



Texas Task Force on Indigent Defense

August 31, 2004

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Presentation of FY04 Discretionary Grant of \$300,000 to Dallas County Commissioners Court on April 8, 2004. Pictured above (L-R) Judge Sharon Keller, Judge Karen Greene (282nd Judicial District Court), Judge Vickers (Vic) Cunningham (283rd Judicial District Court), Judge Janice Warder (Criminal District Court #1), Judge Tom Fuller (County Criminal Court), Jeannette Drescher Green-Chief Public Defender. Dallas applied for a discretionary grant to purchase a case management system.

Task Force Presents Dallas With Discretionary Grant Award

Terri Tuttle, Executive Assistant

Dallas County was presented with its discretionary grant award on April 8, 2004. The oversized check was presented by Judge Sharon Keller, Chair of the Task Force and Presiding Judge of the Court of Criminal Appeals and Bryan Wilson, the Grants Administrator for the Task Force. To be awarded a discretionary grant, applicants must develop an idea for an innovative indigent defense program in their county. Counties compete for these funds based on how closely they meet the priorities set by the Task Force. Dallas' grant award to the county will help pay for an integrated case management system for Dallas County's Public Defenders office. The new system will interface with the current and future Dallas County computer system. It will provide conflict detection for the PD office and have the ability to enter additional data such as the names of complaining witnesses to ensure an accurate conflict check. A total of six grants were awarded in FY04 totaling about \$1.1 million. See other [photos of discretionary grant award presentations](#).

Task Force Members:

Chair:
Sharon Keller
Presiding Judge, Court
of Criminal Appeals

Vice Chair:
Olen Underwood,
Presiding Judge, 2nd
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, 8th Court of
Appeals

Orlinda Naranjo
Travis County Court at
Law #2

Thomas Phillips
Chief Justice,
Supreme Court

Todd Smith
State Representative

Glen Whitley
Tarrant County
Commissioner

John Whitmire
State Senator

Message from the Chair

Sharon Keller, Presiding Judge, Court of Criminal Appeals

I am pleased to announce that the Task Force increased the award amount for the FY04 formula grants by an additional \$1.1 million. This additional money will be distributed with the last quarterly payment to qualifying counties. Counties have to submit their Indigent Defense Expense Report and demonstrate they spent above their baseline by at least the grant amount to receive the additional funds. The increased funds were received from a surety bond fee adopted by the 78th Legislature. The Task Force raised the projected allocation for the FY05 Formula Grant from \$9.6 million to \$11 million statewide.

The Task Force was also successful in obtaining a \$90,000 grant to conduct a research project entitled "*Evaluating the Impact of Direct Electronic Filing in Criminal Cases: Closing the Paper Trap*". This study has national significance and implications for indigent defense. I want to express my appreciation to the Office of Court Administration and staff for its efforts and success in obtaining these additional resources. Staff is also gearing up for the FY05 grant cycle by conducting training and providing plan assistance to courts. More information about the application processes are contained in this newsletter.

As this fiscal year 2004 comes to a close, I want to say thank you to all of you who work on indigent defense. You have made an important difference and contribution towards Texas' justice system. You should be proud. I look forward to serving with you in FY05.

Sincerely,



Director's Report

James D. Bethke, Director

It's been a productive summer for the Task Force. We've made great strides in gathering information on public defense systems and have published several reports with the help of The Spangenberg Group. The [Blueprint for Creating a Public Defender Office in Texas](#) (see the [June 25, 2004 Press Release](#)) will assist county and court officials to determine whether or not a public defender office is feasible for their particular county. Best practices and guidelines along with a checklist of steps to take, is included in the [Blueprint](#). Texans



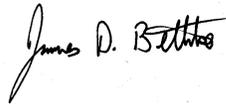
Jim Bethke presentation to Lubbock officials on July 16, 2004 regarding the Blueprint (Photo: ©Lubbock Avalanche-Journal 2004)

involved in the Texas criminal justice system also provided major contributions to the [Blueprint](#). An additional study, [Report on Dallas County's Indigent Defense System and Public Defender Office](#), was presented on August 20, 2004 to Dallas officials who welcomed and thanked the Task Force for the assistance provided by the report by issuing a [Resolution](#).

The FY05 grant programs are underway. Counties may now apply for FY05 Formula Grants (see [Request for Applications](#)) and FY05 Discretionary Grants (see [Request for Applications](#)). New discretionary grant money has been earmarked for 'direct client services': for example, the creation of a public defender office.

I encourage all counties rural and urban alike to take advantage of the written and monetary resources available through the Task Force. By doing so, you enable the Task Force and its staff to achieve its stated purpose: to promote justice and fairness to all indigent persons as provided by the laws and constitutions of the United States and Texas. Please do not hesitate to contact me or Task Force staff for assistance regarding any of these programs or publications. I look forward to hearing from you.

