



TEXAS INDIGENT DEFENSE COMMISSION

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Executive Director:

James D. Bethke

June 6, 2012

The Honorable Alan Sadler
Constitutional County Court Judge
Montgomery County Courthouse
501 North Thompson Street
Conroe, Texas 77301

Re: Montgomery County Fiscal Monitoring Visit

Dear Judge Sadler:

A monitoring visit of your county was conducted on March 13-16, 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 Montgomery County's staff.

If you have any questions or need further clarification, do not hesitate to contact me at (512) 936-7561.

Sincerely,

Carol Conner
Fiscal Monitor

cc: The Honorable Tracy A. Gilbert, Local Administrative District Court
The Honorable Keith Stewart, Local Administrative Statutory County Court
The Honorable Mary Ann Turner, Chairman of the Juvenile Board
Ms. Phyllis L. Martin, County Auditor
Ms. Amanda Vance, Grants Reporting Auditor
Ms. Berenice Juan, OCA Manager/Indigent Defense Coordinator
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

Fiscal Monitoring of Indigent Defense Expenses

Montgomery County, Texas

on

March 13-16, 2012

Final

June 6, 2012

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I. INTRODUCTION

Montgomery County on-site fiscal monitoring visit was conducted on March 13-16, 2012. 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.

Montgomery County is located on Interstate 45, approximately forty miles north of downtown Houston with a population of approximately 462,144.

Montgomery County's court system is comprised of five statutory county courts (four of the five courts handle criminal cases) and seven district courts. In 2011, the county received \$234,839 in formula and \$89,519 in discretionary grant disbursements. The county also received \$653,589 in equalization disbursement for the increased cost of indigent defense services. Additionally, the county collected \$520,934 for reimbursement of attorney fees from defendants.

The fiscal monitor reviewed Montgomery County's comprehensive annual financial report for the fiscal year ended September 30, 2010. Hereford, Lynch, Sellars & Kirkham, P.C., licensed certified public accountants firm, audited Montgomery 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 Montgomery County a Certificate of Achievement for Excellence in financial reporting for the FY 2010 comprehensive annual financial report (CAFR). The county has received a Certificate of Achievement for the last twenty-two consecutive years. The CAFR must satisfy both accounting principles generally accepted in the United States and applicable legal requirements.

Montgomery County Indigent Defense Expenditures			
Expenditures	2009	2010	2011
Population Estimate	433,425	455,746	462,144
Juvenile Assigned Counsel	\$256,200	\$214,286	\$91,837
Juvenile Contract Counsel	n/a	n/a	\$131,250
Capital Murder	\$31,130	\$30,304	\$94,994
Adult Non-Capital Felony Assigned Counsel	\$2,593,884	\$3,028,968	\$2,515,423
Adult Misdemeanor Assigned Counsel	\$1,006,227	\$1,326,234	\$1,036,196
Juvenile Appeals	0	0	\$5,380
Adult Felony Appeals	\$106,723	\$69,490	\$175,987
Adult Misdemeanor Appeals	0	\$4,226	\$15,467
Licensed Investigation	\$145,868	\$155,239	\$170,415
Expert Witness	\$181,884	\$232,332	\$260,732
Other Direct Litigation	0	0	\$56,815
Total Court Expenditures	\$4,321,916	\$5,061,079	\$4,554,496
Administrative Expenditures	\$213,242	\$214,453	\$150,197
Total Court and Administrative Expenditures	\$4,535,158	\$5,275,532	\$4,704,693
Formula Grant Disbursement	\$190,779	\$194,624	\$234,839
Equalization Disbursement	\$441,662	\$299,249	\$653,589
Discretionary Disbursement	n/a	n/a	\$89,519
Reimbursement of Attorney Fees	\$449,924	\$586,073	\$520,934
Total Assigned Counsel Cases	4,719	7,961	6,689
Total Juvenile Contract Counsel Cases	n/a	n/a	159

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 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 grants during fiscal year 2011. The fiscal monitor reviewed records located in Montgomery County Courthouse, Auditor’s Office, Office of Indigent Defense, and Managed Assigned Counsel - Mental Health Office.

