



Texas Task Force on Indigent Defense

December 2009

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\$12 Million in Formula Grants Awarded

The Task Force on Indigent Defense voted to award almost \$12 million in Formula Grants to 218 Texas counties. The award letters will be faxed to county judges before the end of the year. The remaining 36 counties will automatically be assigned to the Direct Disbursement funding pool. Most of the Formula Grant funded counties will receive quarterly disbursements unless they have special conditions preventing them from receiving funds until certain conditions are met. [Article is continued on page 4 below.]

Message from the Chair

The Task Force wants to thank county court personnel for their patience and spirit of public service during the new plan submission process that will enhance and increase accessibility, accountability and transparency. Task Force staff is available to assist counties. The Task Force can be called toll-free in Texas at (866)499-0656. Also, the email for assistance is: terri.tuttle@courts.state.tx.us.

Sincerely,
Sharon Keller, Presiding Judge, Court of Criminal Appeals

Message from the Director

The Indigent Defense Workshop was a huge success in October. The presentations were videotaped and video downloads are now available on the [website](#). There were many talented presenters who shared a wealth of useful information, perspectives and practical advice on how to improve local indigent defense systems. The [online video downloads](#) are eligible for up to 5.5 hours of attorney self-study continuing legal education credit, including up to .5 hour of ethics. Happy holidays!

Warmest regards,
James Bethke, Director

Policies and Standards Update

Update on 2009 Indigent Defense Plan Submission Process

As you know, the Task Force directed staff to develop and implement a new online submission process for indigent defense plans. The [instructions](#) for that process went out in late October, which provided a later due date of December 1st, 2009 due to late launch of the website. We also developed a [PowerPoint](#) to demonstrate how the new web process works. Staff at Texas A&M- Public Policy Research Institute (PPRI) developed the website architecture to allow submission of plans by section, list requirements for each section, provide links to view and upload plan templates and forms, and provide links to the relevant statutes and rules for each section. Several counties assisted us by testing the website by completing the process of submitting their own plans and providing us with feedback on the process.

As of the deadline on December 1, 2009, 113 counties had submitted the plans for all three court levels, although 51 had plans pending approval by the designated official (administrative judge/juvenile board chair). As of December 21, 2009 these numbers improved to 162 counties fully submitted (32 of these with plans pending approval). You may check the status of your jurisdictions plans on the [Status Report](#) on our website. Staff from our office and PPRI is contacting the remaining courts to reach 100% reporting. **Counties will be ineligible to receive grant or other funds disbursements until the submission is complete.** When the submissions are complete, we will review the contents of the plans for compliance with the requirements listed on the website and contained in the plan submission instructions.

Please call Wesley Shackelford, Special Counsel, at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about the Plan Submission Process.

The Importance of Stakeholder Meetings

Many requirements of the Fair Defense Act require coordination between multiple departments. Magistrates are responsible for ensuring that proper assistance is provided to arrestees in filling out forms necessary for requesting counsel. Magistrates must also ensure that requests for counsel are transmitted to the appointing authority in less than 24 hours. The appointing authority is then required to appoint counsel in one or three working days, depending on the size of the county. Once appointed, attorneys are to contact clients within one working day. Any break in these

Policies and Standards:

**Chair: Knox
Fitzpatrick
Pete Gallego
Tony Odiorne
Olen Underwood**

Task Force Members:

Chair:
Sharon Keller
Presiding Judge, Court of Criminal Appeals

Vice Chair:
Olen Underwood, Presiding Judge,
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Alfonso Charles, Gregg County
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Knox Fitzpatrick, Dallas Attorney,
Fitzpatrick, Hagood, Smith & Uhl,
L.L.P.

Pete Gallego, State Representative

Wallace Jefferson, Chief Justice,
Supreme Court

Tony Odiorne, Public Defender,
West Texas Regional Capital
Public Defender

Sherry Radack, Chief Justice, First
Court of Appeals

Todd Smith, State Representative

Jeff Wentworth, State Senator

Glen Whitley, Tarrant County
Judge

John Whitmire, State Senator

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We're on the Web!
www.courts.state.tx.us/tfid

In our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer; cannot be assured a fair trial unless counsel is provided for him.

Hugo L. Black

links can breach statutory timelines and delay the effectiveness of defense counsel.

