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November 18, 2011

The Honorable Clay Jenkins, Dallas County Judge  
411 Elm Street, 2nd Floor  
Dallas, TX 75202

Re: Policy Monitoring Visit

Dear Judge Jenkins:

In compliance with Section 79.037(a) of the Government Code, the Texas Indigent Defense Commission conducted an initial policy monitoring visit of Dallas County in July 2007. A report was issued, to which the County responded. A follow-up visit was conducted in May 2009 to ensure that the recommendations had been implemented and to address recent changes in law. Dallas County responded to this report with an extensive plan to overhaul its indigent defense processes. In July 2011 the Commission conducted a second follow-up monitoring visit.

Included with this letter is a new report which includes both commendations and recommendations. After you review this report, please provide your written response and action plans on or before **December 21, 2011**. Please respond in a single report.

Your assistance in this matter is greatly appreciated. If you have any questions or need further clarifications, please contact Joel Lieurance, with the Texas Indigent Defense Commission, at (512) 936-7560.

A handwritten signature in blue ink that reads "Joel Lieurance".

Joel Lieurance  
Policy Monitor

cc: Mr. Ron Stretcher, Dallas County Criminal Justice Director  
The Honorable Cheryl Lee Shannon, Juvenile Board Chair  
Ms. Dana Wisner, District Courts Manager  
Ms. Patricia Johnson, County Courts Manager  
The Honorable Terrie McVea, Magistrate Judge  
Mr. Ryan Brown, Program Director  
The Honorable Martin Lowy, Local Administrative District Judge  
The Honorable Don Adams, Presiding District Judge  
The Honorable Mark Greenberg, Local Administrative Statutory County Court Judge  
The Honorable Angela King, Presiding Statutory County Judge  
The Honorable William Mazur, 304<sup>th</sup> District Court  
The Honorable Gracie Lewis, 305<sup>th</sup> District Court  
Ms. Diane Grafton, First Assistant Auditor  
Mr. James D. Bethke, Director, Texas Indigent Defense Commission  
  
(Enclosure)



Texas Indigent Defense Commission

Second Policy Monitoring Follow-up Visit -- Dallas County

July 25 – 28, 2011



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**COMMISSION BACKGROUND**

In January 2002, the Texas Fair Defense Act (FDA) became effective after its passage by the 77<sup>th</sup> Texas Legislature in 2001. The FDA established an organization, the Texas Task Force on Indigent Defense (Task Force), to oversee the provision of indigent defense services in Texas. In the 82<sup>nd</sup> Texas Legislative Session, a bill was passed that changed the name of the organization to the Texas Indigent Defense Commission (Commission) and gave greater independence to the Commission. The mission of the Commission is to provide financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and State law.

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## **Background**

The Commission conducted an initial policy monitoring visit of Dallas County between July 16 and July 20, 2007. The Commission issued a report with recommendations that focused on the timeliness of attorney appointments and the fairness of appointments. The district courts responded to the report and noted that computer system problems had been the main cause of late attorney appointments. The response stated that the courts would research the costs of having a pre-trial services department or magistrate court staff assist arrestees with affidavits of indigence. Concerning the fairness of appointments, the district courts stated that they would have IT Services give them access to wheel appointment data reports. The county courts later adopted the district courts' response.

In May 2009, the Commission conducted a follow-up visit to see if recommendations made regarding the 2007 visit had been put into place. This report found that the County had the same issues with timely appointments and uneven appointment distributions that were noted regarding the 2007 visit. The County provided a definite action plan that called for a method to manage requests for counsel from arrestees in municipalities and for a new software system to manage attorney appointments.

The part of the 2009 action plan for managing requests for counsel was to work in two phases. In the first and interim phase, municipalities would fax requests for counsel to Dallas County. Dallas County would attempt to make appointments of counsel based on these faxes. In the second and permanent phase, Dallas County would conduct magistrate warnings via a videoconference system between the County and municipalities. The advantage of this second phase was that the centralized magistrate's warning system would create a more fool-proof method for ensuring timely appointments of counsel. A pilot project was to begin with Rowlett and Seagoville but to expand to include all 23 municipal jails. At that point, all magistrate warnings would be conducted by Dallas County magistrates. After Dallas County began this project, it applied to the Commission for a grant to complete the project, so as to move into compliance with the FDA's requirements for prompt transmission of requests for counsel to the appointing authority and for prompt appointment of counsel by the appointing authority.

The part of the action plan for managing attorney appointments was to utilize new software functionality in Dallas County's AIS computer management system. The new software functionality would manage attorney appointments by allowing judges to appoint the top attorney on the appointment list or to appoint another attorney while providing a reason for skipping the top attorney on the list. The software system, AIS, is a server-based case management system that was designated to replace FORVUS, a mainframe-based system. The AIS system would also generate regular reports so judges could monitor how well the wheel was being followed.

## **Overview of Follow-up Monitoring Review**

Staff members Joel Lieurance and Dominic Gonzales conducted the second follow-up visit to Dallas County between July 25 and July 28, 2011. The purpose of this visit was to examine whether proposed action plans were put in place and whether the recommendations from the May 2009 visit were implemented. On this follow-up visit, staff met with court managers, court coordinators, the public defender's office, Dallas County magistrate judges, juvenile court judges, municipal judges, and other municipal personnel. To ascertain the timeliness of appointments, we examined requests for counsel received on the morning of Tuesday July 26, and looked to see if a determination of indigence had been made by Wednesday July 27. We also interviewed court administrators to determine processes for making in-court assignments of counsel. To ascertain whether the distribution of appointments was fair, neutral, and non-discriminatory, we examined AIS appointment data and auditor cases paid data.

## **Summary of Commendations / Recommendations**

### **Transmittal of Request to Appointing Authority**

**Recommendation 1:** The current process for transmitting requests for counsel from the non-participating municipalities (municipalities who are not part of the videoconferencing system) to the appointing authority is not enabling Dallas County to meet Article 1.051 requirements for making timely appointments of counsel. A process must be established that allows Dallas County to meet its statutory obligations.

### **Timely Appointment of Counsel**

**Felony Commendation 1:** When felony requests for counsel are successfully received by Dallas County, the County has implemented processes to make timely appointments of counsel.

**Misdemeanor Recommendation 1:** Dallas County must ensure that counsel is appointed to misdemeanor defendants within one working day of request (plus 24 hours allowed to transfer the request to the appointing authority).

### **Determinations of Indigence**

**Felony Recommendation 1:** The felony courts must put in place a process that comports with Article 26.04(p) and may not deny indigence to those persons who previously qualified as indigent and who did not experience a material change in financial circumstances.

**Misdemeanor Recommendation 2:** Appointments of counsel are not being made if the arrestee posted bond. Per Article, 1.051(j), appointment of counsel may not be delayed because the defendant posted bond. Per Article 26.04(m), indigence determinations may not consider whether a defendant has posted bond, except to the extent that it reflects the defendant's financial circumstances.

**Misdemeanor Recommendation 3:** The misdemeanor courts must put in place a process that comports with Article 26.04(p) and may not deny indigence to those persons who previously qualified as indigent and who did not experience a material change in financial circumstances.

