



# Texas Task Force on Indigent Defense

December 15, 2004

Volume 3, Number 1

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Photo left: Task Force Grants and Reporting Committee Chair Tarrant County Commissioner Glen Whitley (left) and Chair of the Task Force, Sharon Keller, also Presiding Judge of the Court of Criminal Appeals (right) at December 8, 2004 Task Force meeting.

## Task Force Awards FY05 Grants

**Sharon Whitfield, Budget and Accounting Analyst**

The Task Force on Indigent Defense awarded over \$13 million in grants to 218 counties. The first question everyone wants answered is: "When can we expect to receive the funding?" [Please see continuation of article on page 5.]

## Message from the Chair

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

This fiscal year 2005 has started strong with the [grant awards announced](#). I am extremely excited about the multi-year discretionary grant program and the formation of two additional public defender offices in the state -- Bexar and Hidalgo. These grant awards will provide Bexar and Hidalgo counties the opportunity to try new approaches to providing indigent defense services. The Task Force is committed to assisting these programs to become successful models that other counties will want to emulate. A [press release](#) was issued on December 8, 2004 announcing these grant awards. Also, Bryan Wilson has written an article about the FY05 discretionary grants later in this e-Newsletter.

We are grateful to Eddie Arredondo. He has been a member of the Task Force since the Fair Defense Act went into effect January 1, 2002. He will no longer be a member of the Task Force after this year. He will serve in the capacity of Burnett County Attorney. We are sad to see him go, but also happy for his new opportunity and his service to the state, local county government and citizens of Texas.

Please continue to keep up the good work you all do for Texas. I am proud of you all.

Sincerely,



Sharon Keller and Eddie Arredondo at December 8, 2004 Task Force meeting

## Task Force Members:

Chair:  
Sharon Keller  
Presiding Judge, Court  
of Criminal Appeals

Vice Chair:  
Olen Underwood,  
Presiding Judge, 2<sup>nd</sup>  
Administrative  
Judicial Region of  
Texas

Eduardo Arredondo  
Attorney, Law Office  
of Eduardo Arredondo

Jon Burrows  
Bell County Judge

Chris Harris,  
State Senator

Knox Fitzpatrick  
Dallas Attorney,  
Fitzpatrick, Hagood,  
Fisher & Holmes

Terry Keel  
State Representative

Ann McClure  
Justice, 8<sup>th</sup> Court of  
Appeals

Orlinda Naranjo  
Travis County Court at  
Law #2

Wallace Jefferson  
Chief Justice,  
Supreme Court

Todd Smith  
State Representative

Glen Whitley  
Tarrant County  
Commissioner

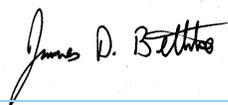
John Whitmire  
State Senator

# Director's Report

**James D. Bethke, Director**

Texas counties are doing a tremendous job of getting their deadlines met for the indigent defense grant program, expenditure reporting and plan submission process. This effort demonstrates the strong spirit and character of Texas and those who work together for its improvement. It shows that people care. Staff of the Task Force continues their accountability and are striving to improve services to the counties and the state. Soon the FY04 Annual Report and Expenditure Report will be published. With three years into this program and three years of data, I encourage everyone to look over this report as it demonstrates the great strides Texas has taken on both a local and state level in the indigent defense system. At a recent strategic planning session, staff raised the bar on the [mission and goals of the Task Force](#) and retooled their own performance measures for FY05-06. Out of this strategic planning session many ideas were generated. More trainings, more awareness, more research, more best practices and, of course, more of what we all know is needed...money for indigent defense. The FY05/06 Legislative Appropriations Request has indicated the need for additional revenue. 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 citizens, regardless of their income. That is our continuing responsibility. We wish you a safe and happy holiday season. See you next year!

My Best,



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## *Policies and Standards Update*

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# Reminder to Complete 2005 Plan Submission/Verification Process

**Wesley Shackelford, Special Counsel**

Please remember to complete the plan submission/verification process before the end of December. It is a simple on-line process to verify the plan documents you have previously submitted, an opportunity to submit updated documents, and archive out of date ones. You may also create a supplement on-line based on a Task Force-adopted [model procedure](#) for handling removal and discipline proceedings for attorneys on the appointment list. Any official in the county may log-in to the system and complete the process for all court levels within the county. Completion of the process is required to continue receiving grant funds from the Task Force. To view instructions and/or log-in, please go to this link: <http://www.courts.state.tx.us/oca/tfid/TFID%20Plan.htm>.