In addition to ensuring that the communication links in processing requests for counsel are present, counties must ensure that record systems can accurately track each step. In particular, prosecuting attorneys must be aware if an arrestee has requested counsel and whether this request was denied, so that they may know whether they can speak to an arrestee upon being shown a waiver of counsel. Article 1.051(f-2) of the Code of Criminal Procedure states: “the attorney representing the state may not: (2) communicate with a defendant **who has requested the appointment of counsel**, unless the court or the court’s designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county **has denied the request** and, subsequent to the denial, the defendant (A) has been given a reasonable opportunity to retain and has failed to retain private counsel; or (B) waives or has waived the opportunity to retain private counsel.” If an arrestee requests counsel at magistration or at a later time, prosecutors must be able to ascertain this fact. This necessity means that all requests for counsel need to be tracked in a central location (most likely the case file). The appointment or denial of counsel must be tracked in this same central location.

Counties could benefit from holding periodic stakeholder meetings that highlight how information obtained by one party is later used by other parties. The meetings could track the local practices used in handling an arrestee from arrest until disposition of the case. Each party could note the information they receive at each step, their actions, and the information they hand off to other parties. If any stakeholder sees a deficiency with a current practice, he/she could voice the problem. Many times, a broken communication link will not be obvious until an outside stakeholder raises the issue. These issues can often be resolved in an agreeable manner, but problems may not become known until all relevant stakeholders talk about how their processes interact with one another.

Please call Joel Lieurance, Research Specialist for the Policy Monitoring Program, at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about the Policy Monitoring Program.

Proposed Amendment to Policy Monitoring Rules

At their meeting on December 11th, the Task Force directed staff to publish in the Texas Register proposed amendments to its policy monitoring rules. The first three amendments would establish benchmarks for when a jurisdiction is presumed to be in substantial compliance with each of three core requirements. These include prompt magistration if it occurs within 48 hours in at least 98% of monitor's sample, prompt appointment of counsel if indigence determinations are timely in at least 90% of the

 Grants and Reporting:
Chair: Glen Whitley
Jon Burrows
Sharon Keller
Sherry Radack
Alfonso Charles

appointed attorneys receive less than 30% of appointments at each level of proceedings (felony, misdemeanor, juvenile cases).

Another amendment would set a 30-day time limit for a county to respond to a follow-up monitoring report, with the opportunity to request an extension of up to 30 more days. The final change would establish a procedure to address a county's failure to timely respond to a policy monitoring report by directing staff to send a certified letter to several local officials notifying them that all further payments will be withheld if no response to the report is received by the Task Force within 10 days of receipt of the letter. If funds are withheld under the section, then the funds will not be reinstated until the Task Force or the Policies and Standards Committee approves the release of the funds. You may review the proposed rules [here](#).

Please call Wesley Shackelford, Special Counsel at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about the proposed amendments.

Grants and Reporting Update

\$12 Million in Formula Grants Awarded (continued from Page 1)

Examples of special conditions include low expenditures in the previous year that resulted in a refund, not meeting submission requirements for indigent defense plan, county/district clerks not meeting statutory Texas Judicial Council reporting requirements or a not reporting court data electronically. The \$12 million in funding must be used to improve counties' indigent defense systems.

Distribution schedule for FY10 Formula Grant quarterly payments:

- 1st Quarter payment – by end of January
- 2nd Quarter payment – by end of April
- 3rd Quarter payment – by end of July
- 4th Quarter payment – by end of January (after receipt of IDER)*

* The Indigent Defense Expenditure Report must be submitted by counties and verified by Task Force staff before 4th quarter payments can be distributed. The submission of this report determines the amount of the 4th quarter payment and whether or not a county will owe a refund.

Under the current formula the Task Force distributes funds to counties through a formula that sets a \$5,000 floor per grant with the remainder based on a county's percent of population (estimated by the Texas Data Center in the preceding year) multiplied by the Task Force's remaining budgeted amount for formula grants. Counties must meet minimum spending requirements to qualify. The \$5,000 floor portion of the formula

“The Task Force’s support demonstrates their dedication to the citizens of Texas. This funding will be used to enable those that have honorably served this country overcome the wounds of war.”

Judge Marc Carter



provides many smaller counties with a greater percentage of reimbursement than most large counties.

Please call Bryan Wilson, at the Task Force office, toll free in Texas at (866-499-0656, if you have any questions about grant programs. Please call Sharon Whitfield, Budget and Accounting Analyst, at the Task Force office, if you have any questions about grant payments or other disbursements.

