



Texas Task Force on Indigent Defense

June 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

Fort Bend County to Establish a Mental Health Public Defender Office

On June 10th the Task Force awarded FY10 discretionary grants. Fort Bend County was awarded \$517,824 to establish a mental health public defender office to serve indigent defendants with mental illness. The new program will be modeled after the first such program established in the nation in Travis County. In all, the Task Force awarded \$572,024 in FY10 discretionary grants to Fort Bend, Parker and Wichita counties for grants to improve indigent defense.

“Mentally ill defendants present special challenges to their attorneys, as well as to the criminal courts system,” said Sharon Keller, presiding judge of the Court of Criminal Appeals and Task Force chair. “The specialized skills and support services that will be developed for the Ft. Bend mental health public defender office will help assure better outcomes for the clients and the community as a whole.” (Article continues on page six below.)

Indigent Defense-related Legislation

Two bills related to indigent defense were passed by the 81st Legislature and signed into law by the governor. One of the bills was a proposal recommended by the Task Force on Indigent Defense (Task Force) and Texas Judicial Council, while three other recommended proposals contained in SB 625 and SB 1710 made significant progress but died on the House calendar in the waning days of session. The legislature also provided significant funding for indigent defense services. This special legislative update contains summaries of these bills, as well as the funding the legislature appropriated to assist counties.

Bill Summary

Below is a summary of the key bills that passed this session:

HB 2058 by Gallego / Sponsor Sen. Seliger: HB 2058 is a Task Force

(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

proposal that creates separate standards for appellate lead counsel in a capital case that is modeled on those currently provided for counsel in the trial of a capital case under Art. 26.052, Code of Criminal Procedure. The bill requires each of the state's nine local selection committees to amend its standards to conform to the new requirements within 75 days of Sept. 1, 2009. It will permit highly skilled appellate attorneys to represent defendants on appeal without having to meet the current requirements, which include extensive trial experience appellate lawyers often do not have.

SB 1091 by Ellis / Sponsor Rep. Gallego: SB 1091 creates the Office of Capital Writs to provide legal representation for indigent capital murder defendants who were sentenced to death and were appointed counsel for a state writ of habeas corpus. Courts would have to appoint the office to represent indigent capital defendants for habeas writs unless specific conditions are met (e.g. conflict of interest). If the office did not accept the appointment or was prohibited from accepting the appointment, the convicting court would be required to appoint an attorney from a list of competent counsel that will be maintained by the presiding judges of the nine administrative judicial regions, rather than the Court of Criminal Appeals that currently has this duty. The bill also creates a Capital Writs Committee appointed by the State Bar of Texas president to recommend candidates for director of the capital writs office. The director is then to be appointed by the Court of Criminal Appeals no later than September 1, 2010.

Funding

The existing funding streams were continued by the legislature, including court costs, legal services fee, surety bond fee, and surplus juror pay funding. The estimated amount is just under \$30 million each year of the FY 2010-11 biennium. The legislature also continued funding for innocence projects in the four public law schools up to \$100,000 per year per school. The funding for the Task Force is contained within the Office of Court Administration's budget in Article IV of the bill.

Click [here](#) for a full update on the 81st Legislature, including indigent defense related bills that did not pass.

Message from the Chair

The Task Force serves as a clearinghouse of online information. Online resources include: [model forms](#), [papers](#), [presentations](#) and [local plans and expenditure data](#). In addition, the transparency and accountability of Texas and local jurisdictions is evident in the online data that is kept. None of this would be possible absent our partnership with Public Policy Research Institute (PPRI) at Texas A&M University. I mention this because we are in the process of redesigning the PPRI database to enhance functionality, making plan documents more accessible.

I would like to remind you about the deadline (July 31) to submit nominations for the Bob Dawson award. There's more information later in the newsletter beginning on page nine on how to do so.

