



Texas Task Force on Indigent Defense

December 2007 

Volume 6, Number 1

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Left to right: Mr. Don Hase, Presiding Judge Sharon Keller, Chair of the Task Force

Don Hase Receives Award

The Task Force on Indigent Defense awarded the Robert O. Dawson Indigent Defense Distinguished Service Award to Don Hase, a Tarrant County criminal defense attorney. The Robert O. Dawson award honors and acknowledges the late Professor Dawson’s outstanding contributions and symbolizes his lasting impact on the Texas Fair Defense Act and the Task Force. Each year the award recognizes outstanding service by a group or an individual to improve the way Texas provides counsel for its poorest citizens accused of crimes. Mr. Hase received the award for 2007 for his efforts to improve indigent defense in Tarrant County (continued on page 10).

Message from the Chair

It is our responsibility to the state, to the common good and to the law to ensure that indigent defendants receive a strong, quality defense. At a recent Grants and Reporting Committee meeting several representatives from counties gave presentations on discretionary grant funded indigent defense programs that the counties have implemented over the past five years (see article on page 9). I was impressed that these attendees had taken the time and made the effort to travel to Austin to do this, but more impressed with their attitudes and with the hard work that is being put into

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

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

Wallace Jefferson
Chief Justice, Supreme
Court

Orlinda Naranjo
419th Judicial Civil District
Court

Tony Odiorne
Public Defender, Wichita Co.

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

the programs. More and more Texas counties are striving to create proficient processes not only to maintain control over costs, but also to provide the highest quality defense services to indigent defendants. The counties deserve our thanks for their efforts; each successful program is a gift in and of itself. On behalf of the Task Force, I wish you and yours a safe and happy holiday season.

Sincerely,

Sharon Keller, Presiding Judge, Court of Criminal Appeals 

Message from the Director

This newsletter is the first of fiscal year 2008 and closes out calendar year 2007. I know that the holidays are upon us and the preparation for those holidays have been active for the past month or so. It is mind boggling with all that goes on in December to think about indigent defense, formula grant awards, and discretionary grant applications in the works. But I would be remiss not to keep you all informed or reminded about what is coming.

The formula grant award letters are being faxed to county judges by the end of this week. First quarter formula grant payments and an equalization supplement will be processed and mailed in January. These payments will be processed separately with the formula funds being distributed first and an equalization supplement to follow shortly for qualifying counties. A listing of the awards is linked under the Grants and Reporting section of this newsletter. Last year, the Task Force and its staff completed a number [studies that are now available online](#). These studies are prepared to assist local policy makers to make informed decisions on how best to provide indigent defense services that meet the requirements of law and are cost effective. I encourage counties to take advantage of this information as well as the opportunity to apply for funds from the Task Force's FY2009 Discretionary Grant Program. The deadline is February 22 and more information and application information is on page 7 of this e-Newsletter. To see what other counties have done you may view all past applications at <http://tfid.tamu.edu/Public/default.asp>.

Wishing you quality family time together for the holiday season! Until next year,

Warmest regards,
James Bethke, Director



Policies and Standards Update

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

Task Force Publishes Three New Publications

The Task Force published a research study titled *The Costs and Benefits of an Indigent Defendant Verification Study* during the summer of 2007. We have now released a supplemental publication with practical information for local officials who would like to implement an effective indigence screening and verification system. It includes information on setting appropriate standards for indigence, sample screening practices from local jurisdictions, and information on accessing tools to verify financial information.

In addition, the Task Force recently published the *2007 Fair Defense Law* containing a codified version of all indigent defense related statutes. The document includes all of the changes from the 80th Legislature shown using ~~striketrough~~ and underline. The publication now also includes commentary with cases and attorney general opinions on key indigent defense issues.

Key Provisions of the Fair Defense Act for Visiting Judges is another new one page publication with highlights of indigent defense laws. Although it is tailored to the needs of visiting judges, it serves as a great primer for anyone on the topic and was developed with input from the regional presiding judges and other stakeholders.

