



Texas Task Force on Indigent Defense

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Grants and Reporting Committee members on November 15, 2006, left to right: Judge Jon Burrows (Bell County), Judge-elect Glen Whitley (Tarrant County), Judge Sharon Keller, Chair of the Task Force and Presiding Judge of Court of Criminal Appeals; also James Bethke, Director of the Task Force

\$12 Million in Formula Grants Awarded

The Task Force on Indigent Defense voted to award almost \$12 million in [Formula Grants](#) to 225 Texas counties. The remaining 29 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. [This article is continued on page 6.]

Message from the Chair

The holiday season is here and we are grateful to be able to serve those less fortunate than ourselves. Texas counties' indigent defense systems are serving more of the state's poorest. Public defender offices are one way in which this is happening, as well as increased appointments of court-appointed counsel. In Jim's article below, he will describe a study providing evidence for the feasibility of public defender offices in Texas.

At its last meeting the Task Force adopted an "Equalization Disbursement Policy." The purpose of this policy is to ensure that counties are reimbursed proportionally to some degree for local indigent defense expenses. With the passage of this policy, the Task Force took another step

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

Terry Keel
State Representative

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Travis County Court at Law
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Tony Odiorne
First Assistant Public
Defender, Wichita Co.

Sherry Radack
Chief Justice, First Court of
Appeals

Todd Smith
State Representative

Jeff Wentworth
State Senator

Glen Whitley
Tarrant County
Commissioner

John Whitmire
State Senator

in fulfilling its statutory mandate to “ensure that funds ...are allocated and distributed to counties in a fair manner.” Local jurisdictions that had an overall rate of reimbursement less than 24 percent will receive an equalization payment this December. There were 67 counties that qualified for this payment. For a listing of counties and a more detailed discussion of this policy see Bryan’s article beginning on page.

I thank you for your continued hard work and service towards improving Texas’ overall justice system.

Sincerely,

Sharon Keller, Presiding Judge, Court of Criminal Appeals

Message from the Director

As Judge Keller mentioned above, I want to describe some recent findings of a feasibility study just completed concerning public defender offices in Texas. This study was conducted at the request of and in collaboration with the Governor’s Criminal Justice Advisory Council. Dottie Carmichael, Ph.D., with the Public Policy Research Institute, provided Task Force staff assistance with data analysis and report preparation. The purpose of this study is to provide Texas policymakers data and information on what would be the fiscal impact on state and local governments in establishing public defender offices in the adult criminal justice system. The data provides evidence that public defender offices consistently achieved a lower cost per case to dispose both felonies and misdemeanors and also suggests, based on this preliminary study (more research is needed to document this), that public defenders do offer a number of quality advantages. The Task Force will continue to monitor both qualitative and quantitative data as it becomes available over time, but based on currently available indicators, the [study](#) indicates that the public defender model is one way to provide a cost-effective indigent defense delivery system.

Until the next newsletter or until we speak again, I wish you all the best and hope that you have a great holiday season.

My best,

James Bethke, Director

Policies and Standards Update

Commentary on Contract Defender Rules Available

The Task Force on Indigent Defense has promulgated commentary and sample attorney fee vouchers to assist jurisdictions in implementing contract defender programs. The commentary was developed to provide guidance on the recently adopted contract defender program rules and also to highlight for consideration policy areas that, while important, were not made mandatory by inclusion in the rules. The commentary was developed through an interdisciplinary workgroup and is provided to assist counties in implementing quality contract defender programs. In many cases, the commentary is based on model guidelines for providing quality indigent defense services. The sample attorney fee vouchers are designed to capture needed information in a format that is suited to contract, rather than assigned counsel systems. The rules were ratified by the Texas Judicial Council in September and become effective January 1, 2007, after which point all jurisdictions will be required to follow them. The rules, commentary and sample attorney fee vouchers are available [here](#).

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

Revision to Model Affidavits of Indigence

Model Affidavits of Indigence were promulgated by the Task Force on July 30, 2003 that jurisdictions could use to collect financial information on defendants who request appointment of counsel. The signature section of the model forms do not contain the statement required by Subsection (o), [Article 26.04](#), Code of Criminal Procedure, which is required to be signed under prior to determining indigence. We have updated the forms with the required language and they are available [here](#). We recommend that you make sure that whatever forms you use comply with the required statement the defendant must sign under oath in accordance with Art. 26.04(o).

