adult Felony Appeals	0	0	0
Adult Misdemeanor Attorney Fees	\$538,841	\$611,494	\$875,625
Adult Misdemeanor Appeals	0	0	0
Juvenile Attorney Fees	\$167,645	\$138,740	\$145,476
Juvenile Appeals	0	0	0
Total Attorney Fees	\$2,026,306	\$2,004,221	\$2,499,497
Licensed Investigative Expenses	\$37,458	\$78,157	\$18,944
Expert Witness Expenses	\$128,271	\$121,079	\$134,940
Other Direct Litigation Expenses	\$253,262	\$257,454	\$168,850
Total Court Expenditures	\$2,445,296	\$2,460,911	\$2,822,231
Public Defender Administrative Expenses	\$567,329	\$957,010	\$967,213
Funds Received from Other Participating Counties	na	\$381,258	\$322,285
Funds Paid to Participating Counties	na	\$72,330	\$60,701
Total Indigent Defense Expenses (court and administrative)	\$3,012,626	\$3,490,252	\$3,850,145
Commission Formula Grant Disbursement	\$121,689	\$119,875	\$122,369
Commission Discretionary Grant Disbursement	\$567,329	\$1,052,651	\$992,065
Commission Equalization Disbursement	\$74,900	0	\$133,657
Reimbursement of Attorney Fees	\$184,188	\$151,820	\$172,282
Total Assigned Cases	6,264	5,921	7,511

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 is attached to the Office of Court Administration (OCA). The Texas Indigent Defense 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 relating to indigent defense services.
- provide recommendations pertaining to 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 Lubbock County Courthouse, Auditor’s Office and Regional Public Defender Office and Special Needs Defenders Office. The grant program specialist reviewed the equipment purchased with discretionary grant funds (see addendum).

Methodology

To accomplish the objectives, the fiscal monitor met with statutory county court judge and district court judges, county auditor, first assistant auditor, grants auditor, director of court administration, chief public defender, grant manager, and social worker. The fiscal monitor reviewed:

- random samples of paid attorney fees, expert witnesses, licensed investigations, and other direct litigation for verification of expenses;
- general ledger transactions 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.

Lubbock County's Criminal Courts			
Courts	Courts		Sampled
	Total	Reviewed	
County Court-at-Law	3	2	100%
District Court	6	6	100%

Percent Sampled: courts reviewed / courts total

Note: As reported on the FY 2011 Indigent Defense Expenditure Report

Summary of Findings

- The county did not report indigent defense expenditures and case information associated with those expenditures in the form and manner prescribed by Section 79.036, Government Code.
- The county included and reported on the indigent defense expenditure report 2 child protective services cases (\$180), which are unallowable costs under the formula grant.
- The continuing legal education hours were not documented for 1 of the 156 court appointed attorneys on the public appointment list.

II. INDIGENT DEFENSE GRANTS

A. Formula Grant

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

B. Discretionary Grant

The Commission awarded Lubbock County three discretionary grants on the basis of a competitive process. The Commission reviews discretionary grant applications through a formal review process. The purpose of the discretionary grant is to provide funds for direct client service programs that represent indigent defendants. Although counties may apply for multi-year grants (generally four years), all discretionary grants are awarded for one-year periods from October 1 to September 30. For further details, see summary of discretionary grants on page 14.

III. INDIGENT DEFENSE EXPENDITURE REPORT

Indigent Defense Expenditure Reporting

The county did not report indigent defense expenditures and case information associated with those expenditures on the indigent defense expenditure report (IDER) in the form and manner prescribed by Section 79.036, Government Code. According to the grants auditor, the attorney fee vouchers did not identify appeal cases; therefore, the auditor's office was unable to report the number of cases and associated appellate expenses on the indigent defense expenditure report.