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

Bexar County Attorney Voucher Recommendation Committee

The Bexar County District Courts have implemented an innovative program to help judges review questionable attorney fee vouchers. They have created a committee of five lawyers selected by the current president of the San Antonio Criminal Defense Lawyers' Association and approved by the criminal district court judges to whom a judge may refer a voucher for review and a recommendation. The committee has limited investigatory powers, such as access to jail records to verify jail visits, contact with the attorney who prepared the voucher, and requests to the attorney to produce information to corroborate claims on the voucher. The committee then makes non-binding recommendations in writing to the judge presiding over the voucher. In the event of an appeal, the committee's recommendations would be made available to whoever is

hearing the appeal. The committee was created and implemented by an amendment to the indigent defense plan used in the county. Please contact Melissa Barlow-Fischer, the Bexar County Criminal District Court Administrator, for more information on how the system works. She can be reached at 210-335-3474.

Staff Presents to County Judges & Commissioners

Whitney Stark and Wesley Shackelford made a presentation to the county judges and commissioners from Region 10, Texas Cooperative Extension, in Uvalde on December 5th and the presentation may be viewed [here](#). The presentation covered background information



Wesley Shackelford, Special Counsel for the Task Force and Whitney Stark, Grants Administrator for the Task Force

on the Task Force, grant programs, recent legislation, monitoring, and policies and standards. Task Force staff is available to make presentations to conferences, meetings or other groups of local stakeholders.

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

U.S. Supreme Court to Hear Rothgery v. Gillespie County

The U.S. Supreme Court granted a writ of certiorari on December 3, 2007 to decide case brought by the Texas Fair Defense Project that could determine when adversary judicial proceedings are initiated in Texas and therefore when an indigent suspect is entitled to an attorney. At issue is whether the courts are required to appoint a lawyer during an arrestee's first court appearance before a magistrate at the hearing held under Art. 15.17, Code of Criminal Procedure or does the right to an attorney begin upon formal indictment.

The case arose from the 2002 arrest of Walter Rothgery, who was accused of carrying a firearm as a felon. Insisting that he had no felony record and could not afford to hire a lawyer, Rothgery asked for appointed counsel during his magistrate's warning hearing (Art. 15.17). The request was denied. Rothgery posted bail and was released from jail. Six months later, he was indicted by a Gillespie County grand jury and arrested again. At that point he was appointed counsel who cleared up a mistake in California's felony database and the charge against him was dismissed.

The question presented is whether the U.S. Fifth Circuit Court of Appeals

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](#).

Successful implementation of evidence-based principles can be achieved when equal emphasis is placed on organizational development and collaboration.

U.S. Department
Of Justice

correctly held that adversary judicial proceedings had not commenced, and petitioner's Sixth Amendment rights to counsel had not attached, because no prosecutor was involved in petitioner's arrest or appearance before the magistrate. The Austin American-Statesman article on the case may be found [here](#).

Program Monitoring Report: Magistrate's Duties With Out-of-County Arrests Warrants

Arrests on out-of-county warrants compose a significant minority of total arrests by local law enforcement across the State of Texas. Magistrates maintain the duty to make a probable cause determination and to provide Article 15.17 warnings for arrestees, including the right to court-appointed counsel. The language of Tex. Code Crim. Proc. art. 15.17(a) states,

The magistrate shall inform in clear language the person arrestedof his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel.

No exception is made for an out-of-county warrant.

If the arrestee requests counsel, Article 15.17(a) requires the magistrate "shall ensure that reasonable assistance in completing the necessary forms for requesting appointed counsel is provided to the person at the same time" as the magistrate warnings. The magistrate must then transmit the forms for requesting the appointment of counsel to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county. The transmission of the forms must occur without unnecessary delay, but not later than 24 hours after the arrested person requests appointment of counsel. Again, no exception is given for out-of-county warrants. If charges are pending in the county of arrest as well as in an outside county, the request for counsel must be transmitted to both counties' appointing authorities within the statutory timeframe.