Methodology

To accomplish the objectives, the fiscal monitor met with district court judge, magistrate for the office of indigent defense, county judge’s chief of staff, budget/financial reporting supervisor, grants reporting accountant, accounts payable clerk, grants administrator, managing assigned attorney-mental health, indigent defense coordinator, and administrative assistant. 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, invoices, accounting procedures;
- indigent defense expenditure report and attorney fee schedule;
- public appointment list, attorney applications, and attorney criminal continuing legal education training; juvenile contracts; and
- county’s local indigent defense plan.

The expenditure period of October 1, 2010 to September 30, 2011 (FY 2011) was reviewed during the fiscal monitoring visit.

Montgomery County's Criminal Courts			
Courts	Courts		Sampled
	Total	Reviewed	
County Court-at-Law	5	4	100%
District Court	7	7	100%

Percent Sampled: courts reviewed / courts total

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

Summary of Findings

- The county included a payment of \$532.50 in attorney fees for a child protective service case (civil matter) in accounting for indigent defense expenditures.
- The juvenile contract did not meet all requirements of the Compensation and Payment Process as specified in Title 1, Part 8, Chapter 174, Section 174.25, Texas Administrative Code.
- The county incorrectly placed 2 licensed investigation payments totaling \$1,125 in the attorney fee category of services.

II. INDIGENT DEFENSE GRANTS

A. Formula Grant

The county submitted the FY 2011 indigent defense on-line grant application to assist in the provisions of the Fair Defense Act. Montgomery County met the formula grant eligibility requirements.

B. Discretionary Grant

The Commission awarded Montgomery County a discretionary grant on the basis of a competitive process. The purpose of the discretionary grant is to provide funds for direct client service programs that represent indigent defendants. The discretionary grant application goes through a formal review process. 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 grant on page 14.

Monitor Comment

The Commission commends Montgomery County for maintaining fiscal accountability of the formula grant funds and for implementing an effective managed assigned counsel program-mental health that comports with the heightened discretionary grant program directives.

III. INDIGENT DEFENSE EXPENDITURE REPORT

Indigent Defense Expenditure Reporting

During the review of the FY 2011 indigent defense expenditure report, in the “*payments made no charges filed by prosecutor-juvenile*” category, the county reported 26 contract juvenile cases and \$15,658 in associated expenditures, which were significant for that category of services. The “*payments made and no charges filed by prosecutor-juvenile*” category is only for cases in which the attorney fee vouchers or monthly reports do not reveal any information about the level of the charge related to indigent defense expenses or cannot deduce easily that the case is associated with a particular level of court. In reviewing the juvenile contractors’ monthly reports, a significant number of juvenile cases did not have cause numbers. For example, the 26 juvenile contract cases (20-supervisory caution; 3-dismissed; 2-court deferred disposition and 1-other) did not have assigned cause/cases numbers but included the level of court. Therefore, if the court level can be determined, the juvenile case can be assigned to that particular level of court.

Monitor Comment

The Commission suggests that the county review “*payments made no charges filed by prosecutor*” to ensure that the category is used for cases that *cannot* be attributed to a specific court or case level. Please refer to Procedure Manual for the Indigent Defense Expenditure Report at: <http://www.courts.state.tx.us/tidc/pdf/FY11IDERManual.pdf>.

Montgomery County Response

Montgomery County will contact the Juvenile Contract vendor to improve the form used in order to assure that all pertinent information is included so that cases are reported properly.

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. 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).

Reimbursement of Expenses

An attorney appointed to represent an indigent defendant submits an itemized attorney fee voucher listing the court services performed to the judge with dispositive jurisdiction over the case. The submission must occur within 60 days of the judgment. Article of 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.”