Recommendations

The Commission recommends that the county develop and implement procedures to capture the total number of criminal appeal cases and expenditures on the indigent defense expenditure report. For reporting purposes, the county is required to provide the amount spent on indigent defense services, as well as the number of cases associated with those expenditures in each district, county, statutory county and appellate court in the form and manner as prescribed in Section 79.036(e), Government Code. The annual indigent defense expenditure report is critical in establishing grant eligibility. Please refer to Procedure Manual for the Indigent Defense Expenditure Report at: <http://www.courts.state.tx.us/tidc/pdf/FY11IDERManual.pdf>.

Note: The Commission is available to provide technical assistance to improve reporting of indigent defense services and meet the Fair Defense Act requirements. Should you need any technical assistance, please contact Bryan Wilson, Grants Administrator, at 512-936-6996 or Bryan.Wilson@txcourts.gov.

Lubbock County Action Plan

The Lubbock County Auditor's Office has taken steps to revise the current procedures in an effort to capture appeal cases, so that expenditures specifically related to appeal cases can be determined and provided.

Contact person(s): Lubbock County Auditor

Completion date: October 14, 2011

IV. ACCOUNTING OPERATIONS

Accounting Procedures

A copy of the accounting procedures relating to indigent defense expenditures was provided to the fiscal monitor. The accounting procedures have designated codes to identify indigent defense expenses. The formal documentation of accounting policies and procedures provides an effective framework of internal control over accounting and financial reporting.

Monitor Comment

Written procedures provide instruction and guidance; uniformity and completeness; and ensure correct and secure processing of fiscal information. The Uniform Grants Management Standards (UGMS) requires grantees financial systems to provide an "effective control and accountability of funds, property and assets..." (para 20, page 68).

V. INDIGENT DEFENSE PAID VOUCHERS

A. Summary of Attorney 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 \$180 to \$152,252 per attorney with an average of \$20,902 and a median of \$14,100.

2. Reviewed Attorney Fee Vouchers

Attorney Fee Vouchers	
District Courts	300
County Courts-at-Law	150
Total	450

Lubbock County Courts				
55 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
County Court-at-Law #1	1,458	\$459,810	75	\$22,526
County Court-at-Law #2	1,567	\$417,265	75	\$21,749
Total	3,025	\$877,075	150	\$44,275

Note: As reported on the FY 2011 Indigent Defense Expenditure Report

County Court-at-Law 1= juvenile expenses + adult misdemeanor expenses

\$459,810 = \$1,450 + \$458,360

County Court-at-Law 2 = adult misdemeanor expenses

\$417,265

Note: County Court-at-Law 3 did not report hearing criminal cases on the FY 2011 IDER.

District Courts				
48 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
72 nd District Court	17	\$13,012	9	\$1,965
99 th District Court	1,777	\$152,222	65	\$6,800
137 th District Court	929	\$440,717	65	\$46,237
140 th District Court	995	\$503,193	65	\$41,038
237 th District Court	8	\$5,065	8	\$5,065
364 th District Court	1,079	\$473,808	65	\$56,783
County Magistrate	281	\$34,404	23	\$4,504
Total	5,086	\$1,622,421	300	\$162,392

District Court	Juvenile Expenses	Adult Felony Expenses	Total
72 nd	\$1000	\$12,013	\$13,013
99 th	\$140,327	\$11,895	\$152,222
137 th	\$905	\$439,812	\$440,717
140 th	\$100	\$503,093	\$503,193
237 th	\$217	\$4,848	\$5,065
364 th	\$1,227	\$472,581	\$473,808

Court	payments made no charged filed-juvenile	payments made no charges filed-adult	Total
County Magistrate	\$250	\$34,154	\$34,404

3. Unallowable Attorney Fee Vouchers

As a result of reviewing expenses, the county included and reported on the indigent defense expenditure report 2 child protective services cases (\$180), which are unallowable costs under the formula grant. Child Protective Services (CPS) cases are allegations of acts or omissions that constitute child abuse or neglect from the designated social services agency. CPS cases are civil matters and are not allocated as indigent defense expenses under the formula grant. The routine fees and costs associated with court reporting are not allowable according to the Procedure Manual for the Indigent Defense Expenditure Report at:

<http://www.courts.state.tx.us/tidc/pdf/FY11IDERManual.pdf>.