**Misdemeanor Recommendation 4:** Per Article 26.04(j)(2), once an attorney is appointed to a case, the attorney cannot be replaced unless good cause is found.

### **Fair, Neutral, and Non-discriminatory Attorney Selection Process**

**Felony Commendation 2:** The district courts' procedures for appointing counsel result in a relatively even distribution of appointments among attorneys.

**Felony Commendation 3:** The felony courts' attorney appointment management report is an excellent tool for demonstrating the fairness of attorney appointments in each court.

**Misdemeanor Recommendation 5:** The misdemeanor courts must examine their methods of appointing counsel, in particular, with regard to non-Spanish speaking attorneys.

**Juvenile Recommendation 1:** The 304<sup>th</sup> District Court must establish a method to more closely monitor its appointments, in particular, with regard to non-Spanish speaking attorneys.

**Juvenile Commendation 1:** The 305<sup>th</sup> District Court's procedures for appointing counsel result in a relatively even distribution of appointments among attorneys.

## Recommendations and County's Actions

Category and Initial Recommendation Year	Court Level	Status as of the July 2011 Visit	Satisfied	Pending
Transmittal of Request to Appointing Authority (2009)	Felony and Misdemeanor	Municipalities conducting their own magistrate warnings do not transmit requests for counsel to Dallas County in a timely manner. (See Recommendation 1.)		√
Timely Appointment of Counsel (2007)	Felony	The 2011 visit verified that requests for counsel received by Dallas County are processed in a timely manner. (See Felony Commendation 1.)	√	
Timely Appointment of Counsel (2007)	Misdemeanor	The 2011 visit showed that the timeliness of misdemeanor appointments has improved over past visits, but the monitor's sample of misdemeanor cases has not yet attained a 90% level of timeliness. (See Misdemeanor Recommendation 1.)		√
Determination of Indigence (2011)	Felony	Persons who qualify as indigent and who make bond are required to re-qualify for indigence at the initial appearance. (See Felony Recommendation 1.)		√
Determination of Indigence (2011)	Misdemeanor	Persons who make bond are denied indigence until they qualify at the initial appearance. (See Misdemeanor Recommendation 2.)		√
Determination of Indigence (2011)	Misdemeanor	Persons who qualify as indigent and who later make bond are required to re-qualify for indigence at the initial appearance. (See Misdemeanor Recommendation 3.)		√
Determination of Indigence (2011)	Misdemeanor	If a person was initially deemed indigent and appointed counsel, a new attorney is appointed if the person bonds and re-qualifies as indigent. (See Misdemeanor Recommendation 4.)		√
Fair, Neutral, and Non-discriminatory Attorney Selection Process (2007)	Felony	The 2011 visit verified that the distribution of felony appointments is within the Commission's thresholds for presuming a fair, neutral, and non-discriminatory appointment system. (See Felony Commendation 2.)	√	
Fair, Neutral, and Non-discriminatory Attorney Selection Process (2007)	Misdemeanor	For non-Spanish speaking cases, the distribution of misdemeanor appointments does not meet the Commission's threshold for presuming a fair, neutral, and non-discriminatory appointment system. For Spanish-speaking cases, this threshold is met. (See Misdemeanor Recommendation 5.)		√

<b>Category and Initial Recommendation Year</b>	<b>Court Level</b>	<b>Status as of the July 2011 Visit</b>	<b>Satisfied</b>	<b>Pending</b>
Fair, Neutral, and Non-discriminatory Attorney Selection Process (2009)	Juvenile - 304th District Court	For non-Spanish speaking cases, the distribution of juvenile appointments does not meet the Commission's threshold for presuming a fair, neutral, and non-discriminatory appointment system. For Spanish-speaking cases, this threshold is met. (See Juvenile Recommendation 1.)		√
Fair, Neutral, and Non-discriminatory Attorney Selection Process (2009)	Juvenile - 305th District Court	The 2011 visit verified that the distribution of juvenile appointments is within the Commission's thresholds for presuming a fair, neutral, and non-discriminatory appointment system. (See Juvenile Commendation 1.)	√	



## **Determinations of Indigence and Timely Appointment of Counsel**

### **Transmitting Requests for Counsel to the Appointing Authority**

Under Article 15.17 of the Code of Criminal Procedure, magistrates are required to ask and record whether an arrestee requests appointment of counsel. They are to ensure reasonable assistance in completing the necessary forms for requesting appointment of counsel and are to transmit the requests to the appointing authority within 24 hours of the request being made. Per Article 1.051(c) of the Code of Criminal Procedure, the appointing judges or their designees have one working day from receipt of the request to determine indigence and to appoint counsel for detained persons.

Prior to the Commission's visit to Dallas County in 2009, persons arrested by the City of Dallas were sent directly to the Dallas County Jail, where they were given magistrate's warnings and where requests for counsel were taken. Dallas County has an automated system that generates case numbers after arrestees are booked into the Dallas County Jail and typically before cases are filed by the prosecutor. Generating a case number allows a case to be assigned to an individual court before it is filed. When requests for counsel were made from the Dallas County Jail, the appointment of counsel would be matched with the automatically generated case number.

Persons arrested by municipalities other than the City of Dallas were booked at their respective municipal jail and given magistrate's warnings. For these municipalities, there was no clear process for transmitting the request for counsel to Dallas County. It was not clear how requests for counsel made at municipalities could be ruled upon by Dallas County.

After our visit in 2009, the County decided to implement a plan where all municipalities would fax Election of Counsel forms to Dallas County. The County would rule on these requests and appoint counsel if indigent. This was to be a temporary fix to the issue of transmitting requests for counsel.

For the permanent fix, Dallas County embarked on a program to link the County to the municipalities through a videoconference system. Magistrate judges from the County were to take over the role of conducting Article 15.17 hearings in the municipalities. The magistrates would note if a request for counsel was made, and the municipal jail would fax a form to the County listing the estimated income and assets of the defendant.

The process for the County to perform centralized magistrate warnings throughout the County, either in person or by way of videoconference equipment, is a superior process to that of municipalities performing magistrate warnings and faxing Election of Counsel forms to the County. When the County performs the magistrate warnings, it can immediately track individuals, assign cases to a court, and know the case to which an attorney is appointed. When the municipality performs the magistrate warnings and faxes the Election of Counsel form, the appointment may not necessarily link to a Dallas County case because the case will not have a cause number until the arrestee arrives at the Dallas County jail.

Dallas County began the videoconference magistrate warnings program by linking Rowlett and Seagoville to the County. The County did not have funds to link all municipal jails and applied to the Commission for a grant. The Commission approved a targeted specific grant in which Dallas County would receive grant funds in order to move into compliance with the requirements of the FDA. The Commission awarded \$256,773 for the program, which would be matched by an equal amount for the program from Dallas County. See Appendix G for a memo relating to this grant.

