



Texas Task Force on Indigent Defense

December 2005

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Happy
Holidays!

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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.

Chris Harris,
State Senator

Wallace Jefferson
Chief Justice, Supreme
Court

Terry Keel
State Representative

FY2006 Grants Awarded

The Task Force on Indigent Defense awarded grants totaling \$14.5 million to improve indigent defense in Texas counties at its December 8, 2005 meeting.

Formula grants were awarded to 227 counties, totaling \$12.7 million. These grants provide state money to counties for increased indigent defense costs using a standard allocation formula. Grants ranged from \$5,032 to Loving County to \$1,908,009 to Harris County. *(Continued on page 4)*

Message from the Chair

This e-Newsletter is dedicated to the late Professor Robert O. Dawson, who was posthumously awarded the first annual Robert O. Dawson Indigent Defense Distinguished Service Award at the Task Force meeting in December. Five years ago, he worked hand-in-hand with the state legislative leadership and the courts to draft and see to passage the Texas Fair Defense Act. This award honors his inspiration, courage, and commitment to making our laws better reflect our creed.

I also want to recognize the local officials in Val Verde County for putting forth a solid proposal to establish the first regional public defender office in the state. Garnering the political support within a single county to establish a public defender program is challenging, so accomplishing this objective within an entire region is remarkable.

Earlier this month the Task Force published its five-year Strategic Plan for improving Texas indigent defense criminal justice systems. The strategic plan lays out the priorities and goals, and the steps to reach those goals during the next five years. It is online at <http://www.courts.state.tx.us/oca/tfid/Resources.asp>.

I appreciate your hard work and dedication. I wish you and your families a joyous and safe holiday season.

Sincerely,

Sharon Keller, Presiding Judge, Court of Criminal Appeals

Members (continued):

Orlinda Naranjo
Travis County Court at Law
#2

Tony Odiorne
First Assistant Public
Defender, Wichita Co.

Sherry Radack
Chief Justice, First Court of
Appeal

Todd Smith
State Representative

Glen Whitley
Tarrant County
Commissioner

John Whitmire
State Senator

 *Policies and
Standards:*

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

Director's Report

Let's not deny it, satisfying state reporting requirements is not always the most pleasant task. Notwithstanding, Texas auditors, judges, and treasurers are doing a tremendous job of submitting the necessary expenditure reports and indigent defense plans. This concerted effort by many not only reflects positively on local government but provides the Task Force and your elected representatives the necessary information to make informed and meaningful decisions on the state of indigent defense in Texas. Thank you for your efforts and commitment.

As we begin the New Year, the Task Force and its staff will continue to strive to improve its services to the counties, the courts and the state. Soon the FY05 Annual Report and Expenditure Report will be published. I encourage everyone to look over this report as it shows measurable progress in the right direction.

In this season of giving and receiving gifts, we hope that the gifts of freedom and justice for all stay in the forefront of our minds to continually remind us that our mission is to protect those gifts for all people, regardless of their income. That is our continuing responsibility. We wish you the best for 2006!

Sincerely,

James D. Bethke, Director

Policies and Standards Update

2006 Indigent Defense Plan Submissions

November 1 was the deadline for plan submissions and all but a few counties reached the deadline. It was by far the best response rate since the Fair Defense Act went into effect and counties are to be commended. The status of the 2005 Biennial Plan Submission Process is as follows:

- 240 counties have fully completed the indigent defense plan submission process
 - 198 counties had completed process as of November 2, 2005
- Public Policy Research Institute, in conjunction with Task Force staff, are contacting remaining courts to reach 100% reporting
 - Counties will be ineligible to receive grant or direct/extraordinary disbursement funds until submission/verification is completed
- Only 52 Counties submitted new plan documents this cycle. Of these there were:
 - 30 Attorney Fee Schedules,
 - 21 Attorney Fee Vouchers,
 - 19 Applications to be placed on Public Appointment Lists, and
 - 17 Applications for Court Appointed Attorney

Contract Defender Systems

The Fair Defense Act provides very limited guidance with regards to providing indigent defense services through a contract defender program, unlike assigned counsel and public defender programs. Because of the lack of clarity this engenders, the Task Force established this area as one of its priorities in the strategic plan. The Policies and Standards Committee directed staff to form a workgroup of interested stakeholders to discuss all relevant issues and provide feedback to the committee. Any standards resulting from this process would then be presented to the Task Force for consideration. One of the key issues in development of standards is their relationship with the Code of Criminal Procedure provisions related to alternative appointment programs and existing state law related to contracting for professional services.