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

State Bar adopts "Guidelines and Standards for Counsel in Capital Cases"

The State Bar of Texas' Board of Directors adopted on April 21, 2006 guidelines for the representation of defendants in capital cases. The guidelines were developed by the State Bar Standing Committee on Legal Services to the Poor in Criminal Matters, which in turn modeled them on standards adopted by the American Bar Association in February 2003. Roy Greenwood, the primary drafter for the bar, presented them to the November 15th meeting of the Task Force's Policies and Standards Committee. The guidelines are intended to set forth a state-wide standard of practice for the defense of capital cases in order to ensure high quality legal representation. They extensively detail the steps necessary to provide such representation at the trial level, on direct appeal, in writs of habeas corpus, and in clemency proceedings. They are available for viewing [here](#).

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

Program Monitoring Report: How to Conduct an Initial Indigent Defense Self-Assessment

Self-assessment is a technique where the local jurisdiction periodically samples relevant data to determine how well it is meeting the objectives of the Fair Defense Act (FDA). The Task Force recommends that self-assessments be conducted to verify procedures and operational practices (e.g. local plan, rules and procedures, attorneys' applications, attorneys' CLE hours). Self-assessments ensure familiarity with county policies, procedures, and operational practices. Moreover, best practices indicate that internal periodic reviews of documents/forms and processes assist in identifying possible problems or errors. Self-assessment can be performed by any jurisdiction and adds accountability to the indigent defense process. Court personnel may have an internal belief of performance based on experience with a part of the indigent defense process, but without actual records, one cannot know the effectiveness of the system. Self-assessment items are [here](#).

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.

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

U.S. Department
Of Justice

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, 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.

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 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. In FY2008 the Task Force may consider revisions to the formula.

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.

New Equalization Disbursement Policy and Funding Adopted on November 15 Meeting

The [new equalization policy](#) sets a floor on the amount of reimbursement for increased indigent defense costs a county receives by taking available funds set aside in the budget and raising the state percentage of reimbursement on as many counties as the funds will allow. The equity this new policy provides is that no county is reimbursed by state funds for increased indigent defense costs less than the 23.88%. 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. The policy will remain in effect each year. Funds will only be budgeted and payments made when collections and other budget conditions are favorable without adversely affecting other funding methods.

The 67 counties receiving payment under this program are varied in size and characteristics. The smallest county receiving a payment is King County (pop. 356). Harris County at over 3 million in population is the largest. Forty-three of the counties receiving a payment under this policy

For a complete listing of all currently scheduled meetings please go to the website [calendar](#).

have less than 100,000 in population. The median population was about 43,000. The size of payments varies from \$84 to almost \$500,000. See the [equalization disbursement schedule](#).

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.

FY2008 Discretionary Grant Season Scheduled

Do you have a good idea for a new demonstration or pilot indigent defense program? The Task Force has authorized staff to publish the FY2008 Discretionary Grant Request for Applications (RFA). The RFA is now available online [here](#) and is being sent to all 254 Constitutional County Judges. Here is what we know so far:

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 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

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

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 January 30, 2007. 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 16, 2006.

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.

Indigent Defense Costs Rise While Cases Paid Falls

Statewide indigent defense costs rose again this year to almost \$149 million from \$140 million in FY2005. This increase represents about a 63 % increase over the FY2001 expenses (FY2001 is the year before the Fair Defense Act was passed). The FY2006 totals are more than a 6% increase over FY2005 expenses. This change is larger than the previous year increase where costs rose about 2% for FY2004 to FY2005. The number of cases paid from FY2005 to FY2006 fell by 16,171 or 4%. It is uncertain at this time if reporting has improved or if these number represent a statewide unit cost increase for indigent defense services. More detailed analysis will be provided in the Task Force's Annual Report to the Legislature in December 2006.

All but two Texas counties completed the [Indigent Defense Expenditure Report \(IDER\)](#) required under Government Code Section 71.0351. Ninety-four percent of counties completed the report on time. The Task Force staff is grateful that counties have continued to provide timely and accurate report data. The judges, auditors, and treasurers involved in submitting the IDER have done an outstanding job of complying with the statute and quickly resolving any missing or conflicting data we discovered. This year because of the high level of cooperation from judges and financial officers the annual desk review process was complete in a record two weeks after the submission date. Official action on the non-reporting counties will be considered at a later date.

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

Fiscal Monitoring Program

Report of monitoring visits

This chart summarizes 13 on-site fiscal monitoring visits, from September 1, 2005 – October 31, 2006.