At the time of our July 2011 visit, nine of the proposed twenty-three municipalities had joined the program including: Carrollton; Cockrell Hill; Coppell; Duncanville; Hutchins; Rowlett; Sachse; Seagoville; and Wilmer. Additional municipalities were expected to be added to this list in the near

future. Requests for counsel from these municipalities follow a clear process where a cause number is assigned to the case (even though the case may not have been filed in the clerk's office) and assignments of attorneys can be matched to an individual case.

Municipalities that had not joined the program included: Addison; Balch Springs; Combine; Farmers Branch; Garland; Glen Heights; Grand Prairie; Highland Park; Irving; Mesquite; Richardson; University Park; the Tri-Cities jail (Cedar Hill, Desoto, and Lancaster); and Wylie. The monitor found that these municipalities appeared to have processes where requests for counsel would be faxed to Dallas County. However, some municipalities used a different request form than that used by Dallas County. Some municipalities did not seem to send their requests to the fax number used by Dallas County to receive requests for counsel.

Article 15.17(a) requires that requests for counsel are transmitted to the appointing authority within 24 hours of the request. The current process for transmitting requests from the municipality to the appointing authority may not effectively communicate with the appointing authority. While the request may actually leave the municipality, it is not necessarily received by the County. These communication missteps must be resolved so that Dallas County can meet its statutory obligations.

Perhaps the best way to allow Dallas County to meet its statutory obligations of providing timely appointments of counsel is to ensure that the current system works as designed. Dallas County could send to all presiding municipal judges and police chiefs (of municipalities that are not part of the videoconference system) the correct form to request counsel (see Appendix F for Dallas County's Election of Counsel Form as listed in its indigent defense plan) along with the correct method (e.g. fax to a specific number or an email to a specific address) to send a request. The municipality could then send a confirmation response to Dallas County using the specified method. The communication methods used between municipalities and the County must ensure that requests are sent in a manner that allows the County to process the requests.

Dallas County may also want to examine processes in other large counties that have had to address issues with municipalities sending requests for counsel to the county. Both Tarrant County and Harris County have dealt with these issues and have developed practices that manage requests for counsel coming from numerous municipalities. These counties manage requests for counsel very quickly regardless of where a person is arrested.

**Recommendation:** The current process for transmitting requests for counsel from the non-participating municipalities (municipalities who are not part of the videoconferencing system) to the appointing authority is not enabling Dallas County to meet Article 1.051 requirements for making timely appointments of counsel. A process must be established that allows Dallas County to meet its statutory obligations.

## Felony Appointments

The monitor attempted to determine the timeliness of felony appointments in Dallas County by gathering requests received by Dallas County on a specific day and then comparing whether these requests had determinations of indigence that were timely. The monitor found that Dallas County received 53 felony requests for counsel on Monday July 25, 2011. Of these 53 requests, nine were for probation violations. Of the remaining 44 requests for counsel, 43 requests had timely determinations of indigence (98% timely). See the following table showing the timeliness of felony determinations of indigence.

**Table 1: Timeliness of Felony Appointments**

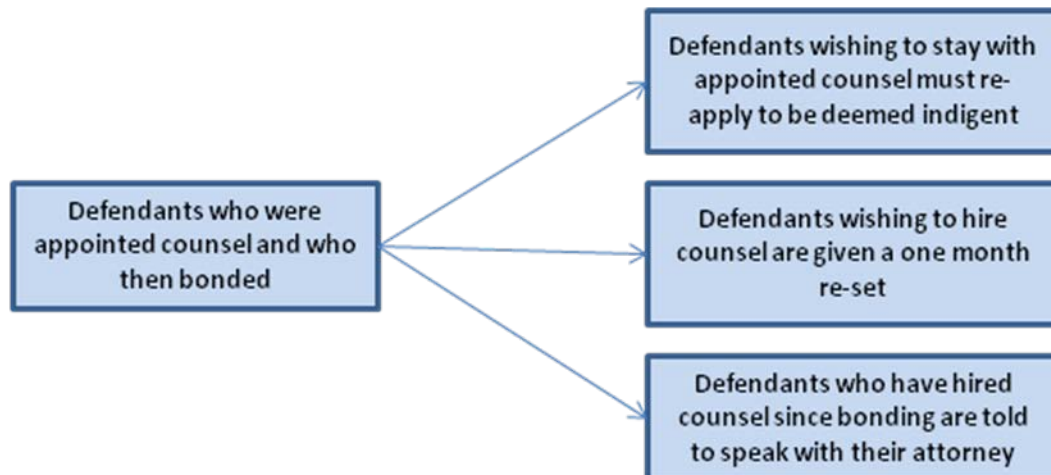
Total Records Reviewed	73
Total Requests for Counsel (non-MTR cases)	44
Timely Appointments of Counsel	42
Timely Denials of Indigence	1
Late Determinations of Indigence	1
<b>Percent of Timely Determinations of Indigence</b>	<b>97.7%</b>

**Commendation:** When felony requests for counsel are successfully received by Dallas County, the County has implemented processes to make timely appointments of counsel.

## In-court Felony Appointments

The monitor interviewed a court administrator to determine the methods for determining indigence and assigning counsel for in-court felony appointments. When a defendant comes to court for the initial appearance, he/she may already have had counsel appointed. Defendants often switch from appointed to retained counsel, so the court will ask defendants with appointed counsel whether the defendant wants to remain with appointed counsel or whether he/she plans to retain counsel. If the defendant wishes to stay with appointed counsel, the defendant is given a detailed affidavit of indigence form to complete. If the defendant wishes to hire counsel, the defendant is typically given a one month re-set. If the defendant has already retained counsel, the defendant is told to speak with his/her attorney about handling the case. Those persons who initially request counsel at the first court appearance (as opposed to magistration) are interviewed by the respective coordinator and must fill out a detailed affidavit of indigence. If the defendant meets the local standard of indigence (income less than 150% of the federal poverty guidelines), counsel is appointed.

**Figure 1: Options for Felony Defendants at the Initial Appearance Docket**



Under Article 26.04(p) of the Code of Criminal Procedure, once a defendant has been determined to be indigent, the defendant is presumed to remain indigent unless there is a material change in the defendant’s financial circumstances. Per Article 26.04(p), Dallas may check to see if a material change in the defendant’s financial circumstances has occurred, but may not deny indigence to someone previously deemed indigent unless a material change in the defendant’s financial circumstances has occurred.

**Recommendation:** The felony courts must put in place a process that comports with Article 26.04(p) and may not deny indigence to those persons who previously qualified as indigent and who did not experience a material change in financial circumstances.

### Misdemeanor Appointments

The monitor attempted to determine the timeliness of misdemeanor appointments in Dallas County by gathering requests received by Dallas County on a specific day and then comparing whether these requests had determinations of indigence that were timely. The monitor found that Dallas County court managers received 47 misdemeanor requests for counsel on the morning of Tuesday July 26, 2011. Of these 47 requests, three were for probation violations. Of the remaining 44 requests for counsel, 33 requests had timely determinations of indigence (75% timely). The 11 requests with untimely determinations of indigence were cases in which the defendant appeared to have posted bond, and in which counsel was not appointed, but a denial of indigence was not issued either. See the following table showing the timeliness of misdemeanor determinations of indigence.

