



# Texas Task Force on Indigent Defense

2004 Annual Report

The mission of the Task Force is to improve the delivery of indigent defense services through fiscal assistance, accountability and professional support to the State, local judicial, county, and municipal officials. The purpose of the Task Force is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and Texas.

**This year marked the 40<sup>th</sup> ANNIVERSARY OF  
CLARENCE EARL GIDEON V. WAINWRIGHT  
U.S. Supreme Court, 1963**

"If an obscure Florida convict named Clarence Earl Gideon had not sat down in prison with a pencil and paper to write a letter to the Supreme Court, and if the Supreme Court had not taken the trouble to look for merit in that one crude petition among all the bundles of mail it must receive every day, the vast machinery of American law would have gone on functioning undisturbed.

But Gideon did write that letter. The Court did look into his case and he was retried with the help of a competent defense counsel, found not guilty, and released from prison after two years of punishment for a crime he did not commit, and the whole course of American legal history has been changed."

**Attorney General Robert F. Kennedy**  
November 11, 1963

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**Front cover photo:** Presentation of FY04 Discretionary Grant of \$72,700 to Limestone County Commissioners Court on February 23, 2004. Pictured above front row, left to right, G.Z. (Peaches) Stone, Judge Sharon Keller, Peggy Franklin, Lauri Anderson, Laura Beth Holmes, Judge Elenor Holmes, Billy Waldrop and Keith Eaves; and back row, left to right, Bryan Wilson, Dennis Wilson, K.C. Odom, Don Ford, Ray Forrester, Ray Jones and Roy DeFriend (The Groesbeck Journal Photo)



# Task Force on Indigent Defense

## FY04 MISSION & GOALS AND STAFF PERFORMANCE MEASURES

### **Mission:**

The mission of the Task Force on Indigent Defense is to improve the delivery of indigent defense services through fiscal assistance, accountability and professional support to State, local judicial, county, and municipal officials. The purpose of the Task Force is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and Texas.

### **Goals:**

**1. Distribute state monies in the form of grants to counties**

**2. Account for the distribution of state monies through the collection and review of county expenditure data through site visits**

**3. Provide professional assistance to courts and counties on-site and through a toll-free help line**

**4. Develop uniform policies and standards for providing legal representation and other defense services to indigent defendants**

**5. Promulgate model forms and identifying best practices**

**6. Collect and maintain statewide indigent defense reporting information**

**7. Promote stakeholder involvement in the development of uniform policies and model forms**

**8. Educate county officials, the courts, the criminal defense bar, the public and other stakeholders about the Fair Defense Act**

**9. Monitor program compliance with the Fair Defense Act through the collection and judicial plans and through site visits**



## TEXAS TASK FORCE ON INDIGENT DEFENSE

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### OFFICERS:

Honorable Sharon Keller	Chair – Presiding Judge, Court of Criminal Appeals
Honorable Olen Underwood	Vice-Chair – Judge, 284 <sup>th</sup> Judicial District, Presiding Judge, 2 <sup>nd</sup> Administrative Judicial Region

### EX OFFICIO MEMBERS:

Honorable Sharon Keller	Austin, Presiding Judge, Court of Criminal Appeals
Honorable Chris Harris	Arlington, State Senator
Honorable Terry Keel	Austin, State Representative
Honorable Ann McClure	El Paso, Justice, 8 <sup>th</sup> Court of Appeals
Honorable Orlinda Naranjo	Travis County Court at Law #2
Honorable Thomas Phillips	Austin, Chief Justice, Supreme Court
Honorable Todd Smith	Bedford, State Representative
Honorable John Whitmire	Houston, State Senator

### MEMBERS APPOINTED BY GOVERNOR:

Mr. Eduardo Arredondo	Marble Falls, Attorney, Law Office of Eduardo Arredondo
Honorable Jon Burrows	Temple, Bell County Judge
Mr. Knox Fitzpatrick	Dallas, Attorney, Fitzpatrick, Hagood, Fisher & Holmes
Honorable Olen Underwood	Judge, 284 <sup>th</sup> Judicial District, Presiding Judge 2 <sup>nd</sup> Administrative Judicial Region of Texas
Honorable B. Glen Whitley	Hurst, Tarrant County Commissioner

### STAFF:

James D. Bethke	Director
Carol Conner	Program Monitor
Wesley Shackelford	Special Counsel
Terri Tuttle	Executive Assistant
Sharon Whitfield	Budget and Accounting Analyst
Bryan Wilson	Grants Administrator



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CHAIR:  
THE HONORABLE SHARON KELLER  
Presiding Judge, Court of Criminal Appeals

DIRECTOR:  
MR. JAMES D. BETHKE

VICE CHAIR:  
THE HONORABLE OLEN UNDERWOOD

December 17, 2004

Governor Rick Perry  
Lieutenant Governor David Dewhurst  
Speaker Tom Craddick  
Texas Judicial Council

Dear Ladies and Gentlemen:

It is our privilege to submit a report concerning the duties, activities and accomplishments of the Texas Task Force on Indigent Defense for the fiscal year ending August 31, 2004. As required by the Fair Defense Act, Section 71.061, Government Code, the Task Force on Indigent Defense shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and council and shall publish in written and electronic form a report: (1) containing the information forwarded to the task force from the Office of Court Administration of the Texas Judicial System under Section 71.0351(e); and (2) regarding: (A) the quality of legal representation provided by counsel appointed to represent indigent defendants; (B) current indigent defense practices in the state as compared to state and national standards; (C) efforts made by the task force to improve indigent defense practices in the state; and (D) recommendations made by the task force for improving indigent defense practices in the state.

This program has been in existence since January 1, 2002 and in that short period of time, Texas counties and all professionals involved in the process have made great strides in its efforts to uphold the process of fair justice for all Texans, not just those who have sufficient means to afford their defense. State leaders and all those involved in the process should be commended for the support and cooperation and spirit dedicated to this worthwhile and important effort.

Sincerely,

Sharon Keller  
Chair, Task Force on Indigent Defense  
Presiding Judge, Court of Criminal Appeals



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# Executive Summary

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## **Insuring 6<sup>th</sup> Amendment Constitutional Right to Counsel to all Texans--How Texas is doing it right...**

In 2004, the Task Force on Indigent Defense (Task Force) administered grant programs totaling 12 million dollars, benefiting 244 counties. This represents an increase of 1.1 million dollars over FY 2003, resulting from a surety bond fee adopted by the 78<sup>th</sup> Legislature. These funds support the overall indigent defense program in the counties and are the primary financial source of state assistance.

Since the passage of the Fair Defense Act (FDA), more indigent defendants are receiving court appointed counsel. In 2002, 278,479 cases received court appointed counsel. In 2004, 371,167 cases received court appointed counsel. This represents a 33 % increase while criminal case filings rose only 8 %.

The Task Force has posted electronically each of the 254 counties' indigent defense plans and expenditure reporting data on its public website at [www.courts.state.tx.us/tfid](http://www.courts.state.tx.us/tfid). A password protected portion of the website is also where county officials complete the annual expenditure report and the plan submission/verification process, and update their contact information. This online system significantly streamlines the process for counties and greatly reduces the paperwork required. The public website also includes all the model forms and procedures adopted by the Task Force.

The Task Force also contracted with The Spangenberg Group, nationally recognized experts in the study and improvement of indigent defense systems, to study the state's public defender offices. The study produced two technical assistance reviews of Dallas and Wichita Counties public defense systems and generated a publication entitled *Blueprint for Creating a Public Defender Office in Texas*. The *Blueprint* is intended to be a tool for Texas local and state officials who seek a deeper understanding of what a "public defender" is and whether creating one makes sense. The reviews and publication are available on the website at [www.courts.state.tx.us/tfid](http://www.courts.state.tx.us/tfid).

In an effort to gain a better understanding of the Act's impact, the Task Force has conducted a study in conjunction with the Public Policy Research Institute (PPRI) at Texas A&M University. The goals of the study were to learn how major FDA requirements impact county processes and indigent defense service delivery, and how county implementation strategies affect effectiveness. The key findings were significant.

- Texas is providing more defendants with indigent defense.
- The counties studied are all complying with the "prompt appointment" requirements of the FDA.
- Under the FDA, counties have flexibility in implementing the requirements and their choices may impact costs.

See Appendix G for the highlights of the report.

The Task Force applied for and was awarded a \$90,000 grant from the State Justice Institute. The study will evaluate the impact of direct electronic filing in criminal cases and will develop models of interest and relevance to local, state and national officials. The study is being conducted in collaboration with Public Policy Research Institute (PPRI) and will be completed in the fall of 2005.

The Task Force adopted two model procedures this past year. One model establishes a uniform process throughout the nine administrative judicial regions relating to the appeal process of court appointed attorney fees reduced or modified by trial courts. The procedure is based on the method used by Judge Dean Rucker from the Seventh Administrative Judicial Region. The second model deals with removal of attorneys from the appointment list. It catalogues 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](http://www.courts.state.tx.us/tfid).

The Task Force conducted an online survey of the implementation of provisions of the Fair Defense Act (FDA). 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 reported involve 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, thus requiring counsel to be appointed.

The Task Force and staff have provided presentations across the state to more than 1,200 judges, county commissioners, defense attorneys, county employees, and other criminal justice stakeholders on their responsibilities and on the responsibilities of the Task Force.

Since its formation in January 2002, the Task Force has used its funds to promote and encourage statewide improvements in the delivery of indigent defense

services. A formerly closed process is now open to public scrutiny. The efforts of the judiciary and the publication of the county-wide indigent defense plans have resulted in greater uniformity than before, when practices varied from judge to judge.

Through support of the Texas Legislature, the Governor's Office, county government, and the judiciary, the Task Force will continue its statewide exchange of ideas with both the public and private stakeholders concerning indigent defense. During the past year, as outlined on the following pages of this report, much of this dialogue has been turned into deliverables. The report is organized in three focus areas: fiscal responsibility and professional support, policies and standards, and general operations.



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# Fiscal Responsibility and Professional Support

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## ★ Grants and Reporting

### **State Indigent Defense Funding Programs**

The Task Force's indigent defense grant programs are designed to provide as much funding as possible to as many counties as possible to improve local indigent defense systems. To better meet the diverse fiscal needs of local government in this area, four grant programs have been developed: 1) formula; 2) direct disbursement; 3) extraordinary; and 4) discretionary. Most grant funding is distributed through a formula that compares expenditures for the most recent year against a baseline year and awards a portion of the increased expenditures over the base year. For counties that may or may not have increased expenses from year to year, these counties may opt into the direct disbursement pool that is only triggered when a county experiences increased expenses. A county may also qualify for funding above its formula or direct disbursement if it is able to demonstrate to the Task Force "extraordinary" expenses. One example would be increased costs due to a case involving a capital offense. To encourage innovative programs and challenge counties to examine local processes, the Task Force awards "discretionary" grants on a competitive basis.

Since the inception of the FDA, the main source of funding for the Task Force is court cost collections. Of court costs collected, a portion is set aside for administrative costs and the remainder is distributed to counties in the form of grants and disbursements.

During the 78<sup>th</sup> Legislative, Regular Session, the Surety Bond Fee (H.B. 1940) and the State Bar Fee (H.B. 599) were additional source of funding designated for the Task Force. Both funding sources will be distributed to counties in the form of grants. The Surety Bond Fee assesses a \$15 fee on surety companies posting bail bonds. Of the fee collected, one-third goes to the Fair Defense Account. The

State Bar Fee allocates one-half of the \$65 annual attorney fee to the Fair Defense Account.

In summary, the Task Force in FY04 provided \$12 million in grants to counties. Of this amount \$10.7 million was allocated to formula grants to 228 counties, \$1.1 million for discretionary grants to 6 counties, \$200,000 for extraordinary grants to 4 counties and \$89,254 in direct disbursement grants to 14 counties.

#### **FY04 Formula Grant Program**

Formula grants provide money to counties for increased indigent defense costs based on a formula set by the Task Force and contingent on judges meeting specified requirements of the Fair Defense Act in the indigent defense plans submitted to OCA. Qualifying counties are eligible for funds determined by the formula only to the extent their spending exceeds spending in their baseline year. The current formula provides that all counties are eligible for a \$5,000 "floor." The remaining funds set aside by the Task Force for these purposes are then allocated based on the counties' percent of the State of Texas' population in 2000. Other grant distribution formulas may be considered in the future as more data becomes available. Per statute counties cannot reduce their expenditures as a result of receiving grant funds. Counties must meet minimum spending requirements to receive credit for spending the funds. This minimum (or baseline) was set as the amount a county expended on indigent defense in FY01, the year before the act went into effect.

Formula grants accounted for 88% of the funds distributed to counties.

Twenty-five counties did not apply for a formula grant and were eligible to receive a direct disbursement if they experienced indigent defense expenses above their baseline. One county, Brewster, declined their formula grant award. A county may decide not to apply for a grant or decline a grant award if they did not expend any of their previous grant award or they do not anticipate increased indigent defense costs.

Of the 26 counties that did not apply for formula grants, 14 of those counties received direct disbursements.

### **Direct Disbursement Program**

The purpose of the direct disbursement pool is to better meet the needs of rural counties that generally have a low incidence of crime and minimal indigent defense expenses. Counties falling into this category were encouraged not to apply for formula grants. But a county could still receive an amount up to their originally proposed grant allocation. 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.

<b>County</b>	<b>Direct Disbursement Award</b>
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
Total	\$89,254

### **Discretionary Grant Program**

Discretionary grants are awarded by the Task Force to encourage courts and counties to examine their indigent defense processes to improve the local system by developing innovative programs. Two years overlap in this annual report because discretionary grants operate from March through February. Many extensions were given in the first year (FY03) to allow counties to complete these new programs.

### **FY03 Discretionary Grant Program**

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

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.<sup>1</sup>

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 system. This program will serve as a model for all potential future contract systems established by the courts. This program

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<sup>1</sup> See Montgomery County's example/use of technology in Appendix F.

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 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 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.

**FY04 Discretionary Grant Program**

Grants for FY04 are still underway. In FY04 six counties (Dallas, El Paso, Limestone, Tarrant, Travis and Webb) were awarded \$1.1 million. Programs represented direct services (1 program), IDCs (2 programs), and technology (3 programs). Court and county coordination documents were strengthened to avoid offering programs that courts and counties were not simultaneously committed to. The completion dates of these programs will be after the 79<sup>th</sup> Legislative session begins. FY04 Discretionary grants were awarded for the period of March 2004 through April 2005 and are listed in Appendix C.

“This technological magic has saved our Judges hours of time and effort in complying with the FDA mandates. It has opened our courthouse doors to extremely efficient proceedings that make our judicial system better for all and it has helped us comply with the mandate to timely appoint counsel for those individuals that are otherwise unable to afford one.”  
**Judge Michael Mayes, Montgomery County, regarding the discretionary grant funded live video conferencing attorney appointment system**

Fiscal Year	Counties Applying	Counties Funded	Total Amount Requested	Total Amount Funded	Total Amount Disbursed
FY03	25	22	\$3.7 Million	\$1.6 Million	\$1.2 Million
FY04	13	6	\$3.4 Million	\$1.1 Million	Pending

### Extraordinary Disbursement Program

The Task Force distributed \$200,000 to four counties (Grimes, Madison, Midland and Victoria) under the Extraordinary Disbursement Program. To qualify for this funding a county must demonstrate indigent defense expenses in the current and/or immediate preceding county fiscal year constituting a financial hardship. Each request is evaluated on a case-by-case basis against other requests and the amount of funds available.

Texas Task Force on Indigent Defense FY 2004 Extraordinary Disbursement		
County	Date Request Received	Amount Disbursed
Grimes	10/20/03	\$12,780
Madison	06/03/04	\$66,997
Midland	8/11/04	\$100,150
Victoria	10/27/04	\$20,073
Total		\$200,000

The Extraordinary Disbursement Program was established in FY03, however, the last legislative session required all state agencies to give 7% of program money back to the state to balance the budget. Because of this request, funds for extraordinary disbursement were removed to avoid other grant reductions. Due to increased court cost collections in FY04, the Task Force was able to fund this program and are listed in the table in the above paragraph.

### On-line application process

The Task Force developed an on-line automatic application process in FY03. The system is accessible to all Texas county officials that have internet access. The process was carried forward successfully for FY04. Counties are provided with the grant eligibility requirements and given an opportunity to update basic court and county official contact information. Virtually no data entry is required since most county contact information remains fairly static. The on-line process provides counties with confirmation of their submitted application and allows them to print out the resolution for adoption by the commissioners' court. Many court and county officials have commented on how easy the process is.

The automatic application is just one way that Task Force reduces administrative costs and paperwork for the counties. As a result of the automatic process counties have only two pages they are required to maintain - a confirmation page and a resolution. The Task Force only maintains one page electronically- the resolution and one paper document - the signed Statement of Grant Award.

### On-line Expenditure Reporting Process

The on-line Indigent Defense Expenditure Report was used first in FY03. County officials have been very appreciative of the process. They are able to control the report entirely up to the submission point. Task Force staff often receive comments from auditors and treasurers about how simple the report is to complete. The report is another way to reduce paperwork at both the state and

local level. Counties receive immediate confirmation that the Task Force has received their report. They are also able to see immediately whether they have spent the grant funds. The system allows the county to monitor their percent increase over the baseline and to see reports on how their expenses compare to other counties throughout the state. The Task Force also maintains this information on its website so that it is available to the public.

### **Expenditure Report Data**

Expenditures have risen for most Texas counties. Some counties have been impacted much greater than others. When considering grant funds many Texas counties have not seen a rise in costs.

#### **Number of Counties Impacted With Increased Costs**

	<b>FY02</b>	<b>FY03</b>	<b>FY04</b>
Number of counties with no increased indigent defense spending when considering grant funds	107	81	87
Number of counties with increased indigent defense spending when considering grant funds	147	173	167
Total number of counties	254	254	254
Statewide percent indigent defense increase over baseline (FY01)	24.2%	40.4%	50.6%
Statewide percent indigent defense increase over baseline (FY01) when factoring grant disbursement	16.4%	29.1%	39.5%

### **Educational Programs for County Officials**

The Task Force set the tone early on that the mission was to improve indigent defense by supporting the judiciary and counties. One key component of the Task Force strategy is to provide educational programs to judges, county officials, and other involved stakeholders. Staff perform these trainings at numerous locations around the state. Counties sponsor the programs by providing a meeting location.

In addition, the Task Force offers regional grant and report training in the major state regions to minimize county and judicial travel time and costs. These trainings include information on how to apply and to develop successful grant applications. They explain how the funds are connected to the countywide indigent defense plans and forms submitted by the judges. A significant portion of the training is dedicated to teaching auditors and treasurers how to complete the statutorily required indigent defense expenditure report. Elements of this training are provided to various county associations throughout the year as well. Providing training at locations around the state has been an excellent way to connect to the localities that the Task Force serves and allows staff to see first

hand what challenges face counties and courts in implementing the Fair Defense Act. See a complete list of trainings in Appendix D.

### **Fiscal Program Monitoring**

The monitoring process consists of three stages. The first stage is preparation of the monitoring visit. The second stage is the actual fiscal monitoring of counties that receives a Task Force grant. The Task Force is required to enforce the terms and conditions of the grant in accordance with the Texas Government Code §71.062(a)(3). The written report is the third stage of the monitoring process. After the monitoring visit, the fiscal program monitor prepares a monitoring report of any noncompliance issues identified in the form of a written draft report. Technical assistance is provided throughout the monitoring process. The fiscal program monitor findings and recommendations are documented in the draft report. The county responds to the monitoring report of findings and recommendations, if any, and submits a plan of action, if necessary, within a specified time frame. The county replies to the monitoring report with a plan of action, if any, and then becomes part of the final report.

In conducting fiscal monitoring visits, three recurring issues were identified for improvement: missing signatures on forms; forms incomplete for adult and juvenile cases; and errors caused by lack of training.