# Study on Costs Impacts of the Fair Defense Act Released

**Wesley Shackelford, Special Counsel**

Since Texas counties began the implementation of FDA requirements in January 2002, policymakers at state and local levels have had a strong interest in understanding the full impacts of the law. To begin answering some of these questions, the Task Force on Indigent Defense contracted with the Public Policy Research Institute (PPRI) at Texas A&M University to conduct site visits and interview key stakeholders in four Texas counties. During the spring and summer of 2004, PPRI staff interviewed judges, jail personnel, budget officers, and other knowledgeable individuals in Cameron, Collin, Dallas, and Webb Counties. The study also examined [expenditure data reported](#) in the annual Indigent Defense Expenditure Report submitted by counties to the Task Force since FY 2002.

Nearly 100,000 more adult defendants were appointed counsel in FY 2004 (371,167 individuals) than in the first year of the FDA, and overall indigent defense costs have risen more than 50 percent. Attorney fees per adult case have risen 4 percent per year, and overall costs per adult case have declined slightly from \$486 in FY 2002 to \$350 in FY 2004 (based on data from 217 counties reporting all three years). Attorney fees per case were found to be lower in counties with public defender offices while investment in support services such as expert witnesses and investigators was higher.

The study found that, as allowed by the law, all four counties adopted different strategies for complying with the FDA, and their choices impact costs. For instance, Dallas and Webb Counties which have historically generous policies for appointing public counsel did not emphasize careful eligibility screening. Other counties more concerned about cost containment are taking measures to establish clear and objective criteria of indigence.

Bond-setting practices also influence costs. In counties that offer early and multiple bond reviews, eligible defendants can exit the system before costs are accrued for services such as transportation, intake to county jail, magistration, and assigned counsel. Furthermore, defendants released from jail early may have greater opportunity to search for affordable counsel in the private sector.

Counties that adopt a pro-active “problem-solving” approach to indigent defense, and that are willing to experiment with new practices appear to be making progress toward improving and refining local systems. Importantly, many local data systems are not capable of providing local decision-makers with monitoring information needed to target system improvements. Significant upgrades are needed before policymakers can retrieve basic information needed to improve the efficiency and cost-effectiveness of indigent defense systems. The complete report will be posted on the TFID website late December. Highlights are currently available in a [downloadable Powerpoint presentation](#).

 *Policies and Standards:*

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

Meet the Task  
Force Staff:

Wesley Shackelford,  
Special Counsel



# Inmate Indigent Defense Reimbursement

**Wesley Shackelford, Special Counsel**

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

Earlier this year I spoke with Ann Hartley in the AG's Financial Litigation division that processes indigent inmate defense claims (among other things). She confirmed the miscellaneous claims appropriation is where indigent inmate defense claims are paid (General Appropriations Act- Comptroller's appropriation A.1.2= \$1.47 million for FY04 and the same in FY05). They are paid under authority of the Miscellaneous Claims Act (Tex. Gov. Code 403.074), which is used mainly to pay for older claims that have been mishandled in some way and where the agency can no longer pay them with current appropriations.

Ann also referred me to Dolores Fojtasek in the Comptroller's office who was helpful and well informed on the issue. She said that FY04 funds were depleted immediately after the start of the fiscal year satisfying pending claims from FY03. She indicated they currently have \$776,000 in final claims pending, meaning that more than 1/2 of FY05 funds are already spent. She anticipates that all FY05 funds will be encumbered before the fiscal year begins. Of the currently pending claims, 17 are for indigent inmate defense totaling \$46,861.51- the oldest of which is from 7/3/2003 (date of approval from OAG). This basically means that the state is always 6-18 months behind in payments, depending on when the bill arrives and is approved.

She explained the process for payment of these claims as follows:

- Bills are sent to the State Counsel for Offenders and are approved by its board at meetings that occur every 2-3 months.
- Bills then sent to Comptroller (Dolores), routed to Judiciary Section for approval, then back to Dolores
- Bills sent to AG for approval
- Bills sent back to Dolores who then generates letter to attorney stating funds have been depleted and they will be paid in the order in which received.

Some counties pay the attorneys themselves and get reimbursed by the state. This is permitted through use of a letter of assignment signed by the attorney. She emailed me a basic assignment letter that a court appointed attorney could complete if the county chooses to pay the attorney and be reimbursed by the Miscellaneous Claims Appropriation when funds become available. Please feel free to contact me if you would like a copy of the sample assignment letter.