**Table 2: Timeliness of Misdemeanor Appointments**

Total Records Reviewed	70
Total Requests for Counsel (non-MTR cases)	44
Timely Appointments of Counsel	31
Timely Denials of Indigence	2
Late Determinations of Indigence	11
<b>Percent of Timely Determinations of Indigence (Non-MTR cases only)</b>	<b>75.0%</b>

Article 26.04(m) of the Code of Criminal Procedure speaks to determining indigence based upon whether the defendant made bond:

*... The court or the courts’ designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant’s financial circumstances as measured by the considerations in this section.”*

Article 1.051(j) of the Code of Criminal Procedure speaks to the timing of when bonded persons are entitled to appointment of counsel:

*Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant’s first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.*

*Rothgery v. Gillespie County*, 554 U.S. 191 (2008), clarifies this time by noting that adversarial judicial proceedings are initiated at the Article 15.17 hearing.

Dallas County appears to have implemented a process where it can timely rule on all requests for counsel that it successfully receives. However, in misdemeanor cases, appointments of counsel are not being made if the arrestee posted bond. Article 1.051(j) (clarified by *Rothgery v. Gillespie County*) disallows delaying an appointment because the defendant made bond. Article 26.04(m) disallows the practice of denying indigence simply because the arrestee posted bond.

**Recommendation:** Dallas County must ensure that counsel is appointed to misdemeanor defendants within one working day of request (plus 24 hours allowed to transfer the request to the appointing authority).

**Recommendation:** Appointments of counsel are not being made if the arrestee posted bond. Per Article, 1.051(j), appointment of counsel may not be delayed because the defendant posted bond. Per Article 26.04(m), indigence determinations may not consider whether a defendant has posted bond, except to the extent that it reflects the defendant's financial circumstances.

### **In-court Misdemeanor Appointments**

The monitor found that initial appointments of counsel were voided if misdemeanor defendants made bond. The monitor interviewed two court administrators to determine methods to determine indigence and assign counsel for in-court misdemeanor appointments. When defendants come to court for an initial appearance, the defendants are asked if they have retained counsel or if they want to apply for court-appointed counsel. Those who request counsel are interviewed by the respective coordinator and must fill out a detailed affidavit of indigence. If counsel was previously appointed but defendants posted bond prior to the case being filed by the prosecutor, the earlier determination of indigence is nullified. Defendants may re-apply at the initial appearance, but the appointed counsel will likely be different than was initially appointed. If defendants meet the local standard of indigence at the time of the interview (income less than 150% of the federal poverty guidelines), counsel is appointed.

Dallas County must re-examine its practices for making in-court determinations of indigence and appointments of counsel. Regarding the practice of denying indigence because of bonding, the previous recommendation that indigence may not be denied simply because the defendant posted bond applies to in-court determinations of indigence as well as to out-of-court determinations of indigence. Regarding the replacement of appointed counsel after indigence was initially determined and counsel initially appointed, Article 26.04(j)(2) of the Code of Criminal Procedure states:

*(j) An attorney appointed under this article shall:*

*(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record.*

Once an attorney is appointed to a case, the attorney cannot be replaced unless good cause is found.

**Recommendation:** The misdemeanor courts must put in place a process that comports with Article 26.04(p) and may not deny indigence to those persons who previously qualified as indigent and who did not experience a material change in financial circumstances.

**Recommendation:** Per Article 26.04(j)(2), once an attorney is appointed to a case, the attorney cannot be replaced unless good cause is found.

## **Fair, Neutral, and Non-discriminatory Attorney Selection Process**

Distributions of attorney appointments are shown in the following sections of the report for felony, misdemeanor, and juvenile cases. Under the Commission's administrative rules, a jurisdiction is presumed to have a fair, neutral, and non-discriminatory appointment system if the top ten percent of appointed attorneys receive less than three times their representative share of appointments. These rules have been adopted since the visit to Dallas County in 2009 was completed.

Because many appointment lists will have a total number of attorneys that is not divisible by ten, the top percent of recipient attorneys will often not be the top ten percent of the list, but will be the closest non-divisible portion to the top ten percent. As an example, if an attorney appointment list has 27 attorneys, the top ten percent of recipient attorneys would be the top three attorneys, or the top 11.1% of recipient attorneys. Under our administrative rules, this jurisdiction would be considered to meet the presumed threshold of having a fair, neutral, and non-discriminatory appointment system if these three attorneys receive less than 33.3% of available appointments.

## **Felony Cases**

In Dallas County, out-of-court felony attorney appointments follow the relevant appointment wheel. In-court attorney appointments may vary by court. Under the AIS case management system, the appointing judge may either appoint the top attorney on the appointment list or may appoint another attorney as an ad hoc appointment. If an ad hoc appointment is made, the judge selects an attorney for the case but must list a reason for not following the appointment wheel. Appointments made through the AIS system are used to generate a management report showing how well each court follows the appointment wheel.

This attorney appointment management report lists wheel appointments and lists ad hoc appointments where the wheel does not appear to have been followed. The report then notes the percent of appointments in each court that do not follow the wheel. In generating this statistic, the report excludes valid reasons for not following the wheel including: the defendant retained counsel<sup>1</sup>; the respective case was for a probation violation; the public defender was assigned to the case; the assignment was for a writ, appeal, or death penalty case; or the attorney currently represents the defendant in another case. The management report covering the felony courts for the period from January 2011 through June 2011 is listed in Appendix A.

**Commendation:** The felony courts' attorney appointment management report is an excellent tool for demonstrating the fairness of attorney appointments in each court.

The report shown in Appendix A lists all of the courts that handle felony cases, and notes the percentage of those cases which do not appear to follow the appointment wheel under the definition noted in the previous paragraph. Of the seventeen district courts, the portion of cases not following the appointment wheel ranged from 0.52% of cases in one court to 44.85% of cases in another court. The average portion of cases not following the wheel across all courts was 13.22%. This report highlights

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<sup>1</sup> Retained counsel may be listed as an ad hoc assignment if an attorney appointment was originally made to the case but retained counsel replaced appointed counsel.

the fact that the courts appear to vary significantly in how diligent they are in following the appointment wheel. While courts may have valid reasons for making ad hoc assignments of counsel, the fact that the portion of ad hoc appointments varies so much across courts could be seen as evidence that not all courts are following the countywide procedures for timely and fairly appointing counsel as set in the local indigent defense plan and as required by Article 26.04(a).

The attorney appointment management report did not consider appointments for probation revocation cases as part of the percentage of appointments not following the wheel. One legislative change that occurred during the 2011 session involves the appointment of counsel in probation revocation cases. Article 42.12, Section 21(d), of the Code of Criminal Procedure has been amended to clarify how appointments of counsel are to be made in probation revocation cases. The new language states:

*(d) A defendant has a right to counsel at a hearing under this section. The court shall appoint counsel for an indigent defendant in accordance with the procedures adopted under Article 26.04.*

Under this new language, probation revocation appointments are clarified to fall under the same requirements for a fair, neutral, and non-discriminatory appointment system as other criminal appointments.

