



Texas Task Force on Indigent Defense

May 2006

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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.

Task Force Awards FY2007 Discretionary Grants

On May 25th, the Task Force awarded discretionary grants totaling more than \$2.1 million to improve indigent defense in Texas counties. "These grants help counties try innovative new ways to comply with the Fair Defense Act," said Tarrant County Commissioner Glen Whitley, who is a member of the Task Force. (Continued on page 6.)

Message from the Chair

Task Force members and staff welcome a new member to the Task Force: Senator Jeff Wentworth. The Senator's bio is available online at: <http://www.wentworth.senate.state.tx.us>. We are looking forward to his valuable input on the Task Force mission.

The big news following the recent Task Force meeting was in newspaper articles proclaiming the recent discretionary grant award to Travis County which establishes the first mental health public defender office, not only in the state, but in the nation. This undertaking was three years in the making. It is an astonishing feat and I commend Travis County for its hard work and dedication.

I encourage other counties that may be considering whether or not to establish a public defender office to be sure and read the *Blueprint for Establishing a Public Defender Office in Texas* which is a guide and provides a feasibility study to determine whether or not creating a public defender office makes sense. This publication is on the website at: <http://www.courts.state.tx.us/oca/tfid/Blueprint.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

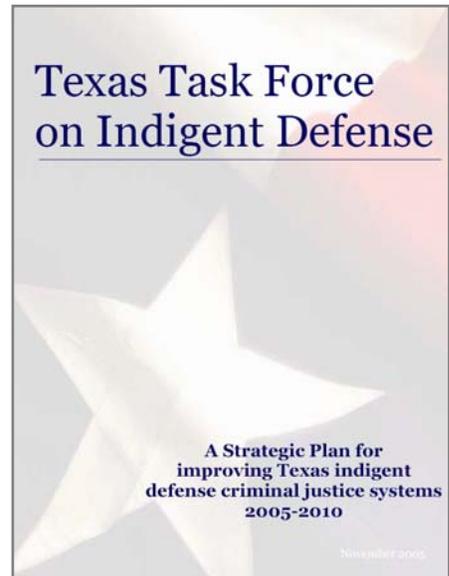
Todd Smith
State Representative

Jeff Wentworth
State Senator

Glen Whitley
Tarrant County
Commissioner

John Whitmire
State Senator

Recent work of the Task Force illustrates strong progress towards three major goals set by the Task Force at its strategic planning session last summer. If you have a moment to review "A Strategic Plan for improving Texas indigent defense criminal justice systems," please do. The Task Force values stakeholder input and feedback and we would welcome yours. The three goals to improve indigent defense are tied to 1) policies and standards development, 2) evidence-based practices to promote and ensure compliance with the Fair Defense Act, and 3) strategic funding strategies. Actions taken by the Task Force at its meeting on May 25th are in support of those goals. For example, under Goal One the Task Force approved for publication in the Texas Register contract defender standards (see article on page 3 by Wesley Shackelford). Under Goal Two, the Task Force completed a data-driven study of the Tarrant County indigent defense system (see page 4) as well as a summary of the substantive program monitoring currently under way (see page 6). Funding of a mental health public defender office in Travis County fits under Goal Three, in promoting a cost-effective way to deliver high quality indigent defense services to special need defendants.



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. Upcoming reports to be published this summer are: "Evaluating the Impact of Direct Electronic Filing in Criminal Cases: Closing the Paper Trap" and "Determining Indigence and the Cost-Effectiveness of Financial Verification." I highly recommend that you take a close look at each of these reports and see what recommendations you can incorporate into your local practices.

The Task Force places an emphasis on sharing information, models, best practices and the like with all criminal justice stakeholders through its published studies, newsletters, website, educational programs, on-site visits, and our toll-free telephone line.

And that's where my staff and I come in. Please do not hesitate to contact me or any of my staff directly for any assistance with any issue (preferably something related to indigent defense though!). The Task Force needs and

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

welcomes your participation.

