



Task Force on Indigent Defense

May 2003

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"any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."

Gideon v. Wainwright, U.S. Supreme Court, March 1963

The next Task Force meeting is scheduled for July 30, 2003; for a complete listing of Task Force meetings, please go to this hyperlink to the: [Task Force Calendar](#).

Message from the Chair

Sharon Keller, Presiding Judge, Court of Criminal Appeals

January marked the one-year anniversary of the Task Force. Although the Task Force has been composed for just over a year, much has been accomplished. These are some of the accomplishments of the Task Force: established a solid financial and administrative infrastructure; established a contract with the Public Policy Research Institute of Texas A&M University; approved grant rules and procedures covering formula and discretionary grants; approved and awarded almost \$20 million in grants; developed and distributed model forms; adopted minimum CLE requirements; provided many hours of technical assistance; and established a new discretionary grant program. A fund to reimburse counties for extraordinary costs has also been established. This fund is intended to assist counties facing financial hardship for extraordinary costs in indigent defense related matter(s). The procedures and application form are available online at: [Procedures and Forms](#). For further information concerning this fund or any other assistance, please contact Task Force staff at (512) 936-6994. As was demonstrated this past year, continued concerted efforts in indigent defense services will continue to help all Texans. I want to thank all the stakeholders and participants who have a part in the indigent defense process.

Director Welcomes New Members

James Bethke, Director

I welcome the new legislative members, the Honorable John Whitmire, Chair of the Senate Criminal Justice Committee, the Honorable Terry Keel, Chair of the House Criminal Jurisprudence Committee, and the Honorable Todd Smith, Vice-Chair of House Judicial Affairs to the Task Force. I look forward to working with each of them and their staff in the upcoming months.

The Honorable Ken Armbrister, the Honorable Juan Hinojosa, and the Honorable Pete Gallego all are to be commended for their respective participation and leadership to the Task Force. Their knowledge and experience will be missed. I am grateful to each of you for your and your staff's participation in making the Task Force's inaugural year a success.

None of what has been accomplished could have occurred but for the commitment of each Task Force member to volunteer his and her time to attend meetings, review draft documents, debate policy issues, reach consensus, take action, and provide Task Force staff the tools and information it needs to do its job. Too often there is a lot of talk, big ideas, but no action. I want to thank all members, including all staff, for your commitment to improving the delivery of indigent defense services through hard work and a lot of action this past biennium.

A special thank you is owed to the Honorable Rick Perry for his five excellent appointments to the Task Force. What has been accomplished so far could not have happened without the leadership of Commissioner Glen Whitley (Chair, Grants and Reporting) and Mr. Knox Fitzpatrick (Chair, Policies and Standards). Moreover, during the last year the Honorable Jon Burrows, the Honorable Olen Underwood, and the Honorable Eduardo Arredondo spent many hours preparing for and participating actively and intelligently in both the committee and full Task Force meetings.

I also want to thank the members of the Texas Judicial Council (the Honorable Sharon Keller, the Honorable Thomas Phillips, the Honorable Robert Duncan, the Honorable Pete Gallego, the Honorable Ann McClure, and the Honorable Orlinda Naranjo) all of whom served ably on the Task Force and committed much of their time to Task Force responsibilities in developing a solid administrative and fiscal infrastructure to improve the statewide delivery of indigent defense services.

As an update from the 78th Texas Legislative Regular Session, the hearings before the House Appropriations committee and Senate Finance committee have gone well. The Honorable Sharon Keller has led the charge on behalf of the Task Force and testified on its mission, budget, activities, and accomplishments. In addition, Senator Duncan and his staff are to be commended for their role on the Task Force and the legislative support and guidance they provided to the staff of the Task Force. Regular session is scheduled to conclude on Monday, June 2, 2003. The 20th day following final adjournment is the last day the Governor can sign or veto bills passed during the previous legislative session. Shortly after that a full legislative update of the substantive and fiscal bills affecting the Task Force will be compiled and distributed prior to the next Task Force meeting scheduled for July 30, 2003.