The operational efficiencies were also reviewed for effectiveness. Overall, the counties are maintaining policies and procedures and are in compliance with issues related to the indigent defense program.

The Task Force is committed to providing a balanced approach that ensures fiscal responsibility and needed technical assistance to counties.

The Task Force has developed model forms that are available on the web site. The model forms are intended to be instructional with data elements required in the statutes related to indigent defense. The Task Force recognizes that many counties have systems in place and forms that provide them with the necessary information. However, counties that do not have forms or a system in place may use the model forms that best meet the needs of the county and statutory reporting requirement. The model forms can be edited to accommodate other fields that meet the county need. All counties are encouraged to download forms from the Task Force on Indigent Defense web site. The link to the model forms is available at: [www.courts.state.tx.us/tfid](http://www.courts.state.tx.us/tfid).

### **Risk Assessment**

The Task Force monitors counties based on a risk assessment formula developed using the standards outlined in the Texas Uniform Grant Management Standards (UGMS). As outlined in UGMS, all counties receiving funding in excess of \$300,000 in a fiscal year ending before December 31, 2004, must be monitored annually. Counties receiving less than \$300,000 in a grant period will be monitored based on the risk assessment formula. The Task Force monitors, at a minimum, 5 counties per quarter. Counties are monitored based on their relative risk assessment score, with the highest scoring counties monitored first. The scoring process can have a maximum of 50 points. Counties scoring 25 points or more will be considered high risk and monitored within the current fiscal year.

For fiscal years after January 1, 2004, the UGMS states that any county receiving in excess of \$500,000 in grant funding must be monitored annually.

All counties have been reviewed and assessed based on the risk assessment. There were 22 counties scoring within the risk assessment range to require monitoring which includes the 6 counties who require annual monitoring due to funding levels.

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.

### **Desk Reviews of FY03 Expenditure Reports**

To date desk reviews have been conducted on all 254 counties FY03 expenditure reports. All 254 counties have submitted statutory reports required by the Fair Defense Act. In reviewing expenditure reports, several counties had missing data from the report. Therefore, counties were contacted by telephone, email, and facsimile to collect missing data and confirm the accuracy of available data to the expenditure report. All data issues were resolved to ensure completion.

## ★ Policies and Standards

### **Successful Implementation of Electronic Indigent Defense Plan Submission Process**

All counties successfully submitted their indigent defense plans to the Task Force using a new on-line process. Counties are charged with annually submitting by January 1<sup>st</sup> the “rules and forms that describe the procedures used in the county to provide indigent defendants with counsel.” After two years of county submissions, the Task Force implemented an easy to use web-based system for local officials to either submit new or amended plans, or verify that the plans on file are still current. The website has direct links to all of the plan documents previously submitted by the county for easy review. The Task Force staff provided technical assistance on the new process to approximately 200 county and court officials.

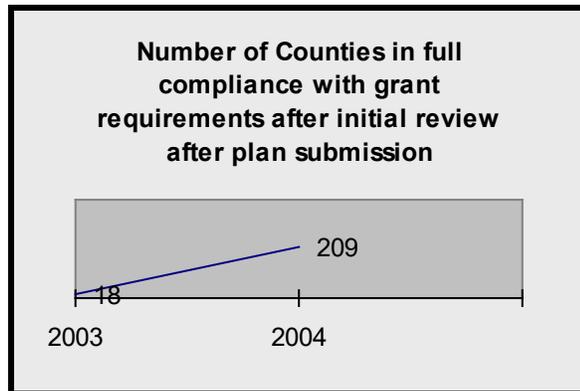
As part of the process, a checklist is displayed on screen for officials to review whether the previously submitted plans complied with the FY04 discretionary and formula grant requirements. Requirements included meeting the prompt access to counsel requirements and payment processes, including attorney fee schedules and vouchers. The FY04 discretionary grant also added compliance with the Task Force adopted minimum continuing legal education (CLE) rules for appointed counsel. The plan submission instructions informed local officials that compliance with these rules was likely to be added as a formula grant requirement in FY05 and encouraged those not in compliance with this to consider supplementing their plans. The website provided links to the rules and allowed them to create a plan supplement using model language from the Task Force to comply with the CLE rules. Most counties used this feature to come into compliance with the rules with 187 submitting new CLE supplements. Although many counties had some CLE requirements already, implementation of these rules statewide will assure that attorneys are staying up to date on the always changing criminal and juvenile law.

Compliance by counties with the on-line plan submission/verification process was also improved with less than 25 percent of counties not completing the process by mid-January. All counties were in compliance by April. Under the paper process used in 2003, many more counties initially failed to submit their plans and it took months longer for them all to complete the process. The Task Force will build on this successful process by using and updating it in future year's submissions.

Implementation of the electronic submission of indigent defense plans means that all the Task Force's regularly required reports from counties, including expenditure and grant reports, are now completed via the internet. Achievement of this goal means a lessening of the burden on local officials and Task Force staff to generate, mail, process, scan, and upload hard-copy plan documents and entering of other data manually. As before, all plan documents are available to the public on the Task Force website.

### **Indigent Defense Plan Compliance with Grant Eligibility Requirements Improves**

Upon initial review of the 2004 indigent defense plans, we found over 80 percent of counties in full compliance with all the formula grant requirements for the coming year. This compares with only seven percent of the plans submitted in 2003. We attribute this success to the electronic submission process discussed above because it let



counties know of any deficiencies upfront *and* provided them an opportunity to remedy them immediately. Those counties not already meeting the eligibility requirements still have an opportunity to bring their plans into compliance and staff are providing direct technical assistance so that all counties have an opportunity to receive grant funds. The Task Force's strategy of giving judges early information on what is being expected of their indigent defense procedures and a straightforward way to meet those expectations is working.

### **Identifying Best Practices**

The Task Force is always looking for ways to help counties address issues that are critical to a well functioning indigent defense system. The Task Force worked towards this goal by promulgating two model procedures. The first is a *Model Procedures for Removal of Attorneys from the Court-Appointed List*. This procedure deals with the difficult issue of when and how to remove attorneys from the appointment list created by the judges. This is an area that many judges did not contemplate or address when they originally developed their indigent defense procedures. Setting objective standards for placement on the list and creating the list were paramount concerns at the time. As implementation enters the third year, a procedure for removing attorneys came to the fore as an area of need. This procedure was developed by Task Force in collaboration with other criminal justice stakeholders. The result is a procedure courts may adopt that sets out the grounds for removal (including criminal and ethical violations) and

"I am very much in favor of the Texas Fair Defense Act. It's a great thing. It's fair. I'd like to say first that this district is blessed with outstanding attorneys in the defense bar who are on the attorney appointment list. However, to complement that, this district has made improvements in the quality of representation to indigent defendants by initiating three key mechanisms in response to the Fair Defense Act: 1) Keep the attorney appointment list current - immediately remove attorneys not interested in being on the list. 2) Monitor the attorney appointments - match cases up with qualification and experience of attorneys. 3) Aggressive court management - move and work the cases. Due to the increased expenditures for the counties to operate this way, the state needs to increase funding. Bottom line: Quality representation depends on the judges. If the judges demand that the lawyers do right, then they'll do right."

**Kenneth H. Keeling, Judge, 278<sup>th</sup> District Court Judge, Huntsville**

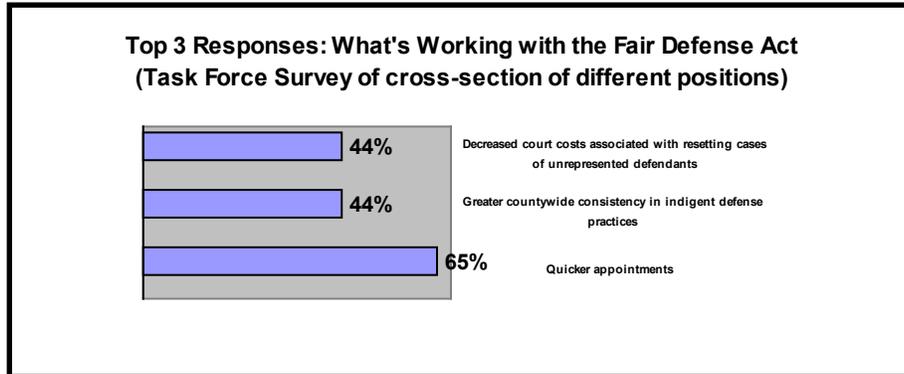
the process that the judges must follow prior to removing an attorney from the list. The procedure gives attorneys the opportunity to present their case to the judge and gives the judge a range of possible actions. These options range from requiring an attorney to complete some rehabilitative measures to stay on

the list up to removal from the list for an extended period of time. Adoption of this procedure will help judges fairly address concerns about attorneys when they arise.

The second procedure adopted by the Task Force is the *Model Procedure for Appeal of Disapproval of Requested Counsel Fee* for use in cases where a judge reduces or disapproves the fee requested to be paid by an appointed attorney. Such a procedure is needed to address the process by which such appeals are to be handled by the regional presiding judges required by Article 26.05(c), Code of Criminal Procedure. The procedure is based on one used by Judge Dean Rucker, presiding judge of the Seventh Administrative Judicial Region. It provides time-frames for reviewing the appeals and what type of documents the judge will consider in making his findings.

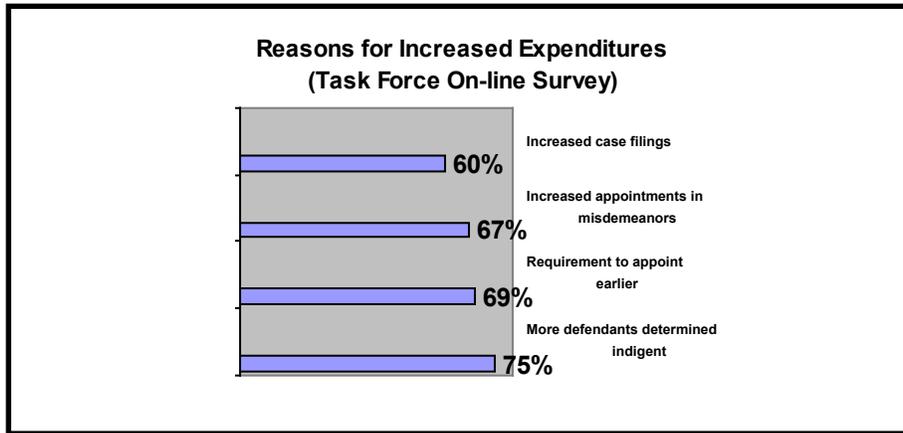
"To eliminate potential waste, a plan was developed to screen the cases early - before magistration. This obviously requires leadership from the prosecuting attorney, sufficient input and information from law enforcement at or very near the time of arrest. Collaborative efforts to achieve this goal were made with law enforcement, the justices of the peace and the district attorney's office. As a result of these efforts, Comal county's indigent defense expenditures rose only 20 percent as compared to the statewide average increase of 40 percent."

**Dib Waldrip, Comal County District Attorney**

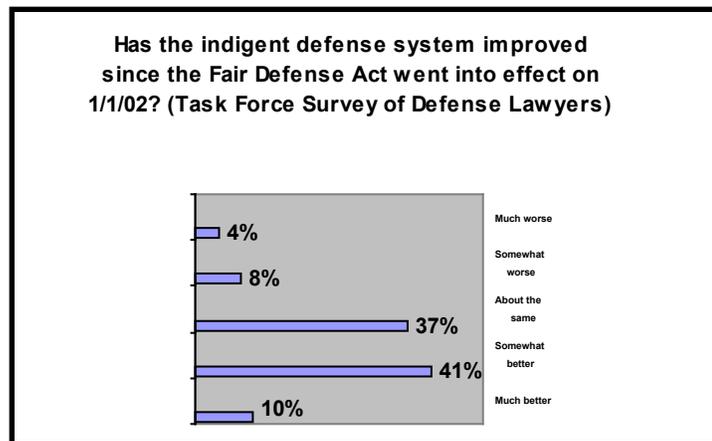


### Feedback on the Fair Defense Act

As two years elapsed since the FDA became effective the Task Force directed staff to survey stakeholders in the indigent defense system on the impact of the FDA. The areas where problems were reported lay the groundwork for legislative recommendations addressed in the next section of this report. See Appendix E. The results framed the issues. In the spring, staff developed and the Task Force approved an on-line survey that was then distributed to all key county and court officials. The survey was also available on the Task Force's website for members of the public to complete. Over 150 people responded from counties of varying sizes representing a cross-section of different positions within their communities. It contained a variety of questions related to the impact of the substantive requirements of the FDA. It also contained a section related to the formula used in the formula grant, which is discussed elsewhere in this report. Most respondents indicated that expenditures had risen since FDA implementation with more than two-thirds saying that more defendants are now determined to be indigent, attorneys are required to be appointed earlier, and more appointments are being made to defendants charged with misdemeanors. Nearly four in ten indicated their attorney fee schedules were increased. Reported improvements caused by the FDA include quicker appointment of counsel, greater countywide consistency in indigent defense practices and decreased cost associated with resetting cases of unrepresented defendants. Problems reported with FDA included time frames for contacting client are too short and no notice is given to appointed counsel when counsel is retained. The latter problem is being dealt with through the development of a model procedure that counties may adopt providing notice to appointed counsel so that they may discontinue work on the case, thus saving money. Many also reported problems with determining indigence accurately and within the time frames for appointing counsel. Some reported false claims of indigence and difficulty verifying these claims. The Task Force is examining the process for determining indigence and will consider adoption of a model process that counties may use to improve indigency determinations.



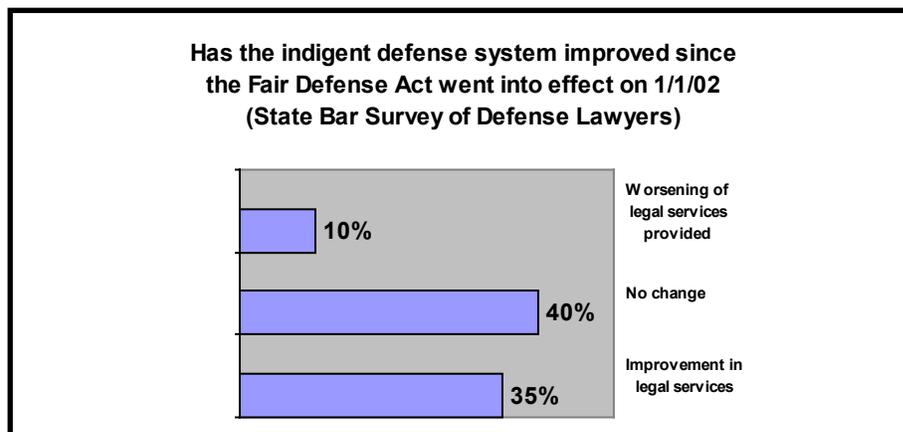
Over the year, staff spoke at 12 seminars for criminal defense attorneys across the state. At each of these we asked the attorneys to complete a survey gauging their view of the impact of the FDA. A majority of the attorneys reported the indigent defense system had improved in their county with quicker appointment of



of counsel and fairer distribution of appointments cited most often. Problems with the FDA most commonly cited were inadequate compensation for appointed attorneys, no notice to appointed counsel when client retains counsel, and time frame for attorney to contact/meet with client is too short.

In addition to these surveys, the State Bar of Texas Committee on Legal Services to the Poor in Criminal Matters conducted a survey of criminal defense attorneys in late 2003 to gauge their views on the implementation of the FDA. The survey was conducted by Dr. Michael Moore of The University of Texas at Arlington through the State Bar Committee on Legal Services to the Poor in Criminal Matters and was sent to about 3300 attorneys who practiced criminal defense attorneys, of whom just over 1000 responded. Some of the key findings are that approximately 35% of defense attorneys reported an improvement in legal services to indigent defendants in their county, with more than 40% reporting no change. Only 10% reported a worsening of the legal services provided. Approximately 50% reported that prior to the FDA the judge selected whomever he or she wished in appointing counsel, while now about 75% report some form of rotation system is used to fairly allocate appointments. The attorneys also

report much greater consistency between judges on the method of attorney selection and standards for determining the indigence of defendants requesting appointment of counsel.



### Legislative Recommendations

The feedback provided by stakeholders provided the framework for the Task Force to consider making recommendations for improving the system as directed by Government Code Section 71.061. Following receipt of the survey results the Policies and Standards Committee of the Task Force directed staff to create a workgroup of stakeholders to consider legislative recommendations to improve the indigent defense system and invited all interested parties to participate. The resulting workgroup consisted of more than 30 people including judges, attorneys, court staff, county officials, and public interest. Two meetings were held and all proposals were considered. Proposals garnering consensus support from all participants were advanced to the Policies and Standards Committee for consideration at their meeting on August 16, 2004. The Committee then considered the workgroup's suggestions and advanced most of the recommendations to the full Task Force where they were considered the same day. The Task Force then evaluated the proposals and made final recommendations, which are contained in Appendix E. Each recommendation is accompanied by the rationale explaining the basis for the change.

In addition to the statutory changes recommended in Appendix E, the workgroup and Task Force also considered the need for additional state funding. A consensus was reached that additional state funding was essential to support county efforts to appropriately fund and improve the delivery of indigent defense services.

Besides the recommendations above, the workgroup and Task Force painstakingly considered potential changes to the time frames for appointment of counsel. Many counties have struggled with appointing counsel within the

parameters of the FDA, which generally means no more than four days after arrest in urban counties and six days in small and midsize counties. These counties argued strongly that extending these time frames would allow more time to determine indigency and avoid appointment of counsel in cases where charges are not filed. It would also allow some defendants to make bail and hire their own attorney. On the other side were advocates for keeping the time frames the same or even shortening them. They argued that counsel should be appointed within 24 hours after arrest, which is the time frame specified in standards recommended by the American Bar Association and the State Bar of Texas. After substantial discussion at the first workgroup meeting on the issue, a subworkgroup was formed and met. Without consensus on the issue possible, the Task Force makes no recommendation for changes. However, its staff continues to actively assist counties in finding ways to meet the statutory requirements in the most efficient manner possible.

### **National Trends**

National and state standards discussed above recommend appointment of counsel to indigent defendants within 24 hours of arrest. In addition to those standards, staff researched the existing standards used in the 15 most populous states. We found most of these states, 11 out of 15, appoint counsel for indigent defendants at or immediately following the initial appearance before a magistrate. This appearance ordinarily occurs within 48 hours of arrest. The other four states utilize different methods in appointing counsel that may result in faster or slower appointment of counsel. A common characteristic of these states is that a person other than the magistrate makes an indigency determination. In some cases, this recommendation is submitted to a magistrate, who will then appoint counsel. In Florida, counsel is provided shortly after arrest when the person tells the booking officer that he cannot afford to hire counsel. Georgia specifies that appointment of counsel must be made as soon as feasible but always within 72 hours of arrest. Ohio's timeline is perhaps closest to that used in Texas by requiring appointment of counsel as soon as feasible but not later than two working days following appearance before a magistrate.

Texas appointment of counsel time frame has three components. An arrested person must be brought before a magistrate within 48 hours of arrest. At this time they may request appointment of counsel. The magistrate must transmit this request within 24 hours to the appointing authority, which is usually the court where charges will be filed. The appointing authority must then appoint counsel within one working day in urban counties (250,000 population or greater) or three working days in smaller counties (less than 250,000 population). With the possible exception of Ohio, all of the other states appoint counsel more

quickly than in Texas. The chart that follows lists time frames for the appointment of counsel in the 15 largest states.