My best,

James Bethke, Director

Policies and Standards Update

Proposed Contract Defender Program Standards

At its meeting on May 25th, the Task Force on Indigent Defense proposed new rules to establish minimum requirements for the use of contract defender programs to provide indigent defense services. The rules provide for an open attorney application and selection process by the judges or juvenile board in whose court(s) the attorney(s) will serve. The rules also require that certain specific items be included in a contract for indigent defense services and the contract be approved by the county. Development of minimum requirements for these programs is a key part of the Task Force's strategic plan. The rules were developed by a small workgroup made up of judges, court personnel, auditors, county officials, a defense lawyer, and a public interest advocate. The Task Force will consider the final adoption of these rules at their August meeting, along with a companion set of "Best Practices" for contract defender programs to be developed by the workgroup. Afterwards, the rules will be submitted for ratification to the Texas Judicial Council before becoming effective. You may see the proposed rules at:

http://www.courts.state.tx.us/oca/tfid/Contract%20Defender%20Programs%20Rules%20w%20preamble%20_Document%203_.pdf . Please submit written comments on the proposed rules to Wesley Shackelford at Wesley.shackelford@courts.state.tx.us or by fax to 512-475-3450 no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

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

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.

Ways to Improve Indigence Determination and Attorney Selection Processes

In March the Task Force released a report on Tarrant County's indigent defense system based on a site visit and review of its attorney selection and indigence screening practices. Some of the recommendations and changes the county is implementing may benefit other jurisdictions. Tarrant County has improved its indigence determination process at the front-end by hiring a single, part-time county magistrate and four financial information officers through a Task Force grant to screen in-custody defendants who request counsel. Before the new system was in place, the municipal court judges in 41 jurisdictions made these determinations. For those not requesting counsel initially or who make bond, indigence determinations are presently made by the statutory county courts using precious court time and with a limited ability to effectively screen the defendants. In the district courts, unrepresented defendants appear before one of three other county magistrates for an initial appearance setting to oversee this process. The Task Force recommended and the county has now decided to make the new magistrate full-time and broaden his duties to include screening of on-bond defendants in misdemeanor cases. This will reduce critical docket time of the judges and provide a meaningful review of requests for counsel by a magistrate who specializes in such determinations.

This change in process also has benefits in the attorney selection process by facilitating more appointments from the computer-maintained wheel system. When indigence determinations are made in court by the judge, an attorney then present in the courtroom is often appointed. By shifting this role to a magistrate, appointments are then made from the automated wheel system assuring that appointments are allocated evenly among qualified attorneys.

As another alternative, a county could create a public defender office to represent indigent defendants. In counties with such offices, public defenders appear at dockets for the courts to which they are assigned and can provide immediate attorney client contact for eligible defendants. It is also the system used in more than 80% of cases in urban counties nationally. Public defender offices *may* also be tasked with screening defendants to determine if they are indigent, thereby relieving the courts of this duty.

Lastly, many of the judges in Tarrant County perceived that the quality of court appointed counsel had gone down since the passage of the Fair Defense Act. They noted that there are some attorneys who meet the objective criteria but do not provide high quality representation. We recommended that the judges critically review the quality of representation actually provided by attorneys applying to be on the list and carefully

consider the removal of attorneys from the list who provide substandard representation to their appointed clients. These judgments can then be effectuated by the judges' votes to approve or remove attorneys from the list.

The full report is available at:

<http://www.courts.state.tx.us/oca/tfid/Tarrant%20County%20Report.pdf>

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

Funding Improvements for Indigent Inmate Defense

In the December 2004 newsletter we wrote about the limited funds available to pay assigned counsel for indigent inmate defense. At the time, funds to pay for services were typically depleted near the beginning of each state fiscal year and payments on subsequent claims were not made until the next fiscal year, when additional appropriations became available. Since no other appropriation is available, such claims are paid from the Miscellaneous Claims line-item in the General Appropriations Act. This amount was increased from \$2.94 million for the FY04/05 biennium to \$3.94 million in FY06/07. More importantly, the amount appropriated is now an estimated amount, rather than sum certain. This change means that the comptroller may pay claims even if they exceed the amount indicated in the line item. This should result in much prompter payments to attorneys who must be appointed locally to represent indigent inmates with criminal charges.