The Task Force recognizes the complexity of this issue and is pursuing the best solution to provide assistance to counties seeking to implement good contract defender systems. Even before formal standards are adopted, there are several statutory requirements that govern contract defender systems:

- No payments may be made to attorneys without the submission and approval by the judge of an itemized list of services performed. This is required by Article 26.05(c), Code of Criminal Procedure, which states “...No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment.” Submission of an itemized form with the number and type of cases is also needed to allow the auditor to report the number of cases paid to the Office of Court Administration each year as part of the Indigent Defense Expenditure Report under Section 71.0351, Government Code.
- Each attorney providing indigent defense services must have submitted an application to be considered for the appointment list. Article 26.04, Code of Criminal Procedure, requires that only attorneys who apply may be on the approved appointment list. Applications are also necessary to document that attorneys meet the specific objective qualifications for eligibility (e.g. years of criminal experience, number of jury trials, etc).
- Contract defender systems fall under the alternative appointment program, which is defined in Article 26.04(g), Code of Criminal Procedure. This section requires that appointments are reasonably and impartially allocated among qualified attorneys. Under this statute, attorneys must be selected through an open application, such as the issuance of a well publicized Request for Qualifications (RFQ). An RFQ process allows all attorneys with criminal defense experience interested in contracting with the county to submit their qualifications to the courts.

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

Grants and Reporting Update

FY2006 Grants Awarded *(continued from page 1)*

“These grants are a good starting point for the state in accepting more fiscal responsibility of implementing the Fair Defense Act,” said Tarrant County Commissioner Glen Whitley, the Chair of the Task Force’s Grants and Reporting Committee.

In addition to the formula grants, five multi-year discretionary grants for new direct client services were continued from last year in Bexar, Dallas, El Paso, Hidalgo, and Limestone counties amounting to \$872,000. Val Verde County received a new multi-year discretionary grant, beginning with \$470,000 this year, to establish a regional public defender office to serve Edwards and Val Verde Counties.

Hill County was awarded a discretionary grant of \$139,000 to set up video conferences between courtrooms, the county jail and court-appointed attorneys to enable attorneys better access to their jailed clients. “This grant will put Hill County miles ahead of where it was in complying with the Fair Defense Act and truly provide indigent defendants with meaningful access to their court appointed attorneys,” said County Court-at-Law Judge Lee Harris from Hill County. More than half of the attorneys on Hill County’s court appointment list have offices outside of the county.

“I believe that the grant will greatly reduce the turnover in the attorneys willing to accept court appointments for Hill County cases,” Harris said.

Hood County received a discretionary grant of \$115,000 to implement a regional video teleconference system for juveniles from the county who are detained in Garza, Bowie and Kerr counties. And Polk County received a grant of \$196,000 to establish a regional video conferencing system to improve representation for indigent juvenile offenders in Polk, San Jacinto and Trinity counties.

Counties should expect to receive their Grant Award Statements by early January. Instructions are provided on the statement. Awards will be issued on a quarterly basis beginning February 2006. To see a list of counties and awards please go to http://www.courts.state.tx.us/oca/tfid/TFID_Grant_Program.asp.

Expenditure Reports

The FY2005 Indigent Defense Expenditure Reports (IDER) showed a leveling in statewide indigent defense expenses up only about \$2 million from last year (FY2004). The overall totals still show a 53% increase from 2001 (the first year data was collected). The Fair Defense Act (FDA) went into effect on January 1, 2002. These figures are still preliminary until desk reviews on all counties have been completed. All but one county completed the IDER. About 80 counties showed no increase over the baseline when the grant funds are taken into consideration. That means when the current expenses are compared to the baseline and the grant disbursement, the county is spending less than or equal to the amount they spent in 2001. The \$48.6 million increase is mainly distributed among the

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

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.

remaining 174 counties.