To meet the Article 15.17 transfer requirements, magistrates must know to whom to send a request for counsel. The list for out-of-county arrest contacts is available on the Task Force web site maintained by PPRI (<http://tfid.tamu.edu/Main/Main.asp>). If one needs to find the person to whom a counsel request is to be sent, select the county where the warrant was issued and then scroll through the contact information. Near the bottom of the contacts, one finds **Out Of County Arrest Contacts**. Magistrates can find the appropriate court's designee in this list and can then fax requests for court-appointed counsel to this person.

Please call Joel Lieurance at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about the program monitor program. There is also a webpage with [information about the monitoring programs](#).

Grants and Reporting Update

 *Grants and Reporting:
Chair: Glen Whitley
Jon Burrows
Sharon Keller*

\$12 Million in FY08 Formula Grants Awarded

The Task Force on Indigent Defense voted to award almost \$12 million in Formula Grants to 223 Texas counties. The remaining 31 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. Click [here to see a list of FY08 Formula Grants awarded on December 12, 2007](#).

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 a 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 county indigent defense systems.

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

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

FY08 Equalization Disbursement

The Task Force will provide \$6 million in Equalization Disbursements to 88 counties that had less than a 23.92% state reimbursement for increased expenses since 2001. The first payment will arrive in early January 2008 with two additional payments expected in May and August 2008. These payments are contingent on increased revenue from a new court cost to be implemented in January under HB 1267 passed by the 80th Legislature.

The equalization policy provides additional state funds to counties with the lowest percentage of state reimbursements of overall increased indigent

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

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 23.92%. 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 FY2007. However, 90 counties had 50% or more of their increased indigent defense cost paid with state funds. Over half of the counties had one-third or more of their cost reimbursed by state funds. [Equalization disbursement schedule](#).

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

FY09 Discretionary Grant Applications

The Task Force has authorized staff to publish the [FY2009 Discretionary Grant Request for Applications \(RFA\)](#). The publication will be distributed to all 254 Constitutional County Judges during December 2007.

How much money?

\$100,000 for new single year programs

\$500,000 for new multi-year programs

The Task Force will continue its commitments to counties operating multi-year grants.

What kind of programs will the Task Force fund?

These funds are dedicated by statute to improve indigent defense services. The Task Force has avoided limiting these funds to one specific process or another. It does set fairly broad priorities. This year the priorities are as follows:

Priority Funding -- New Single-Year Discretionary Grants

The following application characteristics shall be given priority in deciding funding:

- Applications for creating programs or processes to improve indigent defense services.
- Applications that demonstrate a good likelihood the proposed activity will be a model program or can be duplicated in other jurisdictions.
- Applications that involve multiple counties coordinating their submission.
- Applications that demonstrate a county's(ies') long term commitment to the program. For instance a seed program that requests funds from the Task Force to start a program the county will maintain over time.
- Applications that contain cash match from the county or other non-governmental source.

- Applications that have minimal or no indirect costs requirements.
- Applications from small counties (less than 50,000 population) or mid-sized counties (50,000 to 250,000 population).
- Applications to purchase equipment and resources to establish and implement a regional approach to magistration.

New and Continued Multi-Year Discretionary Grants

In addition to all of the application characteristics listed above for the single-year discretionary grants, the only programs that will be considered for multi-year grants are:

- Programs that provide direct services to indigent defendants.
- Establishment of public defender offices.
- Establishment of regional public defender offices.
- Programs that provide mental health defender services.
- Programs that provide juvenile defender services.

What kind of grant is it?

Reimbursement and Matching. Most programs do require some type of match.

What is the process?

The grant is a two-tier process. Counties submit a brief description of the program by February 22, 2008. The Grant Administrator will allow the grant to proceed to a full proposal with or without changes for the county to consider. The full proposal will be due on April 25, 2008.

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

Recap of Fiscal Year 2007 Grant and Other Funding Disbursements

State funding this year for indigent defense services was disbursed to counties under four categories: Formula, Direct Disbursement, Extraordinary and Equalization.

Formula Grants provides money to counties for increased indigent defense costs using a standard allocation formula. Over \$11.5 million was distributed to 214 counties under this system.

