



Texas Task Force on Indigent Defense

December 2008 

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\$12 Million in Formula Grants Awarded

Last Friday the Task Force on Indigent Defense voted to award almost \$12 million in [Formula Grants](#) to 220 Texas counties. The award letters will be faxed to county judges by the end of this week. The remaining 34 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.

Examples of special conditions include low expenditures in the previous year that resulted in a refund, failure to maintain indigent defense plan requirements, failure of the county/district clerks to meet statutory Texas Judicial Council reporting requirements, and county's failure to report court data electronically or obtain a waiver from doing so. The \$12 million in funding must be used to improve counties indigent defense systems. (This story is continued on page 4.)

Message from the Chair

The Task Force was honored to give Bob Spangenberg the Robert O. Dawson Indigent Defense Distinguished Service Award at the December 12th meeting. Please join me in congratulating him. Bob has served Texas for many years and has



volunteered countless hours over the past ten years instrumental to the Fair Defense Act and furthering the mission of the Task Force.

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

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

Knox Fitzpatrick
Dallas Attorney, Fitzpatrick,
Hagood, Smith & Uhl, L.L.P.

Wallace Jefferson
Chief Justice, Supreme
Court

Tony Odiorne
Public Defender, West Texas
Regional Capital Public
Defender

Aaron Peña
State Representative

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

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](#). Information on *Rothgery v. Gillespie County* (downloads at 5,6,7,8) and other hot topics in indigent defense are only a click away. 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 five hours of attorney self-study continuing legal education credit, including up to one hour of ethics. Happy holidays!

Warmest regards,
James Bethke, Director

Policies and Standards Update

Collateral Effects of *Rothgery v. Gillespie County*

The Harvard Law Review in its November 2008 issue provided insightful summary of the Supreme Court's key decisions from last term. It includes an excellent summary of the *Rothgery v. Gillespie County* decision from June 23, 2008 dealing with when the right to counsel attaches. This includes a discussion of some of the practical effects of the decision, as well as potential future areas of litigation in this area of the law. You can read the summary [here](#).

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

Proposed Policy Monitoring Rules

At its December 12th meeting, the Task Force proposed new rules concerning policy monitoring processes. The rules are proposed to establish the guidelines for the administration of the policy monitoring program, which is designed to promote compliance by counties 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 timeframes for reports and county responses. They will be posted in the Texas Register for public comment and they may be viewed on our website [here](#).

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

 **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](#).

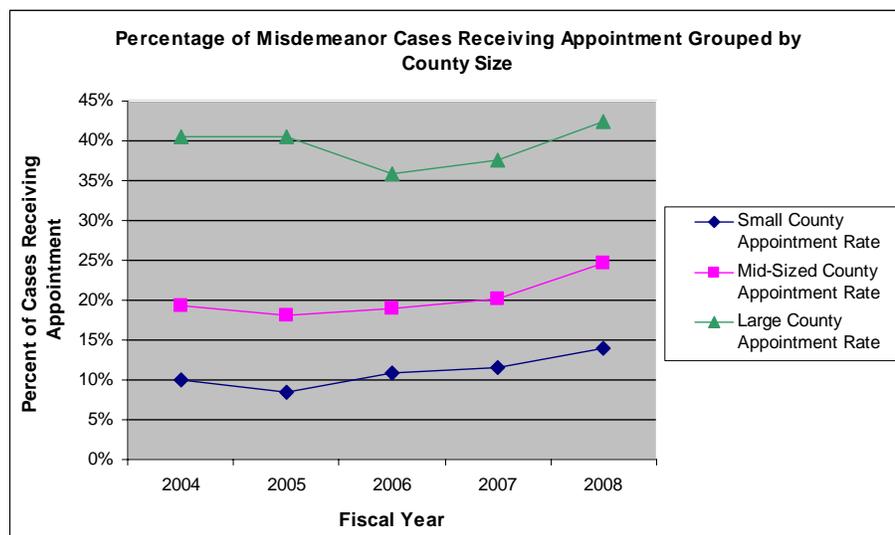
National Study and Guidelines on Determining Indigence

Earlier this fall, the Brennan Center for Justice at NYU School of Law released a study entitled, *Eligible for Justice: Guidelines for Appointing Defense Counsel*. The study recommends a set of practical guidelines to help states and counties with the task of determining eligibility. It is a quick read and provides practical guidance and insight into the process of determining eligibility for court appointed counsel. Click [here](#) to download a copy of the Full Report, or [here](#) for the publication's homepage. This report coupled with the work that we've done on this topic, see [The Costs and Benefits of an Indigent Defendant Verification Study](#) (July 2007); also, [Supplement to the Verification Study](#) (November 2007) and [Indigent Determination Form \(sample form in Excel\)](#) should provide local jurisdictions the information needed to put in place an effective screening process.