Task Force Approves Funding to Support Harris County Veteran’s Court

The Task Force approved funding in the amount of \$50,000 to support indigent defense services for Harris County’s Veteran’s Court pilot program. As Texas’ first Veteran Court, it will be among the first dozen established throughout the entire country. Harris County will use Task Force funds to create specialized representation for indigent veterans and current members of the United States armed services. The program aims to divert veterans away from jail and into the myriad of often under-utilized treatment options that are available to them. Recent legislation, SB 1940, allowed for the development and funding of Veteran’s Courts in Texas by the Governor’s Office. The Task Force recognizing this significant legislation is complimenting the Veteran’s Court legislation by providing funding to Harris County to provide quality representation to these veterans. This pilot program will model local contract systems under the Task Force’s contract standards. Judge Caprice Cosper, former judge of the 339th district judge and appointed by Harris County Commissioners Court to be liaison between the county judges and the county jail, said there are approximately 300-400 veterans in Harris County jails on any given day. Figures from the Bureau of Justice Statistics show that a large number of arrested veterans exhibit signs of depression, post traumatic stress, traumatic brain injury, or substance abuse. Modeled after successful drug court or mental health court models, the Veteran’s Court will focus on recently arrested veterans in need of mental health or substance abuse treatment. Once in the program, participants will receive treatment from the Department of Veterans Affairs, saving Harris County the cost of providing treatment in addition to curbing the cost of incarceration.

The Task Force is particularly pleased with the collaborative nature of this program. In addition to Task Force funds for indigent defense services, the program has received support from several county departments and the Michael E. DeBakey VA Medical Center. Additionally, a grant application has been submitted to the Criminal Justice Division of the Governor’s Office to fund a case manager.

FY 2011 Discretionary Grant RFA and Training

The Task Force published its [Request for Applications \(RFA\) for FY2011 Discretionary Grants on December 18, 2009](#). The RFA provides the opportunity for counties to submit applications for programs to improve their indigent defense systems. These can be for direct service multi-year programs like public defender or representation model programs or for single year technology and process programs like software, videoconferencing, or staff to change processes.

A Discretionary Grant Training has been scheduled for January 20th in Austin to provide information on programs the Task Force's grant application process. TFID Staff may conduct additional regional Discretionary Grant workshops in early 2010 pending demonstrated interest in specific regions.

Counties must complete Intent to Submit Applications (ISA) on-line by 5:00 PM on February 26, 2010. On-line submission can be accessed at <http://tfid.tamu.edu>. New Discretionary Grants are divided into two categories: New Single-Year Grants pay up to 100% of an awarded activity on a reimbursement basis with a minimum request amount of \$5,000 per application. New Multi-Year Grants require a cash match, are intended to last up to four years, and have a minimum request amount of \$50,000 per application. The ISA process does not require a commissioners court resolution unless local county commissioners courts require it. It will require a judicial support letter. If a county's ISA is approved the full application is due on April 30, 2010. This would require a commissioners court resolution.

In order to be eligible for Task Force grant funds Countywide Indigent Defense Plans must be in compliance with applicable statutes and standards. Local Administrative District Judges, Local Statutory County Court Judges and the Chairs of Juvenile Boards must submit their countywide plans to the Office of Court Administration as required in Government Code Section 71.0351.

The Discretionary Grant Training on January 20th (1:30 p.m. – 3:30 p.m.) will cover other eligibility requirements, the submission process, and additional program development topics. Please contact Terri Tuttle at the Task Force for more information at (512) 936-6994 and RSVP by January 13, 2010. This training will take place at the Texas Association of Counties, Event Center, 4th floor, 1210 San Antonio Street, Austin.

Please call Bryan Wilson, at the Task Force office, toll free in Texas at (866-499-0656, if you have any questions about grant programs.

Advance Payment Notification

The State Comptroller is offering Advance Payment Notification (APN) to state (counties) vendors who receive funds by direct deposit. This feature will provide state (counties) vendors with a one-business-day advance notice before a direct deposit payment posts to their bank account.

To take advantage of this service, please log onto the State Comptroller's website at: www.cpa.state.tx.us/fm/payment. A page will come up listing payment services for state vendors and state employees. Go to the state vendors section, page down to resources and click on Advance Payment Notification. This page will explain the features of APN. To take advantage of this feature, go to the box to the right and click on the Advance Payment Notification Authorization (74-193) form. Follow the instructions and complete the form. You may mail or fax the form back to the Comptroller, the address and fax number is located at the bottom of the form.

We hope this service will be of benefit to your county's accounting and/or audit section.

Please call Sharon Whitfield, Budget and Accounting Analyst, at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about grant payments or other disbursements.