With that said, although much has been accomplished, much more still needs to be done.

Go to: [Composition of the Texas Task Force on Indigent Defense](#) for a full listing of the members of the Task Force.

Indigent Defense Formula Grant Processes Streamlined

Bryan Wilson, Grants Administrator

The Task Force on Indigent Defense approved on April 23rd a policy to support automatic application renewals. The Internet based process would simply ask the grant Authorized Official (usually the County Judge or District Judge) to log on to our website and verify that the grant official information is correct and then answer a few simple questions. It would then create a sample resolution for the commissioners' court to adopt. The Authorized Official may delegate this responsibility as long as the alternate user provides their name and contact information.

These new procedures are part of the on-going efforts by the Task Force to minimize paperwork. This allows counties and the Task Force to focus on improving indigent defense services. Please contact the grant administrator if you have any questions regarding these new procedures. They will be mailed shortly after certification of funds by the Comptroller of Public Accounts.

Indigent Defense Expenditures Increase In Many Texas Counties

Indigent Defense expenditures rose over \$21 million in FY02 over FY01 in Texas. This represents an increase of 23.47%. The amount paid by counties for attorney fees increased 20.5% in FY02 over FY01. It is unclear at this time whether this percentage of statewide increase is directly related to SB7 in areas such as higher rates paid to attorneys and more attorney appointments by courts or it is due to increased crime or other factors.

Of all Texas counties, 188 counties reported increases in direct indigent defense spending (attorney fees, defense investigation, expert witness and other litigation expenses). When Task Force grant funds to counties are considered, only 139 counties reported an increase in indigent defense spending.

One significant development was that all other litigation expenses (defense investigation, expert witness and other litigation expenses) increased 62.07 % in FY02 over FY01. These expenses have often been considered harbingers of effective defense systems.

As expected, the largest Texas counties (Harris, Tarrant, Dallas, El Paso and Bexar Counties) had the greatest actual expenditure increase although the percentage varied – Harris 47%, Tarrant 38%, Dallas 10%, El Paso 30%, and Bexar 24%. Many rural counties had huge percent increases but rather small actual expenses. The ten counties with the largest percentage increases amounted to \$219,129.50 or only about 1% of the total statewide increase.

In the first year of data collection counties realized that expenses were not always classified correctly. Many counties have traditionally consolidated all attorney fee payments (civil and criminal) into one line item. This led to confusion in the data submitted both for FY01 and FY02. The statutorily required case information was optional in FY02 because most counties had not collected case data related to payments. In FY03 the data will be required. The Task Force has adopted model payment voucher forms to assist counties in collecting this data. The forms are available on the Task Force website.

For complete statewide expenditure reporting data, go to: [Statewide Expenditure Reporting Data](#)

Performance Measures Provide Long

Term Benefit to Program

To establish long-term program effectiveness all grant recipients should develop program and plan specific performance measures. Any grant program requires recipients to provide some measurable elements to justify their existence. Task Force funding is no different. What is different is that Task Force funds come along side of processes that counties are already funding. As partners in the process, the Task Force on Indigent Defense can be the coordination point for performance measures.

The grants are provided to counties to improve indigent defense systems. While the formula grant does not currently require counties to measure the specific grant eligibility items, a county may want to do so. Long term funding will eventually be determined by some group (Legislature, State Auditor, etc...) wanting to establish that the grant program is providing the effect intended. Below are two examples.

First, a performance measure related to the prompt appointment of counsel is that each defendant must be brought before a magistrate within forty-eight hours of arrest. Even though this is required by statute, the Task Force has adopted as a required item for funding that each county identify in their countywide plan (or procedures) how they will meet this requirement. Some counties have a judge or magistrate drop by the jail at a specific time each day to conduct magistration hearings. Other counties rely on the local law enforcement officials to call the judge or magistrate when an arrested person is due for a magistration hearing.

