



Texas Task Force on Indigent Defense

August 2005

Volume 3, Number 4

Inside:

- Chair's Message
- Director's Report
- Policies and Standards Update
 - 2006 Indigent Defense Plan Submission Process
 - Policies and Standards Survey Results
- Grants and Reporting Update
 - Grants and Expenditure Reports
 - Planning for FY2006 Discretionary Grants
 - Summer/Fall Regional Trainings for FY06 Grants and Expenditure Reporting Underway
 - Monitor Summary of Findings
 - Summary of Monitoring Site Visits
 - Acronyms and Abbreviations

Grants and Expenditure Reports

Bryan Wilson, Grants Administrator

It's that time of year again—FY06 grant season is underway. At its meeting on August 19th, the Task Force set the FY06 budget and authorized staff to publish and distribute the Request for Applications (RFA) for the FY06 formula and discretionary grants, as well as the FY05 Indigent Defense Expenditure Report instructions. The FY06 Formula Grant was budgeted at \$13 million (see the FY06 Allocation Schedule [here](#)), nearly \$2 million more than allocated in FY05. The increase is primarily due to increased surety bond fee collections. Small counties with low indigent defense costs may once again choose not to apply for a formula grant and instead be covered by the direct disbursement program if they have expenses above their baseline. The RFA for formula grants was mailed to county judges around August 25th. Formula grant applications will be due to the Task Force by October 21st. [This article is continued on page 4.]

Message from the Chair

Sharon Keller, Presiding Judge, Court of Criminal Appeals

Task Force and staff just successfully completed a two-day strategic planning retreat during which members and staff brainstormed future activities, moderated by Dr. Tony Fabelo. Based on the survey results distributed to stakeholders, the following priorities rose to the top for the next five years: 1) policy and standard development, 2) evidence-based outcomes, and 3) funding strategies. The success of any organization is based on its strategic planning. I feel that the Task Force, in partnership with the counties and courts, has made great strides in its mission thus far but there is still a lot of work to be done. These meetings were necessary and very worthwhile and I wish to thank members and staff, the Office of Court Administration and last but not least, Dr. Fabelo and Dr. Dottie Carmichael, for their efforts in helping the Task Force chart out its course for the next five years. We anticipate the Task Force's report on its strategy will be published in mid-September.

I would also like to introduce two new members of the Task Force: Sherry Radack, Chief Justice, First Court of Appeals, Houston is one of the courts of appeals justices serving on the Texas Judicial Council appointed as Ex-Officio member of the Task Force by the Governor on 5/11/05, to expire 2/1/07; and Anthony Odiorne, First Assistant Public Defender, Wichita County, appointed by the Governor on 5/11/05, to expire 2/1/07. I wish to recognize and thank Justice Ann McClure, a recent past member, for her service on the Task Force. For over three years she traveled to Austin from El Paso to attend most Task Force meetings. We are very thankful for her enthusiasm and valuable guidance.