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

Message from the Director

In addition to the legislative happenings, on April 14th, the Constitution Project's [National Right to Counsel Committee](#) released its much-anticipated report, *Justice Denied: America's Continuing Neglect of our Constitutional Right to Counsel*. The report details the endemic and systemic challenges of the indigent defense system and recommends twenty-two specific reforms. The full report and other relevant materials are available online [here](#). Also, links to [Quick Facts](#) and the [22 recommendations](#). See [my response to the Texas Legislature](#) on how Texas compares to the recommendations. One of the two reporters for this publication was the 2008 Dawson Award recipient, Robert Spangenberg.

Earlier this year, it was announced that The Spangenberg Group joined forces with George Mason University's Center for Justice, Law and Society. Under this exciting new arrangement, Mason has created The Spangenberg Project, which offers research, consulting, and technical assistance on issues of access to justice and indigent defense. As part of the merger, Bob Spangenberg is now Professor Spangenberg, a research professor, where he will work collaboratively with faculty researchers and graduate students. The combined team will connect field work on indigent defense with larger research and policy goals on access to justice. Among other things, the Center will create an annual Robert L. Spangenberg prize for the best student paper on the subject.

Over the past 35 years, Mr. Spangenberg has worked in all 50 states with civil legal services programs, indigent defense programs, bar associations, state and county officials, and legislative bodies interested in improving the U.S. justice system. Since 1986, he has provided technical assistance

 *Policies and Standards:*
**Chair: Knox
Fitzpatrick
Tony Odiorne
Olen Underwood**

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](#).

on indigent defense systems for the American Bar Association's Bar Information Program, which provides support and research to individuals and organizations working to improve their jurisdictions' indigent defense systems.

The Spangenberg Project completed an [evaluation of the Bexar and Hidalgo Public Defender Offices](#). Highlights from the two evaluations show that persons are spending less time in jail, the quality of representation is better and more persons are being served.

On behalf of the Task Force I thank all local officials who proactively take action to improve and monitor their indigent defense systems based on [evidence from studies](#).

Warmest regards,
James Bethke, Director

Policies and Standards Update

Changes to Indigent Defense Plan Submission Process

In response to an internal audit report on the current process of receiving and displaying indigent defense plans, the Task Force is planning to change our process for the upcoming submissions that will be due November 1st, 2009. The wide latitude local officials have had in the structure of plans and format of submission has resulted in a cumbersome, and at times, confusing set of documents. Updating of plans originally submitted at the end of 2001 has varied dramatically and many counties have multiple plan documents, including supplements and amendments on file, often with conflicting language, making it difficult or impossible to piece together the current plan.

Accordingly, the auditor recommended and the Task Force will implement a standardized plan format incorporating several different improvements, and provide sample plan templates that address all legal requirements, for consideration by local judges. The overall goal is to have a single, uniform, accessible indigent defense plan for each court level in each county that may be amended and searched. The new plan format will require that plans be broken down and submitted electronically into six sections representing the core legal requirements: prompt magistration, indigence determination standards, minimum attorney qualifications, prompt appointment of counsel, attorney selection process, and fee and expense payment process. In addition to readily available plan templates for each section, we will include a checklist of required elements necessary for the

section, model documents/procedures previously promulgated by the Task Force, and links to the statutory references that underlie each section. The submission process will also allow judges to upload and submit attachments to their plans, such as attorney fee vouchers and affidavits of indigence. After the initial submission using the new system, judges will be able to amend the plan at any time by changing the language for the appropriate section of the plan. The replaced section will then be automatically archived with a notation of when it was amended and by whom. The archived section would be available to prevent data loss from submission mistakes and to provide a record of all prior versions of the plan.

Plans will be able to be displayed by section or in their entirety. They will also be searchable by section, rather than the search taking you to a list of plan documents on file for the counties meeting the demographic criteria you set. This will allow state and local officials, staff and researchers to focus on only those parts of the plans they are currently interested in reviewing. As an example, it would allow a judge to find the attorney qualification requirements in the plans of similarly sized counties in the judge's region.

Staff from the Task Force, Public Policy Research Institute (PPRI), and legal interns will be available to assist local officials in the submission process. Assistance could include breaking an electronically available whole plan down into the respective sections.