### **Appointment of Counsel Time-Frames for 15 Largest States**

#### **Appointment of Counsel at or immediately following initial court appearance**

States where appointment of counsel occurs at or immediately following the initial court appearance	California, Florida, Illinois, Indiana, Massachusetts, Michigan, New Jersey, New York, North Carolina, Pennsylvania, Virginia, and Washington
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#### **Other States' Time-Frame for Appointment of Counsel**

State	Time-Frame when Attorney must be Appointed
Florida	Counsel will be appointed when the person is formally charged with an offense, as soon as feasible after custodial restraint, or at the first appearance before a magistrate, whichever is earliest. It is the duty of the booking officer to advise the defendant of the right to counsel and to put him or her in touch with the public defender if the defendant claims indigency.
Georgia	Entitlement to the services of counsel begins as soon as feasible and no more than 72 hours after the indigent person is taken into custody or service is made upon him or her of the charge.
Ohio	The right to counsel attaches from the defendant's initial appearance. Counsel must be appointed no later than the second working day after arraignment.
Texas	Three components are that an arrested person must be brought before a magistrate within 48 hours of arrest where they may request appointment of counsel. The court must transmit the request to the appointing authority within 24 hours. The appointing authority, typically a judge, must appoint counsel within the following time periods following receipt of the request: Within one working day in counties of 250,000 or more population or three working days in counties with populations of less than 250,000.

Major indigent defense reform has also been started in other states. In 2003, Georgia created the Georgia Public Defender Standards Council ("GPDSC"). As an independent agency within the judicial branch of the state government, GPDSC is charged with overseeing indigent defense in the state and is required by statute to create and supervise a statewide public defender system that includes at least one office in each of Georgia's 49 judicial circuits. Prior to passage of the Georgia Defense Act, Georgia's indigent defense system was funded and organized on a local level by the state's 159 counties. Similar to Texas' Task Force, the Georgia Indigent Defense Council was a statewide oversight body for the county-based system that provided counties some supplemental state funding. The Georgia Public Defender Standards Council assumed the powers and duties of the Georgia Indigent Defense Council on December 31, 2003.

The new circuit public defender offices will be responsible for providing representation to defendants charged with state felonies or misdemeanors and for representing juveniles facing confinement or probation. While the state will provide the public defenders and other staff, Georgia counties are responsible for providing office space and operating expenses. The statute requires that five-member Circuit Public Defender Selection Panels be appointed in each judicial circuit to select the local Circuit Public Defender. The panels are composed of five members: one each appointed by the Governor, the Lieutenant Governor, the Speaker, the Chief Justice and the chief judge of the Superior Court. Members must reside in the judicial district and have experience or an interest in indigent defense.

The Georgia General Assembly enacted three revenue sources in order to help pay for the additional costs of the new indigent defense system. First, an additional \$15 filing fee was added to all civil actions filed in the superior, state, probate, recorders', mayors', municipal, and magistrate courts. Second, there is a new \$50 application fee for "any person who applies for or receives legal defense services." The fee is waiveable if a court finds that the applicant is unable to pay it or that hardship would result if the fee is charged. Finally, the legislature increased fines in criminal and traffic cases by 10 percent of the original fine and required defendants posting bail or bond to post an additional 10 percent of the original amount of bail or bond to help fund indigent defense.

Virginia has also recently initiated indigent defense reform in response to a February 2004 study by The Spangenberg Group for the American Bar Association. Virginia's all-state funded indigent defense system consists of public defender offices that handled roughly 37 percent of the indigent criminal caseload in FY02, and private, court-appointed lawyers who handle the balance of cases. The study concluded that Virginia's indigent defense system had serious problems and did not guarantee defendants the effective assistance of counsel required by federal and state law.

The study documents systemic problems affecting both the assigned counsel and the public defender systems in Virginia. For assigned counsel, low fee caps act as a disincentive to many lawyers from doing the work necessary to provide meaningful and effective representation to their indigent clients. Virginia's non-waivable statutory fee caps for work performed by court-appointed counsel are the lowest in the country. An attorney taking court-appointed cases will earn a maximum of \$112 for misdemeanors and juvenile delinquency cases, \$395 for felonies where the potential sentence is less than 20 years, or \$1,096 for felonies that carry a potential sentence of 20 years or more. As for public defenders, the

report found that they are over-burdened with excessively high caseloads with few resources, especially when compared to prosecutors.

In its 2004 session, the Virginia General Assembly acted on the study and created the new Virginia Indigent Defense Commission (VIDC). As of July 1, 2004, the VIDC is responsible for overseeing the provision of legal counsel to indigent defendants in Virginia. The organization is charged with overseeing the training and certification of both private court-appointed attorneys and public defenders. The newly established VIDC replaces the Virginia Public Defender Commission, which oversaw the public defender offices. There was previously no oversight system for private court-appointed counsel. It is charged with creating standards for court-appointed counsel, guidelines for the removal of an attorney from the official list of attorneys qualified to receive court appointments, and appropriate caseload limits for public defender offices. While creation of the new commission is a welcome reform, the Virginia General Assembly failed to address the low fee caps for work performed by court-appointed lawyers.

## Professional Support

### Site Visits

The Task Force provides a significant amount of technical assistance by going to counties and discussing local processes with key stakeholders. Last year staff made 42 site visits to counties for a variety of purposes. Many visits were related to utilization of grant funding and expenditure reporting. Seven visits were to conduct fiscal monitoring and are discussed elsewhere in this report. Of the remaining visits, eight consisted of visits to gather information or present discretionary grant checks where no technical assistance was provided. These visits included providing information on creating public defender offices and reviewing local practices to develop solutions to help counties efficiently comply with the FDA. A staff person from the comptroller's office accompanied Task Force staff on a visit to Harrison County at the request of local judges. Staff conducted an operational and financial management review of their indigent defense system that resulted in a substantial report back to the county with findings and suggestions for improvement. In addition to required fiscal monitoring, this type of onsite assistance builds the local knowledge base and encourages county



James Bethke, Director of the Task Force, responds to concerns about having a public defender program in Lubbock County during a Board of Judges meeting on the topic on July 16, 2004. Photo: © Lubbock Avalanche-Journal 2004

collaboration with the state to improve indigent defense practices. FY04 site visits are chronicled in Appendix D.

### **Legal Educational Programs**

The Task Force places a strong emphasis on training to increase awareness of the FDA and to share insights on indigent defense practices. In addition to substantial training related to grants and expenditure reports discussed elsewhere, staff provides substantial training on the substantive issues of indigent defense. With only six staff this is vital way to reach the most people. A complete listing of trainings is in Appendix D.

The Task Force hosted a two day workshop in October 2003 for 30 indigent defense coordinators. Attendees learned about best practices in indigent defense from judges, policy experts, and representatives of county organizations. It also included small group sessions for coordinators to share problems and solutions from other parts of the state. The highly praised workshop has become an annual event.

At the direction of the Task Force, in FY04 staff provided significant training to the criminal defense bar. This shift followed an early focus on county officials, judges, court staff, and magistrates in the first two years of the program. The training covered the role of the Task Force and duties of defense lawyers under the FDA. In reaching the defense bar, staff primarily worked in collaboration with the Texas Criminal Defense Lawyers Association to provide a segment at most of their regional trainings. In the end, staff provided 11 trainings directed at the defense bar encompassing 580 defense lawyers.

The Task Force also worked closely with Webb County to conduct the South Texas Symposium on Cost Effective Indigent Defense in Laredo. The two day event in March 2004 brought together experts and practitioners from across the state to provide information on indigent defense to a regional audience. The 70 attendees included district and statutory court judges, prosecutors, public defenders, private defense bar, prosecutors, law enforcement and corrections staff. The forum included break out sessions allowing attendees to focus on issues unique to their positions.

In addition to meetings with counties to explore the possibility of creating public defender offices, the Task Force conducted a presentation in Lubbock on the issue. We also hosted a presentation in Austin for 20 county officials on the "Blueprint for Creating a Public Defender Office in Texas." Additional trainings included presentations at the American Bar Association Annual Meeting, two

trainings for court administrators, and two trainings for county judges and commissioners.

### **Evaluation Projects**

Since counties began to implement the FDA in January of 2001, policymakers at the state and local levels have had a strong interest in understanding the full impact of the law. Counties have experienced significant increased expenditures for indigent defense services in that time and are particularly interested in learning how the FDA has affected local administrative and fiscal systems. In an effort to gain a better understanding of the Act's impact, the Task Force has conducted a study in conjunction with the Public Policy Research Institute (PPRI) at Texas A&M University. The goals of the study were to learn how major FDA requirements impact county processes and indigent defense service delivery, and how county implementation strategies affect effectiveness. The study focused on the pre-trial court processes related to indigent defense, including the attorney appointment and case processing systems. The study is based on empirical data and extensive interviews in the following four counties: Cameron, Collin, Dallas, and Webb. The final written report is expected to be completed in December 2004. See Appendix G for a summary of the key findings.

The Task Force and Office of Court Administration, once again working with PPRI, also applied for and was awarded a grant of up to \$90,000 from the State Justice Institute to conduct a research study entitled "Evaluating the Impact of Direct Electronic Filing in Criminal Cases: Closing the Paper Trap." The Task Force matched these funds with \$50,000 to complete the 15 month project that began with the initial advisory board meeting in September. Building on the first study above, we will take a more detailed look at how information flow can facilitate or handicap the implementation of indigent defense reforms. The study will focus on three counties that are at different stages of implementing direct electronic filing systems: Bexar, El Paso, and Harris. We will be looking at the effect of electronic filing systems at three key points in the pre-trial system: Setting bail, magistration, and filing charges by the prosecutor. Once again the study will be based on extensive interviews with key participants in the system and a review of data. We will use the information garnered to evaluate the impact of direct electronic filing in terms of misdemeanor case outcomes including the promptness of magistration, speed of the arraignment process, timeliness of appointment of counsel, number of court settings per case, and the number of days defendants spend in county jails awaiting trial. We also seek to develop two replicable direct electronic filing models relevant to local, state and national officials. The study is important for indigent defense because for the prompt appointment of counsel to be meaningful charges should be filed promptly so that defendants can have their cases resolved more quickly. The

study also builds on an assumption that technology can facilitate changes in court processing to help meet FDA requirements. The results of these two studies will provide key information to the Task Force and Texas counties on ways that their indigent defense systems may be improved.

### **Public Defender Evaluations and “Blueprint for Creating a Public Defender Office in Texas”**

“If nothing else, the technical support made a great improvement in communication between the Public Defender office and the County Commissioners Court. Each now has a clearer understanding and greater appreciation of each other’s responsibilities. Internal processes were also improved by the county obtaining a discretionary grant which increased efficiencies. For instance, an in-house software system was designed to track cases. The software allows any user to access case information and provide necessary information to defendants who call in. Before, one person may have had to spend hours looking through stacks and files to provide basic information. The software system also has improved the conflict check process. Case loads are also managed more effectively. All these improved processes result in the improvement in quality of public indigent defense in Wichita County – faster appointments, attorneys and staff not overburdened, increases cooperation with defense bar, etc. Although the process of determining what the problems were was difficult, the end result was a good thing and Wichita County, its public defenders office and indigent defendants are better off because of it.”

**Anthony Odiorne, Assistant Public Defender, Wichita County**

Implementation of the FDA has led many counties to reconsider their indigent defense service delivery system. The vast majority of counties use some form of assigned counsel system where attorneys in private practice are appointed to represent indigent defendants, but many have expressed an interest in establishing public

defender offices. Currently, public defender offices only operate in seven counties and only represent only portions of the indigent defendants. Given the county interest and the Task Force’s mandate to provide technical assistance to improve indigent defense practices, the Task Force worked with a nationally recognized expert to examine the practices of two public defender offices and provide guidance to counties considering creating such offices.

The Spangenberg Group, working closely with Task Force staff, traveled to Wichita Falls and Dallas in late 2003 to assess the effectiveness of the public defender offices in those communities. We visited with all the key stakeholders and analyzed a variety of data. *The Review of Wichita County’s Indigent Defense System – Findings and Recommendations: Final Report (February 2004)* was presented to the Wichita County Commissioner’s Court in February 2004 with recommendations to strengthen the management of the office and develop performance and caseload standards, as well as written policies and procedures.

The report has led the county to work with the public defender office to develop a plan to implement many of the improvements.

The *Report on Dallas County's Indigent Defense System and Public Defender Office* was released in August 2004 when it was presented to key stakeholders in the county. Its main recommendation is to develop a plan to make the public defender office the primary provider of indigent defense services in the county in line with virtually all other urban public defenders in the country. The report also recommended additional resources to address inadequate support staff levels and to bring public defenders salaries up

"The Dallas County Public Defender's Office has been dedicated to providing quality representation to indigent clients for over 20 years. We are proud of our growth and accomplishments and believe that The Spangenberg Group's report provides additional insight and direction towards our continuous goal of improving and strengthening our office."

**Jeanette Drescher Green, Chief  
Public Defender**

to those paid to district attorneys with similar job titles. It also recommended implementation of a case management system and an improved training and mentoring program for new attorneys in the office. Dallas County received a discretionary grant from the Task Force for \$300,000 in FY04 to implement a case management system for the public defender's office that will interface with the countywide system. In the upcoming FY05 budget, the commissioners' court also included funds for an additional secretary in the public defenders office.

After completing those two studies on existing Texas public defender offices, the Task Force and The Spangenberg Group set out to provide counties comprehensive information to assess the creation of public defender offices in their communities. The *Blueprint for Creating a Public Defender Office in Texas* was created with significant contributions from lawyers and other professionals in the Texas criminal justice system to make sure that it was relevant to Texas counties. The study sets out legal, economic and administrative factors for counties to consider for creating public defender offices. It provides counties and courts needed to make a meaningful decision on whether or not a public defender office is right for their community. The release of the study coincided with the Task Force setting a priority for the creation of public defender offices and regional public defender offices with \$1.5 million in discretionary grants available in FY05.



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# General Operations

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**Focus is on striking a balance between cost efficiency to maximize funding to counties and to minimize administrative burden/costs to counties while promoting the quality of indigent defense services through training, technical assistance, and promulgation of model forms.**

## **Staff**

Staff is committed to continue creative and innovative ways to implement the Fair Defense Act, always seeking ways to reduce transaction costs, provide on-line processes, increase the knowledge base about indigent defense and bring stakeholders together to get the best Texas has to offer. Staff has increased to six full time employees. The five original employees hired in 2002 when the program began have all now entered their third year in the program. These are the Director, Executive Assistant, Special Counsel, Grants Administrator and the Budget and Accounting Analyst. One additional FTE was approved in the 78<sup>th</sup> Legislature to fill the Fiscal Program Monitor position. This newly created position fulfills one of the mandates of the Task Force which is to ensure that grantees spend funds in accordance with the Fair Defense Act and are in compliance with laws, regulations, policies, standards and procedures.

## **Strategic Planning**

Strong emphasis is placed on program goals, performance measures and continuously updating program goals. Staff recognizes this as a positive and fundamental responsibility and service to state leaders, constituents and taxpayers for complete accountability, trust and accomplishing the mission. Several times throughout the fiscal year staff meets to strategize to revise and raise the bar on program goals. It is only through this type of planning that the success of the program for the state is assured and achieved.

## **Budget**

Program revenue and expenditures are attached in Appendix B.

## **Priority on Communication**

In addition to trainings, outreach and dissemination of its major studies and publications, the Task Force uses the latest internet technology to establish and maintain a cost effective program. The Task Force is mandated to make the

process of reporting and applying for grants as efficient as possible to lessen the burden on the counties. Verifiable evidence of the efficacy of the Task Force's innovative approach is the two websites developed by the Task Force. The first is a password protected user interface system for judicial and county officials. The second is available to the public and located at [www.courts.state.tx.us/tfid](http://www.courts.state.tx.us/tfid). The Task Force has contracted with the Public Policy Research Institute at Texas A&M to develop a system for counties to apply for grants on-line. Counties are able to submit their annual expenditure reports and grant progress reports through the internet. Finally, the courts' indigent defense plans for each county are stored in a common format to allow full public disclosure of all court indigent defense procedures, fee schedules and forms.

Counties are able to apply for grants, update judicial procedures and contact information, and complete expenditure and grant reports on-line. Users only need to update--not reenter old data. Task Force staff and a program manager at Texas A&M provide technical support in the operation of the user system. Counties may perform operations themselves, request assistance over the phone, or ask staff to perform operations for them. Counties are also able to compare their procedures or expenses based on county demographics and find officials in other counties.

The public website contains and makes available all indigent defense plans and county expenditure and case data since FY2001. This data is expandable to allow users to select the detail of data they want to view. All expenditure and case data may be downloaded in Excel to allow further sorting by the user. There have been 4442 distinct visits out of 13871 page hits to the public access site since its inception on September 23, 2003.

The Task Force site also contains model forms and processes, as well as research and evaluation results. The State Bar of Texas, the National Legal Aid and Defenders Association and other websites have linked to publications on the Task Force website.

### **e-Newsletter**

The Task Force communicates to all court, county officials and employees involved in indigent defense via e-Newsletter. From the email address data gathered from the PPRI database that the counties use to update their contact information and maintain plans and expenditure data, the Task Force sends out news via the e-Newsletter. The e-Newsletter broadcasts announcements of grant application processes and deadlines, other grant funding opportunities, and actions of the Task Force that impact the counties' indigent defense services.

### **Involvement of Stakeholders**

The Task Force invites advocate groups, county associations, judicial officials, bar members, and others to participate in workgroups that allow all interested parties to work through significant issues in a collegial fashion. In many cases, these inclusive workgroups have led to consensus solutions to seemingly intractable conflicts.

The Task Force developed models and used grants funds to improve processes and increase availability of attorney appointments. The Task Force used the collaborative effort mentioned above to identify major concerns of stakeholders and respond with models. The Task Force workgroups provided model Magistrate's Warning Form (English and Spanish), Model Attorney Fee Voucher, and Model Affidavits of Indigency. The use of discretionary grants and technical support funds have augmented this process by having county groups and advocate groups providing input on programs that highlighted priorities.

### **Press Releases**

Press releases are issued whenever a significant newsworthy action takes place. For instance, when the Task Force announces grant money available or new projects are underway, it allows the news to pick up on the story to increase the public awareness of Texas' commitment to all individuals receiving a fair defense in Texas' justice system.

### **Training and Outreach**

In FY04, the Task Force and staff have provided presentations across the state to 1,200 judges, county commissioners, defense attorneys, county employees, and other criminal justice stakeholders on their responsibilities and on the responsibilities of the Task Force. A complete listing of all appearances is in Appendix D.

### **Major Studies and Publications**

The Task Force leadership set increasing the knowledge about indigent defense processes as a priority through research and evaluation. The Task Force commissioned and funded reviews of two public defender offices and a *Blueprint* for the creation of a public defender office to guide counties in this process. It also undertook two research projects to evaluate the impact of the Fair Defense Act and identify effective processes for replication. Further discussion about these studies and publications is contained on pages 23-25 of this Annual Report.



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# Vision for This Biennium

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## **Our continuing responsibilities...**

The Task Force and its staff will continue working collaboratively with all stakeholders to ensure that indigent persons accused of criminal offenses receive timely and competent appointed counsel. Through a collaborative, thoughtful process among all stakeholders consensus and meaningful change is possible.

The foundation and infrastructure for the delivery of indigent defense services has been established and improved during the past two and a half years. Although much has been accomplished much more work remains to be done.

The Task Force is grateful for the additional funding the legislature has entrusted to it. Using the funding provided by attorneys through the new legal services fee, we will continue to make grants to assist counties develop innovative new programs. These funds will make it possible for more counties to create public defender offices by covering the initial startup and operating costs that would otherwise be insurmountable hurdles for many jurisdictions. Task Force staff will also provide direct technical assistance to these counties to make sure they have the tools needed to be successful. The purpose of this effort is to help counties manage increasing costs while maintaining and improving the quality of court appointed counsel.

During the 2004/2005 biennium the Task Force will award approximately 28 million dollars to county government to ensure the continued improvement of the delivery of indigent defense services in the State of Texas. The Task Force and its staff will continue to refine its fiscal monitoring program to assure counties spend these monies properly. The Task Force will also plan for the creation of a substantive monitoring program to review county compliance with the FDA and the county's indigent defense plans. The Task Force has requested authorization for an additional FTE to staff this important program.

In addition to fiscal assistance, Task Force staff will continue to provide technical assistance to counties to assist them in providing effective indigent defense services. Phone, email and especially onsite visits are key components of the technical assistance program. Staff uses these tools to share best practices and

the experiences of others to implement effective indigent defense systems across the state.