County	Date of Site Visit	Status of Report
Grayson County	September 15, 2005	Complete
Lubbock County	September 27, 2005	Complete
Fort Bend County	February 14-16, 2006	Complete
Harris County	March 28-30, 2006	Complete
Atascosa County	April 4, 2006	Complete
Karnes County	April 5-7, 2006	Complete
Kaufman County	April 25-28, 2006	Complete
Taylor County	June 6-8, 2006	Complete
Bexar County	June 20-22, 2006	Complete
Smith County	July 25-27, 2006	Final Pending
Dallas County	August 1-3, 2006	Complete
Tarrant County	August 30-31, 2006	Complete
Webb County	October 10-13, 2006	Draft Pending

Reminder to counties to update contact information

It is important to maintain county contact information on the PPRI database so that communication is not interrupted. Please visit your county home page today and verify that names, phone numbers, email addresses, physical addresses are up-to-date. Please visit <http://tfid.tamu.edu/>

Thank you!

Indigent defense fiscal issues identified for improvement

1. Attorney fee vouchers. Some attorney fee vouchers were incomplete for adult and juvenile cases. The attorney fee voucher has a location designated for the signature of the presiding judge and attorney. However, often the signature of the presiding judge or attorney was missing from the attorney fee voucher. The statute and corresponding grant eligibility condition requires that *“no payment shall be made until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment.”* Since the statutory report is built on the payment orders or instruments which the county uses, it is crucial that the county institute payment procedures that allow for the accurate collection of fiscal and case data for each court.

2. Fee schedule. The revised fee schedules adopted by the formal action of the judges from the county courts, statutory county courts, and district courts that try criminal cases in each county are often not submitted to the Task Force. A copy of the revised adopted fee schedule should be submitted to the Task Force as required under Section 71.0351, Government Code. Each fee schedule adopted will state reasonable fixed rates or minimum or maximum hourly rates. The fee schedule must take into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates. The attorney fee voucher is utilized by the appointed counsel to itemize the types of services performed in accordance with Article 26.05(c), Code of Criminal Procedure.

3. Approval of Qualified Attorneys. The appointments of attorneys to represent indigent defendants were not adequately documented in the courts. All qualified attorneys must be approved by a majority of the

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judges in accordance with Article 26.04, Code of Criminal Procedure. Texas state law requires that the appointment of counsel in each court be made from a pool of qualified attorneys “approved by a majority of the judges” by formal action as defined in Article 26.04(d)-(e), Code of Criminal Procedure. Judges shall evaluate the qualifications of the applicants and by a majority vote select the attorneys and specify the case types each attorney is qualified to handle. The judges together by formal action determine which attorneys are accepted in all courts. The formal action by the majority of judges serves as the basis for selection and payment of attorneys.

4. Continuing Legal Education (CLE) Requirement. The CLE requirements were not consistently documented for attorneys. Attorneys appointed to represent indigent defendants or juvenile respondents must complete a minimum of 6 hours of CLE pertaining to criminal or juvenile law, respectively, during each 12-month reporting period in accordance with Title 1, Chapter 174, Texas Administrative Code. CLE may include activities of self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. In addition, the judges in each county may require attorneys to complete more than the minimum number of hours of criminal CLE. Thus, attorneys’ CLE requirements must meet the Task Force standards and county local plan. Task Force recommends that counties require attorneys to submit proof of documentation. The documentation may include a copy of the attorney’s minimum continuing legal education annual verification report from the State Bar of Texas of CLE courses in criminal or juvenile law for the requisite number of hours. See the [Texas Administrative Code](#).

Desk reviews of expenditure reports

The staff is currently conducting desk reviews of 254 counties’ FY 2006 expenditure reports. The purpose of the desk reviews is not to burden the court appointed counsel but enable the county auditor or treasurer to accurately report the number and types of cases. The Indigent Defense Expenditure Report (IDER) serves two purposes: 1) fulfills the statutory requirements listed in Section 71.0351(c), Government Code; and 2) serves as the annual formula grant report.

In reviewing expenditure reports, several counties have missing data elements. The missing data elements include the administrative expenses, program income, and expenditures reported for each court. The major missing element in the on-line expenditure report is the total amount of money collected from defendants for reimbursement of court appointed attorney fees. Counties are contacted by telephone, facsimile, and email to collect and confirm the accuracy of the expenditure report data.