Direct Disbursement gives small counties that have low incidences of crime and low indigent defense costs a way if needed to receive funding besides applying for a Formula Grant. This year \$132,280 was distributed to 18 counties under this category.

Extraordinary Disbursement is for counties who demonstrate that indigent defense expenses in the current and/or immediately preceding county fiscal year rendered a financial hardship on the county. Each request is evaluated on a case-by-case basis against other requests and the amount of funds available. This year 2 counties (Brazoria and Hunt)

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

received \$100,000 each under this umbrella.

Equalization Disbursement provides additional state funds to counties with the lowest percentage of state reimbursements of overall increased indigent defense costs. The \$3,000,000 provided by the Task Force ensured that every county was reimbursed for at least 24% of their increased indigent defense costs. Sixty-seven (67) counties received payment under this program.

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 (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.window.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 Grant Recipients Share Their Success Stories

On November 30th, representatives from 11 counties attended the Task Force's Grants and Reporting Committee meeting to share their experiences in implementing discretionary grant projects funded by the Task Force. The attendees included:

- Angela Moore, Chief Appellate Public Defender in Bexar County;
- Judge John Miller, 102nd District Judge (Bowie & Red River counties);

- Charlie Hall, Chief Public Defender in Bowie & Red River counties;
- Robert Riley, First Assistant Public Defender in El Paso County;
- Raquel Levy; Indigent Defense Coordinator in Fort Bend County;
- David Slayton, Director of Court Administration in Lubbock County;
- Kathy Edwards, Indigent Defense Coordinator in McLennan County;
- Holly Webb, Criminal Court Support Manager in Tarrant County;
- Jennifer DeLeon, Indigent Defense Coordinator in Taylor County;
- Nolan Martin, IT Manager for Civil and Criminal Courts in Travis County;
- Melissa Shearer, Attorney with the Travis County Mental Health Public Defender's Office; and
- Mary Kay Secola, Director of Texas Rio Grande Legal Aid's Public Defender Division representing Val Verde and Willacy counties.

Each county representative gave a brief description of the successes and challenges in carrying out their county's grant project and an update on the accomplishments to date. The objective of all Task Force grant funding is to improve counties' indigent defense systems, but many of these counties also reported reaping unexpected benefits from these projects such as significant financial savings, decreased jail populations, improved efficiency and more. Additional information on the grant programs in these counties can be found online [here](#).

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

Continued from page 1

Don Hase Receives Award

"He is a public-minded individual who devotes his time and energy to benefit the legal system," said Presiding Judge Sharon Keller of the Court of Criminal Appeals, who chairs the Task Force. Brent Carr, judge of the Tarrant County Criminal Court No. 9, described Mr. Hase as a "statesman" and "tireless advocate." "Not only does he render outstanding service to his clients, he seeks to improve the quality of the practice of law," Judge Carr said. "To know Mr. Hase is to hope that our profession will have many more like him."

The Honorable Sharen Wilson, judge of Tarrant County Criminal District Court #1, also praised Mr. Hase's efforts and explained that "His innovative solutions improved the system in Tarrant County and the State."

Mr. Hase, a partner in the Ball and Hase law firm in Arlington, is a 1981 graduate of the Texas Tech University School of Law. He first joined the Tarrant County District Attorney's Office after graduation, prosecuting felony, misdemeanor and juvenile cases. He is a past president of the Tarrant County Criminal Defense Lawyers Association and member of the Texas Criminal Defense Lawyers Association and the Arlington Bar

Association.

Past recipients of the award: Robert O. Dawson (2005), Dr. Tony Fabelo (2006).

