



Texas Task Force on Indigent Defense

August 2009

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Task Force Members:

Chair:
Sharon Keller
Presiding Judge, Court of Criminal Appeals

Vice Chair:
Olen Underwood, Presiding Judge, 2nd Administrative Judicial Region of Texas

Jon Burrows
Bell County Judge

Alfonso Charles
Gregg County CCL#2 Judge

Additional \$4 million in Equalization Disbursement

At its August 6, 2009 meeting, the Task Force awarded an additional \$4 million in Equalization Disbursement funds to 111 counties. A list of the counties receiving an equalization payment can be found [online](#). The Task Force has already distributed \$8 million in Equalization funds this year to 94 counties, bringing the grant total of Equalization funds to be disbursed in 2009 to \$12 million. The additional \$4 million will be disbursed in early September.

The Equalization Disbursement was developed to assist those counties receiving the lowest percentage of reimbursement from the state for their increased costs since 2001. The additional \$4 million will allow all Texas counties to be reimbursed for at least 29% of their increased indigent defense expenses. Counties who did not receive an equalization disbursement are currently reimbursed for 30% or more of their increased indigent defense expenses.

The Task Force encourages counties to use this money to help pay for something on their indigent defense “wish list”, a project or plan that may have remained unrealized without this extra funding. If you would like help or have question, please contact Whitney Stark, the Task Force Grants Administrator at (512) 936-6996. If you have any financial questions about funds received, please contact Sharon Whitfield, the Task Force Budget & Accounting Analyst at (512) 936-6998.

Message from the Chair

The Task Force invites you to register and attend this year's indigent defense workshop scheduled for October 22-23 in Austin. Registration information begins on page 7 of this eNewsletter. Elected officials (judges, commissioners, district/county attorneys, and law enforcement), defense bar, public defenders, indigent defense coordinators and court administration are encouraged to attend. I am certain you will find the experience valuable.

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

(members continued)

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

 *Policies and
Standards:*

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

Message from the Director

The federal government has indicated a renewed focus on indigent defense. In late June I attended the American Council of Chief Defenders meeting in Washington, D.C. Here is a [link to Attorney General Eric Holder's remarks](#) at that gathering. It was encouraging and exciting to hear that the federal government is once again engaging in dialog about when can and will be done to better protect citizens' right to counsel under the Constitution.

On behalf of the Task Force I thank all local officials who proactively take action to improve and monitor their indigent defense systems.

Warmest regards,
James Bethke, Director

Policies and Standards Update

Update on New Indigent Defense Plan Submission Process

Task Force staff continues to work with stakeholders and our partners at the Public Policy Research Institute (PPRI) to develop a new system for the submission of county indigent defense plans. As noted in our [June eNewsletter](#), the Task Force has directed staff to implement the new system based on the recommendations in an internal audit report on the program. The changes will require judges to submit their plans in six parts representing each of the core legal requirements, along with required forms (e.g. attorney fee voucher). The new process will be in place in time for the submissions that will be due by November 1, 2009 and will result in a single, uniform, accessible indigent defense plan for each court level in each county.

Staff is working closely with PPRI to develop the new website architecture for this process. On the page for submitting each of the required plan sections, the site will list the requirements for that section, provide links to sample plan template(s) and to the relevant statutes or rules underlying the requirements. Keep in mind that you may continue to use your existing plan (so long as it meets the requirements for each section), you will simply have to submit it by section. Staff has also formed a workgroup to solicit input on the process and plan templates from stakeholders including judges, court administrators, county organizations, defense attorneys, and public interest advocates.

The mission of the Task Force on Indigent Defense is to improve the delivery of indigent defense services through fiscal assistance, accountability and professional support to State, local judicial, county, and municipal officials. The purpose of the Task Force 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.

See the [Task Force's Strategic Plan](#).

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

When the site and its supporting documents are complete we will send out instructions for you to complete the required submission. Staff from the Task Force, PPRI, and legal interns will be available to assist you in the new submission process.

For additional information please call Wesley Shackelford, Special Counsel at (512) 936-6997.

New Policy Monitoring Rules are in Effect

New policy monitoring rules have been codified in the Texas Administration Code (1 TAC §§174.26 - 174.28). The rules establish guidelines for the administration of the policy monitoring program. Policy monitoring is designed to promote county compliance with the requirements of state law and Task Force policies and standards relating to indigent defense. They set out the expectations for what areas the monitoring will cover, what documents will be reviewed, and the time-frames for reports and county responses. The rules may be viewed on the link [here](#).

Grants and Reporting Update

Four Counties Receive Extraordinary Funds

The Task Force reimbursed four counties, Delta, Hill, Jackson and Jefferson for their extraordinary expenses at the August 6, 2009 meeting. The Task Force had budgeted \$350,000 for this fund. Because of increased revenue this fiscal year, the board was able to approve funding for all extraordinary expenses.

Counties experiencing an indigent defense event “constituting a financial emergency” should review the policy to determine whether they should submit an application.

**FY08
 Extraordinary
 Budget: \$350,000**

County	Disbursement Amount	Type of Request
Delta	\$ 29,126	Murder trial
Hill	\$ 37,772	Capital murder
Jackson	\$271,798	Capital murder
Jefferson	\$136,307	Capital murder
Total	\$475,003	

Please call Sharon Whitfield, Budget and Accounting Analyst, at the

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

Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about grant payments or other disbursements.

Distribution of Grant Funds by Direct Deposit

For counties still receiving their grant payments by warrant (check), you may want to consider direct deposit for receiving your payments. There are several advantages to receiving your payments by direct deposit versus by warrant such as the ability to trace your payments, no deposit delays, prompt availability of funds and no worry about a lost or stolen warrant.