In Montgomery County, claims for the court appointed attorney payments are processed by the accounts payable section of the auditor's office and approved by the Commissioners' Court. The approved attorney fee vouchers and supporting documents are routed to the clerk's office for certification and filing. The clerk's office forwards the attorney fee vouchers and supporting documents to the auditor's office. The auditor's office time and date stamp all documents. The accounts payable accountant reviews, verifies, and enters the attorney fee claims into the accounts payable system. After posting, checks are submitted to the Commissioners' Court for approval. Checks are disbursed to the court appointed attorney or service provider every two weeks.

Monitor Comment

The fiscal monitor reviewed the effectiveness of local procedures in tracking expenses necessary to complete the indigent defense expenditure report. Based on the review of local procedures, the auditor's records indicate that indigent defense expenses are accurate.

Note: In order to improve internal controls and efficiency in processing payments, the county may find it helpful to have all court appointed attorneys to complete a standardized attorney fee voucher for uniformity and consistency in tracking and reporting of all indigent defense expenses. The Commission also has a sample attorney fee voucher available at: http://www.txcourts.gov/tidc/TFID_policies_and_standards.asp. See Appendix G.

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 2011, the attorney fee annual payments ranged from \$550 to \$181,045 per attorney with an average of \$34,103 and a median of \$24,685.

2. Reviewed Attorney Fee Vouchers

<u>Attorney Fee Vouchers</u>	
County Courts-at-Law	200
District Courts	227
Total	427

In reviewing expenses, the county included a payment of \$532.50 in attorney fees for a child protective service case (civil matter) in accounting for indigent defense expenditures, which is an unallowable 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 cannot be allocated as indigent defense expenses under the formula grant calculations.

County Courts-at-Law				
48 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
County Court-at-Law #1	717	\$207,915	50	\$13,389
County Court-at-Law #3	805	\$221,024	50	\$10,134
County Court-at-Law #4	835	\$229,606	50	\$13,180
County Court-at-Law #5	1,496	\$618,610	50	\$16,958
Total	3,853	\$1,277,155	200	\$53,661

Note: County Court-at-Law #2 does not handle criminal cases.

County Courts-at-Law*	Juvenile Contract	Juvenile	Juvenile Appeals	Adult Misdemeanor	Adult Misdemeanor Appeals	Total
CCL#1				\$204,315	\$3,600	\$207,915
CCL#3		\$350		\$218,574	\$2,100	\$221,024
CCL#4		\$2,260		\$225,846	\$1,500	\$229,606
CCL#5	\$131,250	\$83,777	\$5,380	\$389,937	\$8,266	\$618,610

*As reported on the FY 2011 Indigent Defense Expenditure Report

District Courts				
45 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
9 th District Court	170	\$303,063	25	\$19,839
221 st District Court	782	\$587,066	50	\$25,012
284 th District Court	483	\$432,525	25	\$13,841
359 th District Court	553	\$705,761	50	\$50,499
410 th District Court	455	\$418,935	50	\$39,375
418 th District Court	2	\$517.50	2	\$517.50
435 th District Court	391	\$341,512	25	\$43,501
Total	2,836	\$2,789,379.50	227	\$192,585

Court	Juvenile	Adult Felony	Capital Murder	Felony Appeals	Total
9 th District Court		\$291,309.45		\$11,753.08	\$303,062.53
221 st District Court		\$495,229.20	\$53,854.35	\$37,982.88	\$587,066.43
284 th District Court		\$412,289.55		\$20,235.86	\$432,525.41
359 th District Court		\$612,297.04	\$41,140.00	\$52,323.84	\$705,760.88
410 th District Court	\$4,970.00	\$377,463.48		\$36,501.62	\$418,935.10
418 th District Court	\$480.00	\$37.50			\$517.50
435 th District Court		\$324,321.81		\$17,189.89	\$341,511.70

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

Recommendation

The Commission recommends that the county implement procedures to ensure that civil matters such as child protective services' cases are not allocated as criminal indigent defense expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual: <http://www.txcourts.gov/tidc/pdf/FY11IDERManual.pdf>.

