



Texas Task Force on Indigent Defense

August 2006

Volume 4, Number 4

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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

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

Formula Grant Award Set

The Task Force set its budget for the FY2007 fiscal year. The formula grant budget was set at \$12 million dollars. The Task Force usually sets the initial allocation lower until the final unexpended funds are carried forward from the actual disbursements to counties based on the FY2006 Indigent Defense Expenditure Reports (IDER). Some counties will not expend all of their grant funds in FY2006. The resulting returned or unexpended funds are usually re-disbursed through the formula grant or other types of disbursements.

Constitutional County Judges will receive the FY2007 Formula Grant Packets within the next week. The local administrative district and statutory county judges and financial officers will receive a courtesy letter [Article continued on page 5.]

Message from the Chair

The end of the state fiscal year on August 31 marks major accomplishments: four new public defender programs (funded with FY06 and 07 Discretionary Grants); funding for extraordinary indigent defense expenses (see page 8); enhanced funding for rural areas through the direct disbursement policy (see page 5); and various studies.



Jim speaks about the recent SJI/PPRI study in his message below, but I wanted to express appreciation on behalf of the Task Force to the counties who participated in the study: Bexar, El Paso, and Harris counties all demonstrated leadership and the spirit of public service by agreeing to serve as study sites, and opening their criminal case processing systems to the research team. The Task Force appreciates these counties' help in improving Texas' criminal justice system overall. Please see the Resolution recently passed by the Task Force at: <http://www.courts.state.tx.us/oca/tfid/resolution2.pdf>.

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

Message from the Director

Task Force Members
(continued):

Wallace Jefferson
Chief Justice, Supreme
Court

Terry Keel
State Representative

Orlinda Naranjo
Travis County Court at Law
#2

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

To promote effective public policy, the Task Force through its partners conducts in-depth research to provide policy makers the hard data to make informed decisions on the state of indigent defense issues affecting local and state government. The purpose of this research is to identify what works and what can work better for counties to provide quality indigent defense services in a cost-effective way. "Evaluating the Impact of Direct Electronic Filing in Criminal Cases: Closing the Paper Trap" is an example.



It is available online on the Task Force website at:

[http://www.courts.state.tx.us/oca/tfid/Final%20Report%207-12-06%20\(2\)%20w%20ackn.pdf](http://www.courts.state.tx.us/oca/tfid/Final%20Report%207-12-06%20(2)%20w%20ackn.pdf).

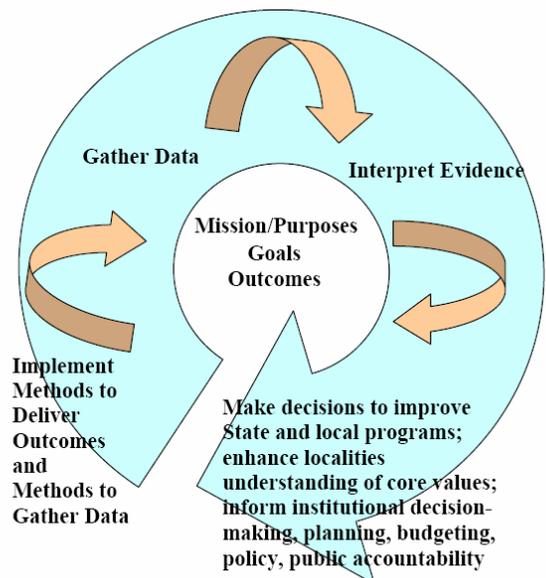
As another means by which to gather empirical data, staff has begun piloting its evidence-based practices to promote local compliance and responsibility with core requirements of the Fair Defense Act. Please see Joel Lieurance's article on page 4. Joel is responsible for analyzing data collected at the local level, reviewing local county indigent defense plans and practices, and then reporting those findings to the local jurisdiction and Task Force.

Through this process, the Task Force acts as an enabler to local government by noting factors driving successful indigent defense service levels in the individual counties and by showing how county indigent defense services could be improved through utilizing models and best practices followed in counties across the State. The Task Force appreciates the counties' continuous efforts in this process.