Task Force Staff Delivers Presentation to County Judges

On November 18, 2009, Task Force staff members Dominic Gonzales and Jennifer Willyard delivered a presentation entitled "Fair Defense Act: Update and Implementation" to county judges from across the state of Texas.

The presentation introduced participants to the indigent defense standards required under the Fair Defense Act and highlighted how to submit indigent defense plans to the Task Force, how the Task Force can assist counties with indigent defense problem-solving, and grants that are available for indigent defense programs through the Task Force. Participants also examined the challenges and potential solutions to their own indigent defense services with assistance from other judges and Task Force Staff.

The presentation was given as part of the Texas Association of Counties' 2009 Fall Judicial Education Session. The three-day conference was held in Corpus Christi with over 80 judges in attendance.

Please call Jennifer Willyard or Dominic Gonzales, Grant Program Specialists, at the Task Force office, toll free in Texas at (866) 499-0656,

if you have any questions about assistance with indigent defense problem-solving, and grants that are available for indigent defense programs through the Task Force.

Fiscal Monitoring Program

Benefits of a Fiscal Monitoring and Technical Assistance Visit

The Task Force Fiscal Monitor is required by law to conduct monitoring visits to ensure counties are using the Fair Defense Account funds to improve indigent defense systems. Additionally, the fiscal monitor may visit counties that want assistance in appropriately tracking their indigent defense system and expenses. Whether a technical assistance visit or an official monitoring visit, the Task Force monitors the fiscal 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. Additionally, counties may request a technical assistance to address financial issues, data infrastructure, as well as fiscal procedure challenges related to the indigent defense system.

Benefits include:

- Provide an objective assessment of county's fiscal accountability systems.
- Serve as confirmation that internal controls and procedures are in place.
- Identify strengths and opportunities for improvement of daily operations.
- Recognize opportunities to automate procedures.
- Facilitate discussions with employees and local officials to promote operational efficiency and eliminate redundant.
- Recommend improvements to internal controls to prevent problems.
- Evaluate the county's compliance with applicable laws, regulations, policies and procedures relating to the grant.

Listed below are the technical assistance and fiscal monitoring visits that were conducted in FY 2009 and thus far, in FY 2010:

FY 2010 Technical Assistance Visits		
County	Date of Site Visit	Type of Visit
Hood	October 14, 2009	tech assist
Delta	October 15, 2009	tech assist
Johnson	October 28, 2009	tech assist

FY 2009 Fiscal Monitoring and Technical Assistance Visits

County	Date of Site Visit	Type of Visit
Cooke	October 7-8, 2008	fiscal
Grayson	October 8, 2008	tech assist
Delta	October 9, 2008	tech assist
Maverick	October 14-16, 2008	fiscal
Zavala	October 15, 2008	fiscal
Dimmit	October 17, 2008	tech assist
Hidalgo	February 9-13, 2009	fiscal
Brazos	February 24-26, 2009	fiscal
Zapata	March 9-10, 2009	tech assist
Van Zandt	March 17-19, 2009	fiscal
Palo Pinto	March 24-26, 2009	fiscal
Brazoria	May 26-29, 2009	fiscal
Wichita	July 7-10, 2009	fiscal
Guadalupe	July 17, 2009	tech assist
Bell	August 10-14, 2009	fiscal
Liberty	August 19-20, 2009	fiscal

For questions or technical assistance, please contact: Carol Conner, Fiscal Monitor; 512/936-7561; toll-free 866/499-0656; email: carol.conner@courts.state.tx.us

Timothy Cole Advisory Panel on Wrongful Convictions Holds First Meetings

Members of the Timothy Cole Advisory Panel on Wrongful Convictions gathered in Austin on October 13, 2009, to hold the group's inaugural meeting. The panel, established by HB 498 during the last legislative session and composed of representatives from the judiciary, legislature, governor's office, defense, prosecution, police chiefs, and academia, was charged by the Legislature to discuss the problems that lead to wrongful conviction in Texas and to recommend policies to help prevent those problems in the future.

The panel has specifically begun to examine reforms related to eyewitness identification procedures, recording custodial interrogations, informant evidence, post-conviction DNA testing, writs of habeas corpus based on new or changing science, discovery, and the feasibility of establishing an innocence commission. Workgroups dedicated to the subject areas met again in December to advance policy recommendations. The next meeting is tentatively scheduled for late January to examine electronic filing and open discovery policies in Tarrant County.