Although changes to the General Appropriations Act affected the funding mechanism for these claims, the substantive law remains the same. Claims from attorneys are paid under authority of the Miscellaneous Claims statute (Tex. Gov. Code 403.074), which is used to pay claims when no other appropriation source is available and claims for wrongful imprisonment. Although bills were filed that would have made changes to this statute, none passed the legislature. This means that claims are still limited to no more than \$25,000 for a single claim or aggregate of claims from a single claimant during a biennium. This limitation is most likely to be an issue when courts must appoint assigned counsel to represent indigent inmates on capital murder charges.

Additional changes to the funding mechanism may also result from two related cases pending before the Supreme Court of Texas. The actions are challenging the statutory limitation of \$25,000 per claimant per biennium and the prohibition on paying experts and investigators directly. The latter requirement means that they may only be paid through an attorney as part of the \$25,000 maximum in payment per biennium. The two cases are Case Numbers 05-1041, *Wingfield v. Strayhorn* and 05-1040, *In re Wingfield*. We will update you on the disposition of these cases in a later newsletter article.

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!

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

Program Monitoring Report

Beginning March 1, new staff addition Joel Lieurance serves as the Research Specialist for the Task Force. The purpose of this position is to promote local compliance and accountability with the core requirements of the Fair Defense Act through evidence-based practices. He is responsible for analyzing data collected at the local level, reviewing local county indigent defense plans and practices, and then reporting his findings to the Task Force on Indigent Defense. He 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 best practices followed in counties across the State.

As part of his efforts to implement an evidence-based practice system, the Task Force is about to begin regular on-site quality reviews in counties across Texas. Cherokee County and Coryell County have volunteered for quality reviews scheduled for June of 2006. Other counties have volunteered for visits, but schedules have not yet been set. Beginning in the fall of 2006, site visits will be determined by a risk assessment. The quality reviews consist of the following items:

- a pre-quality assessment interview;
- an on-site quality assessment;
- post-visit recommendations and a possible agreement on a work plan;
- a follow-up visit; and
- a report on changes/improvements in the local indigent system.

The process will focus on ensuring that county and court officials know their obligations under their county plan, that this plan is adequately executed to meet the critical time requirements of the Fair Defense Act, that the county becomes able to self-monitor its performance, and that available improvements are implemented into the system. The Task Force looks forward to meeting with county and court officials and appreciates local efforts to improve service levels to indigent defendants. For questions or comments regarding program monitoring, please direct responses to: Joel.Lieurance@courts.state.tx.us.

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

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

Grants and Reporting Update

Task Force Awards Discretionary Grants (continued from Page 1)

Travis County received a new multi-year discretionary grant, beginning with \$500,000 this year, to establish a public defender office to serve indigent defendants with mental illness. Staffed with attorneys and case workers, the office will represent defendants with mental health issues in their criminal cases. The program will help connect them to available services and treatment options. The office also will seek solutions to get and keep defendants with mental illness out of the criminal justice system.

“I commend the local officials in Travis County for putting forth a solid proposal to establish the first free-standing mental health public defender office in the state,” said Sharon Keller, presiding judge of the Court of Criminal Appeals and Task Force chair. “This program will help provide appropriate representation to a population that is challenging all areas of the criminal justice system.”

“We have been brainstorming over the past several years about how to improve the quality of legal defense for mental health clients,” said Travis County Judge Sam Biscoe. “This grant is a big piece of that solution for us.”

Willacy and Kaufman counties were both awarded new multi-year discretionary grants to create new public defender offices. Willacy County, in the lower Rio Grande Valley, was awarded \$189,664 to start its office. Simon Salinas, Willacy County Judge, said: “We really appreciate the state helping this county serve its poor and improving the representation.”

Kaufman County, near Dallas, will receive \$180,256. Howard Tygrett, Kaufman County state district judge, said: “This grant allows us to provide for the constitutional rights of people in our county more effectively.”

Lubbock County was awarded \$46,533 for a video teleconferencing system. “Video teleconferencing systems are the future of a lot of indigent defense processes,” said Thomas V. Head, Lubbock County Judge “This grant is great news moving us towards that future.”