### **Appointment Distributions for Each Appointment Wheel**

The monitor examined felony wheel appointment data to determine the distribution of felony appointments. The data came from the AIS case management system and listed cases for “CD”<sup>2</sup> appointments for each of the four appointment wheels (first degree felony wheel, second degree felony wheel, third degree felony wheel, and state jail felony wheel). For analysis purposes, cases appointed to attorneys approved for Spanish-speaking defendants were separated from other attorneys.

All four felony appointment wheels had appointment distributions for both Spanish speaking and other attorneys that fell within thresholds where the system is presumed to be fair, neutral, and nondiscriminatory.<sup>3</sup> Table 3 below shows the distribution of appointments received by the top 10% of recipients for each wheel. As noted previously, the top 10% is actually the percent of attorneys closest to the top 10%. See Appendix B for diagrams showing the distribution of cases to appointed attorneys.

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<sup>2</sup> The CD cases are felony-level cases. They do not include civil cases. Some courts use the wheels for probation cases and some do not. Those courts that do use the appointment wheel for probation cases were included in the distribution of appointments. Some cases list a reason for the appointment. A few of the reasons were listed as “retained”. These cases were not included in the distributions and seem to have occurred when a defendant initially was appointed counsel but later retained counsel. In the AIS report, some attorneys were listed under slightly different names (e.g. Joe Smith and Smith Joe). While the entries had different names, the monitor’s analysis considered these cases to be one attorney.

<sup>3</sup> If the portion of attorneys closest to the top 10% of recipient appointees received less than three times their representative share of cases, the system is presumed to be fair, neutral, and non-discriminatory.

**Table 3: Portion of Cases Received by the Top 10% of Recipient Attorneys**

<b>Appointment Wheel</b>	<b>Portion of Attorneys Closest to the Top 10%</b>	<b>Percent of Appointments Received by these Attorneys</b>	<b>Top 10% Received X Times Their Representative Share</b>
First Degree Felony (Spanish)	11.8%	28.7%	<b>2.4</b>
First Degree Felony (non-Spanish)	10.0%	26.4%	<b>2.6</b>
Second Degree Felony (Spanish)	8.7%	14.5%	<b>1.7</b>
Second Degree Felony (non-Spanish)	10.2%	24.9%	<b>2.4</b>
Third Degree Felony (Spanish)	12.0%	22.7%	<b>1.9</b>
Third Degree Felony (non-Spanish)	10.2%	24.7%	<b>2.4</b>
State Jail Felony (Spanish)	10.3%	24.3%	<b>2.4</b>
State Jail Felony (non-Spanish)	10.0%	24.0%	<b>2.4</b>

**Commendation:** The felony courts' procedures for appointing counsel result in a relatively even distribution of appointments among attorneys.

### **Misdemeanor Cases**

Misdemeanor courts generally rely on the public defender for the majority of appointed counsel cases. When private attorneys are used, out-of-court attorney appointments follow the respective appointment wheel. In-court attorney appointments may vary by court. In particular, attorneys available at court on the day of appointment appear to receive most in-court appointments.

The monitor requested misdemeanor cases paid data from the auditor for the period from January 2011 through June 2011. The monitor separated attorneys into two groups: those attorneys on the Spanish speaking appointment list and those attorneys on a non-Spanish speaking list. The Commission's administrative rules presume that a jurisdiction is in substantial compliance of the FDA's requirement that attorneys are appointed in a fair, neutral, and non-discriminatory manner if the top 10% of recipient attorneys receive less than three times their representative share of appointment. For the Spanish speaking list, the top 12.0% of attorneys receiving appointments received 35.0% of total appointments (**or 2.9 times their representative share**). For the non-Spanish speaking list, the top 9.9% of attorneys receiving appointments received 38.6% of total appointments (**or 3.9 times their representative share**). Under the Commission's rules, the local procedures for appointing counsel in Spanish speaking cases meets the presumed threshold that the appointments were made in a fair, neutral, and non-discriminatory manner. The local procedures for appointing counsel in non-Spanish speaking cases do not meet this threshold. The misdemeanor courts may benefit from creating an AIS appointment report similar to the felony courts. This report allows one to see how closely a court follows the appointment wheel and allows one to see the top attorneys receiving appointments. See Appendix C for diagrams that describe the distribution of appointments in misdemeanor cases.



In order to ensure a more even distribution of appointments, the misdemeanor courts must examine their methods of appointing counsel, in particular, with regard to non-Spanish speaking attorneys. The differences in the number of assignments given to individual attorneys seem to most likely be due to practices of appointing immediately available attorneys rather than appointing attorneys who are next on the appointment list.

**Recommendation:** The misdemeanor courts must examine their methods of appointing counsel, in particular, with regard to non-Spanish speaking attorneys.

## Juvenile Cases

Dallas County has two juvenile courts that use separate appointment lists. The two courts have a very large list of eligible attorneys, but since many of these attorneys also handle criminal cases, they tend to spend most of their time at the criminal courts building. The juvenile courts building is located a few miles across town, and according to interviews, criminal defense attorney often miss juvenile dockets because of conflicts with criminal court dockets. The comparison of attorney appointments to juvenile delinquency cases used auditor data of cases paid for its analysis. However, this analysis is limited with respect to the fact that juvenile delinquency cases include both misdemeanor-type and felony-type case levels. The juvenile courts use five levels of appointments, with attorneys approved for higher levels also eligible for lower level cases. In this manner, attorneys approved for higher level offenses would be expected to receive more appointments than attorneys approved only for lower level offenses.

### 304<sup>th</sup> District Court

In the 304<sup>th</sup> District Court, the appointing judge keeps a log of appointments to attorneys in felony-type juvenile delinquency cases. Because of difficulties in having attorneys appear at juvenile dockets, the appointment wheel is not strictly followed, and often the most available attorney may be appointed for a case. However, by tracking appointments to attorneys, the judge attempts to limit differences in the distribution of appointments.

The Commission's administrative rules presume that a jurisdiction is in substantial compliance of the FDA's requirement that attorneys are appointed in a fair, neutral, and non-discriminatory manner if the top 10% of recipient attorneys receive less than three times their representative share of appointment. For the Spanish speaking list, the top 10.5% of attorneys receiving appointments received 30.3% of total appointments (**or 2.9 times their representative share**). For the non-Spanish speaking list, the top 9.4% of attorneys receiving appointments received 37.4% of total appointments (**or 4.0 times their representative share**). See Appendix D for diagrams that describe the distribution of appointments in juvenile cases for the 304<sup>th</sup> District Court.

Under the Commission's rules, the local procedures for appointing counsel in Spanish speaking cases meets the presumed threshold that the appointments were made in a fair, neutral, and non-discriminatory manner. The local procedures for appointing counsel in non-Spanish speaking cases do not meet this threshold. The 304<sup>th</sup> District Court has established procedures for monitoring appointments in felony-level cases. As a result, the distribution of appointments to attorneys has become more even than the distribution found from the Commission's last report, but has not yet met the Commission's presumed threshold for a fair, neutral, and non-discriminatory appointment system.