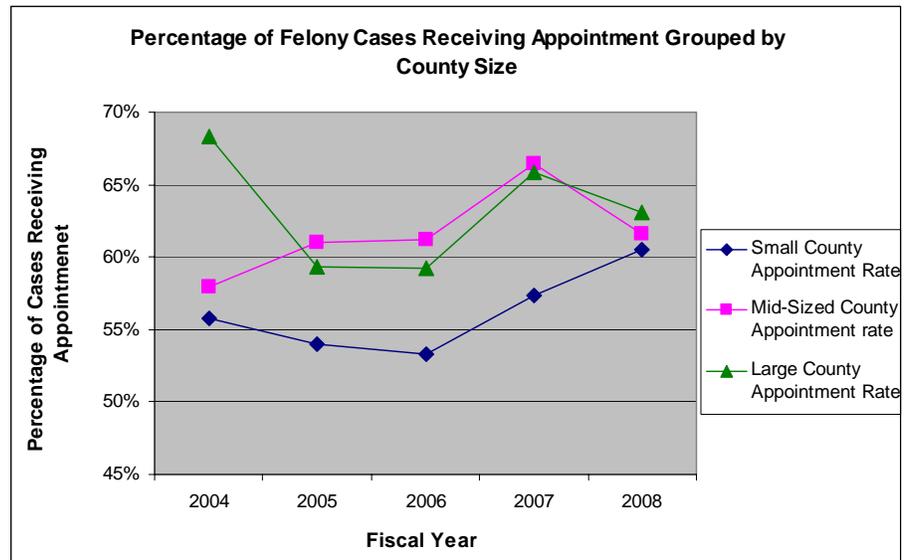
For additional information please call Wesley Shackelford, Special Counsel at (512) 936-6997.

Indigent Defense Appointment Trends

Jurisdictions are required to appoint counsel for indigent defendants in all felony and Class A and Class B misdemeanor cases. Large counties tend to appoint a greater percentage of attorneys to misdemeanor cases than either small or mid-sized counties, but within each group the attorney appointment rate has steadily increased over the last five years. (Small counties are those counties with a census population under 50,000. Mid-sized counties are between 50,000 and 249,999. Large Counties have a census population of at least 250,000.) Misdemeanor appointment rates have not yet begun to converge together toward an average rate of appointment.



For felonies, the percentage of persons receiving appointed counsel has shown signs of converging toward an average rate of appointment. Whether a defendant is being prosecuted in a large, mid-sized, or small county does not appear to drastically affect the likelihood of receiving appointed 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

Formula Grants (continued from page 1)

The distribution schedule for FY09 Formula Grant quarterly payments is as follows:

- 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 December (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

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

budgeted amount for formula grant. Counties must meet minimum spending requirements to qualify. The \$5,000 floor portion of the formula provides many smaller counties with a greater percentage of reimbursement than most large counties.

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.

Equalization Disbursement

The Task Force will provide \$8 million in Equalization Disbursements to 96 counties that had less than a 23% state reimbursement.

The equalization policy provides additional state funds to counties with the lowest percentage of state reimbursements of overall increased indigent defense costs. The equity this new policy provides is that no county is reimbursed by state funds for increased indigent defense costs less than the 23%. While the formula grant and direct disbursement programs ensure that some funds are available to every Texas County, this equalization payment works to equalize the amount of increased indigent defense costs that any one county must absorb. Funds will only be budgeted and payments made when collections and other budget conditions are favorable without adversely affecting other funding methods.

The total statewide average for reimbursement of increased indigent defense costs is about 45% in FY2008. However, 62 counties had 50% or more of their increased indigent defense cost paid with state funds.

Here is a [link](#) to the equalization disbursement schedule.

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.

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

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

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

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.

Revised Grant Rules

At its December 12th meeting, the Task Force proposed revisions to the existing grant rules. The rules establish guidelines for the administration of the grant program, which is designed to improve counties' indigent defense systems and promote compliance with state law. They describe the types of grants and other funds available to counties from the Task Force and outline how the funds will be administered. They will be posted in the Texas Register for public comment and they may be viewed on our website [here](#).

If you would like help or have questions, please contact Whitney Stark, the Task Force Grants Administrator at (512) 936-6996.