Most counties assume this is performed automatically. Eventually interested parties will want verification that magistration was conducted on each arrested person within the designated timeframe. On a simplistic level the two data points a county must know before the 48 hour magistration element can be measured are: 1) the date and time of arrest of a specific individual and 2) the date and time of magistration for that individual. Obviously, in the court and criminal justice system things are rarely simple. More data issues that may impact a successful measure are multiple arrests within a day or two for different crimes, aliases, charges re-filed, etc.... Counties that collect data elements to prove magistration even on a simplistic level may provide the Task Force with support to show improvement in legal fairness.

Second, counties could provide a performance measure for a locally created process. An example of this could be services to non-English speaking defendants or defendants that have special needs. The courts in a county could develop special procedures to ensure that attorneys who meet locally developed criteria would handle these special cases. The court could then institute measures to verify that the attorneys with the special criteria ended up serving most of the cases identified as having the special need.

While performance measures are not always easy they are important. They establish evidence to fund providers and interested parties that sound and fair court management practices ensure justice to all parties.

Target Purposes of Indigent Defense Funds

Task Force funds are intended by statute to improve indigent defense systems in a county. A lot of discussion has ensued about allowable and unallowable costs related to indigent defense. Some confusion is to be expected in a new program that is partnering with counties in providing indigent defense services. The four clearest allowable items are the ones the Task Force measures in the annual expenditure report. These four allowable costs are: attorney fees, investigative services, expert witnesses, and other direct litigation costs. As allowable costs, these items are specific to when the county spends these funds on behalf of a defendant or respondent accused of a charge punishable by incarceration.

The Task Force adopted the Uniform Grant Management Standards (UGMS) as the primary method to determine allowable and unallowable costs. The Task Force adopted these standards because many counties currently receive or have received other types of state or federal grants. Indigent defense funds should fit into the normal tracking and accounting systems of county government since most grants use these standards (or their U.S. Office of Management and Budget counterparts). UGMS allows counties broad latitude in determining other allowable costs for this program. The standards typically use a reasonableness test. They also require grantees to maintain sufficient documentation to support a claim of allowable costs if the expense is outside the stated purposes of the grant.

Some normal county expenses are clearly outside of the scope of these grant funds. UGMS clearly states that general government and prosecutorial costs are outside the scope of use for grant funds. Many other routine costs may fall into grey areas that may need to be negotiated with Task Force staff. Unfortunately, many costs claimed on expenditure reports may not be reviewed or audited in detail for quite some time after the submission of reports. For counties with burgeoning direct indigent defense expenses the four statutory expense items can easily demonstrate the needed increased expenses to qualify for the grant. For counties that marginally qualify for the formula grant based on expenses the important thing is to make sure they maintain documentation for expenses other than the four statutory items.

Governor's Office to Coordinate Grant Training with Task Force Staff

The Office of the Governor--State Grants Team staff--will work with Task Force staff to conduct a grant writing seminar on July 31 and August 1, 2003. The seminar will be in Austin. More details and registration information will be announced soon. The training will cover general grant writing techniques, how to search for new funding sources, and provide details on applying for Task Force discretionary grants. The course is designed for the individuals who will actually complete the online discretionary grant submission process.

The State Grants Team is specifically mentioned in the Fair Defense Act. The Grants Team was mentioned in the act to assist the Task Force to identify grants and other resources. This joint training is the first step in building toward common success in indigent defense for counties, the Governor's office and the Task Force. In addition to learning how to write proposals, counties will learn how to seek out other sources of funds to improve local indigent defense systems.

Show Them The Money!