Task Force staff will also continue to provide training to key stakeholders across the state relating to effective indigent defense practices. We seek to leverage the training programs of the respective groups to provide targeted training in the most efficient manner possible. We are developing a new training program for FY2005 for justices of the peace to facilitate the front end appointment of counsel process. We will continue to provide our own training for indigent defense coordinators. We are also in the early stages of developing a full conference focused on indigent defense that would be open to all the criminal justice system actors in the state. The purpose of this endeavor would be to share ideas across jurisdictions and encourage the development of a systemic approach to indigent defense.

The Task Force will continue to strive to eliminate any redundant or unnecessary reporting by county officials to the state as it relates to indigent defense. Further development of our web-based reporting system will minimize the need to send any paper reports. The Task Force also asks for the legislature's help to reduce the burden on counties through its legislative recommendation to require counties to submit their indigent defense plans every other year, rather than every year. More information about this request can be found in Appendix E.

The Task Force and staff will continue to develop policies and standards for providing legal representation to indigent defendants while being mindful of the potential costs to counties to implement new mandates. The Task Force will focus on policy areas where the state's assistance will be helpful to the counties. In FY2005 we will help counties develop measures to oversee the quality of legal representation provided by attorneys in assigned counsel and contract counsel systems.

The Task Force will also carry on with the evaluation projects currently underway described in the Policies and Standards section of this report. The results of this work will be available for policy makers at the state and local level to assess their own processes and make changes to improve their effectiveness. The Task Force will also begin to evaluate the impact of policies and standards currently in place and modify them, if needed.

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## ★ Appendices

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- A - Timeline of activities**
- B - FY04 Expenditure Report**
- C - Discretionary Grant Program – FY03 and FY04**
- D - Trainings and Presentations and Site Visits**
- E - Legislative Recommendations**
- F - Montgomery and Smith Counties' Responses to the Fair Defense Act**
- G - Evaluation Summary Report: Impacts of Texas Fair Defense Act on Improving Indigent Defense**



**FY04 Annual Report**

# **Appendix A**

## **Timeline of Activities**



## TASK FORCE ON INDIGENT DEFENSE FY04 TIMELINE

### ***FY04***

#### **September 2003**

- 9/1/03 Research project proposal: Evaluating the impact of the Texas Fair Defense Act on County Jail Costs; PPRI, in collaboration with consultant Tony Fabelo and staff of the Task Force use “case study” approach
- 9/2/03 W. Texas site visits (Haskell, Taylor Cos.)
- 9/3/03 Regional Grant Training (Graham, Young Cos.)
- 9/4-9/22/03 Interviews re FTE monitoring position
- 9/9/03 Regional grant training presentation (Panhandle – Potter Co.)
- 9/17/03 Site visit (Van Zandt Co.)
- 9/18/03 E. TX region grant training (Walker Co.) and site visit (Montgomery and Waller Cos.)  
Invitation for Offer #212-3-0441 re public defender office evaluation agreement between TFID/OCA and The Spangenberg Group signed
- 9/20/03 End Formula Grant follow-up for counties not applying
- 9/30/03 Staff establish funding recommendation for Formula Grant Program  
Develop State Bar Dues and Surety Bond funds distribution draft procedures  
Technical assistance, re Spangenberg Wichita Co. public defender’s office evaluation

#### **October 2003**

- 10/1-10/2/03 Technical assistance, Wichita Co. PD office study
- 10/9-10/10/03 Task Force hosts Indigent Defense Coordinators Workshop/Statewide Meeting, Texas Law Center
- 10/15/03 S. Texas site visits (Webb, Duval, Jim Wells Cos.)  
Complete written monitoring procedures
- 10/22/03 Contract with PPRI renewed for FY04
- 10/30/03 On-site visit with San Marcos Co. re expenditure report  
FY03 Annual Expenditure Report due to LBB  
Policies and Standards Committee meeting
- 10/31/03 4<sup>th</sup> Qtr Distribution – Formula Grants

#### **November 2003**

- 11/3/03 Expenditure Report for formula grant (IDER) Due from counties  
New FTE Program Monitor begins  
Program site visits – West Texas  
Plan Instructions go out
- 11/4/03 Dallas technical assistance site visit
- 11/7/03 5:00 p.m. Close Discretionary Grant application acceptance  
Program Monitor begins Technical Assistance Reviews

- 11/14/03 FY03 Discretionary Grant 3rd Quarter Financial and Progress Reports due  
Staff Development – Strategic planning and develop staff performance  
measures
- 11/19/03 Grants and Reporting Committee meeting
- 11/20/03 Task Force meeting  
Task Force establishes indigent defense plan submission process (on-line  
method preferred)  
FY03 Annual Report final  
Task Force votes to approve research study/contract with PPRI to do cost  
analysis of the prompt appointment standards, jail costs  
FY04 Budget adopted  
Technical Support policy adopted  
Direct Disbursement policy adopted  
Deletion of Rule 173.307 adopted
- 11/30/03 FY03 Discretionary Grant 3<sup>rd</sup> Quarter Reimbursement distribution  
FY03 Formula Grant 4<sup>th</sup> Quarter (Final Payment) distribution

### **December 2003**

- 12/1/2003 Complete calculations on FY03 grants and disburse to counties that spent  
funds  
Dallas technical assistance site visit, Spangenberg public defender office  
evaluation  
Monitoring on-site visit, Dallas Co.
- 12/15/03 Complete review and recommend Discretionary Grants to Task Force  
Contract signed between TFID/OCA and PPRI re analyzing effects of  
FDA on county jail populations  
Site visit, Harris Co., Direct Filing System, re indigent defense
- 12/22/04 FY03 Annual Report and FY03 Expenditure Report published and  
distributed

### **January 2004**

- 1/7 – 1/8/04 Monitoring on-site visit, Kaufman Co.
- 1/14-1/15/04 Monitoring on-site visit, Bowie Co.
- 1/22/04 Grants and Reporting Committee meeting  
Task Force meeting  
FY04 formula and discretionary grants awarded  
Task Force directs that a Workgroup be formed re FY04 Discretionary  
Grants for IT projects (Dallas, Tarrant, Travis)  
Task Force adopts plans to apply for SJI Grant re Electronic Filing  
Systems
- 1/27/04 Meet with Dallas defense bar

### **February 2004**

- 2/3/04 Monitoring on-site visit, Montgomery Co.
- 2/9/04 Presentation to Wichita Co. Commissioners' Court of Spangenberg Report  
on evaluation of Wichita Co.'s public defender

- 2/13/04 SJI/Task Force apply for State Justice Institute Grant to evaluate the impact of direct electronic filing in criminal cases  
FY03 Discretionary Grant 4th Quarter Financial and Progress Reports due  
Monitoring on-site visit, Orange Co.
- 2/23/04 Presentation of Discretionary Grant award to Limestone Co.
- 2/27/04 Workgroup re FY04 Discretionary Grant IT Performance Measures meets
- March 2004**
- 3/3/04 Presentation of Discretionary Grant award to Webb Co.
- 3/4 - 3/5/04 El Paso on-site visit  
Review final reports and compile report on FY03 discretionary grant programs
- 3/9-3/10/04 Monitoring on-site visit, Harris Co.
- 3/12/04 e-Newsletter published and distributed via email
- 3/11-3/12/04 Monitoring on-site visit, Galveston Co.
- 3/15/04 Presentation of Discretionary Grant award to El Paso Co.
- 3/23-3/24/04 Monitoring on-site visit, El Paso Co.
- 3/24/04 Webb Co. – South Texas Symposium on Cost Effective Indigent Defense, Laredo
- 3/31/04 Monitoring on-site visit, Val Verde Co.
- April 2004**
- 4/1/04 Monitoring on-site visit, Val Verde Co.
- 4/13-14/04 Monitoring on-site visit, Harrison Co.
- 4/15/04 On-site visit, Bowie, Smith Cos.  
Presentation of Discretionary Grant award to Travis Co.
- 4/21/04 Presentation of Discretionary Grant award to Tarrant Co.
- 4/28/04 Grants and Reporting Committee meeting  
Policies and Standards Committee meeting
- 4/29/04 Task Force meeting
- May 2004**
- 5/11/04 Testify – House County Affairs Committee hearing  
FY04 Discretionary Grant 1<sup>st</sup> Quarter Financial and Progress Reports due
- 5/13/04 Staff assesses external/internal variables for OCA strategic plan
- 5/17/04 e-Newsletter published and distributed via email
- June 2004**
- 6/16/04 Policies and Standards Committee meeting
- 6/23/04 Blueprint for Creating a Public Defenders Office in Texas published
- 6/25/04 Press release issued re Blueprint
- 6/30/04 Staff on-site visit re Tarrant Co. case flow
- July 2004**
- 7/12/04 State Justice Institute awards \$90,000 to OCA/TFID re application for grant to evaluate impact of direct electronic filing in criminal cases  
Program Monitor position filled

7/15/04 Workgroup re Legislative Proposals has 1<sup>st</sup> meeting  
7/16/04 Meet with Lubbock officials re Blueprint  
Press release issued re SJI grant  
7/23/04 Public Defenders Blueprint Workshop  
7/29/04 Sub-workgroup re Legislative Proposals meets

**August 2004**

FY04 Discretionary Grant 2nd Quarter Financial and Progress Reports due  
8/5/04 Workgroup re Legislative Proposals has 2<sup>nd</sup> meeting  
8/11/04 Monitoring on-site visit, Bell Co.  
8/16/04 Grants and Reporting Committee meeting  
Policies and Standards Committee meeting  
Task Force meeting  
8/20/04 Present Dallas officials with report on Public Defender study  
8/24/04 Regional FY05 Grant and FY04 Reporting Training (Austin)  
8/26/04 Regional FY05 Grant and FY04 Reporting Training (Harris)  
8/30/04 Publish August 2004 e-Newsletter  
8/31/04 Monitoring on-site visit, Burleson Co.



**FY04 Annual Report**

# **Appendix B**

## **FY04 Expenditure Report**

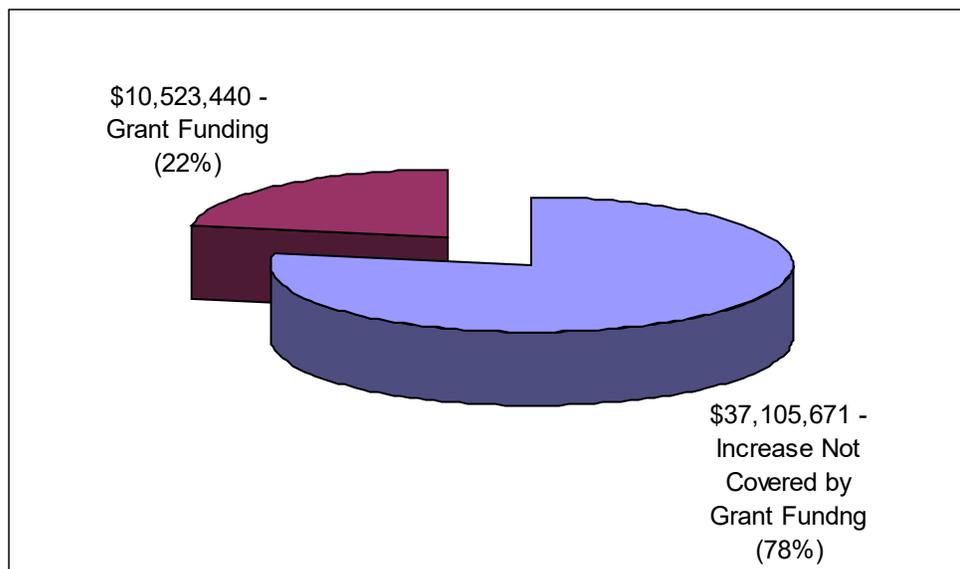
## I. Fiscal Year 2004 Expenditures

Expenses for indigent defense services continue to rise throughout the state, although the rate of increase has continued to moderate. In fiscal year 2004 indigent defense expenditures rose seven percent statewide to \$139,315,145 from a fiscal year 2003 total of \$130,029,892. This increase is the smallest since the Fair Defense Act was implemented in 2002. The rate of increase has moderated from the 24% increase experienced in fiscal year 2002, the first year of the Fair Defense Act. The Task Force believes the leveling off of increased expenses is due to counties having a clearer understanding of the Fair Defense Act which has increased efficiency in the court system.

Moreover, a portion of these increases is attributable to rises in adult and juvenile criminal case filings. Since 2002, approximately 100,000 more adult defendants and 10,000 more juvenile respondents are receiving indigent defense services.

Counties are eligible to receive grant funds to cover expenses above their fiscal year 2001 baseline expenditures. State grant funding consisting of Formula, Direct Disbursement and Extraordinary totaled \$10,523,440 in fiscal year 2004, which covered approximately 26% of the increased county expenditures for the year.

Cost Increase since the Inception of the Fair Defense Act - \$47,629,111



Prior to fiscal year 2002 the state did not provide any funding assistance to counties for indigent defense services. During the past four years, combined State and county funding for indigent defense services were:

- FY01 -- \$91,684,262
- FY02 -- \$113,960,219
- FY03 -- \$130,029,892
- FY04 -- \$139,315,145

In fiscal year 2004 state grant funding covered 26% of increased costs since the inception of the Fair Defense Act.

## **II. Funding Source**

The primary source of funding for the Task Force has been through court cost collections. The court costs are paid upon conviction by defendants convicted of offenses ranging from fine only misdemeanors up to serious felonies. The costs are authorized by Local Government Code Section 133.102. In fiscal year 2004, \$12,226,545 million was appropriated. The appropriation amount represents an estimate of the amount of revenue that will be collected in court costs. The actual amounts collected vary from year to year.

In 2003, the 78<sup>th</sup> Legislature passed two bills that provide additional funding sources for indigent defense. H.B. 1940 amended Chapter 41 of the Government Code to require payment of a new \$15 fee on all bail bonds taken for an offense other than for an offense punishable by fine only. Of the fee collected, one-third goes to the Fair Defense Account while two-thirds goes to support longevity pay for prosecutors. The Fair Defense Account received more than \$1.6 million from this fee in FY 2004.

The State Bar of Texas sunset bill, H.B. 599, also amended the Government Code to create a new mandatory \$65 annual legal services fee assessed on attorneys. One-half of the fees collected are allocated to the Fair Defense Account and are designated for “demonstration or pilot projects that develop and promote best practices for the efficient delivery of quality representation to indigent defendants in criminal cases at trial, on appeal, and in postconviction proceedings.” In FY 2004, over \$1.6 million was deposited into the Fair Defense Account from this fee. Due to a limitation in the Office of Court Administrations rider that only appropriates revenue from court costs deposited into Fund 5073, the Task Force could not expend the revenue collected from this fee until FY 2005.

In August 2004, the Task Force designated the funds collected from the attorney fee to fund grant proposals with priorities for establishment of public defender offices, regional public defender offices, mental health defender services, and programs that provide direct services to indigent defendants.

### III. Operating Budget for Fiscal Year 2004

Budget Category	FY04 Total Expended	FY03 Comparative Total
Salaries & Wages	\$362,913	\$316,243
Other Personnel Cost	\$951	\$385
Benefit Replacement Pay	\$2,310	\$2,054
Payroll Related Costs	\$0	\$0
Professional Fees & Serv.	\$72,640	\$7,855
Computer/Programming Serv.	\$40,000	\$46,410
In-State Travel	\$20,682	\$11,295
Out-of State Travel	\$1,280	\$0
Training	\$2,245	\$2,475
Postage	\$3,567	\$1,616
Materials & Supplies	\$8,878	\$18,181
Printing & Reproduction	\$1,214	\$5,079
Maintenance & Repairs	\$10,251	\$24
Telecommunications	\$5,741	\$3,421
Rentals & Leases	\$3,125	\$1,370
Other Operating Expenses	\$89,304	\$88,697
Formula Grant Payment	\$10,234,186	\$10,410,103 <sup>(1)</sup>
Discretionary Grant Payment <sup>(5)</sup>	\$1,121,303	\$1,383,403 <sup>(2)</sup>
Extraordinary Grant Payment	\$200,000	\$0
Direct Disbursement Payment	\$89,254	\$0
Capital Outlay	\$0	\$0
<b>Total</b>	<b>\$12,269,844</b>	<b>\$12,298,611</b>

Method of Finance Category	FY04 Method of Finance	FY03 Method of Finance
Fund 5073, Fair Defense Account, Court Costs	\$11,442,888	\$11,513,490
7% Reduction (H.B. 7, 77th Leg. R.S.)	\$0	(\$835,800)
Surety Bond Fee <sup>(3)</sup>	\$1,655,192	\$0
State Bar Fee <sup>(3)</sup>	\$1,661,978	\$0
Net Revenue	\$14,760,058	\$10,677,690
FY02 Carryover Revenue		\$1,737,718
FY03 Carryover Revenue	\$301,080	(\$116,797)
FY04 Carryover Revenue <sup>(4)</sup>	(\$2,791,293)	\$0
<b>Total</b>	<b>\$12,269,844</b>	<b>\$12,298,611</b>

<sup>(1)</sup> The actual amount expended for FY03 Formula Grants totaled \$10,367,173 based on the indigent defense expenditure reports submitted by counties.

<sup>(2)</sup> The actual amount expended for FY03 Discretionary Grants totaled \$ 1,165,485 based on completion or termination of all grants.

<sup>(3)</sup> During the Legislature, 78th Regular Session, two new sources of revenue were dedicated to the Task Force on Indigent Defense for FY04 and FY05. The two revenue sources are Surety Bond Fee and State Bar Fee.

<sup>(4)</sup> Carryover is primarily related to the new state bar fee, which was collected in FY 2004, but not appropriated to the Task Force until FY 2005. Further, surety bond fees were collected in excess of the amount estimated.

<sup>(5)</sup> Amount showing for Discretionary Grant is the grant award

The Task Force expended only \$625,101 for administrative cost from the Fair Defense Account. This amount is 5.1% of the \$12,269,844 spent in all categories. These expenses included not only six (6) full-time staff and travel but the on-line statewide grant application, plan submission, and expense reporting system. The on-line system also provided public access through the internet of all plans and expense information submitted by the courts or counties.

## **IV. Grants**

In fiscal year 2004, the Task Force distributed funds to counties in the following four categories: Formula Grants, Discretionary Grants, Extraordinary Disbursement, and Direct Disbursement. Formula grants are the major category of funds provided to support counties in providing indigent defense services. They are distributed based on a floor award amount and each county's population. Total award disbursements for FY04 were \$10.7 million. Discretionary grants are competitive grants to allow counties to implement innovative indigent defense programs. Discretionary grants totaling \$1,121,303 were awarded to six counties in FY04. The extraordinary disbursements category of funding was created to assist counties with unusually large indigent defense expenditures and demonstrate a severe financial hardship. Awards were made to four counties totaling \$200,000 in FY04, which was the first year awards were made under the program. Lastly, direct disbursements were made to 14 counties totaling \$89,254 in FY04. This program was created last year to allow small counties to receive funding for indigent defense should they incur expenses without having to apply for a formula grant. A detailed discussion of each program follows.

### **Formula Grants**

Formula grants provide money to counties for increased indigent defense costs using a standard allocation formula. Funds are distributed to all counties who apply, document their increased expenditures, and their countywide indigent defense plans comply with statutes and standards requirements set by the Task Force. In FY04, formula grants accounted for 88% of the funds distributed to counties. Funding for formula grants in FY 2004 consisted of a combination of court cost collections and the "new" surety bond fee, added by the 78<sup>th</sup> Legislature.

Eligibility for a formula grant for FY04 required the countywide indigent defense plan to comply with the three statutory time-frames for prompt access to counsel. A county must also have submitted a copy of the indigent defense plan used in juvenile cases in the county. The plan must also meet statutory requirements related to payment for indigent defense services including an adopted attorney fee schedule, and attorney fee voucher and procedures use to pay for expert witnesses and investigative expenses with and without prior court approval.

