



Texas Task Force on Indigent Defense

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Chair:

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Presiding Judge, Court of Criminal Appeals

Vice Chair:

Olen Underwood, Presiding Judge, 2nd Administrative Judicial Region of Texas

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Chris Harris,
State Senator

Wallace Jefferson
Chief Justice, Supreme Court

Terry Keel
State Representative

Orlinda Naranjo
Travis County Court at Law #2

[Note: This is a post-Regular Session Special Edition of the Task Force's e-Newsletter; e-Newsletters are usually issued after a Task Force meeting]

79th Legislative Update

Wesley Shackelford, Special Counsel

The 79th Texas Legislature adjourned May 31st and the governor completed signing or vetoing legislation on June 19th. Although Governor Perry has called a special session beginning today to address the unresolved school finance issue, we wanted to bring you an update on what was accomplished in the regular session. A few indigent defense related bills were passed and the potential exists for additional state revenue to be directed to indigent defense services. In the broader criminal justice arena, a couple of significant bills were approved dealing with the implementation of a life without parole sentencing option in capital cases and crime lab oversight. Below is a selective listing of the most significant bills passed and signed by the governor:

HB 1701

HB 1701 consists mainly of a modest set of recommendations from the Task Force on Indigent Defense (Task Force) following a series of public meetings held last year concerning the administration of indigent defense in Texas. Significant amendments were also added related to qualifications for attorneys in death penalty cases. The key changes are as follows:

- Streamlines the state judicial reporting requirements by requiring indigent defense plan submission every other year, rather than every year.
- Clearly defines what a "governmental entity" means in the context of establishing a public defender in Texas.
- 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.
- 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.

Anthony Odiorne
First Assistant Public
Defender, Wichita County

Sherry Radack
Chief Justice, First Court of
Appeal, Houston

Todd Smith
State Representative

Glen Whitley
Tarrant County
Commissioner

John Whitmire
State Senator

 Policies and
Standards:

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

SB 1704

The bill 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 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.

CLE Resources

- TCDLA (Texas Criminal Defense Lawyers Association) – hosts free and low cost CLE seminars; please see the schedule of events at the following link:
<http://www.tcdla.com/seminars/index.shtml>
- For those in and around the Austin area, ACDLA (Austin Criminal Defense Lawyers Association, website: <http://www.acdla.com>) hosts free CLE (1 hour) on a weekly and monthly basis. Topics vary. Call to see if of interest to you. ACDLA Phone: 512-499-0969:
Each Friday at noon, location: Travis County Court at Law No. 3, Blackwell-Thurman Criminal Justice Center, 509 W. 11th Street, Austin
3rd Tuesday at noon during the monthly meeting of the ACDLA, location: Room 101, Texas Law Center, 1414 Colorado, Austin; BBQ \$8
- Texas Bar CLE
<http://www.texasbarcle.com/CLE>
- State Bar of Texas Juvenile Law Section - CLE
<http://www.juvenilelaw.org/CLE.htm>
- Center for American and International Law
<http://www.cailaw.org/calendar/CLE/index.html>
- Texas Independent Bar hosts online CLE webcasts. First hour of CLE is complimentary. Membership covers all courses offered.
http://www.texindbar.org/homepage_h.htm

SB 1

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). The bill also includes one additional FTE (staff member) for the Task Force to hire a monitor to implement a substantive monitoring program, for a total of seven FTEs. This program is discussed further below.

SB 60

The legislature also passed a new sentencing system in capital cases. SB 60 will give juries the option of imposing a death sentence or life without parole. While the bill adds a life without parole sentencing option in capital cases, it also removes the option of a life sentence with possibility of parole after 40 years.

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

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

HB 1068

Crime laboratories practices will be strengthened by HB 1068 by creating an oversight committee of experts. This new Texas Forensic Science Commission is charged with developing an accreditation process for the crime labs operated by the state, counties, and cities. This accreditation and oversight should help ensure the integrity of the system.

SB 611

Electronic filing of criminal cases will be permitted under SB 611. The bill will facilitate the move towards paperless offices in some jurisdictions by allowing prosecutors to file electronic charging instruments such as indictments, information, complaints, or other related documents. It also authorizes a district clerk, county clerk, or court to issue a *caapias* in electronic form and provides for the admissibility of an electronically preserved document.

HB 2120

An arrested person may be brought before a magistrate in any county in the state for a hearing under Article 15.17, Code of Criminal Procedure, rather than only before the magistrate of the county of arrest or an adjoining county. The person may be presented to the magistrate through the use of an electronic broadcast system, rather than closed circuit television. The electronic broadcast system must permit two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure internet videoconferencing. This legislation is discussed further below in the Video Teleconferencing Survey.