Sharon Whitfield, Budget and Accounting Analyst

The Texas Legislature appropriated the Task Force with a \$7,239,400 budget for grant funding for Fiscal Year 2002. The Task Force was charged with the task of distributing these funds to 254 counties in the form of a Formula Grant. The Task Force used a population-based formula with a minimum funding level of \$5,000 for this grant. Counties qualified for funding if their FY02 annualized expenses were greater than their FY01 baseline expenses. County plans were also required to provide for the prompt access to counsel as required by the Fair Defense Act. Grant applications were due back by May 31, 2002. The Task Force approved FY02 Formula Grant awards on July 22, 2002 totaling \$7,298,124 to 240 counties. The Task Force staff was in charge of notifying counties and a Statement of Grant Award was faxed to qualifying counties for signatures and returned. Distribution of 238 grant awards and 2 direct disbursements were completed by September 3, 2002.

For Fiscal Year 2003, the Task Force plans to distribute \$12,386,903 for Formula and Discretionary grants. A select committee reviewed and evaluated applications received and 20 counties will receive grant awards totaling \$1,586,903 under the Discretionary Grant umbrella. For the Formula Grant, 242 counties applied for grant funding totaling \$10,800,000, which will be distributed in quarterly payments. As of March 25, 2003, 145 counties received their first quarter distribution totaling \$2,225,721 and by April 30, 2003, 166 counties received their second quarter distribution totaling \$2,661,605.

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CLE Rules Rule

Wesley Shackelford, Special Counsel

The Task Force on Indigent Defense's first standards took their final step to approval on April 1st when the Texas Judicial Council ratified them. The rules became effective on April 27th. This completed a process begun by the Task Force's Policies and Standards Committee at their first meeting in May 2002. At that time the committee set out continuing legal education (CLE) requirements as an area for review and possible development of standards. The Task Force's authority for policy development in this area is found in Government Code Section 71.060, which provides in part that it develop policies related to "qualification standards under which attorneys may qualify for appointment to represent indigent defendants, including: successful completion of relevant continuing legal education programs".

Under direction from the Policies and Standards Committee, Task Force staff, working with law students from The University of Texas School of Law, compiled information on CLE requirements already in place in Texas counties, as well as those used in other states and national standards. Based on a review of this information and a lively discussion, the committee developed proposed rules that were recommended to the full Task Force. Feedback was sought on the rules from stakeholders across the state. The Task Force formally proposed the rules at its October 23rd meeting and published them in the November 8th issue of the Texas Register. No public comments were received. The Task Force finally adopted the rules at its January 22nd meeting.

The rules require attorneys to attain a minimum of six hours of CLE in criminal law or six hours of CLE in juvenile law annually to be eligible for appointment in criminal or juvenile cases, respectively. Most counties already require more than six hours. As an alternative to meeting the CLE requirements, the rules allow an attorney to be currently certified in criminal or juvenile law by the Texas Board of Legal Specialization.

Each jurisdiction may determine what annual reporting period to use for the attorneys on the appointment list (e.g. fiscal year, calendar year, month of birthday). Continuing legal education activity completed within a one-year period immediately preceding the initial reporting period may be used to meet the educational requirement for the initial year.

The following provisions are also included in the rules to add flexibility so that attorneys may meet the requirements without causing an undue burden:

- All of the hours may be earned through any method authorized by the State Bar, including self-study. Attendance at a State Bar accredited CLE training is NOT required.
- Carryover provision allows an attorney to earn 12 hours at one conference and carry forward 6 hours to the next year's reporting period.
- Emergency appointment allowed when no attorney meeting the CLE requirements is available by the time an attorney must be appointed in a case. Priority must be given to an attorney with experience in criminal or juvenile law, respectively.

The Task Force believes that completing CLE in criminal and juvenile law is essential for attorneys representing indigent defendants to stay abreast of the latest developments in the law. Implementation of these standards will lead all attorneys in the field to complete training or reading on the law on a regular basis and improve the quality of representation provided to indigent defendants.

For the CLE rules, go to: [CLE Rules](#).