This fiscal year, the Task Force awarded formula grants to 228 counties with an original budget of \$9,600,000. Due to new revenue collected from the surety bond fee, \$1.1 million was added to this grant, for a total budget of \$10,700,000. Twenty-five counties did not apply for a formula grant and were, therefore, eligible to receive a direct disbursement if they incurred indigent defense expenses above their baseline amount. One county, Brewster, declined its formula grant award. A county may decide not to apply for a grant or decline a grant award if the county did not expend any of its previous

grant award or the county does not anticipate increased indigent defense costs over the baseline amount.

In Fiscal Year 2002, 234 counties received disbursements totaling \$7,187,036; in Fiscal Year 2003, 214 counties received disbursements totaling \$10,367,173 and in Fiscal Year 2004, 207 counties received disbursements totaling \$10,234,186. See Appendix A for a complete listing of FY 2004 grant awards and final disbursements.

## Discretionary Grants

The Task Force also distributes funds in the form of discretionary grants. Discretionary grants are awarded on a competitive basis to assist counties develop new, innovative programs or processes to improve the delivery of indigent defense services. Payments are issued on a reimbursement basis. Applications are reviewed and scored by a select committee prior to being presented to the Grants and Reporting Committee and the full Task Force. Counties may compete for a discretionary grant if their countywide plan is in compliance with applicable statutes and standards requirements set by the Task Force. In addition to meeting the plan requirements for formula grants, a county plan must comply with the Task Force adopted continuing legal education training requirements for attorneys representing indigent defendants.

Six counties (Dallas, El Paso, Limestone, Tarrant, Travis and Webb) out of 15 submitting applications were awarded discretionary grants totaling \$1,121,303. The programs funded included a case management system for the Dallas County Public Defender's office, a mental health unit at the El Paso County Public Defender's office, and two new indigent defense coordinators. A summary of each funded program is contained in Table 1 below.

**Table 1**

County	Grant Number	Program Title	Grant Award Amount
Dallas	212-04-D06	Case Management System for Dallas Co. -Public Defender's Office	\$300,000.00
El Paso	212-04-D04	Public Defender Mental Health Unit	\$175,291.00
Limestone	212-04-D02	Indigent Defense Liaison/Expanding Indigent Defense Services	\$72,700.00
Tarrant	212-04-D01	Integrated Justice Information System - Indigent Defense On-Line (IDOL)	\$350,840.00
Travis	212-04-D05	Technology Improvement for Travis Co. Indigent Defense	\$152,472.00
Webb	212-04-D03	Indigent Defense Coordinator	\$70,000.00
		Total	\$1,121,303.00

## Extraordinary Disbursement

In FY 2004, the Task Force distributed \$200,000 in extraordinary disbursement funding to four counties (Grimes, Madison, Midland and Victoria). To qualify for this funding, a county must demonstrate indigent defense expenses in the current and/or immediately preceding county fiscal year constituting a financial hardship. Each request is evaluated on a case-by-case basis against other requests and the amount of funds available. The chart below details the funds disbursed under this program in FY04.

**Table 2**

County	Requested Amount	Amount Disbursed
Grimes	\$17,812	\$12,780
Madison	\$93,375	\$66,997
Midland	\$139,580	\$100,150
Victoria	\$27,976	\$20,073
Total	\$278,743	\$200,000

The Extraordinary Disbursement grant category was established in Fiscal Year 2003; however, the 77<sup>th</sup> Legislature required all state agencies to reduce their FY03 budgets by 7% to help balance the state budget. As a result, funds for extraordinary disbursements were not implemented that year to assure adequate funding was available to cover formula and discretionary grants awarded. Increased court cost collections in Fiscal Year 2004 allowed the Task Force to revive funding for this program.

## Direct Disbursement

The Direct Disbursement grant category was established to give small counties that have low incidences of crime and low indigent defense costs a way, if needed to receive funding besides applying for a Formula Grant. Small counties often do not have sufficient indigent defense expenses to earn grant funds. Two-thirds of the funds that would have been allocated to counties that do not apply for a formula grant are budgeted for direct disbursement. If a county has indigent defense expenses above their baseline year amount, that county is eligible to receive funding based on requirements set by the Task Force and availability of funds.

In FY 2004, twenty-six counties did not apply for a Formula Grant. Of those twenty-six counties that did not apply, fourteen counties submitted applications and were eligible to receive direct disbursements. The total amount disbursed for this grant category was \$89,254. The table below lists all counties that did not apply for a formula grant and any direct disbursement made.

**Table 3**

County Did Not Apply for Formula Grant	Direct Disbursement Amount Received
Borden	
Brewster *	
Brooks	
Camp	\$2,237
Clay	\$9,397
Concho	\$6,584
Dickens	
Duval	\$7,755
Edwards	
Fisher	\$5,733
Floyd	
Gaines	
Hemphill	\$6,339
Jeff Davis	\$1,747
Jim Hogg	\$619
Kenedy	
King	
Lavaca	\$18,842
Lipscomb	
McMullen	\$1,758
Oldham	\$5,873
Rains	
Real	
Stephens	\$7,297
Trinity	\$10,505
Upton	\$4,568
<b>Total (14 counties)</b>	<b>\$89,254</b>

25 counties did not apply for Formula Grant

\* Declined Formula Grant

**FY 2004 Formula Grant Award and Disbursement**

County	Grant Award	Grant Disbursement
Anderson	\$30,467	\$30,467
Andrews	\$11,009	\$0
Angelina	\$42,030	\$42,030
Aransas	\$15,396	\$15,396
Archer	\$9,092	\$9,092
Armstrong	\$5,993	\$5,993
Atascosa	\$22,851	\$22,851
Austin	\$15,901	\$15,901
Bailey	\$8,047	\$8,047
Bandera	\$13,154	\$13,154
Bastrop	\$31,680	\$31,680
Baylor	\$6,891	\$6,891
Bee	\$19,954	\$6,815
Bell	\$114,973	\$114,973
Bexar	\$648,705	\$648,705
Blanco	\$8,890	\$0
Bosque	\$12,950	\$12,950
Bowie	\$46,270	\$46,270
Brazoria	\$116,726	\$116,726
Brazos	\$75,434	\$34,769
Briscoe	\$5,827	\$5,827
Brown	\$22,410	\$22,410
Burleson	\$12,611	\$12,129
Burnet	\$20,780	\$20,780
Caldwell	\$19,878	\$19,878
Calhoun	\$14,541	\$14,541
Callahan	\$10,964	\$10,964
Cameron	\$159,916	\$159,916
Carson	\$8,011	\$8,011
Cass	\$19,066	\$8,436
Castro	\$8,829	\$1,997
Chambers	\$17,030	\$9,154
Cherokee	\$26,562	\$26,562
Childress	\$8,553	\$8,553
Cochran	\$6,724	\$0
Coke	\$6,786	\$6,603
Coleman	\$9,268	\$9,268
Collin	\$232,214	\$232,214
Collingsworth	\$6,482	\$6,482
Colorado	\$14,423	\$14,423
Comal	\$41,055	\$41,055
Comanche	\$11,482	\$11,482
Cooke	\$21,804	\$21,804
Coryell	\$39,649	\$39,649
Cottle	\$5,880	\$0
Crane	\$6,847	\$5,956
Crockett	\$6,894	\$259
Crosby	\$8,268	\$6,217

County	Grant Award	Grant Disbursement
Culberson	\$6,375	\$5,226
Dallam	\$7,875	\$7,875
Dallas	\$1,030,404	\$1,030,405
Dawson	\$11,925	\$11,925
Deaf Smith	\$13,577	\$13,577
Delta	\$7,462	\$7,462
Denton	\$205,088	\$205,088
DeWitt	\$14,248	\$14,248
Dimmit	\$9,736	\$0
Donley	\$6,769	\$6,769
Eastland	\$13,455	\$13,455
Ector	\$60,974	\$60,974
El Paso	\$319,069	\$319,069
Ellis	\$56,462	\$56,462
Erath	\$20,251	\$20,251
Falls	\$13,584	\$13,584
Fannin	\$19,438	\$19,438
Fayette	\$15,076	\$15,076
Foard	\$5,750	\$0
Fort Bend	\$168,800	\$168,800
Franklin	\$9,371	\$9,371
Freestone	\$13,257	\$13,257
Frio	\$12,510	\$12,510
Galveston	\$120,604	\$120,604
Garza	\$7,251	\$7,251
Gillespie	\$14,619	\$14,619
Glasscock	\$5,650	\$0
Goliad	\$8,202	\$4,629
Gonzales	\$13,608	\$8,510
Gray	\$15,511	\$15,511
Grayson	\$56,108	\$56,108
Gregg	\$56,471	\$56,471
Grimes	\$15,884	\$15,884
Guadalupe	\$46,140	\$46,140
Hale	\$21,915	\$21,915
Hall	\$6,748	\$6,748
Hamilton	\$8,803	\$8,803
Hansford	\$7,481	\$7,481
Hardeman	\$7,183	\$7,183
Hardin	\$27,216	\$27,216
Harris	\$1,576,484	\$1,576,485
Harrison	\$33,702	\$33,702
Hartley	\$7,559	\$7,559
Haskell	\$7,816	\$7,816
Hays	\$50,098	\$50,098
Henderson	\$38,863	\$38,863
Hidalgo	\$268,162	\$268,162
Hill	\$19,936	\$19,936

County	Grant Award	Grant Disbursement
Hockley	\$15,498	\$15,498
Hood	\$23,993	\$23,993
Hopkins	\$19,769	\$19,769
Houston	\$15,714	\$15,714
Howard	\$20,540	\$20,540
Hudspeth	\$6,545	\$6,304
Hunt	\$40,397	\$40,397
Hutchinson	\$16,025	\$16,025
Irion	\$5,818	\$5,818
Jack	\$9,050	\$7,7010
Jackson	\$11,650	\$11,650
Jasper	\$21,453	\$21,453
Jefferson	\$121,478	\$121,478
Jim Wells	\$23,173	\$23,173
Johnson	\$63,602	\$63,602
Jones	\$14,605	\$14,605
Karnes	\$12,138	\$0
Kaufman	\$37,955	\$37,955
Kendall	\$15,972	\$15,972
Kent	\$5,397	\$5,397
Kerr	\$25,173	\$15,395
Kimble	\$7,065	\$7,065
Kinney	\$6,562	\$6,562
Kleberg	\$19,580	\$664
Knox	\$6,965	\$0
Lamar	\$27,412	\$27,412
Lamb	\$11,797	\$11,797
Lampasas	\$13,208	\$13,208
La Salle	\$7,711	\$0
Lee	\$12,235	\$10,775
Leon	\$12,087	\$12,087
Liberty	\$37,420	\$37,420
Limestone	\$15,190	\$15,190
Live Oak	\$10,688	\$0
Llano	\$12,876	\$12,876
Loving	\$5,031	\$0
Lubbock	\$117,124	\$117,124
Lynn	\$8,027	\$1,590
Madison	\$10,980	\$10,980
Marion	\$10,056	\$10,056
Martin	\$7,193	\$5,120
Mason	\$6,727	\$3,798
Matagorda	\$22,541	\$0
Maverick	\$26,857	\$26,857
McCulloch	\$8,792	\$8,792
McLennan	\$103,671	\$103,671
Medina	\$23,163	\$23,163
Menard	\$6,091	\$6,091

County	Grant Award	Grant Disbursement
Midland	\$58,610	\$58,610
Milam	\$16,201	\$16,201
Mills	\$7,380	\$7,380
Mitchell	\$9,482	\$9,482
Montague	\$13,834	\$13,834
Montgomery	\$140,757	\$140,757
Moore	\$14,298	\$14,298
Morris	\$11,030	\$11,030
Motley	\$5,659	\$0
Nacogdoches	\$32,359	\$32,359
Navarro	\$25,853	\$1,319
Newton	\$11,965	\$4,811
Nolan	\$12,302	\$12,302
Nueces	\$149,942	\$149,942
Ochiltree	\$9,162	\$9,162
Orange	\$44,265	\$44,265
Palo Pinto	\$17,489	\$17,489
Panola	\$15,516	\$15,516
Parker	\$45,896	\$45,896
Parmer	\$9,629	\$9,629
Pecos	\$12,768	\$9,002
Polk	\$24,008	\$23,156
Potter	\$57,472	\$57,472
Presidio	\$8,375	\$0
Randall	\$53,205	\$53,205
Reagan	\$6,537	\$0
Red River	\$11,615	\$0
Reeves	\$11,071	\$11,071
Refugio	\$8,617	\$8,617
Roberts	\$5,410	\$636
Robertson	\$12,394	\$12,394
Rockwall	\$24,908	\$24,908
Runnels	\$10,312	\$10,312
Rusk	\$26,892	\$17,834
Sabine	\$9,838	\$7,473
San Augustine	\$9,134	\$9,134
San Jacinto	\$15,280	\$11,429
San Patricio	\$36,026	\$36,026
San Saba	\$7,859	\$7,859
Schleicher	\$6,356	\$6,356
Scurry	\$12,561	\$12,561
Shackelford	\$6,526	\$6,187
Shelby	\$16,657	\$0
Sherman	\$6,472	\$6,472
Smith	\$85,736	\$85,736
Somervell	\$8,147	\$8,147
Starr	\$29,768	\$17,031
Sterling	\$5,644	\$5,030

<b>County</b>	<b>Grant Award</b>	<b>Grant Disbursement</b>
Stonewall	\$5,782	\$5,471
Sutton	\$6,884	\$0
Swisher	\$8,872	\$3,447
Tarrant	\$673,331	\$673,331
Taylor	\$63,484	\$63,484
Terrell	\$5,500	\$5,461
Terry	\$10,897	\$7,440
Throckmorton	\$5,855	\$5,855
Titus	\$17,994	\$825
Tom Green	\$53,065	\$53,065
Travis	\$380,373	\$380,373
Tyler	\$14,645	\$10,882
Upshur	\$21,309	\$21,309
Uvalde	\$16,981	\$0
Val Verde	\$25,729	\$25,729
Van Zandt	\$27,247	\$27,247
Victoria	\$43,859	\$43,859
Walker	\$33,540	\$33,540
Waller	\$20,094	\$20,094
Ward	\$10,041	\$10,041
Washington	\$19,036	\$19,036
Webb	\$94,244	\$94,244
Wharton	\$24,034	\$0
Wheeler	\$7,442	\$6,496
Wichita	\$65,845	\$65,845
Wilbarger	\$11,782	\$11,782
Willacy	\$14,280	\$14,280
Williamson	\$120,515	\$120,515
Wilson	\$19,976	\$19,278
Winkler	\$8,315	\$8,315
Wise	\$27,548	\$27,548
Wood	\$21,984	\$21,984
Yoakum	\$8,384	\$8,384
Young	\$13,292	\$10,177
Zapata	\$10,630	\$10,630
Zavala	\$10,361	\$7,348
	\$10,700,000	\$10,234,186

\* 228 Counties applied for a Formula Grant



**FY04 Annual Report**

## **Appendix C**

### **Discretionary Grant Program – FY03, FY04**

## FY03 Discretionary Grant Status Report

County	Grant Proposal Title	Short Description	Rounded Final Expended Amount	Major Accomplishments	Site Visit
Bell	Indigent Defense Computer Support	Funds used toward the purchase of a laptop, software, and scanner for the Indigent Defense Coordinator's Office.	\$2,591	100% of 1843 applications for attorney were transmitted to appt. authority w/in 24 hours. 1178 applications out of 2404 were processed at jail with purchase of new technology..	Yes
Cameron	Indigent Defense Coordinator	Created a new Indigent Defense Coordinator position to streamline functions between courts, law enforcement agencies, and others involved in the processes of implementing SB7	\$41,788	Streamlined processes from four separate court coordinators to one. Survey of professionals involved believes process improved and specifically ID coordinator helped improve process. Instituted a habeas corpus process to allow judicial review of incarcerated individuals refusing court appointment.	Yes
Collin	Indigent Defense Coordinator	Create a new Indigent Defense Coordinator position to streamline functions between courts, law enforcement agencies, and others involved in the processes of implementing SB7	\$78,502	Survey responses indicate 78% of practitioners believe ID system improved. Reported 100% documented compliance on statutory prompt appointment measures.	Yes
Dallas	Computers for Public Defenders Indigent Defense Coordinator Parent / Youth Advocate Attorney	The acquisition of computers for forty-five (45) attorneys. Create a new Indigent Defense Coordinator position to streamline functions between courts, law enforcement agencies, and others involved in the processes of implementing SB7. Provide a Spanish Speaking Parent/Youth Advocate Attorney will enhance the quality of due process available to all youth and their parents in the juvenile justice system by intervening at the earliest point of the youth's entry into the system.	\$287,063	<b>Computers-</b> Provided individual technology for PD attorneys to increase disposed cases by 16%. <b>ID Coordinator</b> – Unable to track key performance measures due to volume and existing systems. However random sample survey conducted by IDC showed Dallas County Courts in Compliance with prompt appointment issues. <b>Parent/Youth Advocate</b> – Made 7866 parent contacts, 1422 court appearances, and resolved 40 unworkable placements.	Yes

Duval	Indigent Defense Coordinator	Create a new Indigent Defense Coordinator position to streamline functions between courts, law enforcement agencies, and others involved in the processes of implementing SB7. Will involve Duval county court and district courts in three counties.	\$6,157	Grant was cancelled after first quarter. ID coordinator remained on staff but unable to provide measures for district courts in both counties as originally agreed.	Yes Cancelled
Fort Bend	Indigent Defense Coordinator Office	Create a new Indigent Defense Coordinator position to streamline functions between courts, law enforcement agencies, and others involved in the processes of implementing SB7. 2 FTEs.	\$61,953	Reported 100% documented compliance on statutory prompt appointment measures. Survey indicates 89% percent positive results by practitioners. County reports fewer resets and more disposed cases attributed to ID Coordinator.	No
Haskell	39th Dist Court /PT Indigent Defense Coordinator	The 39th Judicial District, create a new Indigent Defense Coordinator position to streamline functions between courts, law enforcement agencies, and others involved in the processes of implementing SB7	\$9,333	Most prompt appointment issues met. Distance, technology infrastructure, and shortage of licensed attorneys in the region hindered success.	Yes
Hidalgo	Indigent Defense Coordinator and VTC Program	Create a new Indigent Defense Coordinator position to streamline functions between courts, law enforcement agencies, and others involved in the processes of implementing SB7	\$105,315	<b>IDC</b> - Reported 100% documented compliance on statutory prompt appointment measures. <b>Video-teleconferencing</b> – 94% of uses involve first time attorney contacts with client and 100% of those contacts were within 24 hours of appointment.	Yes
Lamar	ID System of NE Texas	Hire a full time contract investigator to support all assigned counsel. Also, purchase computer, and equipment allocated to ID.	\$9,962	<b>Contract Investigator</b> - County was unable to implement a contract investigator system. <b>Equipment</b> -Copy machine purchased was used by ten defense attorneys for over 17, 000 pages of discovery copied.	Yes