The most important issue when submitting the expenditure report is that counties’ case counts are based on the payment instrument/cases paid. The expenditure report will only be accurate to the extent that counties maintain good record keeping systems in accordance with government generally accepted accounting principles as required in Title 4, Chapter

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.

112, Local Government Code. To report the “state of indigent defense” accurately, the Task Force relies on the data submitted by the counties. Counties must report actual court and administrative indigent defense expenses as well as summary case data associated with the reported expenses. See the [Procedure Manual for the Indigent Defense Expenditure Report FY2006](#).

FY 2006 Status Report of Indigent Defense Expenditure Report Reporting Period: October 1, 2005 – September 30, 2006

Status Count, as of November 17, 2006:

Certified Complete	250
Submitted Pending Staff Review	2
Not received	2

Thanks to all the county officials and employees who provided indigent defense expenditure information.

For additional questions or comments, please contact Carol Conner, Fiscal Monitor, at (512) 936-7561 or carol.conner@courts.state.tx.us.

Findings from the Indigent Defense Workshop

Each year in October the Task Force has presented an annual workshop. In 2003-2004 the workshops were geared towards educating newly funded or created indigent defense coordinators. Since 2005 the workshop format has been modified to address county elected officials and the workshop requires a ‘team’ of a cross-section of county division leaders (court, law enforcement, prosecution, defense, etc.). A small number of counties were asked to attend this year’s workshop. The advisory panel and staff chose counties with expenditure spikes and that not participated in past years’ workshops. What was learned from this workshop is that all counties basically share four common issues:

- Decentralized criminal justice systems
- Determining indigence and verification
- Attorney accountability issues; and
- Technology (software and tracking systems)

County team attendees quickly saw from presentations and small workgroup sessions that collaboration and integrated processes were the keys to success. This requires a complete shift of focus from individual players to the *entire process*. Many counties expressed willingness, even eagerness, to partner with other criminal justice entities in their respective counties to implement some of the ideas they got from the workshop.

Please remember that if your county needs information on best practices and processes, to contact the Task Force for [Technical Assistance](#) provided



*Judge Lee Hamilton,
Local Administrative
District Judge, Taylor
County, attended the
workshop*

by staff.

The workshop is becoming an increasingly popular event and we apologize not being able to accommodate every county across the state who may have wanted to come as space was limited. We hope to be able to accommodate more attendees at future events. Stay tuned for announcements for future workshops.

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.

Program Spotlight

Travis: TCAMS (Travis County Appointment Management System)

By: Nolan Martin, IT Manager, Travis County Criminal Courts

In March 2004, the Task Force on Indigent Defense awarded Travis County a discretionary grant to improve the overall quality of service provided to indigent defendants. Travis County utilized the grant funds to implement the Travis County Appointment Management System (TCAMS) in 2005.

TCAMS is an Internet application that provides court appointed attorneys in Travis County the ability to: view and manage appointments; view posted messages and warnings; view and edit their personal profile information; and view current docket and case information.

TCAMS enables attorneys to obtain and manage their appointment information related to their indigent defense duties in a convenient, time-saving way. It is accessible from any Internet access point (office, home, courthouse, restaurants, etc.) as well as through a set of kiosks conveniently located within the Travis County Criminal Justice Center. As a result, attorneys have more immediate access to their appointment information and are able to more readily make contact with their defendants.

Prior to the implementation of TCAMS, Criminal Courts staff faced the manual and labor intensive tasks of inputting information related to attorney / client contact. At the time, Criminal Courts judicial aides received notification from an attorney that he or she had met with the represented client through two different methods – by fax and in person. Each of these methods was time consuming, resulting in hours of additional work each week, as a judicial aide would dedicate time to receive and manually input the contact information into the appointment database application.



Travis County court appointed defense lawyer, Mr. Wade Russell, utilizing the Travis County Appointment Management System (TCAMS).

TCAMS allowed the Criminal Courts staff to recover time previously spent on these manual tasks. With TCAMS, attorneys input their own contact information (eliminating the need for staff to input information from faxes); they manage and update their own personal profile information; and they have greater access to more real-time information (reducing phone calls to court staff).

Travis County continues to work with local defense attorneys to identify ways to improve the TCAMS application and to make it more useful and user friendly. The criminal courts actively seek ongoing feedback and input from individual attorneys as well as local defense attorney groups. For additional information on the TCAMS application, please review the online site dedicated to TCAMS: <http://www.co.travis.tx.us/tcams> or e-mail tcamshelp@co.travis.tx.us.