

## **PUBLIC DEFENDER OFFICE SUPPLEMENT**

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This document is a supplement specifically to counties with Public Defender Offices (PDOs) because those counties have unique indigent defense reporting issues. The challenge is to comply with statutory requirements while still making the information compatible with other statewide reporting.

Counties with PDOs will use this set of instructions and forms instead of the Procedure Manual for the Indigent Defense Expenditure Report for reporting PDO information. The Procedure Manual for the Indigent Defense Expenditure Report must still be used to report assigned counsel and contract cases.

For the purpose of the Indigent Defense Expenditure Report, the Commission uses the definition of public defender set forth in Article 26.044 of the Texas Code of Criminal Procedure:

*(a) In this chapter, "public defender" means a governmental entity or nonprofit corporation: operating under a written agreement with a governmental entity, other than an individual judge or court; using public funds; and providing legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 71.001, Government Code.*

### **Case Counting**

Counties with public defender offices must count cases closed or disposed during the fiscal year, with the exception of appeals, in order to avoid duplicate case counts. Appeals should be counted once the brief has been filed as opposed to when the appeal is disposed due to the lengthy time to disposition. Use the case counting definitions and information provided in the Procedure Manual for the Indigent Defense Expenditure Report Fiscal Year 2011.

At the bottom of the electronic form for each court on which cases are reported to the Commission there are three columns. The first column is used to report cases for the assigned counsel system; the second column is used to report cases for the contract counsel system; and the third column is used to report the cases for the public defender system. The cases must be reported for each specific court. Report all cases on the court page form – assigned counsel cases, contract attorney cases, and public defender cases.

Reported case counts will be determined by the respective public defender office's internal case tracking system for cases disposed by the office for the various courts within a county. Unlike the assigned counsel and contract system, there is no section for "**Payment Made and No Charges Filed by Prosecutor.**" The PDO must report the cases disposed in a particular court in the appropriate columns.

## Indirect Costs Rates

Counties may not claim indirect costs, except for the portion attributable to public defender offices. These allowable indirect cost rates may only be calculated based on public defender staff salaries. Do not include fringe in the indirect cost calculation. PDOs claiming indirect costs must have the allocation schedule or cost allocation plan available in the event of a monitoring site visit. The county must fill in the spaces provided for the rate (percent) and the approving agency.

The Commission uses the definition of indirect costs set forth in the Uniform Grant Management Standards as promulgated by the Office of the Governor.

### *"F. Indirect Costs*

*1. General. Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term 'indirect costs' as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within an entity or in other agencies providing services to an entity. Indirect cost pools should be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.*

*2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.*

*3. Limitation on indirect or administrative costs.*

*a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.*

*b. Amounts not recoverable as indirect costs or administrative costs under one Federal or state award may not be shifted to another Federal or state award, unless specifically authorized by Federal or state legislation or regulation."*

## Public Defender Office Administrative Expenditure Report Addendum

### Allocating Costs

The Commission attempts to capture the average cost for different types of cases (felony, misdemeanor, and juvenile). Auditors and Treasurers must work with the PDO to establish a clear basis for the assignment of cost per case. One factor used to calculate the cost per case is

percent of actual time (or reasonable estimate) spent on different types of cases. The Commission previously asked counties to solely submit the number of cases handled by the PDO. This has been determined by staff to be unreliable and incomparable to the other data. To capture a truer picture of the average cost per case requires that each public defender office report how attorney and other salaries are allocated between different types of cases based on time spent. For example, a county may find that based on actual or estimated attorney time spent, 50% of attorneys' salaries are spent on felonies, 25% on misdemeanors, and 25% on juvenile cases. If the total PDO expenses totaled \$500,000, then the estimated felony expenses would be \$250,000. The estimated misdemeanor expenses would be \$125,000, and the estimated juvenile expenses would be \$125,000. If a staff investigator only works on adult non-capital felonies, then 100% of her salary would be reported under adult non-capital felonies. These numbers should be entered into the appropriate felony, misdemeanor, and juvenile boxes under Personnel of the Public Defender Office Administrative Expenditure Report Addendum.

### Reporting Costs

**Personnel:** Report all personnel costs by type (Attorney, Investigator, Mitigation Specialists, Mental Health Specialists, and Administrative Support). For each line item, report the combination of salary and fringe.

**Attorneys:** Attorney salaries are to be separated by felony, misdemeanor, juvenile, and capital cases, and appeals expenses based on actual or estimated time. To capture these average costs requires that each public defender county report how attorney salaries are allocated between different types of cases based on time. If an attorney spends all her time on felony cases, 100% of that attorney's salary payments can be allocated to felony cases. If an attorney's time is split between types of cases, the attorney's salary should be split according to how the chief defender documents or estimates each attorney's time was spent. As an example of reporting, the estimated expenses associated with each type of case, consider the public defender office below.