Additional information available at Task Force's web site:
<http://www.courts.state.tx.us/tfid/>

Fiscal Monitoring Program

Summary of Fiscal Monitoring and Technical Assistance Visits

Twenty-four fiscal monitoring and technical assistance visits were conducted in FY 2007:

Summary of Monitoring Visits September 1, 2006 - August 31, 2007		
County	Date of Site Visit	Type of Visit
Webb County	October 10-13, 2006	fiscal
Limestone County	December 5, 2006	technical assistance
Bexar County	January 30, 2007	follow-up meeting
Moore County	February 20, 23, 2007	fiscal
Dallam County	February 21, 2007	fiscal
Hartley County	February 21, 2007	fiscal
Sherman County	February 22, 2007	fiscal
Guadalupe County	February 27-March 1, 2007	fiscal
Gonzales County	March 2, 2007	technical assistance
Harris County	March 20-23, 2007	fiscal
Jackson County	April 16, 2007	fiscal
Victoria County	April 17-18, 2007	fiscal
Calhoun County	April 19, 2007	fiscal
DeWitt County	April 20, 2007	fiscal
Guadalupe County	June 12, 2007	technical assistance
Medina County	June 19-20, 2007	fiscal
Real County	June 21, 2007	fiscal
Uvalde County	June 22, 2007	technical assistance
Bexar County	June 26-29, 2007	fiscal
Dallas County	July 17-20, 2007	fiscal
Potter County	July 23-24, 2007	fiscal
Randall County	July 25-26, 2007	fiscal
Tarrant County	August 7-10, 2007	fiscal
Travis County	August 14-17, 2007	fiscal

Three technical assistance visits were conducted in FY 2008:

Summary of Technical Assistance Visits for FY 2008 September 1, 2007 – December 31, 2007		
County	Date of Site Visit	Type of Visit
Williamson	September 5, 2007	technical assistance
Johnson	October 4, 2007	technical assistance
Ellis	December 5, 2007	technical assistance

Desk Reviews of Expenditure Reports:

We have completed desk reviews of the 254 counties FY 2007 expenditure reports. The Indigent Defense Expenditure Report (IDER) serves two purposes: 1) to fulfill the statutory requirements listed in Section 71.0351(e), Texas Government Code; and 2) to serve as the annual formula grant report.

In reviewing the on-line expenditure reports, several counties had missing data elements. The missing or incorrect data elements included reimbursements from defendants, program income, administrative expenses, and expenditures reported for each court. Administrative expenses must be properly documented and allowable as defined in the FY 2007 indigent defense expenditure reporting manual. Counties were contacted by telephone, email, and facsimile to collect and confirm the accuracy of data in the expenditure report.

For questions or technical assistance, please contact: Carol Conner, Fiscal Monitor; direct line: 512/936-7561; In Texas 866/499-0656; fax: 512/475-3450; email: carol.conner@courts.state.tx.us.



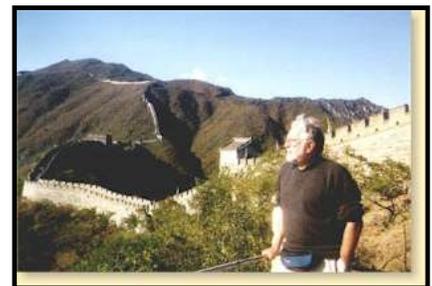
*Indigent Defense Workshop,
Texas Association of
Counties*



*Dana Wrisner, Mikah
Mitchell, Dallas County*

5th Annual Indigent Defense Workshop a Success

This year's workshop was held at the Texas Association of Counties Event Center on October 18 and 19. Approximately 25 counties were represented by a cross-section of county court officials and administrators. Bob Spangenberg, a national consultant on indigent defense was the keynote speaker and he and many other presenters offered information, examples and highlights of current indigent defense practices. The 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 also received copies of the 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



Bob Spangenberg



Berenice Juan, Genoveva Perez, Maria Rendo, Montgomery County



Joel Lieurance, Task Force Program Monitor, presenting

of indigence determination and verification is most appropriate. The workshop materials, agenda and other tools are available on the website. Please contact any staff member should you wish for Task Force staff to assist your county with any of this information. Link to: [Workshop information](#).

The Task Force is grateful to the Texas Association of Counties for allowing the use of its Events Center and for providing refreshments. Staff also thanks The Texas Center for the Judiciary for the use of its facilities for small workgroups.

Next year's workshop is scheduled for October 23 and 24, 2008. Mark your calendars if you are interested in attending. We will announce registration in August of next year.

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.