**Recommendation:** The 304<sup>th</sup> District Court must establish a method to more closely monitor its appointments, in particular, with regard to non-Spanish speaking attorneys.

### **305<sup>th</sup> District Court**

In the 305<sup>th</sup> District Court, the judge follows a rotational method of appointment where attorneys at the top of a list receive an appointment unless there is good cause for deviating from the list. If there is a deviation, the attorney at the top of the list remains at the top until he/she receives an appointment.

The Commission's administrative rules presume that a jurisdiction is in substantial compliance of the FDA's requirement that attorneys are appointed in a fair, neutral, and non-discriminatory manner if the top 10% of recipient attorneys receive less than three times their representative share of appointment. For the Spanish speaking list, the top 7.1% of attorneys receiving appointments received 14.0% of total appointments (**or 2.0 times their representative share**). For the non-Spanish speaking list, the top 9.6% of attorneys receiving appointments received 22.8% of total appointments (**or 2.4 times their representative share**). Under the Commission's rules, the local procedures for appointing counsel in both Spanish speaking cases and non-Spanish speaking cases meet the presumed threshold that the appointments were made in a fair, neutral, and non-discriminatory manner. See Appendix E for diagrams that describe the distribution of appointments in juvenile cases for the 305<sup>th</sup> District Court.

**Commendation:** The 305<sup>th</sup> District Court's procedures for appointing counsel result in a relatively even distribution of appointments among attorneys.

### **Conclusion**

Commission staff set out to determine whether County action plans from our previous report were put in place and whether the recommendations from the May 2009 visit were implemented. We found several improvements in local processes, with more timely appointments, clearer methods for appointing counsel, and new data tracking systems. Nevertheless, some local processes must still be modified, so as to meet the requirements of *Rothgery v. Gillespie County* and to improve the distribution of appointments in some cases.

We thank Dallas County officials and staff for their cooperation with this review. Dallas County officials appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, we will monitor the County's transition and adjustments to Commission findings.

# Appendix A -- Attorney Appointment Management Report for Dallas County Felony Courts

## Summary Attorney Appointment Management Report

From: 1/1/11 To: 6/30/11

(1) Total Appointments from Wheel	(2) Total Wheel Replacements	(3) Total Ad Hoc Assignments	(4) Total District Court Assignments
4,430	911	11,178	16,519
(5)* Total District Court Ad Hoc Assignments for Reason Other Than Retained, PV, PD, Writ, Appeal or Death Penalty, or Already represents defendant on another case		% of District Court Assignments not Following Wheel (5)/(4)	
2,183		13.22%	

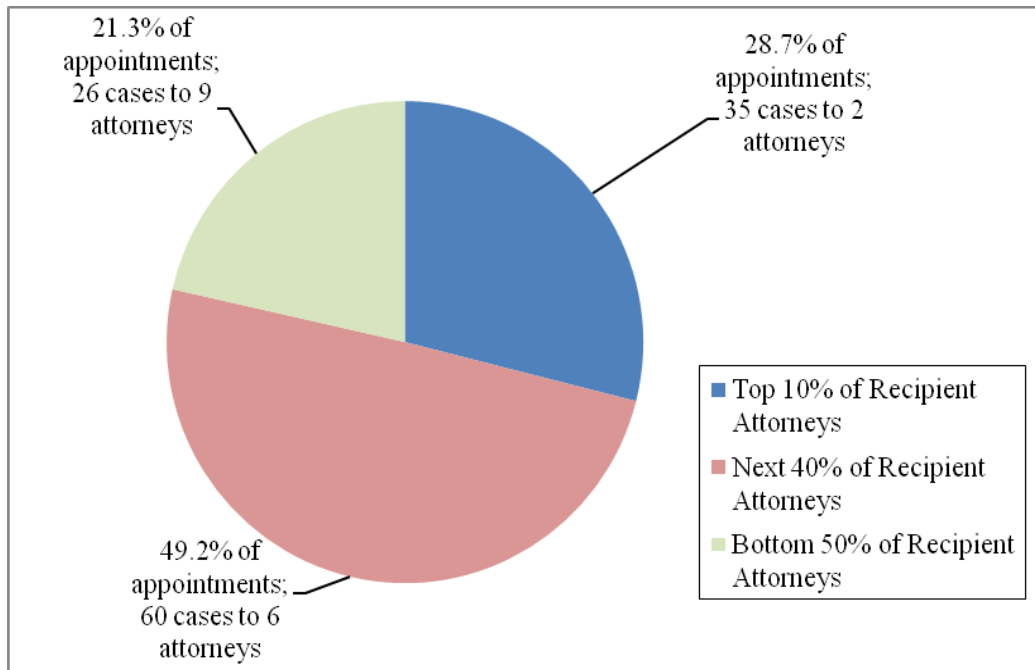
Court	(1) # Wheel Appts	(2) # Wheel Rplcmts	(3) # AdHoc *	(4) # PV Appts	(5) # PD Appts	(7) Total Assignments for this Court (1) + (2) + (3)+ (4)+ (5)	% not Following Wheel (3)/(7)	# of Skips
CDC 1 (H)	303	66	47	180	326	922	5.10%	5
CDC 2 (I)	306	96	55	222	418	1,097	5.01%	0
CDC 3 (J)	227	26	76	112	401	842	9.03%	15
CDC 4 (K)	148	20	43	91	479	781	5.51%	0
CDC 5 (L)	330	106	140	171	413	1,160	12.07%	9
CDC 6 (X)	205	26	318	146	14	709	44.85%	0
CDC 7 (Y)	246	39	62	22	627	996	6.22%	25
194TH (M)	92	20	350	93	471	1,026	34.11%	1
195TH (N)	165	31	203	83	370	852	23.83%	1
203RD (P)	240	20	216	182	352	1,010	21.39%	5
204TH (Q)	407	104	206	2	296	1,015	20.30%	1
265TH (R)	247	38	4	47	430	766	0.52%	45
282ND (S)	100	27	102	94	486	809	12.61%	1
283RD (T)	506	135	8	48	567	1,264	0.63%	0
291ST (U)	230	27	178	160	464	1,059	16.81%	0
292ND (V)	557	93	10	177	91	928	1.08%	9
363RD (W)	121	37	165	144	816	1,283	12.86%	7
<b>TOTALS</b>	<b>4,430</b>	<b>911</b>	<b>2,183</b>	<b>1,974</b>	<b>7,021</b>	<b>16,519</b>	<b>13.22%</b>	<b>124</b>

Wheel	Total Attorneys on Wheel	Total Wheel Apts for F1-4
State Jail (F4)	209	1,111
F3	190	781
F2	160	1,071
F1	133	663
<b>Total:</b>	<b>692</b>	<b>3,626</b>