Montgomery County Action Plan

Montgomery County will continue to focus on controls that are already in place to insure expenditures are appropriately coded and to minimize coding errors. The accounts payable clerk designated to handle the fee vouchers will code the vouchers accordingly. The coding will then be checked upon entering the vouchers into the accounts payable system and upon matching the vouchers with their appropriate claim jacket. The grants reporting accountant will, also, perform a set of checks and balances when compiling the finalized report.

Contact person(s): Montgomery County Auditor (936) 539-7820

Completion date: Immediately

3. Juvenile Contract for Indigent Defense Services

At its meeting on August 24, 2006, the Commission voted to adopt new rules to establish minimum requirements for the contract defender program. At the September 20, 2006 meeting, the Texas Judicial Council ratified the new rules. On January 1, 2007, the new rules became effective and all jurisdictions were required to follow them. In October 2010, Montgomery County established a contract defender program. The county maintains a juvenile contract for indigent defense services in the amount of \$131,250 to provide legal representation for juvenile respondents.

Application Process

The county appears to follow the guidelines for awarding contracts for indigent defense services as required by the Application Process 174.12(a-c), Contract Defender Program Requirements. The Application Process requires appointing authorities to solicit proposals through a widely disseminated notification of the

opportunity to apply (NOA) and applicants to have the same opportunity to respond and be considered for public defender contracts.

Monitor Comment

The Commission commends Montgomery County in the selection process and awarding of contracts for indigent defense services in juvenile cases. The selection process focused on the expected quality of representation versus the lowest bid. The three attorneys awarded contracts are all board certified in Juvenile Law by the Texas Board of Legal Specialization.

Compensation and Payment Process

In reviewing, the juvenile contract did not meet all requirements of the Compensation and Payment Process. The juvenile contract set the amount of compensation to be paid to the contractor and designated method and timing of payment; however, the contract did not meet all of the requirements of Sec. 174.25, which states that vouchers must be approved by a member of the appointing authority prior to being forwarded to the county financial officer for approval and payment.

Recommendation

The Commission recommends that the county amend the juvenile contract for indigent defense services to meet the contract defender program requirements in accordance with Title 1, Part 8, Chapter 174, Section 174.25, Texas Administrative Code. The voucher or monthly report must be approved by a member of the *appointing authority* (i.e. a judge) prior to being forwarded to the county financial officer for approval and payment. The county can amend a new juvenile contract when the current one expires.

For further details and commentary on *required elements of a contract for indigent defense services*, refer to contract defender program rules, Title 1, Part 8, Chapter 174, Rule 174.15 – 174.25, Texas Administrative Code, page 3, at: <http://www.courts.state.tx.us/tfid/docs/Contract%20Defender%20Rules%20w%20Commentary%20and%20Sample%20Fee%20Vouchers%20Final-Rev'd.doc>.

Montgomery County Action Plan

Montgomery County currently requires that submitted vouchers must be approved by a member of the appointing authority prior to being forwarded to the county financial officer for payment. However, the juvenile contract itself does not state these specific requirements. Montgomery County has procedures in place for renewal of the juvenile contract for indigent defense for each calendar fiscal year. If approved by the Juvenile Board and Commissioners Court, the contract will renew on October 1, 2012. The new Master Contract for Legal Representation of Eligible Indigent Juveniles will be amended in Paragraph IX of the contract entitled, Compensation and Payment Process, to provide for the invoice submitted by the Contractor Attorneys to be approved by the Juvenile Judge before being submitted to the County Auditor. The procedure is currently in practice but it will be incorporated in accordance with the Title 1, Part 8, Chapter 174, Section 174.15 – 174.25, Texas Administrative Code.

Contact person(s): Judge Mary Ann Turner, CCL #4 (936) 538-8174

Completion date: October 1, 2012

4. **Summary of Investigations, Experts, and Other Direct Litigation Expenses**
 The county incorrectly placed 2 licensed investigation expenses (\$1,125) in the attorney fees' category of services. Licensed investigation fees include "money paid by the county to a person licensed as an investigator or otherwise legally able to conduct investigations for a licensed attorney in preparing or presenting a defense for an indigent defendant".