My best,
James Bethke, Director

The figure to the right illustrates An Evidence-Based Practice Cycle

Adapted from Maggy Maki, Ph.D. by Marilee J. Bresciani, Ph.D. and used with permission by the Texas Task Force on Indigent Defense



 *Policies and Standards:*

**Chair: Knox
Fitzpatrick
Terry Keel
Orlinda Naranjo
Tony Odiorne
Olen Underwood**



Policies and Standards Committee members on August 24th, left to right: Tony Odiorne, Knox Fitzpatrick. Also third and fourth from left, Judge Sharon Keller, Chair of the Task Force and James Bethke, Director of the Task Force

Policies and Standards Update

Contract Defender Program Rules Adopted

At its meeting on August 24th, the Task Force voted to adopt new rules to establish minimum requirements for the use of contract defender programs to provide indigent defense services. The rules were publicized in our last newsletter, published in the June 16th edition of the Texas Register, and no comments were received. They will become effective on January 1, 2007 if ratified by the Texas Judicial Council at their September 20th meeting as required by Section 71.060(b), Government Code. The Task Force also plans to develop supplementary materials this fall to assist counties and courts implement the rules. You may view the rules at:

http://www.courts.state.tx.us/oca/tfid/Contract%20Defender%20Programs%20Rules%20w%20preamble%20_Document%203_.pdf

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

Legislative Recommendations Adopted

At its meeting on August 24th, the Task Force wrapped up a summer-long project of developing recommendations to the legislature for the improvement of the indigent defense system. The process included the convening of a broad-based stakeholders' workgroup that met three times this summer to consider proposals and make recommendations to the Policies and Standards Committee. The Committee met once with the workgroup on August 11th and then again on the 24th to consider the proposals. The recommendations were made under authority in Section 71.061, Government Code. They will next be presented to the Texas Judicial Council and forwarded to the legislature and governor.

Among the recommendations is a proposal to remove the sunset provision on a legal services fee paid by attorneys licensed by the State Bar of Texas. The funds, which amounted to about \$1.9 million this year, are used for discretionary grants to promote innovative indigent defense programs. The funds are set to expire on September 1, 2007 unless the legislature acts. The Task Force is also proposing revisions to the process for creating public defender offices based on feedback from jurisdictions that have undergone the process under the existing law. The main effect will be to allow counties and courts to first decide whether they want to create a county department or procure a nonprofit corporation. Only if they choose the latter option would they then solicit proposals. Under current law, counties must solicit proposals from nonprofit corporations and

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

U.S. Department
Of Justice

governmental entities, setting up the awkward submission of a proposal by a county to itself. Another key recommendation would provide for separate minimum qualifications for trial and appellate representation by attorneys seeking appointment in death penalty cases. Setting different standards for appellate counsel in death penalty cases will allow greater specialization in representation in death penalty cases and enable highly skilled appellate attorneys to represent defendants on appeal without having to meet the current trial requirements. Other recommendations would improve the system of paying attorneys appointed to represent indigent state inmates. A complete listing of recommendations may be seen at: <http://www.courts.state.tx.us/oca/tfid/Legislative.asp>.

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

Program Monitoring Report

The Task Force has begun making test site visits to local jurisdictions as a part of implementing an evidence-based practice system. Voluntary site visits were made to Cherokee, Coryell, and Johnson Counties between June 1 and August 24, 2006. Additional visits to Nolan and Mitchell Counties are scheduled for August 28 through August 31, 2006. The site visit focuses on the following: review of the local indigent defense plan; measuring time from arrest to magistration (must be within 48 hours of arrest); the content of the magistration warning (whether all Article 15.17 warnings are stated); checking for timely transmittal of requests for counsel from the magistrate to the appointing authority (within 24 hours of the request); measuring times to appointment of counsel (within one or three days of receiving request); checking that attorneys promptly meet with clients; checking that only qualified attorneys are on appointment lists; checking for payment of necessary expert witness and investigative expenses; and checking that appointments are made in a fair, neutral, and non-discriminatory manner.

One finding from initial test visits has been that jurisdictions would benefit from periodic self-assessments. So what is self-assessment and why do it?

Self-assessment is a technique where the local jurisdiction periodically samples relevant data to determine whether core fair defense requirements are being met. To perform a self-assessment, a system of centralized record keeping should be in place. A reviewer must be able to look at a defendant file and determine if magistration was conducted in a timely manner, if a request for counsel was timely transferred, if determination of indigence and appointment of counsel was timely, and whether counsel made timely contact with the client. If files have to be matched between multiple locations (e.g. the jail, the justice-of-peace's office, and the courthouse) to determine whether fair defense requirements were met, a self-assessment study is complicated and time-consuming. 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.

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.