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

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

Director's Report

James D. Bethke, Director

Well session is finally over and needless to say I am sure that most in the state are looking forward to some “down time.” In reality there is no such thing, since there is important work to do and additional responsibilities. Highlights of legislation directly affecting indigent defense are as follows: **HB 1701** does several things: 1) streamlines the state judicial reporting requirements by requiring indigent defense plan submission every other year, rather than every year; 2) clearly defines what a “governmental entity” means in the context of establishing a public defender in Texas; 3) requires the regional selection committee to amend its standards for attorneys seeking appointment in death penalty cases to require that such attorneys not have been found to have rendered ineffective assistance of counsel during the trial or appeal of any capital case by a federal or state court; and 4) requires the Court of Criminal Appeals to amend its rules for attorneys seeking appointment in writs of habeas corpus proceedings following a death sentence to require that such attorneys not have been found to have rendered ineffective assistance of counsel during the trial or appeal of any capital case by a federal or state court. **SB 1704** increases juror pay to \$40 from \$6 per day after the first day of service, while continuing the \$6 minimum pay for the first day of service. The bill creates a new \$4 court cost payable upon conviction for any offense, excluding pedestrian or parking related offenses. These funds will be used to reimburse counties \$34 per day after the first day of service by each juror. The bill also provides that if the balance in the newly created jury service fund exceeds \$10 million, the overage must be transferred to the Fair Defense Account. These funds are appropriated to the Task Force primarily to reimburse counties for the costs of providing indigent defense services. The fiscal note for the bill estimates the funding for indigent defense to be approximately \$2 million in FY06 and \$13 million in FY07 and subsequent years. Please note that a similar court cost was considered in SB 368. The fiscal note for that bill estimated substantially less revenue and would result in no new funds for indigent defense until FY 2008. We will share any clarification we receive on the amount of revenue that may be expected for indigent defense services. **The General Appropriations Act, or SB 1**, includes level funding for the Task Force based on existing revenue sources (court costs, legal services fee on attorneys, and surety bond fee). It also provides that \$100,000 per year in Task Force funds be directed to each of the four public law schools in the state to fund innocence projects at those schools (University of Houston, University of Texas, Texas Tech University and Texas Southern University). As part of the General Appropriations Act, the legislature directed the Task Force to hire an additional staff member to implement a monitoring program focused on the substantive requirements of the Fair Defense Act (FDA). The FDA directed the Task Force to do this type of work, but it has not had sufficient staff to implement such a program until now. This program will complement the fiscal monitoring program we implemented in 2003. We anticipate focusing on the main areas of the FDA including, prompt access to counsel, attorney qualifications, attorney selection, indigency determinations, payments for indigent defense services, and juvenile board indigent defense systems. In developing the program, the Task Force will determine the areas of focus and

make policy determinations to provide to the counties the objective basis it will use in monitoring compliance with the FDA. We will actively solicit input from all of the stakeholders as we go through this process.

I would also like to congratulate Bexar and Hidalgo counties for their efforts in establishing new public defender offices in Texas. Bexar has created an appellate public defender office and Hidalgo is setting up a misdemeanor public defender office. We commend these communities for their initiative and hard work. The Task Force is assisting and supporting their efforts with a special consultant, The Spangenberg Group, to provide technical support and to evaluate the programs.

Policies and Standards Update

Wesley Shackelford, Special Counsel

2006 Indigent Defense Plan Submission Process

The time-frame for the submission and verification process for 2006 has been moved up to account for the passage of HB 1701. The bill requires courts to submit/verify the indigent defense procedures and forms to the Task Force by November 1 of odd-numbered years, meaning that courts will need to complete the process by November 1st, 2005. We plan to use the same on-line process that we used last year and will be sending out full instructions around September 1st to each local administrative judge and juvenile board chair. Although the mandatory submission will now only occur every other year we strongly encourage counties to continue to submit revised plans and forms when those changes happen. This will assure that the information we publish on our website remains current.

Policies and Standards Survey Results

This summer the Task Force completed a survey of stakeholders soliciting feedback to guide its policies and standards development. The survey reflects the priority level that the respondents place on each of the 15 areas specified in the Task Force's enabling legislation. The survey results show that the top five priority areas overall were:

1. Qualifications for counsel representing defendants in death penalty cases
2. Standards governing the reasonable compensation of counsel
3. Standards governing the availability and reasonable compensation of providers of indigent defense support services (e.g. investigators and expert witnesses)
4. Performance standards for counsel
5. Qualification standards for counsel

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

We want to thank the more than 300 people who completed the survey. The results of the survey may be viewed by the position of the respondents (e.g. district judges or advocates) or for all respondents and are available at the following link: [Task Force on Indigent Defense Priority Survey](#)

Grants and Reporting Update

Bryan Wilson, Grants Administrator

Grants and Expenditure Reports

[continued from page 1]

The Task Force allocated a total of \$1,824,026 for FY06 Discretionary Grants. Of this amount, \$924,026 is allocated for continuing multi-year grants while \$500,000 is for new multi-year grants. The remaining \$400,000 of the total was allocated for single year grants. It included the same priority areas as last year with the addition of a priority in multi-year grants for small and midsized counties less than 250,000 in population. The RFA for discretionary grants will be mailed to all county judges the week of August 29th. Discretionary grant applications will be due to the Task Force by November 4th. Feel free to contact Bryan Wilson with questions or assistance in developing a program.