We are currently developing the online system to implement this new process and will share instructions with you for completing it as soon as possible, likely by the end of summer. If you would be interested in assisting with testing the completed system please let me know. We would like to work out any glitches before launching it statewide.

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

Ensuring that Waivers of Counsel Meet the Requirements of Article 1.051

Counties have been challenged in managing the requirements set out in TEX. CODE CRIM. PROC. art. 1.051 regarding waivers of counsel. Some courts with misdemeanor dockets handle pro se guilty pleas without first checking to see if the defendant has previously requested appointed counsel. Under Article 1.051(f), a defendant may voluntarily and intelligently waive in writing the right to counsel. A waiver obtained in violation of Subsection (f-1) or (f-2) is presumed invalid. Subsection (f-1) disallows the attorney representing the State from either initiating a waiver of counsel from an unrepresented defendant or from communicating with a defendant who has a pending request for counsel. Subsection (f-2) disallows the court from directing or encouraging the defendant to

communicate with the attorney representing the State if that defendant has a pending request for counsel.

In order to obtain a valid waiver of counsel from an unrepresented defendant under Article 1.051, the court must first check to see if a request for counsel has previously been made. The request may have occurred at magistration or may have been submitted to jail staff or the court coordinator. Unless these requests are ruled upon, the waiver of counsel is presumed invalid. Article 1.051(f-2) states:

If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state **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:

- (1) has been given a reasonable opportunity to retain and has failed to retain private counsel; or
- (2) waives or has waived the opportunity to retain private counsel.

In order to know whether a request for counsel has been made, courts must ensure that all requests for counsel are promptly transferred to the appointing authority. Article 15.17(a) specifically requires that requests for counsel made at magistration be transferred to the appointing authority within 24 hours of the request. Counties must then rule upon these requests with either an approval or a denial. Many counties do not have procedures in place for issuing a denial of counsel. Instead some requests are left pending. If a requesting defendant later pleads guilty without counsel, Article 1.051's waiver requirements have not been followed since a denial of counsel was not issued prior to the waiver. To ensure that waivers of counsel meet the requirements of Article 1.051, all requests for counsel must be identified and ruled upon prior to the waiver of counsel.

For additional information please call Joel Lieurance, Program Monitor at (512) 936-7560.

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

Grants and Reporting Update

Discretionary Grants (continued from page 1)

Staffed with attorneys, case workers and social workers, the office will represent defendants with mental illness in misdemeanor cases. The program will help connect them to available services and treatment options. The office also will seek solutions to get and keep defendants with mental illness out of the criminal justice system.

**Members of the
Discretionary Grant
Review Team:**



Left to right: Andrea Marsh with Texas Fair Defense Project, Mary Hightower with Office of the Governor CJD, pictured with Judge Keller, and Jeanette Kinard with Travis County Mental Health Public Defender Office

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

“Establishing the Fort Bend County mental health public defender office is a major step forward in ensuring fairness in our legal system for a segment of the population that is often overlooked and underserved,” said Rodney Ellis, State Senator, District 13. “This office will go a long way toward protecting the constitutional right to counsel, as well as connecting mentally ill persons with services and resources that should reduce their involvement with the criminal justice system in the future.”

Dr. Tony Fabelo, Director of Research, Justice Center - Council of State Governments, has been working with Fort Bend officials to develop more effective diversion strategies for defendants with mental illness and said that “The mental health public defender funded by the Task Force supports local efforts already underway to create a more effective system to identify mentally ill persons who pose little threat to public safety and divert them into treatment.”

The Task Force also awarded \$33,450 to Parker County to fund an indigent defense coordinator position. The indigent defense coordinator will be bilingual in Spanish and English and screen defendants to determine if they are eligible for a court appointed attorney. The indigent defense coordinator will appoint counsel for those who qualify and will ensure attorneys contact their clients within the legally required timeframe.

“Indigent defense coordinators have proven to be effective tools for local jurisdictions and Parker County is to be commended for this improvement to its process,” said Judge Keller.