Montgomery	Computer programming	Develop programming to improve data tracking in the county related to ID	\$29,737	System provided all elements to ID coordinator to avoid duplicate appointments, automatic e-mail notice of appointment to attorney and courts, update court/county system about appointments and generate reports.	Yes
Smith	Network and Imaging System	ID portion of an overall countywide imaging and data storage system. Defense attorneys will connect to client data through secure website.	\$145,000	Imaging system was available to county by August 2003. The attorney notification system and access to court documents began in May 2004 but was interrupted due to contract dispute. Operational again in September 2004.	Yes
Taylor	Indigent Defense Coordinator	Create a new Indigent Defense Coordinator position to streamline functions between courts, law enforcement agencies, and others involved in the processes of implementing SB7	\$31,084	Very high level of compliance with prompt appointment issues. Survey indicates 80% percent positive results by practitioners. Streamlined process between courts by centralizing ID responsibilities.	Yes
Tom Green	Attorney - Client Video Teleconference network	Purchase of video-teleconferencing equipment in Runnels, Schleicher, and Runnels Counties. Allows attorneys and clients to meet if client is incarcerated in remote location.	Canceled	Unable to purchase system and implement process during grant period.	Canceled
Travis	Automated Intake Process	Adds SB7 required elements to existing county data system - the ability to automate the intake process, the defendant/respondent eligibility qualification process, and the attorney appointment process in the criminal courts and juvenile courts	\$149,997	System interfaces with existing county system reducing input. Provides for electronic signatures to be recorded reducing paperwork and speeding up process. County now able to document notice of appointment to attorney in over 65% of cases. 95% of cases receiving appointment were completed using electronic system.	N
Van Zandt	ID Administrator	Create a new Indigent Defense Coordinator position to streamline functions between courts, law enforcement agencies, and others involved in the processes of implementing SB7	\$31,767	County reports high level of compliance on prompt appointment issues. County claims increase in attorneys requesting to be on the appointment wheel. Survey of practitioners indicates overall 75% satisfaction with IDC.	N

Waller	Waller Count Indigent Defense	Waller County to contract with ten attorneys to provide indigent defense in all courts in Waller County. Move from an assigned counsel (ad hoc) system to a contract system. Request to fund amount above baseline to make the change. Model contract provision	\$52,401	15 Attorneys responded to RFQ. The ten attorneys selected report a combined total of almost 210 hours of CLE. Judges have eliminated administrative time spent on routine cases for payment issues. Complaints from attorneys have stopped.	Yes
Webb	South Texas Indigent Defense Symposium	Create a new Indigent Defense Coordinator position to streamline functions between courts, law enforcement agencies, and others involved in the processes of implementing SB7. Regional training,	\$18,000	The symposium obtained a 100% approval rating from the attendees that completed the survey. The symposium brought officials from several counties together to learn solutions to providing constitutional defense systems.	Yes
Wichita	Commitment to Justice - Phase II	Modified - Video Magistration, client/ attorney video conferencing, ID coordinator, and Case management system.	\$103,1534	<b>IDC</b> - County reports 100% compliance with prompt appointment issues. <b>VTC</b> - 920 people were magistrate using the system. <b>PD Software</b> – System became operational at end of grant period. Will continue to monitor effect.	Yes
Wise	Indigent Defense Grant Program - District Court	Purchase computers for the District court to provide immediate access of jail records to the court. Also, includes software development.	\$1,680	Able to complete entire ID Expense Report in 1 day using software. Developed 3 new reports to assist courts and county in tracking expenses and appointments.	N
		Rounded	\$1,165,485		14

## FY04 Discretionary Grant Status Report

County	Program Name	Description	Award Amount	Report
Dallas	Case Management System for Dallas County-Public Defender's Office	Purchase a case management system that will interface with the current and future Dallas County computer system. The purchased system will provide conflict detection for the Public Defender's Office and have the ability to enter additional data such as the names of complaining witnesses to ensure an accurate conflict check.	\$300,000	<ul style="list-style-type: none"> <li>• Report pending December 15, 2004</li> </ul>
El Paso	Public Defender Mental Health Unit	The Mental Health Unit will focus on representing individuals charged with criminal and juvenile offenses who have mental illness and mental retardation. An experienced attorney and two social workers familiar with serving the mentally ill and mentally retarded will be hired.	\$175,291	<ul style="list-style-type: none"> <li>• Staff hired.</li> <li>• Over 700 clients screened</li> <li>• Over 100 clients receiving representation</li> </ul>
Limestone	Indigent Defense Liaison/Expanding Indigent Defense Services	Indigent Defense Coordinator for the two district courts in Limestone and Freestone Counties and Video-teleconferencing system for magistration.	\$72,700	<ul style="list-style-type: none"> <li>• Staff Hired</li> <li>• Court processes being implemented</li> </ul>
Tarrant	Tarrant County Integrated Justice Information System-Indigent Defense On-Line (IDOL)	Develop a model information system based on best practices for the management and reporting of indigent defense services that can be used by other jurisdictions across the State.	\$350,840	<ul style="list-style-type: none"> <li>• RFP developed</li> <li>• Specifications developed</li> </ul>
Travis	Technology Improvements for Travis County Indigent Defense	Implement a program establishing an Internet application system that enables defense attorneys to more quickly and easily access and respond to indigent appointments and provide client contact responses. Implement courthouse kiosk stations that provide defense attorneys with access to current indigent appointment, docket and cause information.	\$152,472	<ul style="list-style-type: none"> <li>• Completed user group input</li> <li>• Scope and vision complete</li> <li>• Work scheduled</li> </ul>
Webb	Webb County Indigent Defense Coordinator	Hire an indigent defense coordinator to facilitate the appointment process for county and district courts.	\$70,000	<ul style="list-style-type: none"> <li>• Staff hired</li> <li>• Developing procedures</li> </ul>
			\$1,121,303	



**FY04 Annual Report**

# **Appendix D**

## **Site Visits, Trainings, and Presentations**

## FY04 Site Visits, Technical Assistance provided by Task Force staff

*Staff provided technical assistance on-site on 42 occasions*

Taylor	9/2/2003	Dallas	4/8/2004
Haskell	9/3/2003	Smith	4/12/2004
Montgomery	9/18/2003	Harrison	4/13/2004 - 4/14/2004
Waller	9/18/2003	Bowie	4/15/2004
Duval	10/15/2003	Tarrant	4/21/2004
Webb	10/15/2003	Gonzales	4/26/2004
Hays	10/30/2003	Cameron	5/6/2004 - 5/7/2004
Dallas	12/1/2003 – 12/4/2003	Collin	5/18/2004
Gonzales	12/4/2003	Midland	5/21/2004
Kaufman	1/7/2004 – 1/8/2004	Jasper	5/27/2004
Bowie	1/14/2004 – 1/15/2004	Newton	5/27/2004
Montgomery	2/3/2004 – 2/4/2004	Sabine	5/27/2004
Orange	2/11/2004 – 2/12/2004	San Augustine	5/27/2004
Limestone	2/23/2004	Tyler	5/27/2004
Webb	3/3/2004	Tarrant	6/28/2004 - 6/29/2004
Starr	3/8/2004 – 3/8/2004	Denton	6/30/2004
Harris	3/9/2004 – 3/10/2004	Lubbock	7/16/2004
Galveston	3/11/2004 – 3/12/2004	Bell	8/11/2004
El Paso	3/15/2004	Travis	8/18/2004
	3/23/2004 – 3/24/2004	Harris	8/26/2004 - 8/26/2004
Collin	3/29/2004	Burleson	8/31/2004

26	Site Visits with Technical Assistance
7	Site Visits with Fiscal Monitoring
32	Completed Site Visits
42	Total Site Visits

## FY04 Trainings, Presentations given by Task Force staff

*Task Force on Indigent Defense staff made presentations to over 1300 county officials and stakeholders*

<b>Sponsor</b>	<b>Program Name</b>	<b>Date(s)</b>	<b>Location</b>	<b>Number Trained</b>	<b>Audience</b>	<b>Length</b>
Task Force on Indigent Defense (TFID)	Regional FY04 Grant and Reporting training	9/3/2003	Young County, Graham	25	county grant officials	2.5 hours
TFID	Regional FY04 Grant and Reporting training	9/3/2003	Young County	25	County grant officials	2.5 hours
TFID	Regional FY04 Grant and Reporting training	9/9/2003	Potter County, Amarillo	25	County grant officials	2.5 hours
TFID	Regional FY04 Grant and Reporting training	9/18/2003	Walker County	25	County grant officials	2.5 hours
Texas Association of Court Administrators	Embracing Change – What Do We Do Now?	10/2/2003 - 10/2/2003	Omni South Park Hotel, Austin, TX	60	Court administrators and assistant administrators.	2 - 45 minute sessions
TFID	Indigent Defense Coordinators Workshop	10/9/2003 - 10/10/2003	Austin	30	Indigent Defense Coordinators, county judge, faculty, presenters consisting of leaders in county organizations and experts in indigent defense	12 hours
Criminal Defense Lawyers Program	Regional Training- "A Day in the Life of a Texas Criminal Defense Lawyer"	1/23/2004	Port Aransas	35	Defense Attorneys	15 minutes
Dallas County Criminal Defense Attorneys Association	Regional Training	1/27/2004	Dallas	20	Defense Attorneys	1 hour
TFID/Wichita County	"A Review of Wichita County's Indigent Defense System - Initial Findings and Recommendations"	2/9/2004	W	20	county officials	30 minutes
National Association of Criminal Defense Lawyers/TCDLA	Winter Meeting	2/20/2004	San Antonio	75	Criminal Defense Lawyers	30 minutes
TFID	Grant and Report Training - Austin	2/24/2004 - 2/24/2004	Texas Law Center- 1414 Colorado St. - Room 101	33	County and Court Officials	2.5 hours
CDLP	"A Day in the Life of a Criminal Defense Lawyer"	2/27/2004	College Station	40	criminal defense lawyers	30 minutes
Criminal Defense Lawyers Program	Indigent Defense Training for Public Defenders	3/18/2004 - 3/19/2004	Dallas	70	Public Defenders from Wichita and Dallas counties	30 minutes
Webb County	South Texas Symposium on Cost Effective Indigent Defense	3/24/2004 - 3/25/2004	Laredo	70	District and Statutory Court Judges, Prosecutors, Public Defender, Local Defense Bar, Law Enforcement and Corrections Staff.	15 minutes each
West Texas County Judges and Commissioners	Annual Conference - "Life After Senate Bill 7"	3/26/2004	Midland	70	County judges and commissioners	2 hours

Sponsor	Program Name	Date(s)	Location	Number Trained	Audience	Length
Association						
Center for American and International Law	Capital Defense Trial Advocacy	3/29/2004	Plano	70	Criminal Defense Attorneys	30 minutes
Rural Association for Court Administration	Annual Meeting/Conference	4/21/2004	New Braunfels	60	Court administrators from rural counties	2 hours
Criminal Defense Lawyers Project	Regional Training- "A Day in the Life of a Texas Criminal Defense Lawyer"	4/30/2004	Sugarland	60	criminal defense lawyers	45 minutes
Criminal Defense Lawyers Project	Indigent Defense Training for Public Defenders	5/4/2004 - 5/5/2004	El Paso	30	Criminal defense lawyers	30 minutes
Center for American and International Law	Cross Examination and Impeachment	5/20/2004	Plano	50	defense attorneys	30 minutes
South Texas County Judges and Commissioners Association	Annual Conference - "Life After Senate Bill 7"	5/20/2004	S. Padre	70	County judges and commissioners	2 hours
Midland and Ector Counties	Presentation regarding Fair Defense Act	5/21/2004	Midland	10	County officials	1.5 hours
Southwest Regional Juvenile Defender Center	Annual Conference-Zealous Advocacy=Best Interests	5/21/2004 - 5/22/2004	Houston	100	juvenile defense attorneys	1 hour
Justice Court Training Center	Faculty Development	6/28/2004	Kerrville	30	county judges	1.5 hours
Tarrant County Criminal Defense Lawyers Association	Indigent Defense Training for Public Defenders	7/8/2004	Fort Worth	30	Criminal defense attorneys	1.5 hours
TFID/Lubbock County	Meeting with court and county officials on Task Force Blueprint	7/16/2004	Lubbock	20	county officials	1 hour
TFID	Public Defender Blueprint Workshop	7/23/2004	Austin	20	county officials	2 hours
American Bar Association	2004 Annual Meeting	8/6/2004 - 8/9/2004	Atlanta	25	Standing Committee on Legal Aid and Indigent Defenants; Indigent Defense Advisory Group	2 hours
Center for American and International Law Institute	Capital Issues for Trial Judges - presentation on "Qualification and Appointment of Counsel"	8/19/2004	Plano		trial judges	1 hour
TFID/Spangenberg	"A Review of Dallas County's Indigent Defense System-Initial Findings and Recommendations"	8/20/2004	Dallas	30	county officials	1 hour
TFID	Regional Grant and Report Training - Austin, Texas	8/24/2004	Texas Law Center	33	County Judges, auditors, treasurers, COGs, DAs, ID and Court Coordinators.	2.5 hours



**FY04 Annual Report**

# **Appendix E**

## **Legislative Recommendations**

## Task Force on Indigent Defense Recommendations for Legislative Changes

### 1. Change: Section 71.0351, Government Code, is amended to read as follows:

- (a) Not later than ~~November~~ January 1 of each ~~odd-numbered~~ year, in each county, a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code, that have been revised since last submitted shall be prepared and sent to the Task Force on Indigent Defense ~~Office of Court Administration of the Texas Judicial System~~ in the form and manner prescribed by the Task Force. If the rules and forms previously submitted to the Task Force on Indigent Defense are still current, then the county must verify this not later than November 1 of each odd-numbered year. Except as provided by Subsection (b), the local administrative district judge in each county, or the person designated by the judge, shall prepare and send to the ~~Task Force~~ office of court administration a copy of all rules and forms adopted by the judges of the district courts trying felony cases in the county or verify that the previously submitted rules and forms are still current. Except as provided by Subsection (b), the local administrative statutory county court judge in each county, or the person designated by the judge, shall prepare and send to the ~~Task Force~~ office of court administration a copy of all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county or verify that the previously submitted rules and forms are still current. The chairman of the juvenile board in each county, or the person designated by the chairman, shall prepare and send to the Task Force a copy of all rules and forms adopted by the juvenile board or verify that the previously submitted rules and forms are still current.
- (b) If the judges of two or more levels of courts adopt the same formal and informal rules and forms as described by Subsection (a), the local administrative judge serving the courts having jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, shall prepare and send to the ~~Task Force on Indigent Defense~~ Office of Court Administration of the Texas Judicial System a copy of the rules and forms.
- (c) In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the ~~Task Force on Indigent Defense~~ Office of Court Administration of the Texas Judicial System in the form and manner prescribed by the ~~Task Force~~ office and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county:
- (1) in each district, county, statutory county, and appellate court;
  - (2) in cases for which a private attorney is appointed for an indigent defendant;
  - (3) in cases for which a public defender is appointed for an indigent

defendant;

(4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and

(5) for investigation expenses, expert witness expenses, or other litigation expenses.

(d) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the Task Force on Indigent Defense ~~Office of Court Administration of the Texas Judicial System~~ under this section and under a reporting plan developed by the Task Force on Indigent Defense under Section 71.061(a).

~~(e) On receipt of information required under this section, the Office of Court Administration of the Texas Judicial System shall forward the information to the Task Force on Indigent Defense.~~

**Rationale:** The section provides for an every other year verification process for each county to confirm that the rules and forms on file with the Task Force are still current or to submit them again if they have been changed. Counties should not have to resubmit their rules or forms for providing indigent defense services if the rules or forms have not changed since their last submission. Since plans have been submitted by all counties representing all court levels so annual verification is not needed since so few changes are being made. The resulting reduction in the number of mandatory reports is helpful to county officials and judges. A due date of November 1 of odd-numbered years will also follow regular sessions of the legislature when changing plan requirements are most likely to be implemented and will also avoid having new judges taking office at the same time their indigent defense plan is due.

The section clarifies that juvenile boards must also submit to the Task Force and/or verify the rules and forms on file with the Task Force.

The section is also updated to require the rules and procedures, as well as the expenditure reports, be sent directly to the Task Force, rather than being first sent to the Office of Court Administration. This amendment streamlines the reporting process.

**2. Change: Subsection (b), Section 71.053, Government Code, is amended to read as follows:**

(b) The members serve staggered terms of two years, with two members' terms expiring February 1 of each odd-numbered year and three ~~two~~ members' terms expiring February 1 of each even-numbered year.

**Rationale:** There are five governor appointees to the Task Force, but the statute refers to the terms of only four. This amendment brings the statute into conformity with the terms of the first five Task Force members appointed by the governor.

**3. Change: Subsection (b), Section 71.059, Government Code, is amended to read as follows:**

(b) The State Grants Team of the Governor's Office of Budget, ~~and Planning and Policy~~ may assist the Task Force on Indigent Defense in identifying grants and other resources available for use by the task force in performing its duties under this subchapter.

**Rationale:** This amendment updates the name of the division within the governor's office.

**4. Change: Subsection (b), Section 71.061, Government Code, is amended to read as follows:**

(b) The Task Force on Indigent Defense shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and council and shall publish in written and electronic form a report:

(1) containing the information submitted ~~forwarded~~ to the task force ~~from the Office of Court Administration of the Texas Judicial System~~ under Section 71.0351~~(e)~~; and

(2) regarding:

(A) the quality of legal representation provided by counsel appointed to represent indigent defendants;

(B) current indigent defense practices in the state as compared to state and national standards;

(C) efforts made by the task force to improve indigent defense practices in the state; and

(D) recommendations made by the task force for improving indigent defense practices in the state.

**Rationale:** This amendment makes a conforming change to show that the Task Force will put all the information submitted to it in its annual report to the state leadership.

**5. Change:** Task Force will make a general recommendation in its FY04 Annual Report that the Legislature look for ways to continue gradually increasing state funding for delivery of indigent defense services by the counties.

**Rationale:** Many counties have experienced large increases in expenditures for indigent defense services. Since the inception of the Fair Defense Act in 2001, county expenses for indigent defense services have increased above what was appropriated to cover the anticipated costs of this legislation. In 2001, counties expended approximately \$92 million on indigent defense services. In 2003, counties expended approximately \$130 million on indigent defense services--\$38 million more than they spent in 2001. The increase was offset by \$12 million in state grants provided by the Task Force to counties. In 2003, the Task Force was unable to reimburse counties statewide approximately \$26 million.

**6. Change: Subsection (a), Article 26.044, Code of Criminal Procedure is amended to read as follows:**

(a) In this chapter:-

(1) "public defender" means a governmental entity or nonprofit corporation:

(A) ~~(1)~~ operating under a written agreement with a governmental entity, other than an individual judge or court;

(B) ~~(2)~~ using public funds; and

(C) ~~(3)~~ providing legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 71.001, Government Code.

(2) "governmental entity" includes, but is not limited to, a county, a group of counties, a department within a county, an administrative judicial region created by Section 74.042, Government Code, and any entity created under the Interlocal Cooperation Act created under Chapter 791, Government Code.

**Rationale:** This change clearly defines what a governmental entity is for the purposes of creating a public defender office. This is needed because the statute is currently unclear what entities may be appointed as public defenders. Without clear guidance some counties may choose not to go forward with these offices. The definition will allow all permutations of county government, groups of counties, and administrative judicial regions to operate as a public defender.

**7. Change: Amend Article 15.17, Code of Criminal Procedure, by adding Subsection (g) as follows:**

(g) The warnings required by subsection (a) may be delivered to a person in a prerecorded medium using an electronic device if:

(1) the recording contains a visual image and sound in a language understood by the person;

(2) the magistrate repeats the each right or question on the video recording and makes a record of the response of each person who views the recording; and

(3) the magistrate complies with all other provisions of the subsection.

**Rationale:** This addition clearly authorizes the use of videotaped warnings as part of the magistrate's hearings under Article 15.17, Code of Criminal Procedure. The change could streamline the process of magistration for some counties and give defendants arrested multiple recitations of their rights.



**FY04 Annual Report**

## **Appendix F**

# **Montgomery and Smith Counties' Responses To the Fair Defense Act**

# County Responses to the *Fair Defense Act*

## ★ Montgomery County's Response to the Fair Defense Act:

**Article by: K. Michael Mayes, 410<sup>th</sup> District Court Judge, Conroe, Excerpts Reprinted with permission from an article which appeared in the Spring 2003, Volume 30, Number 1 issue of *In Chambers***

(Note: This is an excellent example of how a county used technology to work smarter and more efficiently saving the county time and money while appointing attorneys to indigent defendants...)