The Task Force also authorized staff to publish the FY05 Indigent Defense Expenditure Report instructions. By statute, the report is due to be submitted by November 1st. The instructions have been modified slightly to better explain the expense categories. The instructions will be sent to the county auditor or county treasurer in each county during the first week of September.

Summer/Fall Regional Trainings for FY06 Grants and Expenditure Reporting Underway

It's not too late to sign up for one of these trainings. For each grant cycle, staff provides regional training to county personnel relating to the Task

Regional Trainings for FY06 Grant programs and FY05 Indigent Defense Expense Reporting
To register please email:
terri.tuttle@courts.state.tx.us

(please include the names of those attending, county name, phone number and location)

- **Austin** (Travis Co.), Texas Law Center, 1414 Colorado, Room 101 – **August 25**, 1-4 p.m.
- **Graham** (Young Co.), room, address to be announced, - **August 30**, 9 – noon
- **Abilene** (Taylor Co.), room, address to be announced – **August 31**, 9-noon
- **Plainview** (Hale Co.), Ollie Liner Center – **September 1**, 9-noon
- **Odessa** (Ector Co.), room, address to be announced – **September 8**, 9-noon
- **Richmond** (Fort Bend Co.), room, address to be announced – **September 14**, 9-noon
- **Edinburg** (Hidalgo Co.), 110 N. Closner Blvd. – **September 16**, 9-noon
- **Livingston** (Polk Co.), Courthouse, **September 22**, 2p.m.-5p.m.
- **Longview** (Gregg Co.), room, address to be announced – **September 23**, 9-noon

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.

Force's grant application process and indigent defense expenditure reporting. Beginning August 25th, Bryan Wilson will be making his rounds to the various regions across Texas. Listed below are the locations and dates. Please mark your calendars now to plan to attend the most convenient location for you. There is no registration fee for this training. To register, simply email terri.tuttle@courts.state.tx.us indicating which location you would like to attend. E-mail registration is preferred so that exact meeting room location can be given to you as that information becomes available. However, if email is not available, you may also call, toll-free (866)499-0656. If prompted to leave a message, please leave the names of those attending, county name, phone number and city location of training.

Monitor Summary of Findings

Carol Conner, Program Monitor

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

1) Contract Defender Systems

The contract defender systems as a whole have not maintained adequate documentation of statutory and fiscal requirements. Texas Government Code, Section 71.001 defines the contract defender program as a "system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts." The written contract with attorneys to provide representation to indigent defendants must comply with the local rules that have been adopted in accordance with Texas Government Code, Section 74.093. In addition, Article 26.04 of the Code of Criminal Procedure allows for contract systems and requires that "appointments are reasonably and impartially allocated among qualified attorneys." Task Force recommends an open selection process for attorneys meeting the objective qualifications set forth in the indigent defense plan. The recommendation includes: 1) applications by attorneys; 2) selection by majority vote of the judges hearing criminal and/or juvenile matters; 3) contracts that clearly indicate payment amounts and frequency; and 4) itemized invoices that meet the requirements of Article 26.05 Code of Criminal Procedure and the formula grant requirements. The county must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation. The contract with appointing attorneys to provide representation to indigent defendants by a county that obligates grant funds must be in writing and consistent with Texas contract law. A resource guide by the Texas Comptroller's Office of Public Accounts, Model Purchasing Manual for Texas Cities and Counties. A link is available at: <http://www.cpa.state.tx.us/lga/purchasing/index.html>

2) 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

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

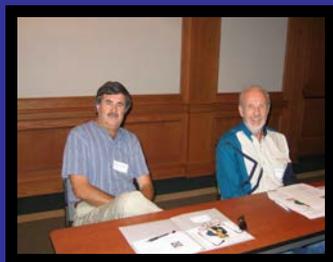
Phone:
(512) 936-6994
toll free:
(866) 499-0656

Fax:
(512) 475-3450

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

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

Photos from the FY06
Grants and FY05
Expenditure Reporting
Regional Training held
August 25, 2005 in Austin...