Five multi-year discretionary grants for new direct client services were continued from last year in Bexar, Dallas, El Paso, Hidalgo, Limestone, and Val Verde counties totaling more than \$1.2 million. A list of counties awarded and the press release are online:

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

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.

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

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.

Timeline for FY2007 Formula Grant Program

The timeline for the FY2007 Formula Grants will follow a similar pattern as in previous years. Requests for Applications will be sent out after the August Task Force meeting. The automatic Formula Grant applications will be due on October 20, 2006. There will be no cumbersome forms to complete.

Officially the constitutional county judges are the primary persons to apply for grants from the Task Force. In addition to the constitutional county judges, we have provided log-in information with read and write access to the local administrative district and statutory county judges, auditors (treasurers where there is no auditor), and some indigent defense coordinators. Any of these listed persons may apply for the grant as long as we receive the commissioners court resolution and internet submission form after application is made.

6 Easy steps for counties to apply for FY07 formula grant (these instructions will be sent to all counties in August)

1. Log-in using the assigned username and password.
2. Verify the contact information is correct for each named position on the county's homepage.
3. Select Apply for 2007 Formula Grant
4. Name the Authorized Official and Program Director and select submit
5. Print off confirmation page and resolution/internet submission form.
6. Fax the resolution/internet submission form to the Task Force Grant Administrator

Direct Disbursement Pool

The direct disbursement pool we established on recommendation from the county associations is operating well. Many low expending rural counties that do not fully qualify for Task Force funds have stopped applying for the Formula Grant. They are reimbursed on actual expenses each August. They are able to avoid refunding money to the Task Force if they fail to expend above their baseline. In cases where they did not spend any grant or reimbursement money in the previous year they can qualify for up to double the grant allocation amount set aside for that county. The Task Force continues to encourage counties that have low indigent defense expenses to remain in the direct disbursement pool.

http://www.courts.state.tx.us/oca/tfid/TFID_Grant_Program.asp.

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.

Technical Support Policy

Task Force on Indigent
Defense
P.O. Box 12066
Austin, TX 78701

Phone:
(512) 936-6994
toll free:
(866) 499-0656

Fax:
(512) 475-3450

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

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

The Task Force on Indigent Defense (Task Force) is required by statute to provide technical support to counties. This is done in many ways. Staff has performed performance reviews, conducted training, and coordinated research projects. Technical support is developed in coordination with counties to provide improvement of indigent defense services under the director of the Task Force. All of these projects must raise the knowledge base about indigent defense. We always are seeking projects that can be generalized to similar situations in other counties.

Counties may apply for technical support by submitting a request to the director of the Task Force. These requests are considered based on availability of staff time, funds, and other required technical support resources. Once application is made, the director or his designee shall review the proposed project.

The county and Task Force staff shall negotiate the details of the project until an agreement is reached.

All technical support projects must result in a project paper that describes the project as it was implemented, the benefit the county received, a brief commentary from participants, and a brief discussion on implications or suggestions for other similar projects. The length of the paper will depend on the scope of the project but in no event be less than two full pages.

For an application go to:

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

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.

Here are Previous Technical Support Projects:

[Lubbock County's Final Report on Lubbock Mentoring Program](#)

[\[pdf\]](#) Lubbock County taped the sessions so that they could use the material covered in the trainings with future attorneys who apply to be on the court appointment wheel. If you would like to obtain the six tape series contact Terri Tuttle at terri.tuttle@courts.state.tx.us or call the Task Force at 866-499-0656 (TFID Toll Free Line)

[Review of Wichita County's Indigent Defense System--Findings and Recommendation](#) [PDF]

[Report on Dallas County's Indigent Defense System and Public Defender Office](#)

Read the [Resolution](#).

[Blueprint for Creating a Public Defender Office in Texas](#) [PDF]

[June 25, 2004 Press Release](#); a valuable tool for Texas local and state officials who seek a deeper understanding of what a "public defender" is and whether creating one makes sense.

Summary of Fiscal Monitoring Program

This chart reflects a summary of five on-site fiscal monitoring visits conducted during the above-specified timeframe.