In Montgomery County, as in all counties, the FDA is managed under Rules adopted by the courts that handle the criminal cases in the county. In Montgomery County, this includes the five District Judges and four County Court at Law Judges. As mandated by the FDA, our local FDA Rules require the almost immediate appointment of an attorney once an indigent defendant is arrested. Since our jail is a five minute drive from the Courthouse, the real issue for our Judges was how to avoid delays in the appointment of an attorney, and at the same time devise a plan that did not require the Judges or our newly hired Appointment Designee ("AD") Genoveva Perez to leave the courthouse or courtroom and travel to the jail to interview the inmates and appoint them an attorney. One alternative to our dilemma was to continue bringing all the inmates before a Judge or Genoveva at the courthouse. This procedure had been used for years for unindicted felons that needed a bond set, but with the advent of the FDA and the additional responsibilities placed upon us, we were anxious to find an easier solution. This "drive 'em to the courthouse" procedure also took one or more deputies away from their normal jailhouse duties and required the use of a van from the jail to the courthouse. Another alternative was for the Judge or Genoveva to travel to the jail once each day and meet with the inmates there. This, of course, took them away from their courtroom and office obligations and was time consuming. It was obvious to us that the best alternative was to use technology to accomplish the stated objectives, if it could be done effectively and for a reasonable cost.

### *VIDEO CONFERENCING - "THE NEXT BEST THING TO BEING THERE"*

With monies obtained from the State under the auspices of the State FDA Task Force, the County purchased multiple video conferencing "centers." Each of these centers contained a television monitor, a camera, microphones and additional supporting equipment. One center was installed in each of the 9 courtrooms, in the jail, in the Juvenile Justice Center and in the Office of Court Administration ("OCA"). We also purchased 2 "roving" video conference centers for use wherever needed. In the 410th District Courtroom, we have two (2) microphones

installed in the ceiling above the attorneys tables and above the Judge's bench. The image obtained from the "far" end of the video-conference connection is shown on all seven (7) tv monitors in our courtroom (1 on the bench, 1 for our reporter, 1 for the witness, 1 extra large monitor for the courtroom spectators and 3 for the jury box). With the video conference equipment , the Judges or Genoveva can interview and appoint attorneys for indigent inmates by video conference, that is to say, by "live television" from our courtroom to the jail, or from the AD's office to the jail. The Judges and AD never leave their courtroom or office. The inmates never leave the jail. This saves time and increases the security surrounding the inmates. The Judges and AD talk to the inmates and conduct the necessary interviews over the television. The interviews are "in person" and in real time. We are able to see the inmate, administer an oath to them and judge the inmate's demeanor and honesty as we interview them. Likewise, the inmates can see the Judge or Genoveva on their monitor at the jail and they can ask any questions they may have. If the attorney being appointed is in the courtroom at the time of the appointment, the inmate can actually see his new attorney and speak to him at that moment.

#### ***COMPUTERIZED RETRIEVAL AND APPOINTMENT OF QUALIFIED ATTORNEYS***

With the help of Montgomery County's Communication Information Services (CIS) Department, our courts have devised a computer program whereby the revolving appointment lists of attorneys (which are required by the FDA) are retrieved instantaneously whenever one of the lists is needed for an attorney appointment. This is normally done by our AD in her office when she is interviewing the inmates by video conference with the jail. As she is talking with the inmates, she simply logs onto her computer. There she is greeted with a link on her computer to the appropriate list with the next 5 names in that category. For example, if the inmate is charged with a second degree felony, she links to the list for qualified attorneys in that category. With a click, an attorney is then selected and appointed from that list as required by the FDA. Once the attorney is selected, the computer simultaneously generates an Order appointing the attorney. As discussed below, the Order includes the name of the defendant, what he is charged with, his pin number, his phone number(s) and the Court in which the case is pending. Quick, simple, no paper.

#### ***COMPUTERIZED ORDERS ARE E-MAILED TO ATTORNEYS***

The attorneys under our FDA Rules are required to provide us with their e-mail address. As the appointment is made on the County computer, the computer automatically and simultaneously generates an e-mail (with the Order attached) that is immediately sent to the attorney advising them of their appointment. The FDA Order advises the attorney of his client's name, their pin number, their cause number, what crime they are charged with, the phone number(s) for his client and other relevant information. The AD or Judge can print a hard copy of the Order if needed for the Clerk's file. The Order is saved on a hard drive under

a folder that is named for the appointed attorney. In other words, our AD keeps a folder for each attorney that has within it a copy of all appointment Orders issued for that attorney. This is a great device to retrieve a list of appointments for the various attorneys that practice in our courts. This computerized process allows appointments to be made without the AD or Judges ever having to touch a piece of paper. Yes, there are times we and our Ad have to do it “the old fashioned way,” because of an error in the computer or some other unexpected glitch, but that is becoming the exception rather than the rule. Our FDA appointment process is expedited by this instantaneous selection, appointment and notification of the appointment. In most cases the attorney knows they are appointed at virtually the same time the inmate has “video contact” with the Judge or AD. Yes, we still appoint attorneys for defendants in the courtroom when they have not yet been appointed one. This may happen, for example, when a defendant bonds out of jail so quickly they do not get an appointment at the jail or where the defendant does not initially seek an appointment because they want to retain their own attorney. But we are moving toward a paperless appointment process that is benefitting all concerned.

*UNINDICTED FELONS-90 DAY BOND HEARING* When a defendant has been arrested on an unindicted felony, the OCA office also saves the Appointment Order on their computer by date so they can follow up on whether the defendant has been released from jail and/or indicted within 90 days. Our attorneys are quickly learning that our OCA office is “ensuring” that the attorneys represent their clients diligently (see below). This calendaring system is one way our AD and OCA verify that unindicted felons get a prompt bond hearing if they are still in jail after 90 days, pursuant to Code of Criminal Procedure, Art. 17.151. The FDA does not specifically require this monitoring, but if you have the technology to do so easily, why not?

*AND SO, IS IT WORTH IT?* This technological magic has saved our Judges hours of time and effort in complying with the FDA mandates. It has opened our courthouse doors to extremely efficient proceedings that make our judicial system better for all and it has helped us comply with the mandate to timely appoint counsel for those individuals that are otherwise unable to afford one. Is technology worth it? Oh yeah!



## **Smith County's Response to the Fair Defense Act:**

**Article by: Floyd T. Getz, Judge, Smith County Court at Law #3**

Even prior to the Fair Defense Act taking effect in January 2000, Smith County had a very pro-active method of addressing the issue of representation in juvenile cases.

The FDA served to formalize Smith County's pre-2002 procedures without any substantive changes required. Except for a few details, we were already doing what the act now requires. In drafting the juvenile plan, it specifically allowed for departure from the rotation in detention situations (using the next attorney on the list who is present at court already) so that the juvenile is immediately appointed counsel and that same attorney handles the case to conclusion.

Juvenile cases initially come before the court in one of two ways: 1) an initial detention hearing or 2) a pretrial hearing for a juvenile who had been released to a parent or other responsible adult. It always has been my practice (since becoming juvenile judge in 1999) to address the representation issue first in either situation and immediately appoint counsel in cases of indigence or where the parent/guardian is the alleged victim. In cases where the parent(s) can afford counsel, they're informed of their legal obligations to do so and placed under a written order if they express any opposition or reluctance. In cases where parent(s) may not be financially capable of paying an attorney up front, I give them a choice. They can either hire the attorney of their choice or the court can appoint one from the list with the clear understanding that the parent(s) will be court-ordered to reimburse the county (over time, if needed) for the fees.

Sometimes, the court encounters divided family situations where the parent with whom the child resides cannot afford counsel on their own, but can do so with the help of the other parent. In those cases, we'll summon the other parent to court, apportion the fees according to ability to pay and put the parents under a written order which spells out their duty to retain counsel.

A couple of things that Smith County does that is not specified under the FDA have helped the county keep a good contingent of qualified juvenile attorneys (usually 10-14) involved and to keep the system running smoothly and efficiently: 1) Judge Getz actively recruits qualified attorneys to participate. 2) Court staff and Judge Getz encourage attorneys to turn in their fee applications after each hearing instead of having to wait until the cases is concluded. Judge Getz acts upon the fee applications very quickly so that counsel get paid in a timely fashion. 3) Court staff make an effort to schedule so that attorney can take care of multiple cases with one trip to the juvenile center (about a 10-minute trip from the courthouse).



**FY04 Annual Report**

## **Appendix G**

### **Summary Report: Impacts of Texas Fair Defense Act On Improving Indigent Defense**

# **Summary Report**

## **Impacts of Texas Fair Defense Act on Improving Indigent Defense: First In-Depth Evaluation**

submitted to:

**The Task Force on Indigent Defense**

prepared by:

**The Public Policy Research Institute  
Texas A&M University**

**December 2004**

Task Force on Indigent Defense, Evaluation  
Report, 2004

# Background

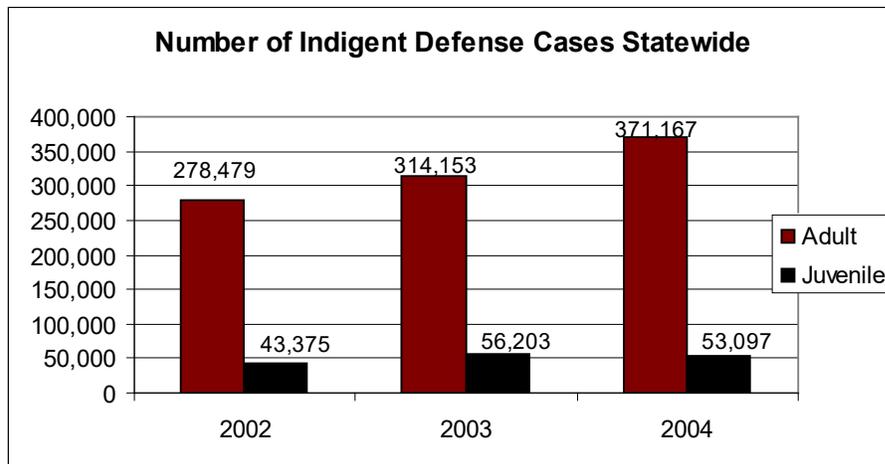
- **Funded by TFID. Conducted by Texas A&M's Public Policy Research Institute with assistance from Dr. Tony Fabelo to examine:**
  - ✓ How FDA requirements have impacted indigent defense service delivery
  - ✓ How county implementation strategies impact costs of meeting FDA requirements
- **Review of overall trends and in-depth analysis of four sites**
  - ✓ Dallas County – population 2.2 million
  - ✓ Collin County – population 492,000
  - ✓ Cameron County – population 335,000
  - ✓ Webb County – population 193,000
- **Site selection**
  - ✓ Different population sizes
  - ✓ Border and non-border areas
  - ✓ Different methods of assigning counsel
- **Approach**
  - ✓ Analysis of trend data, interviews with stakeholders, and collection of local case-level defendant data



## Bottom Line

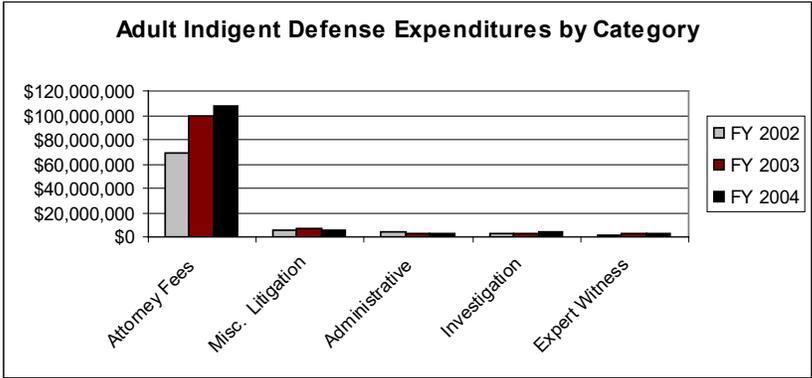
- **Texas is providing more defendants with indigent defense since the FDA was adopted.**
- *The counties studied are all complying with the “prompt appointment” provisions of the FDA.*
- *Counties have flexibility in how they implement FDA requirements, and their choices may impact costs.*

# More Defendants Receiving Indigent Defense



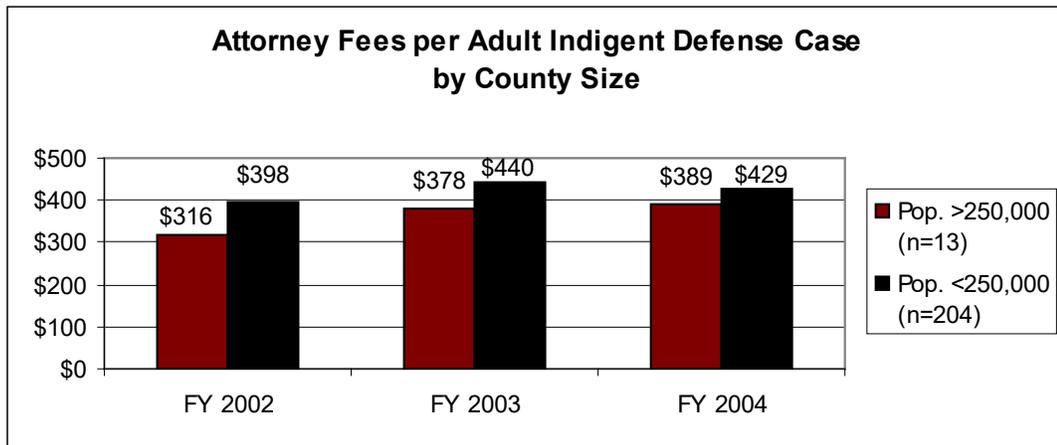
In 2004 there were almost 100,000 more adult indigent cases and 10,000 more juvenile indigent cases represented in Texas than during the first year of the FDA in 2002.

# Local Expenditures Have Increased to Meet Demand for Adult Services



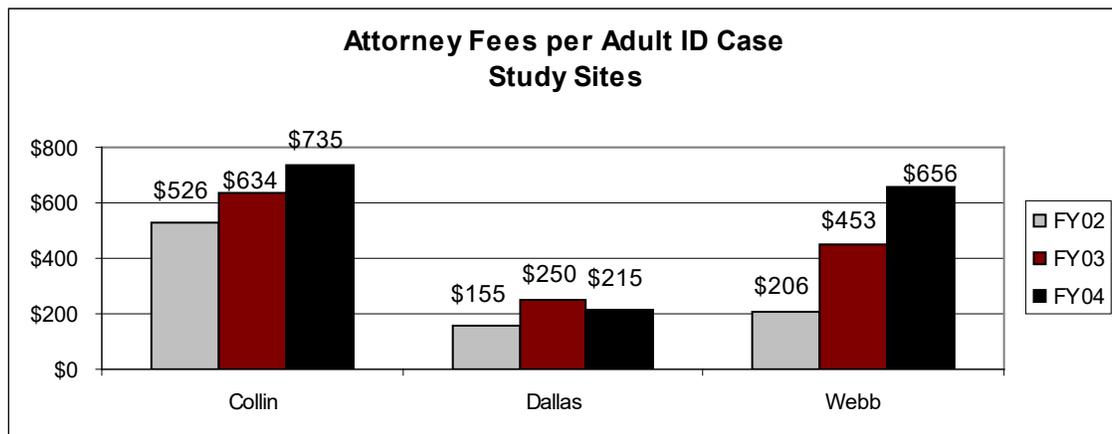
Attorney fees comprised 88 percent of all adult indigent defense costs in FY 2004.

# Attorney Fees Have Increased Since FDA



Attorney fees per adult case have risen 11 percent/year in large counties and 4 percent/year in the balance of counties. Average annual increase overall was 4 percent/year (based on counties submitting data for all three years).

# Attorney Fees Vary by Site



\*Cameron not shown due to reporting inconsistencies with data

The schedule of fees adopted, availability of a public defender office, and local indigent defense system characteristics impact each of the sites.

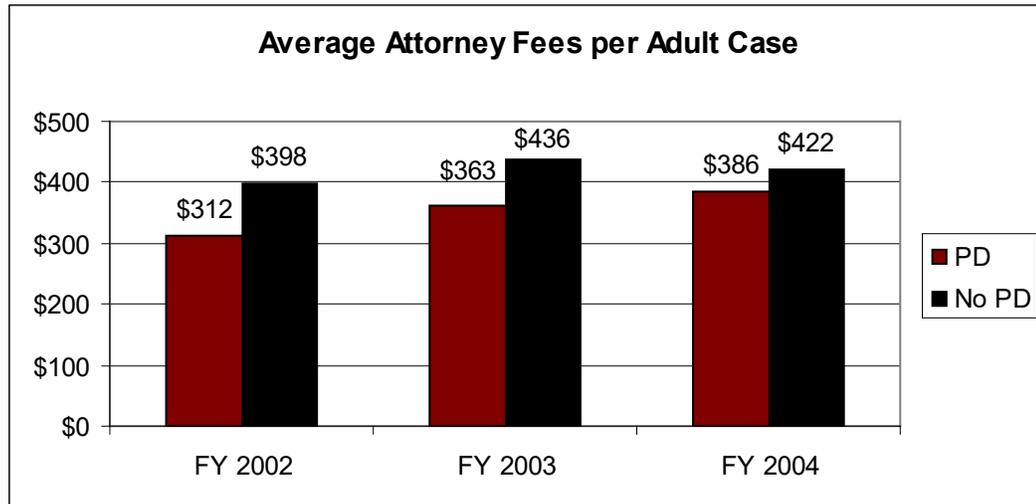


# Five Counties Have Adult Public Defenders

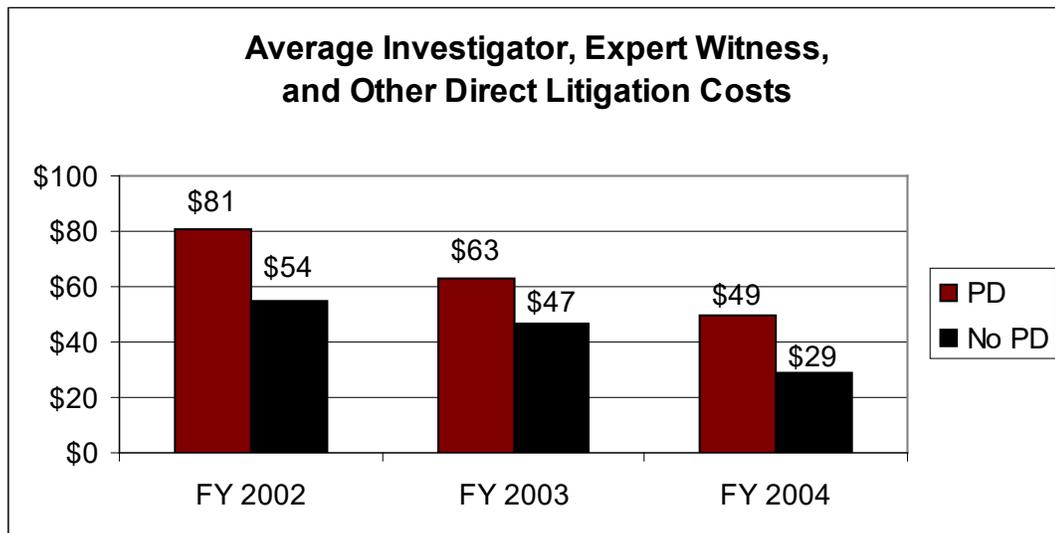
## Adult Indigent Defense Cases Assigned to Public Defenders, 2003-2004

	FY 2003			FY 2004		
	Total Adult Cases	Adult PD Cases	% Assigned to PD	Total Adult Cases	Adult PD Cases	% Assigned to PD
<b>Colorado</b>	155	142	<b>92%</b>	203	193	<b>95%</b>
<b>Dallas</b>	48,813	27,693	<b>57%</b>	55,003	35,272	<b>64%</b>
<b>El Paso</b>	12,858	6,827	<b>53%</b>	14,203	7,666	<b>54%</b>
<b>Webb</b>	3,464	2,834	<b>82%</b>	2,832	1,907	<b>67%</b>
<b>Wichita</b>	1,901	1,542	<b>81%</b>	2,108	1,207	<b>57%</b>