The Task Force also awarded \$20,750 to Wichita County for a video teleconferencing system to connect the jail and the public defender office to increase attorney-client communication.

“This video teleconferencing system will allow secure and more frequent visitation between public defenders and their clients as well as reduce travel time and expense going to the remote jail facility,” said Woody Gossom, Wichita County Judge. “In addition, the system will be made available to private and court appointed attorneys.”

Additional information available at Task Force's web site:

<http://www.courts.state.tx.us/tfid/>

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 26-28, 2009	fiscal

Comprehensive Annual Financial Report (CAFR) and Single Audit Report (SAR)

Counties that received grant funds or state financial assistance expending more than \$500,000 in a given fiscal year are required to obtain an audit of state and non-state funds in accordance with the Uniform Grant Management Standards and State of Texas Single Audit Circular.

RULE §173.402 Audits Not Performed by the Task Force on Indigent Defense

(a) Grantees must submit to the Task Force copies of the results of any single audit conducted in accordance with the State Single Audit Circular issued under the Uniform Grant Management Standards. Grantees must ensure that single audit results, including the grantee's response and corrective action plan, if applicable, are submitted to the Task Force within 30 days after grantee receipt of the audit results or nine months after the end of the audit period, whichever is earlier.

(b) All other audits performed by auditors independent of the Task Force must be maintained at the grantee's administrative offices pursuant to RULE §173.303 of this chapter (relating to "Retention of Records") and be made available upon request by the Task Force or its representatives. Grantees must notify the Task Force of any audit results that may adversely impact the Task Force grant funds.

Link to the [Grant Rules](#).

Please provide a copy of the comprehensive annual financial report (CAFR) and Single Audit Report (SAR) to Carol Conner, Fiscal Monitor, Task Force on Indigent Defense, P.O. Box 12066, Austin, Texas 78711-

Task Force on Indigent
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(866) 499-0656

Fax:
(512) 475-3450

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

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

2066, or via email carol.conner@courts.state.tx.us.

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



Bob Dawson was a beloved law professor and a champion of juvenile justice and indigent defense (Photo credit: Wyatt McSpadden).

Call for Nominations for Dawson Award

The Robert O. Dawson Indigent Defense Distinguished Service Award honors and acknowledges the late Professor Robert O. Dawson's outstanding contributions and symbolizes his lasting impact on the Texas Fair Defense Act and the Task Force. Each year the award will recognize outstanding service by a group or an individual that makes an outstanding contribution to the improvement in the way Texas provides counsel for its poorest citizens accused of crimes.

A complete [Award Nomination Form](#) must be submitted for each nomination. Award Nomination Forms and supporting materials should be submitted for the 2009 award until the final deadline of July 31, 2009 (5:00 p.m.). Additional materials such as news stories, magazine articles, or other appropriate commentaries may be included with a nomination. However, please limit each nomination to 10 pages, including supporting materials. Please do not submit videotapes or tape recordings.

Please send completed Award Nomination Forms to:

Task Force on Indigent Defense
Post Office Box 12066
Austin, Texas 78711-2066

Physical Address: 205 West 14th Street, Suite 700, Austin, Texas 78701

The 2009 award will be presented at the December Task Force meeting.

Past recipients of the award: Robert O. Dawson (2005), Dr. Tony Fabelo (2006), Don Hase (2007), Bob Spangenberg (2008).

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).

Spotlight on Lubbock County

Congratulations are in order for Lubbock County and 69 other West Texas counties on its West Texas Regional Public Defender for Capital Cases Program. This month the county won a national award in the best of the best category for criminal justice and public safety from the National Association of Counties (NACO). Please see the [press release](#). Links to award certificates: [Achievement](#) and [Best of Category](#)

David Slayton, Lubbock County Court Administrator, will accept the award at the NACO award ceremony in Nashville in July.

The West Texas Regional Public Defender program was established with a FY09 Discretionary Grant award and has been in existence for just over a year now. The office serves [70 counties in the 7th and 9th Judicial Regions in West Texas](#).