The long and short of this issue appears that the demand for these services has outpaced the supply of state revenue. Adequate funding for these services would help ensure that qualified counsel could be appointed timely in these cases as required by state and federal law.

Meet the Task Force Staff:

Sharon Whitfield,  
Budget and  
Accounting Analyst



Meet the Task Force Staff:

Bryan Wilson, Grants  
Administrator



## Grants and Reporting Update

# Task Force Awards FY05 Grants

[continued from page 1]

**Sharon Whitfield, Budget and Accounting Analyst**

### **FY05 Formula Grant Distribution**

At the December 8<sup>th</sup> Task Force meeting, members awarded \$11.3 million in formula grants to the 218 counties and \$2 million in discretionary grants to 14 counties.

Formula grant awards will be distributed in four quarterly payments. Distribution will start for counties without special conditions with their 1<sup>st</sup> quarter payment in January. Counties with special conditions (refund owed; county resolution not submitted; required reports to OCA not submitted) will not receive a payment until conditions are met. Counties which did not expend any of their FY04 formula grant or less than 75% of their FY04 formula grant will need to submit a Mid-year Expenditure Report by May 2 before they are eligible to receive payments. This requirement will be indicated in the FY05 Statement of Grant Award when applicable. If the mid-year report shows that a county has expended over their FY01 baseline, they will begin receiving their quarterly payments. If the mid-year report shows that a county has not expended over their FY01 baseline, they must wait until after the Annual Expenditure Report is submitted in November to receive a grant payment. After the year end report, if a county has expended over their FY01 baseline, 4<sup>th</sup> quarter payment can range from the amount over baseline up to the full grant award depending on the county's expenditures as reported.

The distribution schedule for FY05 Formula Grant quarterly payments is:

- 1<sup>st</sup> Quarter payments - January 15
- 2<sup>nd</sup> Quarter payments - April 15
- 3<sup>rd</sup> Quarter payments - July 15
- 4<sup>th</sup> Quarter payments - shortly after receipt of FY05 Indigent Defense Expenditure Report

The Annual Expenditure Report must be submitted by counties and verified by Task Force staff before 4<sup>th</sup> quarter payments can be distributed. The submission of this report determines the amount of the 4<sup>th</sup> quarter payment and whether or not a county will owe a refund.

Meet the Task  
Force Staff:

Jim Bethke, Director



## FY05 Discretionary Grants Awarded

**Bryan Wilson, Grants Administrator**

The Task Force on Indigent Defense [awarded 14 discretionary grants](#) totaling close to \$2 million to 14 different counties on December 8, 2004. These grants are for demonstration and pilot programs that counties developed in response to the Request for Applications issued in August. The Task Force set priorities related to improving the indigent defense systems. Two public defender offices will be established under these funds. Bexar County will create an Appellate Public Defender's Office under a multi-year grant of \$370,076 for the first year. Hidalgo County will establish an Indigent Defense Public Defender under its multi-year grant of \$395,490 for the first year. Other direct client service grants include Dallas County's multi-year Mental Health Division in the Dallas County Public Defender's Office of \$152,136 and Limestone County's multi-year Mental Health/Mental Retardation Contract Defense Program of \$174,100. All multi-year grants combined were \$1,091,802. Many other new programs were funded related to video-conferencing (Collin-\$58,896, Henderson-\$110,178, Hockley-\$140,509, McLennan-\$57,324, Tom Green \$47,500), Technology related grants (Grimes-\$20,588, Van Zandt-\$172,000), magistration and pre-trial services (Tarrant-\$229,312), forensic resources for public defenders (El Paso-\$19,250), and an indigent defense coordinator (Hill-\$42,050). The grants awarded are designed to allow counties to try new approaches to improve their local indigent defense systems with the state as the primary source of funding. Congratulations to these Texas counties for working hard to improve their local systems and provide effective assistance of counsel.

## FY03 Discretionary Grants Completed

**Bryan Wilson, Grants Administrator**

In FY03, the Task Force awarded 22 counties discretionary grants totaling \$1.6 million.

The programs fell into three broad categories: client services programs, indigent defense coordinators, and technology programs. The client service grants were the most complex to implement due to county and court coordination issues. Many counties requested personnel to help develop local indigent defense administrative infrastructure and processes. Also courts and counties recognized software and equipments needs that would assist them in meeting the legal requirements that the Fair Defense Act set.