Here to serve

Terri Tuttle, Executive Assistant to the Task Force

The newly created Task Force staff all have a common denominator...each had years of prior public service with state agencies when hired and each is committed

to public service. We believe that with all stakeholders involved in the criminal justice system working together, the process of equal justice can be achieved. The five staff members include a Director, Special Counsel, Grants Administrator, Budget Analyst and Executive Assistant. We want to introduce ourselves to you:

James D. Bethke, Director

Before serving as Director to the Task Force, Jim served as special counsel to trial courts with the Texas Office of Court Administration for four years. In March 2002, he was named Director of the Task Force on Indigent Defense charged with implementing a statewide system of standards, financing and other resources for criminal defendants unable to hire attorneys. Beginning in August 2001, Jim led a project charged with the initial planning for the Fair Defense Act passed by the 2001 Legislature. The act, Senate Bill 7, was authored by state Sen. Rodney Ellis of Houston and state Rep. Juan Hinojosa of McAllen. In his position as special counsel to Texas trial courts, Jim helped negotiate a contract providing low-cost computer research for Texas judges, credited with saving as much as \$1.3 million in research fees for courts in its first six months. Jim, a U.S. Army veteran from the 101st Airborne Division, is a graduate of the University of Texas at Tyler and the Texas Tech University law school and joined the Office of Court Administration in 1998. Prior to that, Jim served as general counsel for the Texas Municipal Courts Education Center. Before that he was chief prosecutor for the Lubbock City Attorney's Office. He is immediate past chair of the Juvenile Law Section of the State Bar of Texas and heads the Juvenile Law Exam Commission for the Texas Board of Legal Specialization. Jim recently published "Texas Traffic Laws," a practice guide for lawyers and judges.

Wesley Shackelford, Special Counsel

Wesley develops standards and policies for the provision of indigent defense services. He provides legal advice on the issue to judges, counties, and the Task Force. He also speaks about indigent defense issues to stakeholders and policy makers. Wesley previously served as Senior Staff Attorney for the Texas Juvenile Probation Commission (TJPC) from 1995-2002. He was the intergovernmental relations' specialist for TJPC and provided information to legislators and other state agencies. Wesley also responded to inquiries on juvenile justice law from judges, probation officers, and prosecutors, as well as, speaking regularly on juvenile law and progressive sanctions. Prior to TJPC, Wesley was employed as a research associate at the Senate Research Center, research associate and messenger at the Texas Legislative Council, and research assistant at the International Financial Law Review in London. Wesley graduated from the University of Texas at Austin with a B.A. in Government in 1990. He received his Doctor of Jurisprudence in 1994 from the University of Texas School of Law and was licensed to practice law in 1994. He is a member of the Juvenile Law Section of the State Bar of Texas.

Bryan Wilson, Grants Administrator

As Task Force Grants Administrator, Bryan is basically responsible for the program development and fiscal distribution of approximately 12 million grant

dollars annually to the counties. He is also responsible to assist counties meet all eligibility requirements to obtain grants. Bryan also provides technical assistance to counties through association meetings, regional training, and site visits. A native of Austin, Texas, Bryan graduated from Crockett High School. He obtained a Bachelor of Science in 1981 and a MPA in 1995 from Texas Tech University. From 1988 to 1996 he served as probation officer in the Bastrop Probation office (21st Judicial District), then in Hockley County (286th Judicial District). He started work with the Texas Department of Criminal Justice in 1996 as a grants administrator with the Treatment Alternative to Incarceration Program. Under this program, he was responsible for over \$14 million in state substance abuse treatment funds funding Community Supervision and Corrections Departments. In 1998 he was promoted to program director of TDCJ's Office of the General Counsel where he managed the law offices, assisted the federal courts interface with the agency regarding collections and video teleconferencing.