To begin receiving your payments by direct deposit, simply complete the Vendor Direct Deposit Authorization Form 74-176 and return the completed form back to us. This form is available on the Comptroller's state government website at: www.cpa.state.tx.us/taxinfo/taxforms/74-176.pdf. If assistance is needed in filling out the form or you have additional questions a customer service representative is available Monday thru Friday, 8:00 a.m. to 5:00 p.m. by calling 1-800-531-5441, ext. 3-3600 (toll-free) or 512-463-3360 (in Austin) or by email at www.claims.pin@cpa.state.tx.us.

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.

Advance Payment Notification (APN)

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

To take advantage of this new 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 new 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

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E-mail:
fairdefense@courts.state.tx.us

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

Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about grant payments or other disbursements.

Formula Grant Request for Applications

At its August 6th meeting, the Task Force set the FY2010 budget and authorized staff to publish and distribute the Request for Application (RFA) for the FY2010 Formula Grant. The Formula Grant budget was set at \$12 millions dollars. Constitutional County Judges will receive the FY2010 Formula Grant Packets in early September. The local administrative district and statutory county judges and financial officers will receive a courtesy letter informing them of the packet about a week later. The [Request for Applications](#) and [allocation schedule](#) are now available on the Task Force [website](#). Counties will be notified when the online application process is available.

Grant applications will be due on October 16, 2009. Counties (those not receiving grant funds or receiving only a portion of their grant) with low indigent defense costs may choose not to apply for a formula grant and instead be covered by the direct disbursement program if they have expenses above their baseline. The Task Force will meet in November to award the FY2010 Formula grants.

If you would like help or have questions, please contact Whitney Stark, the Task Force Grants Administrator at (512) 936-6996. If you have any financial questions about funds received, please contact Sharon Whitfield, the Task Force Budget & Accounting Analyst at (512) 936-6998.

Fiscal Monitoring Program

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 11-14, 2009	fiscal

Summary of Findings:

In conducting fiscal monitoring reviews throughout the state, there are four consistent findings or issues in managing indigent defense services: reporting of criminal indigent defense expenditures, tracking continuing legal education (CLE) hours, reporting unallowable costs (i.e. general government and prosecution costs), and maintaining procedures for reporting criminal indigent defense expenditures.

1. Criminal Indigent Defense Expenditures

In numerous instances, licensed investigations, expert witnesses, and other direct litigation expenses were not correctly placed in the appropriate category of services. The categories of services consist of attorney fees, licensed investigations, expert witnesses, and other direct litigation expenses. The counties should correctly place the criminal indigent defense expenses in the appropriate category of services. Section 71.0351(e), Texas Government Code, requires that counties report case information showing the total amount expended on indigent defense services and provide an analysis of the amount expended for investigation expenses, expert witness expenses, or other direct litigation expenses. It is crucial that counties develop payment procedures to accurately capture the case and fiscal data of each court.

2. Continuing Legal Education (CLE) Requirement

The CLE requirements were not consistently documented for attorneys on the public appointment list. Attorneys appointed to represent indigent defendants or juvenile respondents must complete a minimum of 6 hours of CLE pertaining to criminal or juvenile law during the 12-month reporting period in accordance with Title 1, Chapter 174, Texas Administrative Code. CLE may include self-study, teaching at an accredited continuing legal education activity, attending a law school class or legal research-based writing. The CLE requirements must meet the Task Force standards and county local plan.

3. Unallowable Costs

Some counties are reporting general government and prosecution costs (unallowable) as criminal indigent defense expenditures. General government costs include routine fees and expenses associated with court transcripts, reporters, and interpreters. The prosecution costs include attorneys, expert witnesses, mental health evaluations, and licensed investigation expenses. General government and prosecution costs are not indigent defense expenditures.

4. Written Accounting Procedures

Many counties do not have written procedures for reporting criminal indigent defense expenditures. The procedures should include sufficient information to permit an individual who is unfamiliar with the process to perform the necessary financial activities of reporting indigent defense expenses. Accounting procedures that are clearly defined will lead to more reliable and consistent financial transactions.

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

Register for Indigent Defense Workshop

7th Annual Workshop – October 22-23, Austin

What the workshop can do for you: System wide solutions are key--in other words if we operate in our silos we won't accomplish much. This year's workshop is a multi-sector collaborative project featuring a segment conducted by the Bureau of Justice Assistance (BJA) Criminal Courts Technical Assistance Project at American University on principles of effective criminal caseflow management. Join and collaborate with a blend of county, state and federal officials and discover methods, processes, ideas and tools that you can use to increase the proficiencies of indigent defense systems, caseflow management practices, management of jail populations and other issues related to the overall criminal justice system in Texas. Our goal is not to be experts with an agenda, but rather to be facilitators of change for enhanced proficiencies. Elected officials (judges, commissioners, district/county attorneys, and law enforcement), defense bar, public defenders, indigent defense coordinators and court administration are strongly encouraged to attend. We are certain you will find the experience valuable.

There is no registration fee. **Space is limited. Register early.** Priority will be given to counties committed to bringing a team of court and county decision-makers including elected officials. Counties are responsible for their own travel expense. Workshop course materials and hotel information will be sent to the team leader at a later date (there will be block of government rate rooms at a hotel nearby, however attendees may select any hotel of their choice). The registration deadline is September 1, 2009. Please fax [this registration](#) to: 512-475-3450, or email the information to: terri.tuttle@courts.state.tx.us. Your registration will be confirmed after it is determined what teams have been assembled and that space is available.

Additional information available at Task Force's web site: <http://www.courts.state.tx.us/tfid/>; or, contact Terri Tuttle, Executive Assistant at terri.tuttle@courts.state.tx.us or 866-499-0656 (936-6994 in Austin).