In direct client service grants the county developed a new service or a method of delivery that had not been available in the court before. For example, Waller County established a contract defender system. This program will serve as a model

Meet the Task Force Staff:

Terri Tuttle, Executive Assistant



for all potential future contract defender systems established by the courts. This program reduces time to locate and contact attorneys, reduces the administrative time judges spend in the appointment and bill approval process, and assures the quality of defense services through a stringent competitive process of reviewing the qualifications and experience of those applying. In another program in Dallas, the parent/youth advocate attorney made appearances over 1400 times in the months it was funded. The attorney worked to resolve the lack of connection between the court and the children’s parents that are often left out of the information circuit in dealing with a child.

Where indigent defense coordinators (IDCs) were funded over 97% of the 24,000 appointments were made within one working day. The income and assets reported by the defendants in all of these counties were very low.

The IDC reports provide insight into the indigent defense local legal processes. The reports reveal that judges are willing to remove attorneys from appointment lists for cause. Attorneys were removed for failing to see their clients, for failing to attend court hearings, and failing to meet minimum continuing legal education (CLE) requirements. Attorneys who declined cases that were assigned were not very common (121 cases) but the reasons were appropriate. Attorneys commonly discovered conflicts with other clients they represented, scheduling conflicts with attorney availability to meet with client in the timeframe required by law, or the attorney was involved in too many cases or jury trials. Both the judges’ removal of attorneys and the attorneys’ removal of themselves are indicative of healthy defense systems in the counties where IDCs were funded.

## Direct Disbursement Funds Distribution Worked as Intended

### Bryan Wilson, Grants Administrator

In response to the problem of cyclical refunds the Task Force established the Direct Disbursement Program in FY02. If counties had co-occurring low incidence of crime and indigent defense expenses, counties were encouraged to not apply for formula grants. In doing so counties could receive an amount up to their originally proposed grant allocation under the Request for Applications in direct state payments once they spent over the baseline amount. A county that had not received a payment in the preceding year could be eligible for up to double the county’s allocation. Counties entering this direct disbursement pool would be rewarded with lump sum payments when the expenses occurred rather than waiting to the end of the year. This program increased availability of available funds if they would not apply for the formula grant. Counties still have to meet the minimum plan requirements set for the grant to receive these payments.

County Did Not Apply for Formula Grant	Direct Disbursement Amount Received
Camp	\$2,237
Clay	\$9,397
Concho	\$6,584
Duval	\$7,755
Fisher	\$5,733
Hemphill	\$6,339
Jeff Davis	\$1,747
Jim Hogg	\$619
Lavaca	\$18,842
McMullen	\$1,758
Oldham	\$5,873
Stephens	\$7,297
Trinity	\$10,505
Upton	\$4,568
<b>Total</b>	<b>\$89,254</b>

Of the 26 counties that did not apply for formula grants, 14 of those counties qualified and received direct disbursements. One county received 48% more than they would have had they applied for the formula grant. The program is not for all counties but is an effective tool to meet the needs of rural counties in a way that is meaningful.

## Extraordinary Expense Fund

**Bryan Wilson, Grants Administrator**

Counties occasionally face higher-than-usual expenses for criminal defense. Costs associated with an *Atkins* mental-retardation remand, for instance, or with death penalty trials and appeals, sometimes strain county budgets. The Task Force can help counties meet these kinds of exceptional demands.

The Task Force set aside \$300,000 this year to ease the burden of extraordinary criminal defense expenses on the counties. These grant funds are designed to reimburse counties for direct litigation costs such as attorney's fees and investigation expenses resulting from an extraordinary event in the county. The money will be divided among qualifying applicants at the end of FY2005. Expenses incurred the current and immediately preceding county fiscal year are eligible for consideration.

An application form is available at the "Grants" section of the Task Force website, under "Extraordinary Disbursement Fund Procedures." Any questions regarding this grant opportunity should be directed to Bryan Wilson, Grants Administrator at (512) 936-6996.

## Revisiting the Current Formula— Proposed Process and Timeline

**Bryan Wilson, Grants Administrator**

The Task Force on Indigent Defense has collected from counties two full years of data in accordance with the law related to indigent defense expenditures. During this time there have arisen questions over whether there is a "better" method to distribute grant funds to counties. The statute authorizes the Task Force to distribute funds to assist counties' improve indigent defense systems and promote compliance with state laws. The statute also requires funds be allocated and distributed to counties in a fair manner.

The Task Force decided to use grants as its primary means of funding counties for increased indigent defense costs. While some direct state aid methods have been utilized in the form of direct disbursements and extraordinary cost reimbursements, most funding has been in the form of formula grants. The formula currently used is:

**Formula** - The Task Force distributes funds to counties through a formula that sets a \$5,000 floor per grant with the remainder based on a county's percent of population (2000 Census) multiplied by the Task Force's remaining budgeted amount for formula grant. Counties must meet minimum spending requirements to qualify.