Child Protective Services Cases (Unallowable Costs)					
No.	Court	Date	Check No.	Amount	Services
1	99th District Court	7/12/2010	325099	\$75.00	CPS cases
2	99th District Court	7/12/2010	325099	\$105.00	CPS cases
			Total	\$180.00	

Recommendation

The Commission recommends that the county implement procedures to ensure that CPS cases are not allocated under the formula grant as indigent defense expenses in accordance with the UGMS and Commission policy. Please refer to the Procedure Manual for the Indigent Defense Expenditure Report at:

<http://www.courts.state.tx.us/tidc/pdf/FY11IDERManual.pdf> and Uniform Grant Management Standards: <http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc>.

Lubbock County Action Plan

The Lubbock County Auditor's office has taken measures to ensure that CPS cases are not allocated under the formula grant as indigent defense expenses.

Contact person(s): Lubbock County Auditor

Completion date: October 14, 2011

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

FY 2010 Licensed Investigations, Experts, and Other Direct Litigation Expenditures				
Expenditures	Total Vouchers			
	Reported		Reviewed	Reviewed Value
	Paid	FY 2010		
Investigation	41	\$18,944	23	\$19,900
Expert Witness	112	\$134,940	30	\$28,009
Other Direct Litigation	157	\$168,850	60	\$57,123

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.

2. Applied for Public Appointment List

All court appointed attorneys applied to be on the public appointment list.

Courts	Number of Attorneys		Sampled
	public appointment list	applications reviewed	
County Court-at-Law and District Court	156	156	100%

Percent Sampled: applications reviewed / number on public appointment list

3. Continuing Legal Education (CLE) Requirements

The continuing legal education hours were not documented for 1 of the 156 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 Lubbock 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
County Court-at-Law and District Court	156	156	155

Recommendation

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

Lubbock County Action Plan

Following the fiscal monitoring visit conducted October 11-14, 2011, the County implemented a new private defender program for all court appointed attorneys in criminal cases. Effective January 1, 2012, this new process moved the responsibility of documenting continuing legal education hours to the Lubbock Private Defender’s Office.

Contact person(s): Lubbock Private Defender Office & Administrative Office of the Courts

Completion date: January 1, 2012

VI. DISCRETIONARY GRANTS

Summary of Discretionary Grants

Lubbock County Discretionary Grants				
Grant		Program Description	Grant	
Title	Type		Award	Disbursed
Expansion of the Regional Public Defender for Capital Cases	FY2009 (multi-year)	Due to a lack of sufficient qualified attorneys available to manage capital murder cases and overwhelming expense of compensating attorneys, more counties requested to join the regional public defender office for capital cases.	\$2,157,311	\$1,944,844
Private Defenders for Mental Health Offenders	FY2009 (multi-year)	The Lubbock Special Needs Defenders Office (LSNDO) was the first private defender office created in Texas. The Lubbock defense bar provides management for a group of specialized attorneys who handle mental health cases.	\$419,360	\$89,432
West Texas Regional Public Defender for Capital Murder Cases	FY2008 (multi-year)	A regional public defender office for capital murder cases based out of Lubbock to provide representation in capital cases in which the death penalty is sought in the Seventh and Ninth Administrative Judicial Regions.	\$650,685	\$567,329

Video Teleconferencing for Lubbock County	FY2007 (single year)	Due to high caseloads and limited resources, the county installed a videoconferencing system to allow the courts to communicate with large numbers of defendants without the need to transport inmates and save on court cost.	\$46,533	\$38,081
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Disclaimer: Fiscal monitor did not review financial records of discretionary grants.