Jim Bethke, Director of the Task Force on Indigent Defense and Presiding

Officer of the Timothy Cole Advisory Panel, said he has faith that the panel is up to the task ahead. “Although there is a lot of work to be done,” he stated, “I am confident that the Advisory Panel will meet its deadlines and reach consensus on the necessary reforms the State needs pass to prevent future wrongful convictions.” The panel must present their final report to the Governor and Legislature by January 1, 2011.

The panel was named after Timothy Cole, the first Texan to be posthumously exonerated of a crime for which he was wrongly convicted. Cole was convicted of a rape near Texas Tech’s campus in 1986 and sentenced to 25 years in prison. Years later the true perpetrator of the crime confessed, and DNA testing proved that he – not Cole – had attacked the college student. Although Cole had died in prison in 1999 due to a severe asthma attack, his family continued to fight on his behalf. Cole was cleared of all crimes by the 299th District Court in 2009.

Please call Jennifer Willyard, Grant Program Specialists, at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about the Timothy Cole Advisory Panel.

Task Force Welcomes New Staff (and Old Staff!)

Last session the Task Force was provided three new FTEs to assist with additional responsibilities. Two of those positions are Grant Program Specialists. These positions will provide consultative services and technical assistance to county officials, members of the judiciary, program staff, governmental agencies, community organizations, and the general public. They are responsible for working on-site with counties to identify strategies to improve local indigent defense practices and to provide local officials with state grant information and technical assistance to implement new programs.

The new employees are Jennifer Willyard and Dominic Gonzales.

Dominic Gonzales

Start date: 10/12/09. Dominic began working as a program specialist for the Task Force in October of 2009. In that role, he is responsible for assisting county officials and court administrators as they develop, implement, and improve their public defender programs. Dominic has



worked on indigent defense issues since 2000. Between 2004 and 2008, he served as Director of the Texas Criminal Justice Coalition’s Fair Defense project, often collaborating closely with Task Force staff. Throughout the last 4 years, he has also taken an active role in the Task Force’s

Discretionary Grant Review Team. Dominic is a graduate of Santa Clara University and currently sits on the Citizen Review Panel for Austin's Office of the Police Monitor.

Jennifer Willyard

Start date: 10/1/09. As a program specialist for the Task Force on Indigent Defense, Jennifer Willyard helps Texas counties to develop, implement, and improve public defender programs. Prior to joining the Task Force, Jennifer was employed as a policy analyst for several criminal justice non-profit organizations where she worked through research, education, and legislation to improve the quality of evidence that enters into Texas courtrooms. Jennifer received her Ph.D. in Communication from Texas A&M University where she studied political and organizational rhetoric.



With regards to welcoming old staff back, most of you are familiar with Bryan Wilson, who was an original Task Force staff member, and now again is. He is the Task Force Grants Administrator.

Bryan Wilson

Start date: 12/1/09 - He obtained a Bachelor of Science and a Master of Public Administration from Texas Tech University. Bryan served courts as a probation officer setting up the substance abuse treatment



(Treatment Alternative to Incarceration Program), as program director of TDCJ's Office of the General Counsel, and the responsibilities of grant administrator of the newly formed Task Force on Indigent Defense. Bryan recently returned to the Task Force after serving the Supreme Court of Texas Permanent Judicial Commission for Children Youth and Families by setting up fiscal and grant processes.

As grant administrator, Bryan is responsible for the program development and fiscal distribution of approximately 30 million grant dollars annually to Texas counties.

Please call Terri Tuttle, Executive Assistant, at the Task Force office, toll free in Texas at (866) 499-0656, if you need information concerning the Task Force on Indigent Defense.

BJA's National Training and Technical Assistance Center

BJA is pleased to announce the availability of training and technical assistance through its new National Training and Technical Assistance Center (NTTAC). Assistance is available to criminal justice agencies and organizations to improve their capacity to address the myriad of challenges they face. Eligible recipients include law enforcement, courts, corrections, providers of substance abuse and mental health services to individuals involved in the criminal justice system, justice information sharing professionals, and crime prevention specialists. BJA's training and technical assistance program is not a grant or funding program. Rather, it is aimed at imparting skills, knowledge, and information that target specific needs and issues of the criminal justice community. To obtain additional information about the services that are available or to request technical assistance or training, contact the NTTAC at bjn.ntta@fvtc.edu, via fax at 202-347-5614, or by calling 202-347-5610 or 1-888-347-5610 (Monday through Friday from 8:30 a.m. to 5:00 p.m. Eastern Time).

Please call Terri Tuttle, Executive Assistant, at the Task Force office, toll free in Texas at (866) 499-0656, if you need information concerning resources available from the Task Force on Indigent Defense.