Grants and Reporting Update

Formula Grant Award Set (continued from page 1)

informing them of the packet about a week later. The grant application and the allocation schedule are now available on the Task Force website at:

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

Grant applications will be due on **October, 23, 2006**. Low expending counties (those counties not receiving grant funds or receiving only a portion of their grant) need to review their expense pattern to determine whether they should be in the formula grant or direct disbursement pool. The Task Force will meet in November or December to award the FY2007 Formula grants and determine the best way to disburse returned or unexpended funds. The Task Force policy on the Direct Disbursement program is to reduce application procedures for counties that have both low incidence of crime and low indigent defense costs. A county that has not spent any formula grant funds in the preceding year and does not apply for a formula grant in the current fiscal year may submit receipts for direct disbursements. If it experiences indigent defense costs above its baseline year amount, such a county is eligible to receive up to twice the amount of the initial allocation of funds for the county under the formula grant program as established by the Task Force prior to issuing the Request for Applications. See the full Direct Disbursement Policy at: <http://www.courts.state.tx.us/oca/tfid/Direct%20Disbusment%20Policy%20revd%2011%2020%2003.doc>.

The grant program is substantially the same this year. One point of clarification we added into the program rules was condition "Q." It provides that counties receiving Formula Grants must understand that their *[a]ctual indigent defense practices and procedures within the county must substantially conform to the Fair Defense Act and the Indigent Defense Information (Countywide Plans)*. This makes explicit what we believe has always been implicit in our funding. This also helps counties and courts to consider self-assessments and other tools to monitor their compliance with the Fair Defense Act and their own plans (see program monitoring report on page 4.)

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.

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

We would like to hear from you!

The Task Force is considering changing its Regional Training format. Many have participated in the past. Some people have commented that they would like to see more indigent defense issues. E-mail us and Let us know your ideas and what you would like to see in our training at FairDefense@courts.state.tx.us.

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

Grant and Report Training Announced

The Grant and Report training session will be reduced for this fiscal year to one scheduled statewide event. The training will be held in Austin on Wednesday, September 27, 2006, at the Texas Law Center (Room 101) located at 1414 Colorado Street. The program will begin at 9:30 a.m. and end at 12:00 p.m. The session will cover the Formula Grant Program, Direct Disbursement Program, Indigent Defense Expenditure Report (IDER), and Extraordinary Disbursement. General Information will be provided about the Discretionary Grant Program at the end of the session.

Registration will be an online process. Beginning on September 4th, 2006, counties may go to <http://tfid.tamu.edu/> to log in and register their attendance. Counties may contact Grant Administrator, Bryan Wilson, to schedule other sessions on a regional basis.

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.

Expense Reports Are Due November 1

The Indigent Defense Expenditure Report (IDER) is a statutorily required report that all counties submit every November 1. This report captures all indigent defense related expenses and a count of the corresponding cases causing those payments. The statute requires this report be submitted by court by county. There have been some slight revisions to the report this year. Some of the significant changes or clarifications:

- 1) Fiscal Categories Line up with Case Count Categories – The biggest change this year will be aligning the fiscal category with the case count categories. In an effort to simplify the report in the past we inadvertently created several challenges related to functionality of data. This year's change requires counties to report cases and expenditures by felony or misdemeanor. If counties cannot provide this information this year, then be sure to implement systems to track this data for next year. There were very few comments from the auditor's list-serve on this issue.
- 2) Use Real Data – The IDER has been in place for over 4 years now. Counties must have procedures in place to count fiscal and case data. In the beginning of the Fair Defense Act implementation, counties were given some latitude to develop court processes and accounting procedures that allowed for the transactions to be collected in a manner consistent with the report. Data collection must be implemented in such a way that financial officers may collect the statutorily required information. Counties that still do not capture fiscal data and the case count information from the attorney fee voucher or other payable instruments are unable to provide true corresponding fiscal and case data.

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

- 3) Use Only Fiscal Officer Data – Some counties continue the practice of using payable instruments for the fiscal report and clerk appointment data for the case count. This is an “apples and oranges” type collection of data. Clerks report to the Office of Court Administration certain data elements related to cases added, disposed and appointment of attorney. The appointment of attorneys in the clerks’ office does not directly correspond to the number of cases associated with specific payments. It is imperative that when a payment is made that the fiscal officer be able to determine at the time of payment how many cases are associated with the payment.
- 4) Report All Courts – Some counties are not reporting all courts that hear criminal and juvenile matters. If a court does not have criminal jurisdiction by statute or local adopted rule then state in the notes sections of the court page the basis for the exclusion. Failure to report a specific court’s information could result in delayed or withheld grant payment.
- 5) No Charges Filed – The need for this non-statutory category has been dwindling. It was intended to be a reasonable method to account for cases where magistrates or court designees appointed attorneys before charges were filed. When the case was dismissed and the attorney submitted a payment then the financial officer did not know how to report the case. We are adding a financial break-out to help determine how helpful this type of tracking is outside of the statute.