Legislature Provides New Staff Member for Substantive Monitoring Program

As part of the General Appropriations Act, the legislature authorized 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. The Task Force will begin work this summer on the framework for this program. 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.

New Members Appointed by the Governor During Session

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.

Plan Submission Instructions for Interim Updates/Revisions

Wesley Shackelford, Special Counsel

Counties that change elements of their indigent defense plans between the required annual submissions are strongly encouraged to submit those changes when they occur. This will assure that accurate information is readily available on the Task Force on Indigent Defense's website. New plan documents should be submitted electronically as an attachment to an email to wesley.shackelford@courts.state.tx.us. If an electronic version of the document is unavailable, you may mail plan documents to the Task Force on Indigent Defense, P.O. Box 12066, Austin, Texas 78711-2066. Be sure the document heading clearly identifies to which counties and courts it applies. In your email or cover letter, please identify the name of any existing plan document that it replaces so that we may archive it when the new document is posted.

Indigent Defense Reporting Manual Revisions

Bryan Wilson, Grants Administrator

Task Force staff is conducting a revision of the Indigent Defense Expenditure Report Manual. Now that we have had three years of report experience and numerous site visits we are in a better position to examine the information. While no major changes are planned the revision should be able to provide better examples and explanations than those that were available three years ago. Each year the draft version is submitted to the auditors and treasurers list serves for comments prior to being accepted. It is anticipated the Task Force will release the publication in August. If you have a suggestion as to how to make the report instructions clearer please forward them to bryan.wilson@courts.state.tx.us.

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- Terri Tuttle, Executive Assistant
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- Bryan Wilson, Grants Administrator

Don't forget to sign up for the 2005 Summer/Fall Regional Trainings for FY06 Grants and Expenditure Reporting

For each grant cycle, staff from the Task Force on Indigent Defense provides regional training to county personnel relating to the Task Force's grant application process and indigent defense expenditure reporting.

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 e-mail 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 e-mail 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.

<i>Location</i>	<i>Date/Time</i>
Austin (Travis Co.), Texas Law Center, Map of 1414 Colorado St. Room 101	August 25, 1-4 p.m.
Graham (Young Co.), Map of 516 4th St., Room 106 (Courtroom at Young Co. Courthouse)	August 30, 8:30-noon
Abilene (Taylor Co.), Map of 300 Oak St., 1st floor, Jury Assembly Room	August 31, 8:30-noon
Plainview (Hale Co.), Ollie Liner Center	September 1, 8:30-noon
Odessa (Ector Co.), Map of 1010 E 8th St., Room 500, Commissioners Office	September 8, 8:30-noon
Rosenburg (Fort Bend Co.), Map of 4520 Reading Rd., Rosenburg Annex	September 14, 8:30-noon
Edinburg (Hidalgo Co.), Map of 110 N Closner Blvd	September 16, 8:30-noon
Livingston (Polk Co.), Map of 101 W Church St (Courthouse)	September 22, 2-5p.m.
Longview (Gregg Co.), Map of 101 E Methvin St (Commissioners Court Room, E. end of Courthouse)	September 23, 8:30-noon

Video Teleconferencing Survey

Sean Rodriguez, Task Force Summer Intern

HB 2120 will allow magistration via a “secure broadcast system” to take place in any Texas county – rather than only in a county that borders the arresting county, as under current law – beginning September 1, 2005.

The new statute also defines “secure broadcast system” as “two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.”

In anticipation of the flexibility allowed under these two provisions, OCA and

the Task Force are undertaking a survey to determine which counties already have video teleconferencing in place. Since the results of this survey may be used in beginning to plan a centralized magistration system that would introduce greater efficiency in the magistration process, we encourage your participation.

You will find a faxable survey form at the end of this newsletter. Alternatively, you may email sean.rodriquez@courts.state.tx.us with your response.

To Respond to Survey via Fax, please fill in form below and fax back to Sean Rodriguez, fax: (512) 475-3450 by July 1. To respond via email, please see link to Sean's email above.

Teleconferencing Video Survey Form

This office is conducting a survey on the current state of video teleconferencing (VTC) in the courts. Please respond by **Friday, July 1st** if you currently use VTC or have an interest in installing VTC. Your response is voluntary, but we would greatly appreciate your assistance.

1. To your knowledge, which courts and jails in your county currently use video teleconferencing (VTC)?

2. How are these VTC systems used? (a) ____ in magistration; (b) ____ for expert witnesses; (c) ____ in other situations, including:

3. Is your county's court administration interested in deploying VTC for the first time or adding to its existing VTC system? If so, what uses do you foresee for (additional) VTC equipment?

Thank you for your time!