In 2009, the Commission awarded a \$419,360 discretionary grant to the Mental Health Private Defender Program for the Lubbock Special Needs Defenders’ Office (LSNDO), the first private defender office created under the Lubbock Criminal Defense Lawyers Association (LCDLA). The LSNDO provides management for a group of specialized attorneys who handle indigent defendant mental health cases. The county has a thorough screening process for indigents who are arrested with signs of mental or emotional health issues or a mental health history.

In 2008, the Commission awarded \$978,046 a discretionary grant for the Regional Public Defender for Capital Cases to serve 70 counties in the Seventh and Ninth Administrative Judicial Regions. A regional public defender based out of Lubbock to provide representation in capital cases in which the death penalty is sought. In addition, the West Texas Regional Public Defender for Capital Cases was renamed the Regional Public Defender for Capital Cases (RPDCC), and expanded to include the Second, Third, Fourth, Fifth, and Sixth Administrative Judicial Regions.

In 2007, the Commission awarded a discretionary grant in the amount of \$46,533 for a video teleconferencing system. The video teleconferencing system improved indigent defendants’ access to effective counsel.

Monitor Comment

The regional public defender office and special needs private defender program received positive comments from judges and clients for indigent defense services. The RPDCC has won both state and national awards for their considerable accomplishments. In 2009, the Texas Association of Counties awarded the RPDCC with “Best Practices” award. The RPDCC also received a 2009 Best of Category Award in the Criminal Justice and Public Safety Category from the National Association of Counties. “There were only 20 Best of Category Awards conferred nationwide, which are given to recognize the most outstanding model programs submitted to the award competition,” Texas Association of Counties <http://www.county.org/resources/news/dynContView.asp?cid=201>.

VII. SUMMARY

General Comments

The Commission wishes to express its appreciation to local county officials and employees of Lubbock County for the time and courtesy extended during the fiscal monitoring visit. In particular, my gratitude extends to Judge Thomas V. Head, Constitutional County Court; Judge Bradley S. Underwood, Local Administrative District Court; Judge Drue Farmer, Local Administrative Statutory County Court; Mr. Dean Stanzione, Director of Court Administration; Mr. Jack Stoffregen, Chief Public Defender; Ms. Irma Shepler, Grant Manager; Ms. Jacqueline Latham, County Auditor; Ms. Rhonda Scott, First Assistant Auditor; and Ms. Robin Wilmot, Grants Auditor, 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, patience and cooperation during the monitoring visit.

Lubbock County Response

Lubbock County appreciates the efforts of the Texas Indigent Defense Commission, namely Carol Conner, who, before, during and after her fiscal monitoring visit, has worked with our County officials professionally and respectfully in our efforts of ensuring compliance and efficiency of our processes. We look forward to continuing this relationship in future visits and projects.

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. 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 charged with, or taking an appeal from a conviction of 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), (f-1), (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 for purposes of a criminal proceeding that a defendant charged with or appealing a conviction of a felony or a misdemeanor punishable by confinement is indigent or that the interests of justice require representation of a defendant in the proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to represent 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.

(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);

Art. 26.04. Procedures for Appointing Counsel (Continued)

- (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, the attorneys' qualifications, and whether representation will be provided in trial court proceedings, appellate proceedings, or both; 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, the attorneys' qualifications, and whether representation will be provided in trial court proceedings, appellate proceedings, or both.
- (f) In a county in which a public defender's office is created or designated under Article 26.044, the court or the courts' designee may appoint that office to represent the defendant in accordance with guidelines established for the office.
- (f-1) In a county in which a managed assigned counsel program is operated in accordance with Article 26.047, the managed assigned counsel program may appoint counsel to represent the defendant in accordance with the guidelines established for the program.
- (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 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:

Art. 26.04. Procedures for Appointing Counsel (Continued)

- (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 for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; 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 for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; 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 or convicted of a felony may appoint an attorney from any county located in the court's administrative judicial region.
- (j) An attorney appointed under this article shall:
 - (1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed;
 - (2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record; and
 - (3) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:
 - (A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;
 - (B) if the defendant wishes to pursue either or both remedies described by Paragraph (a), assist the defendant in requesting the prompt appointment of replacement counsel; and

Art. 26.04. Procedures for Appointing Counsel (Continued)

(C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal.