The Grants and Reporting Committee indicated it will revisit the current formula and consider changes. The first step of the process will be to form a workgroup of interested county officials, county associations and other interested parties. Next, an announcement in the Texas Register will be posted seeking comments for consideration to alter the formula currently being used. Comments must include: 1) whether the comment is for or against changing the formula; 2) why the current formula is fair or unfair; 3) if proposing a change state clearly what the change should be; 4) provide the source of any data used in calculating the proposed formula and 5) give an example of the calculation using the suggested formula.

Then the workgroup will convene and review feedback from public comments. The workgroup will identify positive and negative elements to formulas that are identified as workable. Workable formula means that the data used to calculate the proposed formula is available for all Texas counties and that a result can be determined for all counties. The workgroup will be limited to providing to the Grants and Reporting Committee the positive and negative elements or results of each proposed alternative. The Grants and Reporting Committee will meet prior to the spring Task Force meeting to select and recommend changes to, if any, of the current formula. Please let us know if you have a suggested change using the method above. Fax or e-mail your suggested changes to Terri Tuttle. The fax number is (512)475-3450. The e-mail is [terri.tuttle@courts.state.tx.us](mailto:terri.tuttle@courts.state.tx.us).

Meet the Task Force Staff:

Carol Conner, Program Monitor



## Summary of Monitoring Site Visits

### Carol Conner, Program Monitor

The summary of monitoring visits conducted from January 1, 2004 through December 10, 2004 is reflected in the following table. There were 16 monitoring site visits:

- \* Performance Evaluation Visit
- \*\* On-site visit to review indigent defense services
- \*\*\* Fiscal Technical Assistance Visit

County	Date of Site Visit	Status of Report
Kaufman County	January 7-8, 2004	Complete
Bowie County	January 14-15, 2004	Complete
Montgomery County	February 3-4, 2004	Complete
Orange County	February 11-12, 2004	Complete
Harris County	March 9-10, 2004	Complete
Galveston County	March 11-12, 2004	Complete
El Paso County	March 23-24, 2004	Complete
Harrison County*	April 13-14, 2004	Complete
Bell County**	August 11, 2004	Complete
Travis County Juvenile Public Defender's Office	August 18, 2004	Complete
Burleson County**	August 31, 2004	Complete
Williamson County	September 15-16, 2004	Complete
Webb County	October 5-6, 2004	Complete
Hidalgo County	October 26-27, 2004	Complete
Bexar County	November 8-10, 2004	Pending
Cameron County***	December 1-3, 2004	Pending

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We're on the Web!  
[www.courts.state.tx.us/tfid](http://www.courts.state.tx.us/tfid)

As you know, the position of fiscal program monitor was established last session. Since the creation of the program monitor position, 7 on-site fiscal monitoring reviews were conducted through August 31, 2004. In addition, 1 county requested a performance evaluation of its system, and the program monitor reviewed 3 counties indigent defense services. Since September 1, 2004, the program monitor conducted 5 on-site fiscal monitoring reviews.

### **Desk Reviews of FY04 Expenditure Reports**

We are currently conducting desk reviews of the 254 counties FY04 expenditure reports. 100% of the counties submitted the statutory required FY04 expenditure report. The Indigent Defense Expenditure Report (IDER) serves two purposes: 1) to fulfill the statutory requirements listed in the Government Code 71.0351(c); and 2) to serve as the annual formula grant report. Thank you to all the county officials who provided this information.

In reviewing expenditure reports, several counties have missing data elements. The missing data elements include 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. Therefore, counties are contacted by telephone, email, and facsimile to collect and confirm the accuracy of available data to the expenditure report.

Overall, counties are submitting indigent defense expenditure reports much better than previous 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 Government Generally Accepted Accounting Principles as required in Local Government Code, 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 FY04 is available at: <http://www.courts.state.tx.us/tfid/>, see "Fiscal Report".

### **Status Count, as of December 15<sup>th</sup>:**

Certified Complete by Staff	246
Submitted Pending Staff Review	8

To date, there have been no major significant issues of non-compliance with the terms and conditions of the grant or with the Fair Defense Act. Please do not hesitate to contact me if you have any questions at (512) 936-7561 or [carol.conner@courts.state.tx.us](mailto:carol.conner@courts.state.tx.us).