Sharon Whitfield, Budget and Accounting Analyst

Sharon was formerly with the Texas Department of Agriculture (TDA) and brings a wealth of financial and budget experience to the Task Force. Sharon worked in the Financial Services section of TDA for the past fifteen years. Ten of those years were focused on budgeting. Sharon became a Sr. Budget Analyst in 1992 and she held that position until 1996 when she was promoted to a Budget Analyst III. In 1999 she was promoted to Supervisor for Budget and Planning and she held that position until her transfer to the Task Force. Sharon performs advanced budget preparation and analysis work, prepares grant reports as required by state and federal guidelines, monitors budgets and expenditures, prepares monthly budget reports, develops internal operating budgets as well as working on the Legislative Appropriations Request. Sharon is an authentic Austinite, born and raised in the capital city, graduated from Crockett High School and is a graduate of Southwest Texas State University in San Marcos, Texas.

Terri Tuttle, Executive Assistant to the Task Force

Terri has worked in the legal field with attorneys in the administration of legal offices and legal assistance for over 20 years. Before this position, she served the state in the Office of the Governor since 1998. Her service during the 76th and 77th legislative sessions gave her exposure and interest in the background and development of the Fair Defense Act. On May 6, 2002, Terri began serving as the Executive Assistant to the Task Force and is the first point of contact for those calling in. Terri assists the Director, James D. Bethke, with project management, strategic planning and web site maintenance and design for the Task Force. She is a graduate of the University of Texas at Dallas and is a native of Austin, Texas.

That's us. Now, we want to hear from you. We would appreciate hearing from all personnel in Texas who are involved with the indigent defense process. Indigent Defense Coordinators, Court Administrators acting in that capacity, or any position related to the indigent defense process. You may contact us by e-mail with any comments, questions or suggestions at: FairDefense@courts.state.tx.us. You may also call us, toll free, at 866-499-0656. There is also a website that will familiarize you with the program. On the website at: www.courts.state.tx.us/tfid, you will find

useful information to assist you including all county indigent defense information (indigent defense plans, expenditure reporting data, contact information). In addition, you will find a link to PPRI (Public Policy Research Institute at Texas A&M University). The Task Force has a business service contract with PPRI and they assist us with the online process of gathering county indigent defense plans, expenditure data and grant applications. Counties and the public have access to view each county's indigent defense plans and data. Counties may also update their own contact information and view all submissions made by the county online.

Thank you for giving us the opportunity to serve you. We look forward to working together with you.

Helpful Web links

DISTRICT CLERK PROCEDURE MANUAL 2002 Edition: **District Clerks Manual**

The District Clerk Procedure Manual is a ready reference guide covering the various duties, responsibilities and procedures of district clerks in Texas. It is published by the state Office of Court Administration as a public service. The on-line version of the District Clerk Procedure Manual provides hyperlinks to the authorities referenced throughout the Manual, such as the [Texas Constitution](#), [statutes](#), [Attorney General Opinions](#), and court rules. These hyperlinks are provided for your convenience. The Office of Court Administration cannot guarantee that links to sites maintained by other agencies are current and accurate.

A Fine is Punishment for a Crime Only if it is Collected

The Office of Court Administration (OCA) is a state agency that provides administrative support and technical assistance to all the courts in Texas. The Collections Services Division is available to assist counties in establishing fine and cost collections programs at no charge. OCA can: assist you in evaluating your needs; make a formal collections presentation to interested county officials; assist you with program development and training; provide ongoing administrative/technical support and assistance; and provide free software and training.

For years, the general perception among virtually everyone involved in the criminal justice system was that very few criminal offenders were financially able to pay fines and costs. This perception is being shattered by innovative and aggressive collection programs that are proving a majority of criminal offenders have greater resources to meet financial responsibilities than is usually assumed. Basic private sector collection techniques and procedures are helping courts and counties statewide identify and access resources previously thought to be inherently limited or totally nonexistent. Clearly a change in perception, attitude, and priority is underway in Texas, as well as across the nation. Compliance not only generates

much needed revenue, it encourages respect for the law.

How to get assistance? The most important step is the first step. Contact either Jim Lehman, Collections Specialist at OCA at (512)936-0991 or Rene Henry, The Collections Project Manager at OCA at (512)463-1635.