My Best,



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

Policies and Standards Update

By: Wesley Shackelford, Special Counsel

New Model Procedures

With hopes of providing assistance in two areas of concern, the Task Force moved to adopt two model procedures at their meeting on August 16th. The first is a model procedure that may be used by the regional presiding judges to handle attorney appeals of the fees awarded by trial courts. The procedure is based on the procedure used by Judge Dean Rucker from the Seventh Administrative Judicial Region. The second deals with removal of attorneys from the appointment list. It lists reasons for removal and a process for considering attorney removals that includes an opportunity for the attorney to be heard. Counties may consider adopting the procedure as part of their indigent defense plans. These models are available on the website at www.courts.state.tx.us/tfid and links are provided here:

- [Model Procedure for Appeal of Disapproval of Requested Counsel Fee](#)
- [Model Procedure for Removal of Attorneys from List](#)

Force Staff:

Wesley Shackelford,
Special Counsel



Update on 2005 Plan Submission Process

Following the success of last year's simpler plan submission/verification process, the Task Force will use the same easy process this year. The process relies upon a simple on-line verification of the plan documents you have previously submitted, an opportunity to submit updated documents, and archive out of date ones. A single official may complete the process for all courts within the geographic jurisdiction. We will be sending out instructions at the end of October and the process is required by statute to be completed by January 1st. The instructions packet will include all of the model forms and procedures adopted by the Task Force, as well as some examples from county plans related to attorney qualifications and indigence determination procedures.

Online Survey Results

This spring we asked you to complete an online survey to provide feedback on implementation of the Fair Defense Act (FDA). We had over 154 people representing a cross-section of stakeholders and counties complete it. Respondents noted improvements brought about by the FDA, including quicker appointment of counsel, greater countywide consistency in indigent defense practices, and decreased resetting of cases for unrepresented defendants. The main problem areas with the FDA were reported to center on the shorter time-frames for appointing counsel and the process of determining indigence. Many respondents indicated that these two areas were driving up costs because more people were being found indigent requiring counsel to be appointed.

What if Appointed Attorney Discovers Client is *Not* Indigent?

Concerns have been raised about the ethical obligations for an attorney who discovers that a client who has been found indigent can actually afford to hire their own counsel. Some have expressed concern that it would violate attorney-client privilege if the attorney reports information on the defendant's financial situation back to court without the consent of the defendant. The Texas Committee on Professional Ethics issued an opinion that addresses these concerns back in 1991. Opinion number 473 deals directly with two variations of this issue. In one scenario, the attorney learns that the defendant was not indigent at the time the defendant signed an affidavit requesting appointment of counsel claiming insufficient funds to hire an attorney. In the second scenario, the opinion assumes the defendant was unemployed when he claimed indigence and has since gotten a job, which would enable him to hire an attorney. The opinion states that a defense attorney appointed to represent an indigent defendant is required to report back to court if it appears that the defendant is *not* indigent for reconsideration of indigency. The rationale is that the Texas Rules of Professional Conduct require an attorney to disclose facts to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act and to reveal confidential information when necessary. The full text of the opinion is at:

http://www.txethics.org/reference_opinions.asp?opinionnum=473&searchfor=

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

 Grants and Reporting:

**Chair: Glen
Whitley
Jon Burrows
Sharon Keller
Knox Fitzpatrick**

Meet the Task
Force Staff:

Sharon Whitfield,
Budget and
Accounting Analyst



Link to:
[Results of
online
Grant Survey](#)

Meet the Task
Force Staff:

Grants and Reporting Update

Announcing FY05 Grants and Allocations

Sharon Whitfield, Budget and Accounting Analyst

FY05 Formula Grants

It's that time of year again...grant season! At the August 16, 2004 meeting of the Task Force, with the formula remaining status quo, members [allocated \\$11 million](#) in formula grants to Texas counties. To apply for a formula grant, the county will need to follow the instructions contained in the [Formula Grant Request for Applications available on the website](#). The application is an online process. The deadline for applying for a formula grant is October 20, 2004.

FY05 Discretionary Grants

Discretionary grants are competitive and payment is issued on a reimbursement basis. Discretionary grants are for counties to develop programs or processes to improve indigent defense services. There is \$2 million available statewide. This year, there are two types of discretionary grant--single year grant and a multi-year grant. At a maximum, a county may apply for one of each. Read the [Discretionary Grant Request for Applications](#) for complete information and program priorities and guidelines. The deadline for applying for a discretionary grant is 5:00 p.m. on October 20, 2004.