County	Date of Site Visit	Status of Report
Fort Bend County	02/14/06-02/16/06	Complete
Harris County	03/28/06-03/30/06	Complete
Atascosa County	04/04/06	Complete
Karnes County	04/05/06-04/07/06	Final Pending
Kaufman County	04/25/06-04/28/06	Final Pending

Summary of Findings:

In monitoring the Task Force grants, three indigent defense fiscal issues were identified for improvement:

1) Approval of Qualified Attorneys

The appointments of attorneys to represent indigent defense defendants were not adequately documented. All qualified attorneys must be approved by a majority of the 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 in accordance with the Texas Code of Criminal Procedure, Article 26.04(d)-(e). 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 ultimately payment of attorneys.

2) Attorney Applications

Some counties are not maintaining attorney applications on file or documentation of the Request for Qualifications. The documentation validates the qualifications for appointed counsel or attorney application process with specific objective qualifications (e.g. years of criminal experience, number of jury trials, number of appeals, etc). The Texas Code of Criminal Procedure, Article 26.04, requires that only attorneys who apply may be on the list of court appointed counsel. Links to the Texas Code of Criminal Procedure and Texas Comptroller of Public Accounts, Model Purchasing Manual for Texas Cities and Counties are available at: <http://www.capitol.state.tx.us/statutes/cptoc.html> and <http://www.cpa.state.tx.us/lga/purchasing/96-449.pdf>

Without any attorney applications or qualification documentation on file, it is not possible to determine whether the attorneys appointed and paid have met 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

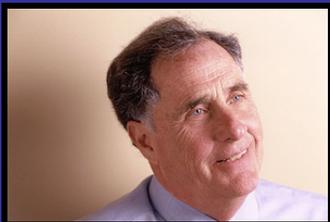
nondiscriminatory appointment process as required by the statute. The applications would demonstrate that attorneys paid were qualified under the courts' plan.

3) 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 your county local plan. Task Force recommends that counties require attorneys to submit documentation annually. 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. The link to the Texas Administrative Code is available at: <http://www.sos.state.tx.us/tac/>

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.

Robert O. Dawson Award



Bob Dawson was a beloved law professor and an important reformer (Photo credit: Wyatt McSpadden).

http://www.utexas.edu/law/news/2005/022605_dawson.html

<http://tarlton.law.utexas.edu/archives/dawson.html>

http://www.tjpc.state.tx.us/whats_hot/previous/DawsonMemorialBook.pdf

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

A complete Award Nomination Form must be submitted for each award. Award Nomination Forms may be obtained from the Task Force on Indigent Defense website www.courts.state.tx.us/tfid. Award Nomination Forms and supporting materials may be submitted for the 2006 award from now until the final deadline of July 14, 2006 (5:00 p.m.).

Additional materials such as news stories, magazine articles, or other appropriate commentaries may be included with a nomination. However, please limit each nomination to 10 pages, including supporting materials. Please do not submit videotapes or tape recordings.

Please send completed Award Nomination Forms to:

Task Force on Indigent Defense
Post Office Box 12066

Austin, Texas 78711-2066

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

The 2006 award will be presented at the December 2006 Task Force meeting.

For more information, contact Terri Tuttle, Executive Assistant at terri.tuttle@courts.state.tx.us or 866-499-0656 (936-6994 in Austin).

Program Spotlight

The Val Verde County Regional Public Defender Program (PD) is intended to be cost effective advocates and ensure proper legal representation for indigent defendants. Goals include creating a public defenders office that will serve indigent defendants in Edwards and Val Verde County. Two other counties, Terrell and Kinney, will be offered the opportunity to participate. The program was implemented by contracting with a non-profit corporation as allowed under Texas Code of Criminal Procedure Article 26.044. This is the first time in Texas that indigent defense would be provided by a non-profit corporation and a first time it is provided on a regional basis. To read the complete story, click on the following link:

[http://www.courts.state.tx.us/oca/tfid/Basic%20Write%20up%20on%20Val%20Verde%205%202%202006%20\(2\).pdf](http://www.courts.state.tx.us/oca/tfid/Basic%20Write%20up%20on%20Val%20Verde%205%202%202006%20(2).pdf) .

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.