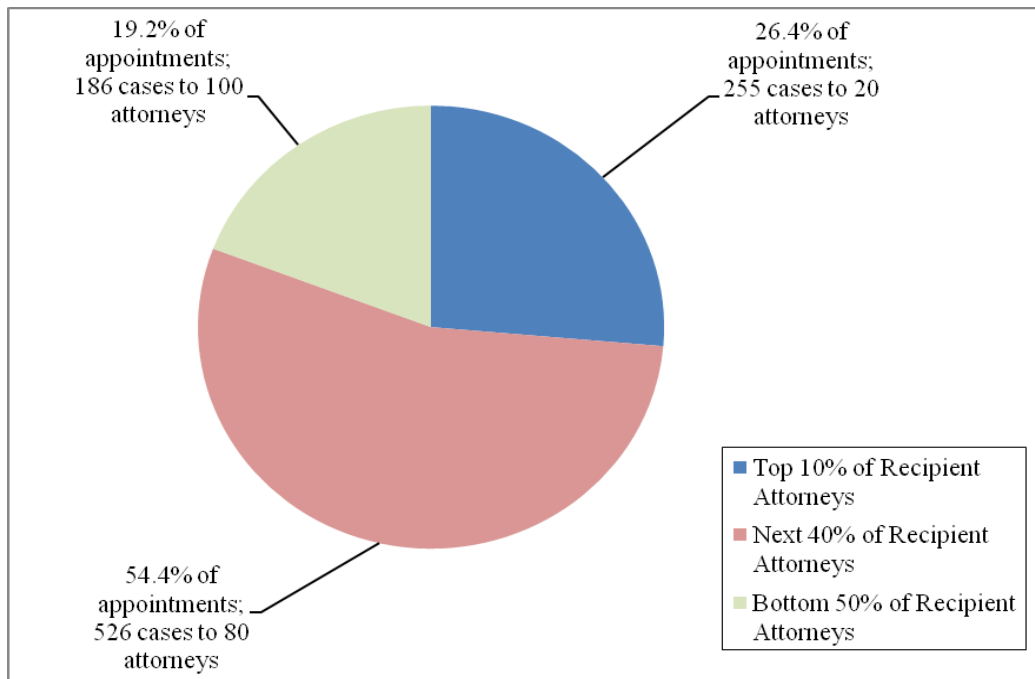
\* Adoc assignments for reasons: Did not respond, failure to appear, special skills, charges upgraded, conflict of interest, MTW granted, PD no longer on wheel, facing immediate incarceration, special language

## Appendix B – Distribution of Appointments in Felony Cases

### Distribution of Spanish Speaking Attorney Appointments for 1<sup>st</sup> Degree Felony Cases<sup>4</sup> (Based on AIS appointments from January through June 2011)



### Distribution of non-Spanish Speaking Attorney Appointments for 1<sup>st</sup> Degree Felony Cases<sup>5</sup> (Based on AIS appointments from January through June 2011)

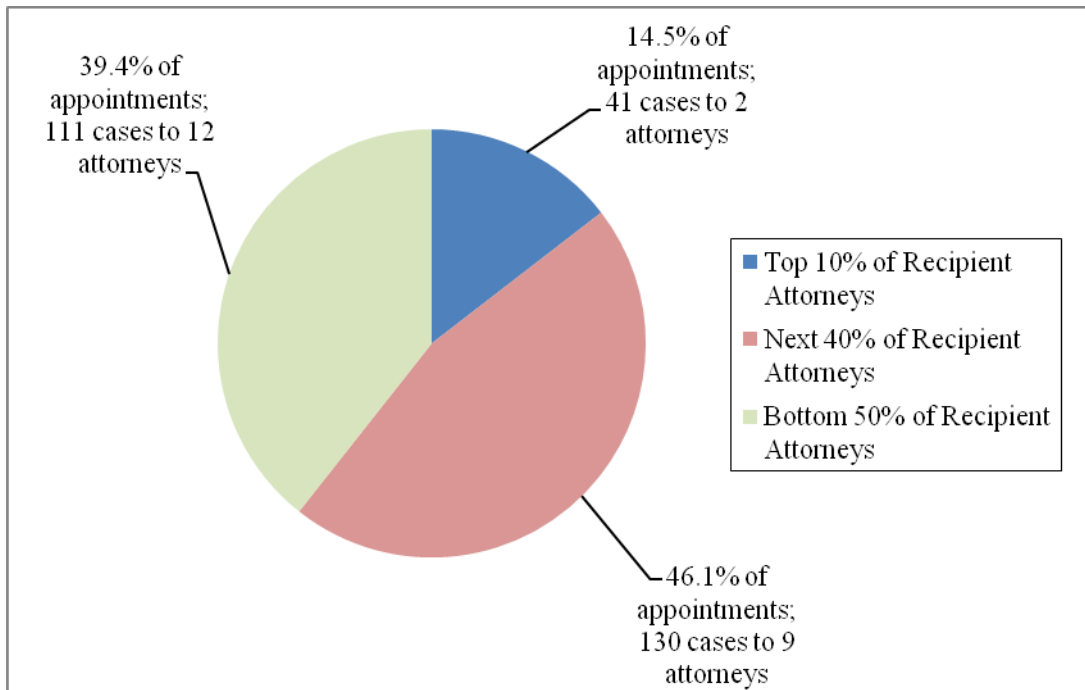


### Distribution of Spanish Speaking Attorney Appointments for 2<sup>nd</sup> Degree Felony Cases<sup>6</sup>

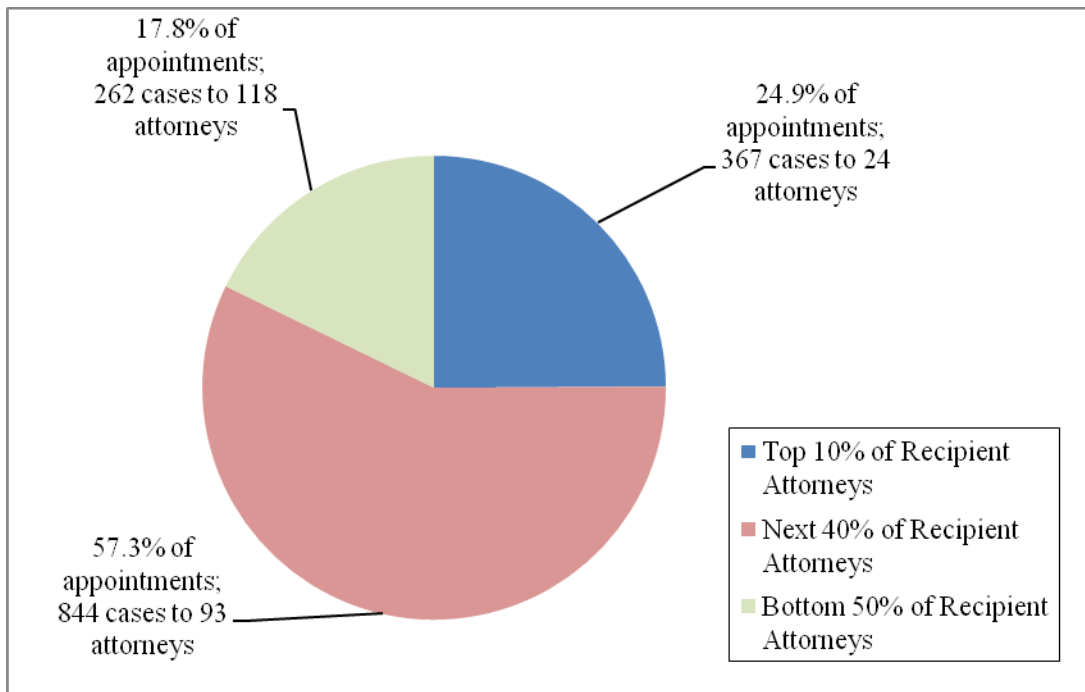
<sup>4</sup> This distribution includes all first degree felony appointments to Spanish speaking attorneys (not including the public defender). The top 10% of recipient attorneys is really the top 11.8%. The next 40% of recipient attorneys is really the next 35.3%. The bottom 50% of recipient attorneys is really the bottom 52.9%.