FY05 Extraordinary Disbursement Fund

The Task Force has set aside \$150,000 for this funding source. A county must demonstrate indigent defense expenses in the current and/or immediately preceding county fiscal year constituting a financial hardship. Each county request is evaluated on a case-by-case basis against other requests and the amount of money available to fund the requests. Counties may apply at anytime, but funds are usually only distributed toward the end of the state fiscal year. In FY04, the Task Force, because of increased court cost collections, was able to award \$200,000 in extraordinary disbursements. Four counties received funding this year: Grimes, Madison, Midland, and Victoria. Capital murder cases were the criteria used in determining a financial emergency for the county. Visit our website for details and applications.

FISCAL YEAR 2004

Fiscal Year 2004 ended with a bang for the Task Force. The Task Force was able to add an additional \$1.1 million to the formula grant for a total of \$10.7 million to be distributed to counties. Each county's increase will be included in the fourth quarter payment which will not be issued until the end of November.

Bryan Wilson, Grants Administrator



Attorney General Opinion May Impact Grant Fund Use

Bryan Wilson, Grants Administrator

The Attorney General recently issued Opinion No. GA-0193. Some counties were using formula grant funds to augment magistrates' salaries to meet Fair Defense Act requirements. Under this opinion there are acceptable ways to accomplish this and unacceptable ways. The opinion states that, since magistration is a constitutional duty, magistrates cannot receive a stipend to perform the duty they are already being paid to perform. The opinion still leaves room for commissioners courts to set disparate salaries based on caseload or other legal mechanisms. To see the full opinion go to the Attorney General's website at:

<http://www.oag.state.tx.us/opinions/op50abbott/ga-0193.htm>. If grants funds are used to augment magistrate salaries, please review this opinion to verify it is in accordance with law.

Regional Trainings Offered

Bryan Wilson, Grants Administrator

The Task Force met on August 16, 2004 to authorize publication of Request for Applications (RFAs) for grant funds of approximately \$13 million. Regional grant and reporting training is scheduled to assist court and county officials to understand the Task Force Formula and Discretionary grant application processes and the Annual Indigent Defense Expenditure Report. Court and county officials are requested to attend to learn about the Task Force processes and to be involved in a forum on indigent defense issues. Registration is requested to provide contact information on attending counties. To register, see [Registration Form](#) on the grants program page of the website or you may also go to the website at www.courts.state.tx.us/tfid. For those wishing to see and/or print out a slide presentation of what was presented, go to this link for [Training Slide Show](#) (also available at www.courts.state.tx.us/tfid, see 'Grants', see 'Resources for Grantees').

Upcoming trainings to register for:

- September 1, 2004 – Laredo
- September 2, 2004 – Corpus Christi
- September 7, 2004 – Amarillo
- September 13, 2004 – Wichita Falls
- September 14, 2004 – Lubbock
- September 15, 2004 -- San Angelo
- September 21, 2004 – Lufkin
- September 22, 2004 – Sulphur Springs

Meet the Task Force Staff:

Terri Tuttle, Executive Assistant



FY04 IDER (Indigent Defense Expenditure Reporting)

Bryan Wilson, Grants Administrator

This year counties have an even better reason to complete their Indigent Defense Expenditure Report (IDER) on time – More Money. The Task Force increased the grant award of qualifying counties after they submit their reports. The IDER is required by statute from county auditors (Tex. Gov't Code §71.0351). The report is due November 1 of each year from all counties, regardless of whether they receive grant funds. The IDER also serves as a formula grant report. The total amount of the reported expenditures will determine whether the county receives these additional forms.

This report is a simple on-line report. The report follows the statute in the required elements. Counties may request a waiver if they do not have access to the internet. Counties with a public defender office should contact the Task Force staff for the supplemental report.

The number one issue discovered on reports last year was that counties did not report the amount of money collected from defendants for reimbursement of court appointed attorney fees. This year that data element will be on the main page not on the administrative expense page. The field will be better labeled as reimbursement. Please just report the raw numbers in all fields for each court. Do not net (or subtract) the amount of reimbursements from the total indigent defense costs. As always, please call the TFID staff for assistance.

Meet the Task
Force Staff:

Carol Conner, Program
Monitor



Meet the New Program Monitor

Carol Conner, Program Monitor

[Note: Lisa Price, the former Program Monitor, resigned in order to move back to her home state for a once-in-a-lifetime opportunity to start her own business. The Task Force wishes her the best of success. The Task Force was fortunate to hire Carol Conner. Carol started on July 12, 2004.]