Atty	Salary + Benefits	% of Time on Felony Non-Cap Cases	% of Time on Capital Cases	% of Time on Adult Misd Cases	% of Time on Juvenile Cases	% of Time on Juvenile Appeals	% of Time on Adult Felony Appeals	% of Time on Adult Misd Appeals
A	\$30,000			100%				
B	\$96,000	50%	50%					
C	\$72,000			50%	50%			
D	\$84,000	100%						
E	\$60,000			50%	50%			

From the above chart, the salaries can be summarized in the following way:

	Total Salary by Case Type
Felony Non-Cap	\$132,000
Capital	\$48,000
Adult Misdemeanor	\$96,000
Juvenile	\$66,000
Juvenile Appeals	
Adult Felony Appeals	
Adult Misdemeanor Appeals	

The Chief PD must estimate or provide actual time salary allocation for attorneys serving as managers and include them with the proper attorney category.

Repeat the above calculation for each of the following:

**Mitigation Specialists:** These positions are attributed entirely to capital cases and offices.

**Investigators:** Counties can enter the actual salary and fringe of the investigators where the office has department investigators assigned to divisions within the office (i.e. felony, misdemeanor, juvenile, etc.). Alternatively, they may use the attorney breakdown to assign the cost in smaller departments or departments where investigators work with all level of cases.

**Mental Health Professionals** (including case managers): Counties with mental health public defenders can enter the actual salary and fringe of the mental health professionals where the office has department professionals assigned to divisions within the office (i.e. felony, misdemeanor, juvenile, etc.). Alternatively, they may use the attorney breakdown to assign the cost in smaller departments or departments where mental health professionals work with all level of cases.

**Administrative Support:** Counties can enter the actual salary and fringe of the administrative support staff where the office has department support staff assigned to divisions within the office (i.e. felony, misdemeanor, juvenile, etc.). Alternatively, they may use the attorney breakdown to assign the cost in smaller departments or departments where support staff work with all level of cases.

Commission staff will attribute the following costs based on the breakdown of attorney costs:

**Public Defender Travel and Training:** Include travel and training of all types for PDO employees.

**Public Defender Equipment:** Report all equipment purchased for the public defender.

**Public Defender Other Direct Operating Expenditures:** Include identifiable direct costs attributable to operating a public defender program. Examples include supplies, software, building and machine rental, and all other operating cost not specifically recorded in the other sections.

**Other Public Defender Court Related Expenses:** All court related expenses authorized by a judge must be included in the court page of the IDER. This section is only for expenses of contract investigators (not including PD employees), expert witnesses, and other direct litigation costs paid for from the public defender office budget.

### **Discretionary Grant Funded Programs**

Discretionary Grant-funded public defenders or grant-funded departments within public defender offices will report all data in the Indigent Defense Expenditure Report (IDER). Counties funded by direct client service discretionary grants will report both the state funded portion and the county funded portion on the form below. All case count data will be reported on the IDER by court. All investigative, expert witness and other direct litigation costs associated with public defender work will be reported in the PDO administrative form. Grant funded programs will continue to demonstrate activity by quarter in their discretionary grant reports to substantiate discretionary grant payments.

Counties participating in a regional public defender program will report any funds paid to or received from the other participating counties as part of an interlocal agreement.

# Example Special Public Defender Expense Form

**Indigent Defense Expenditure Report, Public Defender Office, XXXXX  
County**

**Expenditures**

**October 1, 2010 - September 30, 2011**

**Expenditure Category**

**Expenditures**

**Administrative Expenditures**

Public Defender Personnel

	<b>Attorney Salary and Fringe Benefits</b>	<b>Investigator Salaries and Fringe Benefits</b>	<b>Mitigation Specialist Salaries and Fringe Benefits</b>	<b>Mental Health Professionals Salaries and Fringe</b>	<b>Administrative Support Salaries and Fringe Benefits</b>
Juvenile	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Capital Murder	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Adult Non-Capital Felony	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Adult Misdemeanor	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Juvenile Appeals	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Adult Felony Appeals	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Adult Misdemeanor Appeals	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Total</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Total Public Defender Personnel Cost and Fringe Benefits

Please provide the County's average fringe benefit rate ( %)

Public Defender Travel and Training

Public Defender Equipment

Public Defender Other Direct Operating Expenditures

Total Administrative Expenditures

Other Public Defender Court Related Expenditures

Expert Witness Expenditures

Contract Investigator Expenses

Other Direct Litigation Expenditures

Total Court Related Expenditures

**Indirect Expenditures**

Public Defender Indirect Costs (Apply rate to salaries line item only)

Public Defender Indirect Rate (The approving agency  %)

Grand Total of All Public Defender Expenses

Save

Reset

Cancel