The data collection on indigent defense is a substantial part of the Fair Defense Act. Good data assists the Task Force and Legislature decide how best to serve the needs of counties. Equitable fund distribution, adjustments to the Fair Defense Act, and planning studies are ways that good data can be used to assist counties in implementing the constitutional requirement of providing appointed counsel.

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.

Advance Payment Notification (APN)

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

To take advantage of this new service, please log onto the State Comptroller’s website at: www.cpa.state.tx.us/fm/payment. A page will come up listing payment services for state vendors and state employees. Go to the state vendors section, page down to resources and click on

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

Advance Payment Notification. This page will explain the features of APN. To take advantage of this new feature, go to the box to the right and click on the Advance Payment Notification Authorization (74-193) form. Follow the instructions and complete the form. You may mail or fax the form back to the Comptroller, the address and fax number is located at the bottom of the form.

We hope this service will be of benefit to your county's accounting and/or audit section.

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

Galveston and Haskell Counties Receive Extraordinary Funds

The Task Force reimbursed two counties for extraordinary expenses at the August 24, 2006 meeting. The Task Force had set aside \$350,000 this year and two counties applied. Counties experiencing an indigent defense event “constituting a financial emergency” should review the policy to determine whether they should submit an application. The Task Force has initially budgeted \$350,000 for extraordinary expenses for FY07. The policy is online:

[http://www.courts.state.tx.us/oca/tfid/Extraordinary Expense Disbursement Fund Procedures.asp](http://www.courts.state.tx.us/oca/tfid/Extraordinary_Expense_Disbursement_Fund_Procedures.asp). Contingent on funding, these awards are issued on an annual basis in August.

FY 2006	Requested	Recommended	Type of Request
Galveston	\$84,054	\$84,054	Capital Murder
Haskell	\$7,500	\$7,500	Increased Cost
Total:	\$91,554	\$91,554	
FY06 Extraordinary Budget:		\$350,000	

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.

Summary of Fiscal Monitoring Program

Report of fiscal monitoring visits from February 1, 2006 through August 31, 2006

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.

The chart to the right reflects a summary of ten on-site fiscal monitoring visits conducted during the above-specified timeframe.

Please call Carol Conner, at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about the fiscal monitor program.

County	Date of Site Visit	Status of Report
Fort Bend	February 14-16, 2006	Complete
Harris	March 28-30, 2006	Complete
Atascosa	April 4, 2006	Complete
Karnes	April 5-7, 2006	Complete
Kaufman	April 25-28, 2006	Complete
Taylor	June 6-8, 2006	Complete
Bexar	June 20-22, 2006	Complete
Smith	July 25-27, 2006	Pending
Dallas	August 1-3, 2006	Pending
Tarrant	August 30-31, 2006	Scheduled

Summary of Findings

Indigent defense fiscal issues

Three indigent defense fiscal issues were identified for improvement:

1. Attorney fee vouchers. Some attorney fee vouchers were incomplete for adult and juvenile cases. The attorney fee voucher has a designated section for the attorney and presiding judge signatures. However, often the attorney or presiding judge signature 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.” The statutory report is built on the payment orders or instruments a county uses, so it is crucial that counties institute payment procedures that allow for accurate collection of fiscal and case data for each court.

2. Court reporters. The routine court reporter fees and cost associated with court reporting are not allowable indigent defense expenses. Counties expending additional funds for transcription fees (statement of facts) on behalf of an indigent defendant’s appeal may claim the additional direct cost as “other litigation expenses.” The Task Force has adopted the Uniform Grant Management Standards (UGMS) as the standard for administering grants and determining allowable and unallowable cost. The same principles are used for reporting counties’ indigent defense costs as defined by Section 71.0351(c), Government Code.