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/>

3) Records Management System

Self-monitoring and/or internal reviews are not adequately performed on a regular basis of county local plan. Task Force recommends assessing, part or whole, county local plan to ensure of meeting requirements as related to indigent defense services. Internal reviews are designed to provide reasonable assurance of compliance with the county plan process. Self-monitoring ensures familiarity with county policies, procedures, financial, and operational practices. In addition, by conducting self-monitoring, counties can determine whether procedures are followed, and if not, take appropriate actions.

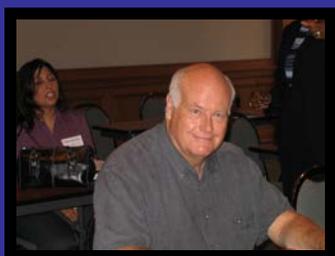
Summary of Monitoring Site Visits

Carol Conner, Program Monitor

This chart reflects a summary of ten on-site visits conducted from March-July, 2005.

County	Date of Site Visit	Status of Report
Harris County	March 8-10, 2005	Complete
El Paso County	March 22-24, 2005	Complete
Washington County	April 13-14, 2005	Final Pending
Burleson County	April 26-27, 2005	Final Pending
Travis County	May 3-5, 2005	Complete
Cameron County	June 8-10, 2005	Final Pending
Bandera County	July 12-13, 2005	Awaiting response to report
Kerr County	July 13, 2005	Complete
Lee County	July 26, 2005e	Complete
Bastrop County	July 28, 2005	Complete

Photos from the FY06
Grants and FY05
Expenditure Reporting
Regional Training held
August 25, 2005 in Austin...



Acronyms and Abbreviations

Carol Conner, Program Monitor

As you know, we use many acronyms and abbreviations around our office and in the counties to speed communication. To those unfamiliar with our shorthand; however, these time-savers can seem daunting.

To clarify any confusion, some of the most commonly used acronyms and abbreviations are listed in the table to the right:

ABA	American Bar Association
ACLU	American Civil Liberties Union
BJA	Bureau of Justice Assistance
BJI	Bureau of Justice Institute
TxCCP	Texas Code of Criminal Procedures
CJPC	Criminal Justice Policy Council
FAR	Federal Acquisition Regulations
FDA	Fair Defense Act
FSR	Financial Status Report
FTE	Full-time Equivalent
GAAP	Generally Accepted Accounting Principles
GAO	General Accounting Office
GPRA	Government Performance and Results Act
HB	House Bill
IDER	Indigent Defense Expenditure Report
ISP	Internet Service Provider
JCIT	Judicial Committee on Information Technology
JIMS	Judicial Information Management System
LBB	Legislative Budget Board
LAR	Legislative Appropriation Request
MOU	Memorandum of Understanding
NACM	National Association for Court Management
NCSC	National Center for State Courts
OCA	Office of Court Administration
OMB	Office of Management and Budget
PDO	Public Defender's Office
PPRI	Public Policy Research Institute
RFA	Request for Application
RFP	Request for Proposal
RFQ	Request for Qualification
SB	Senate Bill
SJI	State Justice Institute
TAC	Texas Administrative Code
TAMU	Texas A&M University
TFID	Task Force on Indigent Defense
UGMS	Uniform Grant Management Standards

**The Task Force on Indigent
Defense**



The Task Force would like to identify and include on a listserve those individuals who are primarily assigned to the duty of coordinating indigent defense activities in your county. Who handles:

- Working with the judges and the indigent defense plans?
- Notification of court appointments?
- Coordination of any other activities associated with indigent defense?

Please email terri.tuttle@courts.state.tx.us with your primary contact for the above duties. Thank you!