I am Carol Conner, the new Program Monitor for the Task Force on Indigent Defense. Prior to joining the Task Force staff, I was the Statewide Coordinator with Securicor New Century's, Performance 2000 (P2K), a contractual project for the Office of the Governor, Criminal Justice Division. Prior to assuming the Statewide Coordinator's position, I was the Dallas/Fort Worth Regional Reviewer with Securicor New Century, P2K project. I conducted quality assurance and technical assistance reviews for organizations receiving grants from the Office of the Governor, Criminal Justice Division. Also, I was employed with North Central Texas Council of Governments (NCTCOG) as a Criminal Justice Grant Specialist. I provided technical assistance to potential grantees and grant applicants throughout the 16 county-region.

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www.courts.state.tx.us/tfid

I have over five years of grant experience in monitoring, administrating, evaluating, and providing technical assistance in accordance with local, state, and federal laws and guidelines throughout the State of Texas. In addition, I have experience as a Community Supervision Officer with McLennan County Supervision and Corrections Department, Waco, Texas. I was an Associate Editor for the Texas Probation Journal. I taught at Tarrant County College-Northwest Campus, Fort Worth, Texas as an Adjunct Instructor in the Criminal Justice Program.

I earned a Bachelor of Science Degree in Criminal Justice from the University of South Carolina and Master Degrees in Criminal Justice and Human Resource Management from the University of Central Texas.

I am excited about joining the Task Force staff and committed to monitoring activities to ensure grant funds are spent appropriately in accordance with the Fair Defense Act. In addition, I strive to provide a balanced approach that not only ensures fiscal responsibility but also focuses on technical assistance to local, state, judicial, county, and municipal officials. Please do not hesitate to contact me if you have any questions at (512) 936-7561 or carol.conner@courts.state.tx.us.

Program Monitor Findings

Carol Conner, Program Monitor

In monitoring the grants, four issues were identified for improvement:

Attorneys were appointed and paid who were not on list approved by judges or juvenile board

Under the rotation system, payments to attorneys for indigent services are made from a public appointment list, which consists of attorneys who meet qualifications. However, in reviewing grants, numerous payments were made to attorneys not listed on the approved attorney appointment list.

Incomplete Attorney Fee Voucher

The [attorney fee voucher](#) was at times incomplete for adult and juvenile cases. The attorney fee voucher form has a designated place for signature of the presiding judge. However, often the presiding judge signature was missing from the attorney fee voucher. The statute and corresponding grant eligibility condition requires that *“no payment shall be made until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment.”* Since the statutory report is built on the payment orders or instruments a county uses, it is crucial that counties institute payment procedures that allow for the correct collection of fiscal and case data for each court.

Magistrate Records Not Being Recorded

In each case in which a person arrested is taken before a magistrate under article 15.17, Code of Criminal Procedure a record shall be made of:

- (1) the magistrate informing the person of the person's right to request appointment of counsel;
- (2) the magistrate asking the person whether the person wants to request appointment of counsel; and
- (3) whether the person requested appointment of counsel.

In a number of jurisdictions, these records were missing or incomplete.

The code provides that a record required under this article may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).

Model Forms Available

Links to forms on the website (www.courts.state.tx.us/tfid):

- o [attorney fee voucher](#)
- o [affidavits of indigency](#)
- o [magistrates warning](#)

Summary of Monitoring Visits

The Task Force on Indigent Defense is required in Texas Government Code §71.062(a)(3) to monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant.

Below are monitoring visits conducted by Lisa Price:

Counties	Date of Visit
Kaufman County	January 7-8, 2004
Bowie County	January 14-15, 2004
Montgomery County	February 3-4, 2004
Orange County	February 11-12, 2004
Harris County	March 9-10, 2004
Galveston County	March 11-12, 2004
El Paso County	March 23-24, 2004
*Harrison County	April 13-14, 2004

*Judge Leggat, 71st Judicial District Court in Harrison County requested technical assistance visit from the Task Force to review their indigent defense systems.

Due to the three months vacancy of the program monitor position, Task Force staff was unable to conduct additional monitoring visits. During the visits, the monitor reviews files and documentation to ensure terms and conditions of the grant are

met. In addition, the on site monitoring visits provides an opportunity for addressing issues and concerns that are related to the definition of indigency in accordance with the Fair Defense Act.

To this date, there have been no major issues of non-compliance with the terms and conditions of the grant or with the Fair Defense Act in any of the counties.

The Task Force takes a proactive approach to provide technical support to improve indigent defense systems and promote compliance by counties with the requirements of state law relating to indigent defense. For questions or technical support, please contact: Carol Conner, Program Monitor; direct line: 512/936-7561; In Texas 866/499-0656; fax: 512/475-3450; email: carol.conner@courts.state.tx.us.