3. Attorneys’ Applications. Some counties are not maintaining attorneys’ applications or documentation of the Request for Qualifications on file. The documentation validates the qualifications for appointed counsel and the attorney application process with specific objective qualifications (e.g., years of criminal experience, number of jury trials, number of appeals,

**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!

etc). Code of Criminal Procedure, Article 26.04, requires that only attorneys who apply may be on the public appointment list. Links to the Code of Criminal Procedure and Texas Comptroller of Public Accounts, Model Purchasing Manual for Texas Cities and Counties are available, respectively, at:

<http://www.capitol.state.tx.us/statutes/cptoc.html> and
<http://www.cpa.state.tx.us/lga/purchasing/96-449.pdf>

Without the attorney application or qualification documents on file, a determination cannot be made whether attorneys appointed and paid meet the objective qualifications specified and approved by the majority of judges. The Task Force recommends that courts maintain applications completed by attorneys as the underpinning for a fair, neutral, and nondiscriminatory appointment process as required by the statute. The applications would demonstrate that attorneys paid were qualified under the county's plan.

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.

Program Spotlight

El Paso: Impact of the Public Defender's Office's Mental Health Unit on the Courthouse and Community

By: Robert Riley, Supervising Attorney, El Paso Public Defender Mental Health Unit

The El Paso County Public Defender's Office launched their Mental Health Unit (hereafter referred to as MHU) in May of 2004. The MHU provides specially trained counsel to meet the needs and challenges of indigent defendants with mental illness and/or mental retardation. The MHU is an innovative and proactive group, wherein the attorneys, working with social workers, specialize in representing mentally ill defendants. Appropriate treatment plans are developed with mental health professionals and community agencies. The MHU advocates for dismissal of the charges, reduced sentences, reduced jail time and makes advocacy referrals to facilitate access to appropriate medical care.

Since funding for mental health programs has been dramatically cut and is being reduced further, the jails and prisons are housing more individuals with mental impairments. As a result, those individuals with mental illness and mental retardation are not receiving the appropriate treatment. The El Paso County Public Defenders conceptualized an innovative approach

to legal and mental health services that combines expertise in both these critical areas for the benefit of mentally impaired defendants.

In the two years since the MHU was implemented at the El Paso County Public Defender's Office, there has been success in meeting the initial goals of the unit, and we have seen some significant positive changes for the mentally ill involved in the criminal justice system. The MHU has been successful in decreasing jail time, linking defendants with services and decreasing the time it takes for cases to be adjudicated.

In order to do this we have developed working relationships with many different entities involved with the criminal justice system. A primary example of this is our work with new arrests. We are able to utilize the Jail Magistrate Court to give our clients the opportunity to go before the Judge for Bond Reduction Hearings very shortly after our office is appointed to the case.

With our specially trained staff we are able to provide an initial treatment plan for our clients if they are released from jail. We have a member of the El Paso Mental Health / Mental Retardation Authority (MHMR) who offices in MHU part time. With cooperation with MHMR the development of treatment plans is simplified and streamlined.

Client's who are in immediate need of treatment are presented to the County Attorney's office for an Emergency Detention. Those that are approved are sent for immediate court ordered treatment rather than being held in jail. It is also the practice of the unit to immediately identify those clients who are not competent and have them evaluated while in the pre-indictment stage.

Most of our indicted and or filed cases are referred to a special Competency Court, which handles only these proceedings regarding competency issues. By working closely with the Judge we are able to have evaluations done and commitments ordered quickly. Our clients benefit by receiving much needed treatment needed to gain competency to proceed through the legal system.

One of the most positive impacts the unit has had, is with the courts themselves. Both judges and prosecutors know immediately that there are mental health issues when they see the attorney that is assigned to the case. It is an immediate sign to these people that the client is unique and requires a different approach. Unit attorneys have developed very positive working relationships with prosecuting attorneys to ensure a rapid resolution to the simple cases and decreased time on the trial docket for the more serious.

By decreasing the jail time and the court time that these cases take, there is an overall savings to the county not only financially but also in easing the stress placed on staff who deal with these very special clients.

MHU Attorneys are highly trained not only in criminal law but mental health law as well. These attorneys and our social workers have become

very important resources for both the legal and mental health community. Currently we have staff members serving on the El Paso Coalition for the Homeless, El Paso Interfacility Task Force for the Mentally Ill, and the Mental Health Court Planning Committee.

Would you like to see your county featured in a Task Force e-Newsletter or the 2006 Annual Report?

If so, please give us your idea for a success story. Photos are also welcome. Articles will describe a creative way on how a county overcame a challenge after the Fair Defense Act went into effect. When we share these stories and best practices it becomes a model for other counties and helps Texas overall. Please contact Terri Tuttle at (866)499-0656 or email terri.tuttle@courts.state.tx.us.