FY 2011 Licensed Investigations, Experts, and Other Direct Litigation Expenditures				
Expenditures	Total Vouchers			
	Reported		Reviewed	Reviewed Value
	Paid	FY 2011		
Investigation	173	\$170,415	25	\$74,231
Expert Witness	284	\$260,732	25	\$50,780
Other Direct Litigation	162	\$56,815	25	\$24,006
Total	619	\$487,962	75	\$149,017

Placed in Attorney Fee Category of Services				
Investigation	Date	Court	Check No.	Expense
Jamac Investigation	3/16/2011	435 th District Court	1109229	\$975
Jamac Investigation	6/13/2011	284 th District Court	1113936	\$150
Total				\$1,125

Recommendation

The Commission recommends that the county develop and implement internal procedures to identify, capture, and report other direct litigation expenses in the appropriate category of services pursuant to Section 79.036(e), Government Code. The correct classification of expenses is the precursor to accurate reporting under the Fair Defense Act.

Montgomery County Action Plan

Montgomery County placed two charges for subpoena fees in the "other direct litigation expenses" category. Montgomery County now understands that all fees associated with investigations should be reported under the "Licensed Investigation Fees" category regardless of the service rendered. Montgomery County will continue to focus on controls that are already in place to insure expenditures are appropriately coded and to minimize coding errors.

Contact person(s): Montgomery County Auditor (936) 539-7820

Completion date: Immediately

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	
District Court	77	77	100%
County Court-at-Law	94	94	100%
Juvenile Contract Attorneys	3	3	100%

Percent Sampled: applications reviewed / number on public appointment list

3. Continuing Legal Education (CLE) Requirements

Courts	Number of Attorneys		
	public appointment list	criminal/juvenile CLE documents	
		reviewed	met minimum hours
District Court	77	77	100%
County Court-at-Law	94	94	100%
Juvenile Contract Attorneys	3	3	100%

Monitor Comment

The Commission commends Montgomery County for providing support documents that court appointed attorneys obtained the CLE hours according to the county's local indigent defense plan and Title 1, Chapter 174, Texas Administrative Code. In addition, the three contract attorneys are board certified in Juvenile Law by the Texas Board of Legal Specialization.

Montgomery County Response

MACMH program has a CLE requirement for its panel of attorneys as well. The attorneys are required to obtain six (6) hours of CLE each year in the areas of mental

illness and/or indigent defense. The Program is also required to offer six (6) hours of CLE in the same area to the defense bar as a whole. The Program has already offered three hours of CLE to the bar including topics such as dealing with the defendant with bipolar disorder and jury selection for defendants with mental illnesses. Additionally, the Program offers monthly speakers to the panel attorneys including the local MHMR jail diversion clinician and the director of the new outpatient competency restoration program.

Montgomery County will strive to maintain the same level of accuracy in obtaining the supporting documentation for Continuing Legal Education requirements.

VI. DISCRETIONARY GRANTS

Summary of Discretionary Grants

Montgomery County Discretionary Grants				
Grant		Program Description	Grant	
Title	Type		Award	Funds Disbursed
Montgomery County Managed Assigned Counsel Program	FY 2011 (multi-year)	The county established a managed assigned counsel program to provide direct services to indigent defendants charged with documented mental health issues.	\$547,400	\$89,519
Indigent Defense Coordinator and System Programming	FY 2003 (single year)	An indigent defense coordinator and expenses for development of a computer program to meet the Fair Defense Act.	\$56,823	\$29,737

Disclaimer: Fiscal monitor did not review financial records of discretionary grants.