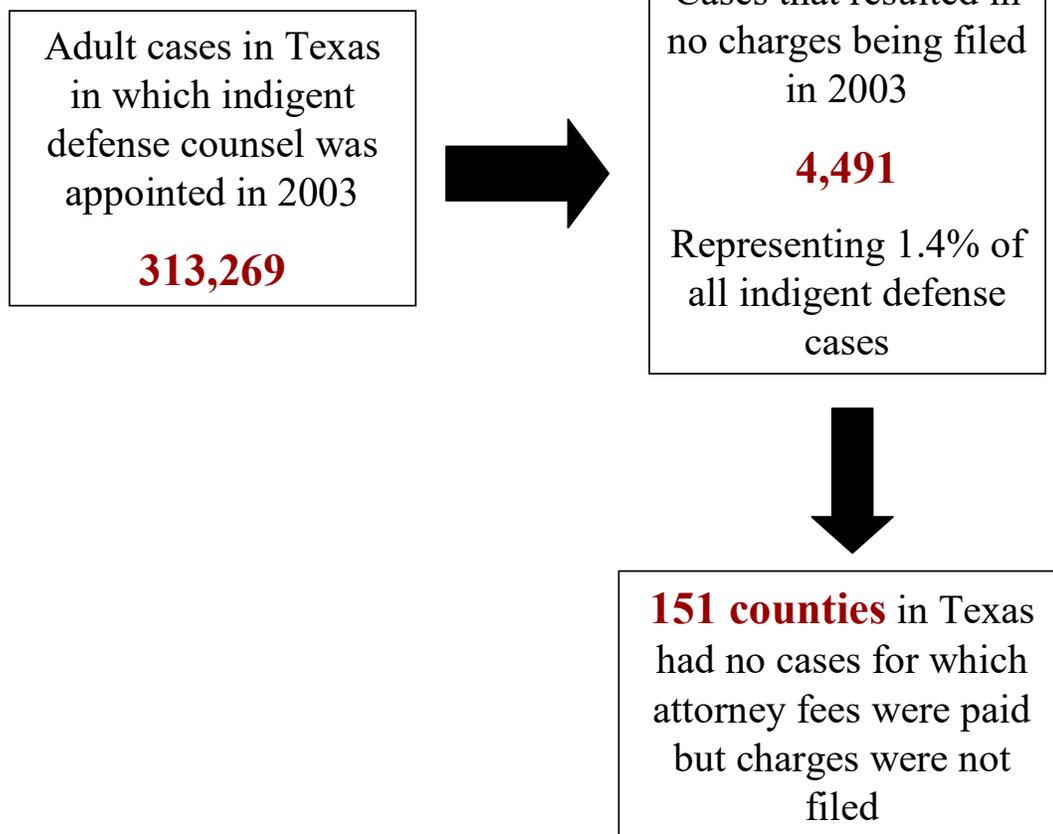
# Public Defender Attorney Fees Are Lower



## Public Defenders Invest More In Support Services



# Attorney Fees Paid in Un-Prosecuted Cases

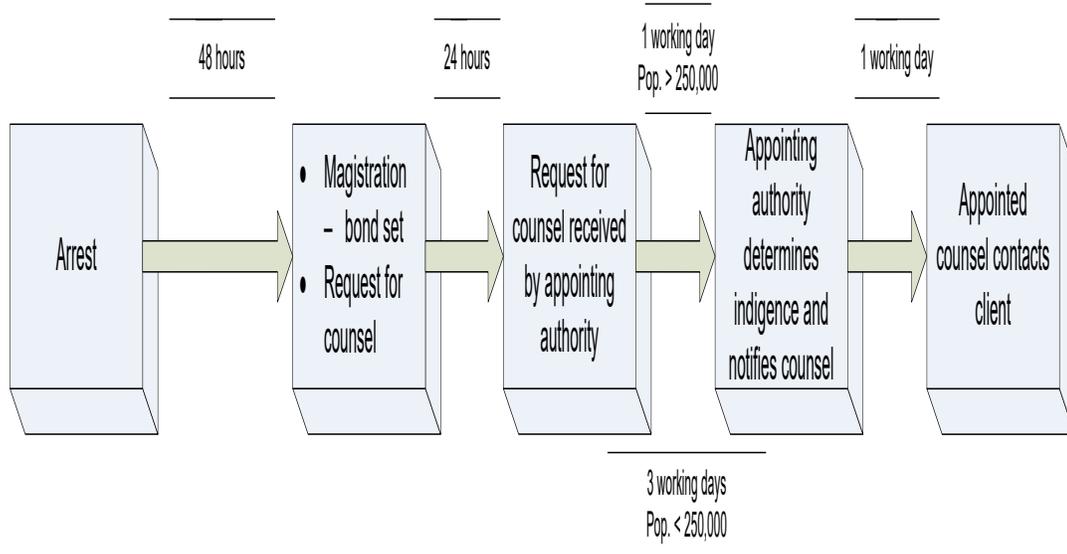


## Bottom Line

- *Texas is providing more defendants with indigent defense since the FDA was adopted.*
- **The counties studied are all complying with the “prompt appointment” provisions of the FDA.**
- *Counties have flexibility in how they implement FDA requirements, and their choices may impact costs*

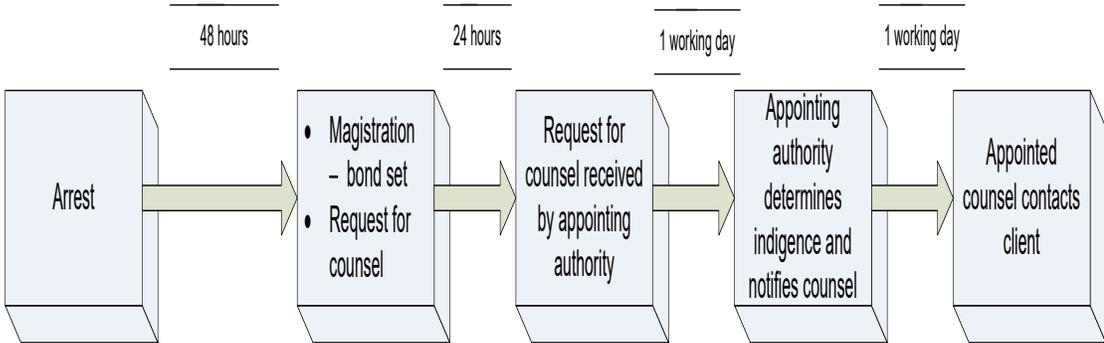
# Required Timelines for Appointment of Counsel

## FDA Requirements

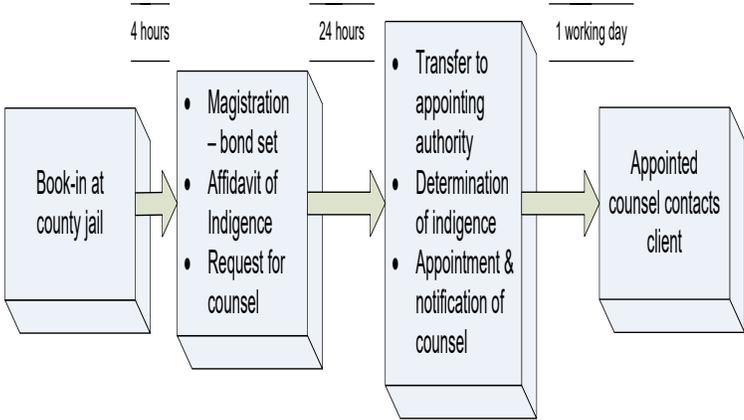


# Site Timelines

## Cameron

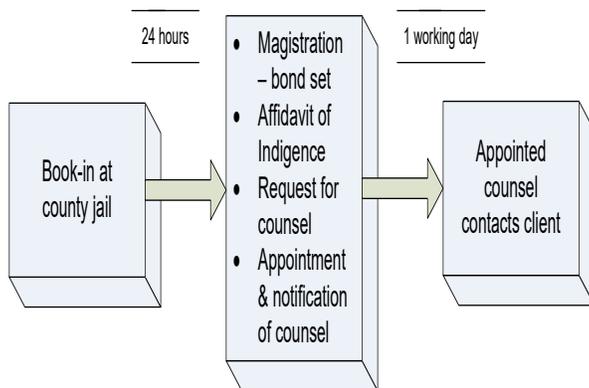


## Dallas



## Site Timelines (continued)

### Collin and Webb



Local timelines and strategies for providing indigent defense services vary as allowed by the FDA.

## Bottom Line

- *Texas is providing more defendants with indigent defense since the FDA was adopted.*
- *The counties studied are all complying with the “prompt appointment” provisions of the FDA.*
- **Counties have flexibility in how they implement FDA requirements, and their choices may impact costs.**

# Variation in Strategies for Determining Indigence

**Less Restrictive**



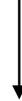
**Dallas/Webb**

- Counsel appointed for all defendants after 72 hours in detention regardless of indigent status.

**Cameron**

- All who ask get counsel appointed at the time of arrest.
- Indigence is re-assessed when the case is indicted or complaint is filed.

**More Restrictive**



**Collin**

- Close review of defendants' income and assets.
- Generally considered indigent if they qualify for means-tested public benefits programs or if annual income is \$15,000 or less.

# Issues Regarding Indigence Determination

•Counties have distinct differences in values regarding determination of indigence.

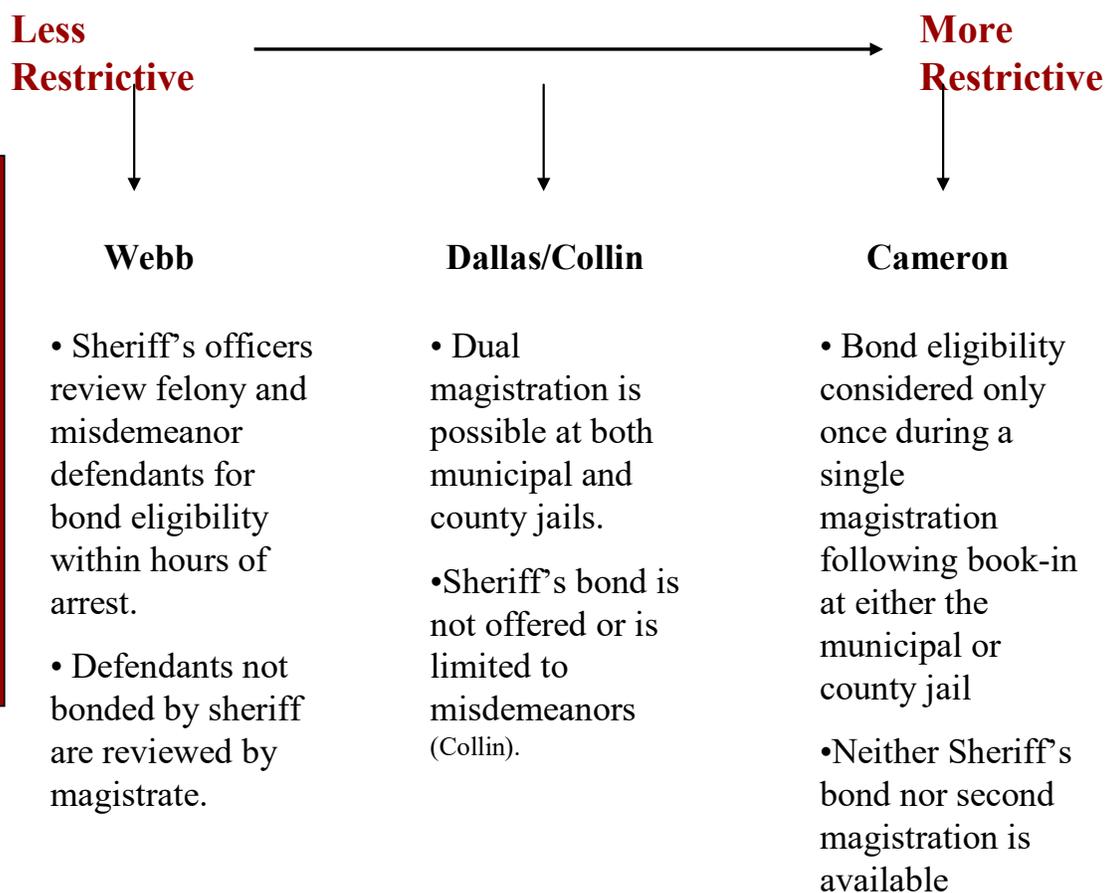
•All sites determined indigence based on unverified financial information reported by defendants.

•Counties focusing on cost containment suggested strategies to improve information about defendant assets:

- ✓ Request more self-reported financial detail.
  - Affidavits currently in use may not create the expectation of a full accounting of personal resources.
- ✓ Place greater burden of proof on defendants.
  - E.g., Appoint counsel within the FDA timeline, but require defendants subsequently released on bond to produce financial evidence requested by the court (tax returns, pay stubs, documentation of child support payments).
- ✓ Visibly highlight that Affidavits of Indigence are sworn legal documents submitted under oath.
  
- ✓ Consider penalties for the falsification of financial information.

•Some members of the private defense bar advocated for more precise methods as ineligible cases assigned public counsel depress the market price for representation.

# Variation in Bond Setting Mechanism



# Variation in Intake and Booking System

## Decentralized Intake

## Centralized Intake

### Dallas

- Intake at 19 municipal jails
- County run transportation system to transport defendants to county jail for magistration and requests for counsel
- Five new positions supporting magistration and request for counsel

### Collin

- Intake at 4 municipal jails and similar transportation as Dallas
- Five jail officers supporting magistration and request for counsel

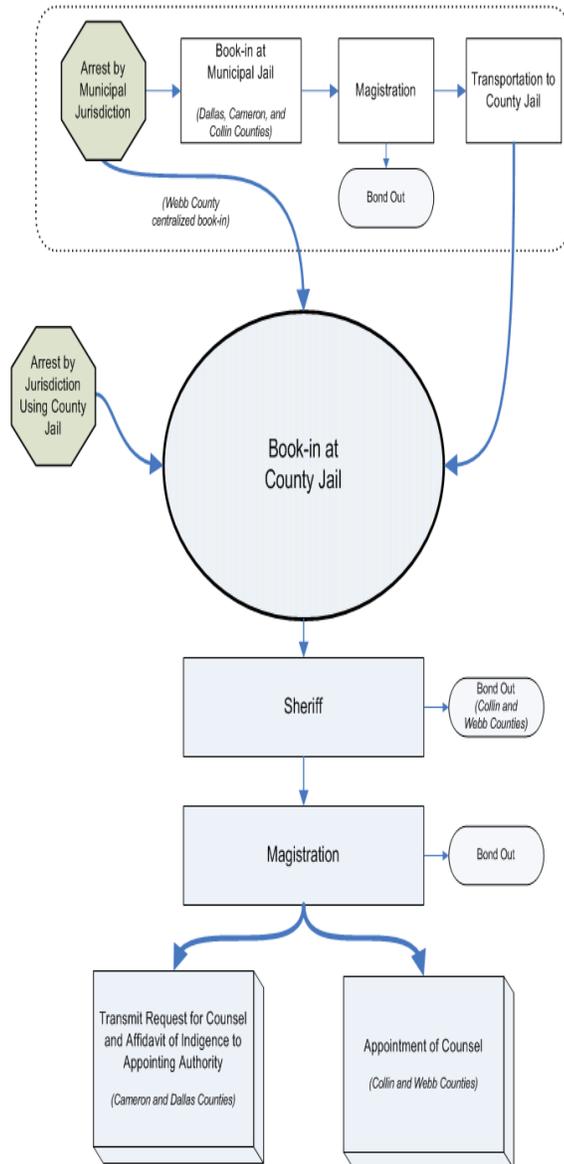
### Cameron

- 7 municipal jails but request for counsel accepted at each facility by presiding municipal judge

### Webb

- Centralized intake and magistration at county jail

# Different Methods May Impact Local Costs



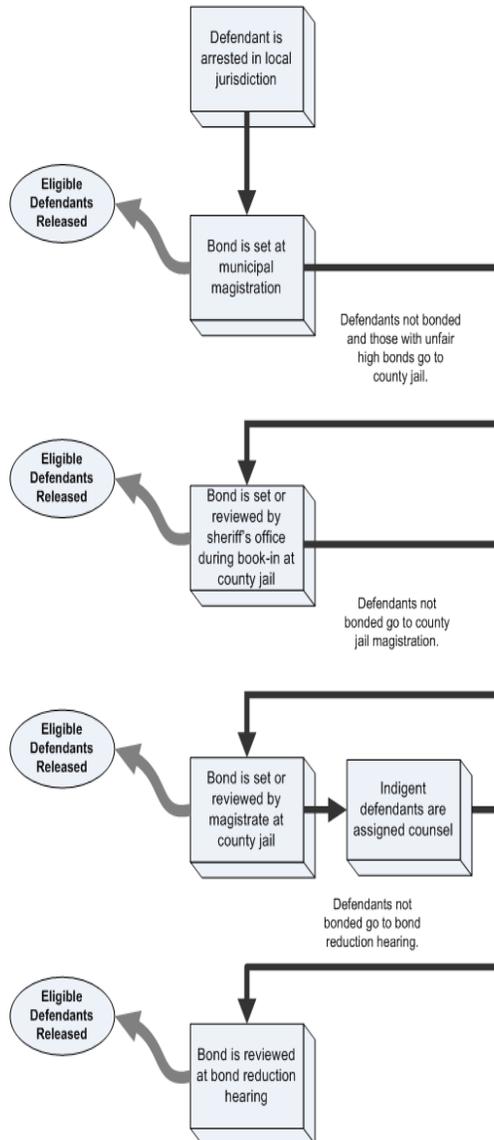
Different intake methods may increase or reduce:

- Transportation costs
- Opportunities for bonding from municipal jails
- Dependence upon municipal enforcement authorities



**Creates opportunities for innovative applications of video-magistration.**

# Multiple Bonding Opportunities Possible



Multiple opportunities for early access to bonds can:

- Lead to fewer jail days;
- Fewer defendants requiring magistration; and
- Fewer defendants requiring assigned counsel at the time of arrest.

All the above factors can reduce local costs.

# Other Issues

- **Rotation system improvement over direct judicial case assignment**
  - ✓ Defense bar perceives cases assignments no longer require “patronage” to judges
  - ✓ Defense bar perceives less chance of penalty from engaging in a vigorous defense
- **Rotation system requires more court involvement in administration**
  - ✓ More costly and complex efforts to locate and notify counsel
  - ✓ Judges are tasked with administrative duties such as managing the pool of qualified attorneys, reviewing bills for allowable expenses above the standard fee schedule, and sanctioning attorneys demonstrating poor performance
  - ✓ Removing incompetent counsel requires formal procedures
- **Public defender**
  - ✓ Reduced costs and provides more options to judges for assigning counsel
  - ✓ Reduced administrative burden imposed on judges
  - ✓ Defender offices have direct control over the performance of attorneys
  - ✓ Low pay, high turnover and excessive workloads are issues of concern
- **Data and reporting**
  - ✓ Local data systems examined in detailed could not be used for analysis in this report as information was incomplete, cross system records could not be linked, and information was inconsistent

# Recommendations

- **Counties should examine:**
  - ✓ Ways to increase the number of points at which bond can be reviewed and granted
  - ✓ Whether a public defender system is suitable in their jurisdictions
  - ✓ Whether standards for establishing indigence can be supported with better financial information from the defendants and whether penalties for a defendant giving erroneous financial information can be established
  - ✓ Strategies for improving their own indigent defense systems including
    - improved data quality;
    - a “problem-solving” mindset; and
    - forums to exchange ideas among stakeholders within county justice systems and between counties facing similar challenges.
  
- **State Justice Institute/TFID funded study presently under way will produce information to:**
  - ✓ Assist counties in identifying “best practices” to use information technology to improve “paper processing” to reduce costs and improve court systems.