(k) A court may replace an attorney who violates Subsection (j)(1) with other counsel. 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 from consideration for appointment an attorney who intentionally or repeatedly violates Subsection (j)(1).

(l) Procedures adopted under Subsection (a) must include procedures and financial standards for determining whether a defendant is indigent. The procedures and standards shall apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail.

(m) In determining whether a defendant is indigent, the court or the courts' designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The court or the courts' designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.

(n) A defendant who requests a determination of indigency and appointment of counsel shall:

(1) complete under oath a questionnaire concerning his financial resources;

(2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or

(3) complete the questionnaire and respond to examination by the judge or magistrate.

(o) Before making a determination of whether a defendant is indigent, the court shall request the defendant to sign under oath a statement substantially in the following form: "On this _____ day of _____, 20 ___, I have been advised by the (name of the court) Court of my right to representation by counsel in connection with the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)"

(p) A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigency or non-indigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.

(q) A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant. This subsection does not prohibit prosecution of the defendant under Chapter 37, Penal Code.

(r) A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel.

Amendments to (a), (d), and (f) and addition of (f-1) effective Sept. 1, 2011 (HB 1754, §20).

Amendments to (a), (c), (e), (g), (i), (j), and (o) effective Sept. 1, 2011 (SB 1681, §4). Section 3 provides: "The change in law made by this Act applies only to a criminal proceeding that commences on or after the effective date of this Act. A criminal proceeding that commences before the effective date of this Act is governed by the law in effect when the proceeding commenced, and the former law is continued in effect for that purpose."

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).



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

Vice Chair:
The Honorable Olen Underwood

Ex Officio Members:
Honorable Sharon Keller
Honorable Wallace B. Jefferson
Honorable Roberto Alonzo
Honorable Pete Gallego
Honorable Jeff Wentworth
Honorable John Whitmire

Members Appointed by Governor:
Honorable Jon Burrows
Mr. Knox Fitzpatrick
Mr. Anthony Odiorne
Honorable Sherry Radack
Honorable Olen Underwood
Honorable B. Glen Whitley

Executive Director:
James D. Bethke

May 09, 2012

The Honorable Thomas V. Head
Constitutional County Judge
PO Box 10536
Lubbock, TX 79408

Re: Indigent Defense Grant Number 212-12-D02, Equipment Inventory Review

Dear Judge Head,

The Texas Indigent Defense Commission (formerly Task Force) awarded Lubbock County discretionary grant funding to operate the Regional Public Defender Office for Capital Cases (212-12-D02). The Commission is required to monitor each county that receives grant funding to ensure compliance with the conditions of the grant.

In addition to conducting a Fiscal Monitoring visit of Lubbock County on October 11th to October 14th, 2011, Commission staff conducted a review of equipment inventory to determine whether state funds had been used in a manner that adheres to Texas Administrative Code, Title 1, Part 8, Rule §173.305 Inventory Reports:

The Commission requires each grantee to maintain an inventory report of all equipment purchased with grant funds. This report must comport with the final financial expenditure report. At least once each year, grantees must complete a physical inventory of all grantee property and the grantee must reconcile the results with the existing property records.

According to the review I conducted, Lubbock County has maintained an inventory report of equipment that satisfies the requirements of the Texas Administrative Code for the Regional Public Defender Office for Capital Cases.

Sincerely,

A handwritten signature in blue ink that reads 'Dominic Gonzales'. The signature is written in a cursive, flowing style.

Dominic Gonzales
Grant Program Specialist

cc:
Dean Stanzione, Program Director
James D. Bethke, Commission
Bryn Wilson, Commission Grants Administrator