Fiscal Monitoring Program

FY 2008 Fiscal Monitoring and Technical Assistance Visits

County	Date of Site Visit	Type of Visit
Williamson	September 5, 2007	tech assist
Johnson	October 4, 2007	tech assist
Ellis	December 5, 2007	tech assist
Collin	January 8-11, 2008	fiscal
El Paso	January 28-February 1, 2008	fiscal
Hunt	February 12-14, 2008	fiscal
Parker	March 4-6, 2008	fiscal
Brooks	April 15, 2008	tech assist
Jim Wells	April 16-18, 2008	fiscal
Edwards	April 28, 2008	tech assist
Kinney	April 28, 2008	tech assist
Val Verde	April 29-May 1, 2008	fiscal
Terrell	May 2, 2008	tech assist
Harris	May 27-30, 2008	fiscal
Henderson	June 10-12, 2008	fiscal
Bexar	June 23-27, 2008	fiscal
Dallas	July 22-24, 2008	fiscal
Tarrant	August 19-22, 2008	fiscal

Preparing for a Fiscal Monitoring Visit

Once a county has been selected for a Task Force monitoring visit, our goal is to make it informative and educational. Although each county is unique, there are similarities that can be found in each monitoring visit.

➤ **Planning**

Prior to the visit, the fiscal monitor sends the county a confirmation letter and fiscal monitor checklist. The confirmation letter describes the approach plan. The fiscal monitor may request support documents such as baseline expenses, financial statements, accounting procedures, and the comprehensive annual financial report. This list is not all-inclusive, as the fiscal monitor may need additional information or support documents.

➤ **Entrance Conference**

The fiscal monitor identifies financial areas for review and addresses any issues or concerns. The entrance conference may include the judge(s), auditor, accountant, grant supervisor, court manager, and indigent defense coordinator. Every attempt is made to minimize the disruption of routine operations. Any special areas of concern should be brought to the attention of the fiscal monitor.

➤ **On-site fiscal monitoring visit**

The fiscal monitor ensures that grant funds are used for authorized purposes in compliance with laws, regulations, and provisions of the grant agreements in accordance with Section 173.401, Texas Administrative Code. The fiscal monitor will request financial documents and select a sampling of financial expenditures relating to indigent defense services. The financial documents will consist of attorney fee vouchers, general ledgers, accounting records, administrative expenses, and equipment inventory purchased with grant funds. In addition, the fiscal monitor will review the approved public appointment list, attorney applications or required documents for appointment of counsel, and attorneys' continuing legal education (CLE) training hours.

➤ **Exit Conference**

The fiscal monitor will discuss any potential findings, recommendations, or areas of concern. Special attention is given to findings that require a corrective plan of action.

➤ **Draft Report**

The fiscal monitor writes and submits a draft report to the county. The draft report will be reviewed for clarifications, suggestions, and/or areas of concern.

➤ **Written Response**

The county has approximately 30 days to respond in writing to the recommendations or findings, and submit a corrective action plan.

The corrective action plan will include:

- Corrective action to be taken.
- Title of the contact person responsible for implementing the action plan.
- Anticipated completion date.

➤ **Final Report**

The fiscal monitor will issue a final report, which incorporates the county's responses.

➤ **Follow-up**

A follow-up monitoring visit may be necessary to ensure the implementation of the corrective action plan.

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

Save the Date for Next Year's Indigent Defense Workshop - October 22-23, 2009

In order to allow you to form your teams we want to let you know when the indigent defense workshop will be. The 2009 (7th Annual) Indigent Defense Workshop will be held at the Texas Association of Counties Event Center on October 22 and 23, 2009. This is an increasingly popular event and seating is limited. The Task Force asks that counties assemble a 2-3 member team consisting of a cross-section of county officials (judges, commissioners, law enforcement, prosecution, defense, indigent defense coordinator). The Task Force strongly urges that each team consist of at least one elected official. As in years past presenters will provide up-to-date information, examples and highlights of current indigent defense practices. One goal of the workshop is for counties to take away a 90-day action plan that will assist the county in increasing proficiencies in their delivery services. Counties will be provided with evidence-based practices from latest studies to help in determining what works best for their local jurisdictions, examples being whether or not a public defender office is a viable option or which methods of indigence determination and verification are most appropriate.

There is no fee for registration but counties are responsible for travel expenses. If you have any questions about this workshop please call (512)936-6994 or email terri.tuttle@courts.state.tx.us. You may also email me of your interest and I'll keep a list to remind you when I start registering. In addition, the Task Force welcomes any and all feedback and suggestions for what counties would find most helpful or solutions to issues presented by those attending the workshop. I will provide a registration form available in August 2009.

Please call Terri Tuttle, at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about this program.