

2010 Monitor Summary of Findings

Updated by Debra Stewart, Fiscal Monitor (July 2014)

1) Contract Defender Systems

The contract defender systems as a whole have not maintained adequate documentation of statutory and fiscal requirements. Texas Government Code, Section 71.001 defines the contract defender program as a “system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.” The written contract with attorneys to provide representation to indigent defendants must comply with the local rules that have been adopted in accordance with Texas Government Code, Section 74.093. In addition, Article 26.04 of the Code of Criminal Procedure allows for contract systems and requires that “appointments are reasonably and impartially allocated among qualified attorneys.” The Texas Indigent Defense Commission recommends an open selection process for attorneys meeting the objective qualifications set forth in the indigent defense plan.

The recommendation includes: 1) applications by attorneys; 2) selection by majority vote of the judges hearing criminal and/or juvenile matters; 3) contracts that clearly indicate payment amounts and frequency; and 4) itemized invoices that meet the requirements of Article 26.05 Code of Criminal Procedure and the formula grant requirements. The county must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation. The contract with appointing attorneys to provide representation to indigent defendants by a county that obligates grant funds must be in writing and consistent with Texas contract law. A resource guide by the Texas Comptroller's Office of Public Accounts, Model Purchasing Manual for Texas Cities and Counties. A link is available at: [http://texasahead.org/lga/finances/purchasing/96-449 Model Purchasing Manual 11 10.pdf](http://texasahead.org/lga/finances/purchasing/96-449%20Model%20Purchasing%20Manual%2011%2010.pdf)

2) Continuing Legal Education (CLE) Requirement

The CLE requirements were not consistently documented for attorneys. Attorneys appointed to represent indigent defendants or juvenile respondents must complete a minimum of 6 hours of CLE pertaining to criminal or juvenile law, respectively, during each 12-month reporting period in accordance with Title 1, Chapter 174, Texas Administrative Code. CLE may include activities of self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. In addition, the judges in each county may require attorneys to complete more than the minimum number of hours of criminal CLE. Thus, attorneys' CLE requirements must meet the Texas Indigent Defense Commission standards and your county local plan. The Texas Indigent Defense Commission recommends that counties require attorneys to submit documentation annually. The documentation may include a copy of the attorney's minimum continuing legal education annual verification report from the State Bar of Texas of CLE courses in criminal or juvenile law for the requisite number of hours. The link to the Texas Administrative Code is available at: <http://www.sos.state.tx.us/tac/>

3) Records Management System

Self-monitoring and/or internal reviews are not adequately performed on a regular basis of county local plan. The Texas Indigent Defense Commission recommends assessing, part or whole, county local plan to ensure of meeting requirements as related to indigent defense services. Internal reviews are designed to provide reasonable assurance of compliance with the county plan process. Self-monitoring ensures familiarity with county policies, procedures, financial, and operational practices. In addition, by conducting self-monitoring, counties can determine whether procedures are followed, and if not, take appropriate actions.