In 2011, the Commission awarded a discretionary grant in the amount of \$547,400 for a Managed Assigned Counsel (MAC) Program, the first private defender office created by Montgomery County to provide management for a group of specialized attorneys who handle mental health cases. The MAC's staff consists of a managing attorney, 14 private/program attorneys, 2 case management coordinators, 2 caseworkers, and an administrative assistant. The county has a screening process for those who are arrested and identified with a mental health history or exhibits signs of mental or emotional health issues.

Equipment

A copy of the equipment inventory list was provided to the fiscal monitor. The county's purchasing agent properly recorded and tagged the equipment. The equipment purchased met the required elements as outlined in Section 262.011, Local Government Code and Title 1, Chapter 173.305 of the Texas Administrative Code.

In 2003, the Commission awarded a discretionary grant in the amount of \$56,823 for an indigent defense coordinator and the development of an automated appointment notification computer system to meet the Fair Defense Act.

Monitor Comment

The Commission commends the Managed Assigned Counsel Program-Mental Health for maintaining written procedures that tracks mental health clients' progress from referral through evaluation. Additionally, the county has continued to maintain an indigent defense coordinator and Texas' first automated appointment notification computer system to comply with the Fair Defense Act.

VII. SUMMARY

General Comments

The Commission wishes to express its appreciation to local county officials and employees of Montgomery County for the time and courtesy extended during the fiscal monitoring visit. In particular, my gratitude extends to Judge Olen Underwood; Presiding Judge of the Second Administrative Judicial Region; Judge Alan Sadler, Constitutional County Court; Judge Cara Wood, 284th Judicial District Court; Judge Paul D'Amico; Magistrate for the Office of Indigent Defense; Ms. Doris Golemon, County's Judge Chief of Staff; Ms. Sara Forlano, Managing Assigned Attorney; Ms. Phyllis Martin, County Auditor; Ms. Krissa Garner, Budget/Financial Reporting Supervisor; Ms. Amanda Vance, Grant Reporting Accountant; and Ms. Berenice Juan, OCA Manager, for accommodating the fiscal monitor activities. Those 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.

Montgomery County Response

We would like to thank Ms. Carol Conner for her time and help during our fiscal monitoring visit. We appreciate how accommodating she was in answering all of our indigent defense questions both during the monitoring visit and afterwards. She was very personable and professional. We look forward to working with her again.

Montgomery County will strive to maintain accurate reporting and to comply with the Fair Defense Act.

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).

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.

Appendix G

Attorney Fee Voucher

1. Jurisdiction <input type="checkbox"/> District <input type="checkbox"/> County <input type="checkbox"/> County Court at Law Court # _____	2. County _____	3. Cause Number Offense _____ _____	4. Proceedings <input type="checkbox"/> Trial-Jury <input type="checkbox"/> Trial-Court <input type="checkbox"/> Plea-Open <input type="checkbox"/> Plea- Bargain <input type="checkbox"/> Other _____		
5. In the case of: State of Texas v _____					
6. Case Level <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Juvenile <input type="checkbox"/> Appeal <input type="checkbox"/> Capital Case <input type="checkbox"/> Revocation – Felony <input type="checkbox"/> Revocation – Misdemeanor <input type="checkbox"/> No Charge					
7. Attorney (Full Name) _____		Firm Name if Applicable) _____			
8. State Bar Number _____	8a. Tax ID Num _____	10. Telephone _____			
			11. Fax _____		
12. Flat Fee – Court Appointed Services			12a. Total Flat Fee \$ _____		
13.	In Court Services		Hours	Dates	13a. Total In Court Compensation. \$ _____
	_____		_____	_____	
	Rate per Hour =	Total hours			
14.	Out of Court Services		Hours	Dates	14a. Total Out of Court Compensation. \$ _____
	_____		_____	_____	
	Rate per Hour =	Total hours			
15.	Investigator			Amount	15a. Total Investigator Expenses \$ _____
	_____			_____	
16.	Expert Witness			Amount	16a. Total Expert Witness Expenses \$ _____
	_____			_____	
17.	Other Litigation Expenses			Amount	17a. Total Other Litigation Expenses \$ _____
	_____			_____	

Sample