Trend analysis will be more reliable with the completion of the FY2005 reports. The Task Force will now begin to examine the long term impact of the Fair Defense Act. Table 1 below shows expenditure and case information. The chart shows the changes that have occurred since the FDA was passed. Since FY2001 expenses rose over 53%. The number of cases paid increased over 31% since FY2002. The net effect of the FDA is that expenses have risen significantly and more people are receiving court appointed attorneys. Also, the State is providing some indigent defense funding for the first time. The Task Force will have more detailed analysis in the annual report. Please remember all county information related to Indigent Defense is available on the public website (<http://tfid.tamu.edu/public> click on the case and court information or expense report results). The database we maintain in the public site can be sorted by region or population to assist counties view their expenses or case information compared to other counties. Please call PPRI representative Darby Johnson (979-845-2003) if you need assistance in using the website.

TABLE 1	FY2001	FY2002	FY2003	FY2004	FY2005	Increase Over FY01
Total Expenses	\$91,484,686	\$113,960,219	\$128,862,339	\$138,100,671	\$140,129,424	\$48,644,738
Total Grant Disbursements	\$0	\$7,182,305	\$10,367,173	\$10,275,805	\$11,462,229	\$11,462,229
Total County Only Expenses	\$91,484,686	\$106,777,914	\$118,495,166	\$127,824,866	\$128,667,195	\$37,182,509
Total Cases Paid*	Not Reported	\$324,412	\$372,769	\$415,042	\$427,932	\$103,520

*FY2002 is estimated based on nine months of case reporting

For additional information please call Bryan Wilson, Grants Administrator, at (512) 936-6996 or Sharon Whitfield, Budget and Accounting Analyst, at (512) 936-6997.

Desk Reviews of Expenditure Reports

Staff is currently conducting desk reviews of the 254 counties FY 2005 expenditure reports.

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

Overall, the quality of the county reporting has improved each year. 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

Status Count, as of December 22, 2005:

Certified Complete by Staff	252
Submitted Pending Staff Review	2

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

Government Generally Accepted Accounting Principles as required in Local Government Code, Title 4, Chapter 112. Counties must report actual court and administrative indigent defense expenses as well as summary case data associated with the reported expenses. The link to the Procedure Manual for the Indigent Defense Expenditure Report FY 2005 is available at:
<http://www.courts.state.tx.us/tfid/>, see "Fiscal Reports."

New Online Resource for Fiscal Monitoring

There is a new page on the website regarding the fiscal monitoring program. Its purpose is to assist counties in complying with the fiscal requirements of the Fair Defense Act. Included on this page is a listing of the items that are subject to monitoring. There are also links to best practices and forms that counties may modify for their use. These resources are available online at:
<http://www.courts.state.tx.us/oca/tfid/monitorfiscal.asp>.

For additional information please call Carol Conner, Program Monitor, at (512) 936-7561.

Robert O. Dawson Award

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 should be submitted for the 2006 award beginning January 15, 2006 and through 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/tfid or 866-499-0656 (936-6994 in Austin).

A Behind the Scenes Look at Team PPRI

The Public Policy Research Institute (PPRI) at Texas A&M University developed and maintains an internet-based data collection system through which all Texas counties submit the information required by the Fair Defense Act. These are the people responsible for the database of the secure county system and the public access site at Texas A&M websites. Since its inception in 2002, the project has been headed by Dottie Carmichael, Ph.D (right). She oversees the specialized online data collection system and has nearly 20 years of policy research experience.



Darby Johnson (left) graduated from Texas A&M University in 2002 and has worked with the Task Force for 3 ½ years. She provides technical assistance to county officials and is always ready to answer your questions. Darby enjoys working with county officials and is the friendly helpful person that coordinates letters and e-mail contacts.

Jim VanBeek (center) is the Senior IT Manager at PPRI. He is responsible for development and maintenance of the grant and report website. Jim was born and raised in Walla Walla, Washington, received his bachelors degree from Washington State University, and has two Masters Degrees from Texas A&M. Prior to working at PPRI, Jim worked at Blinn College and Accenture.

Please contact the PPRI staff when you need assistance with the website or any reporting issues. Contact the Task Force staff when you have questions about the program. The site not only offers a convenient method of data submission for counties, it also makes the resulting information available to external users to download for independent analysis. PPRI also collaborates with the Task Force to use data for research applications. Recently analyses of county data have been conducted to examine cost impacts of the Fair Defense Act on Texas counties. Statistical summaries were also developed for the 79th Session of the Texas Legislature.