<sup>5</sup> This distribution includes all first degree felony appointments to non-Spanish speaking attorneys (not including the public defender). The top 10% of recipient attorneys is really the top 10.0%. The next 40% of recipient attorneys is really the next 40.0%. The bottom 50% of recipient attorneys is really the bottom 50.0%.

(Based on AIS appointments from January through June 2011)



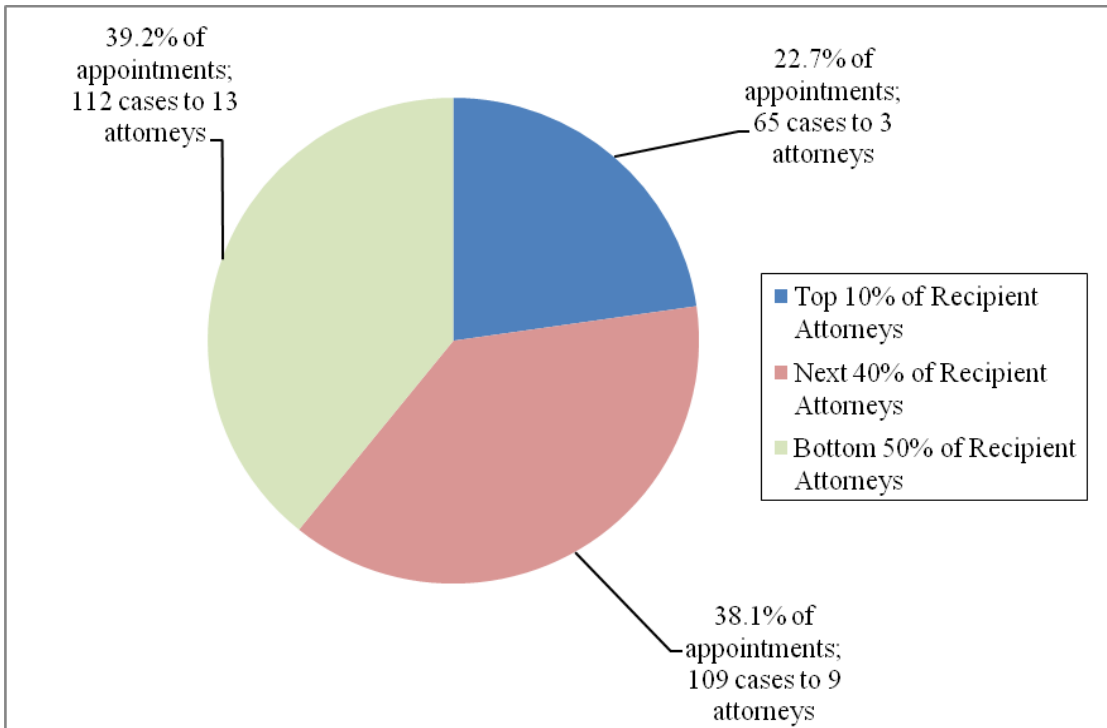
**Distribution of non-Spanish Speaking Attorney Appointments for 2<sup>nd</sup> Degree Felony Cases<sup>7</sup>**  
 (Based on AIS appointments from January through June 2011)



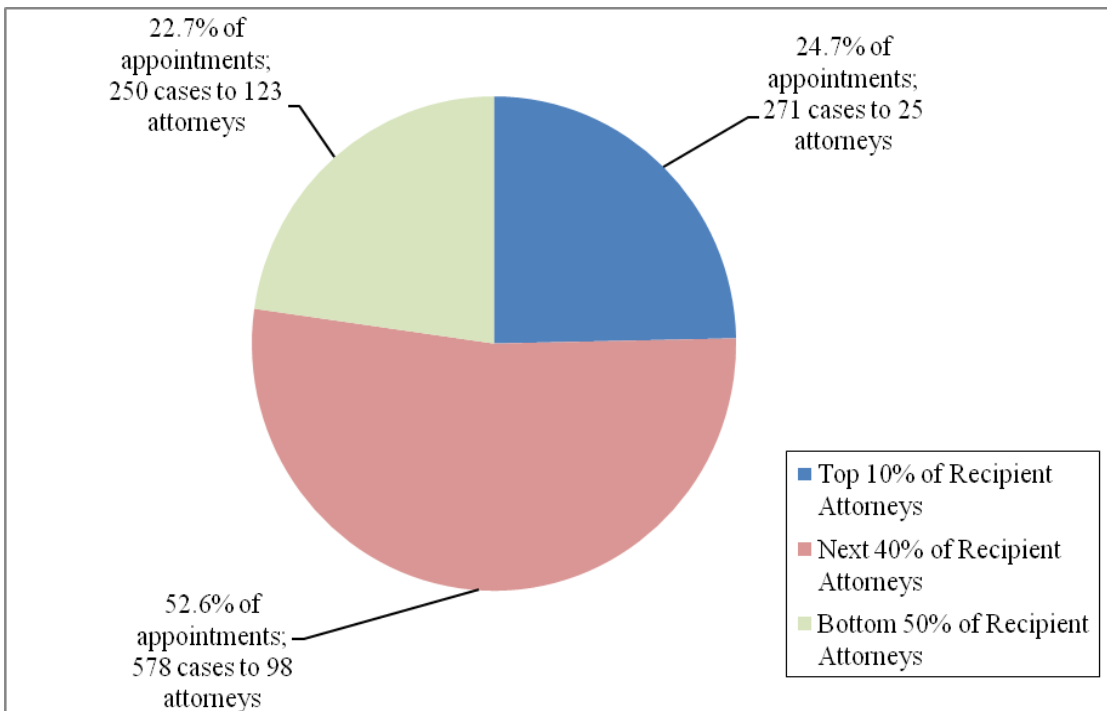
<sup>6</sup> This distribution includes all second degree felony appointments to Spanish speaking attorneys (not including the public defender). The top 10% of recipient attorneys is really the top 8.7%. The next 40% of recipient attorneys is really the next 39.1%. The bottom 50% of recipient attorneys is really the bottom 52.2%.

<sup>7</sup> This distribution includes all second degree felony appointments to non-Spanish speaking attorneys (not including the public defender). The top 10% of recipient attorneys is really the top 10.2%. The next 40% of recipient attorneys is really the next 39.6%. The bottom 50% of recipient attorneys is really the bottom 50.2%.

**Distribution of Spanish Speaking Attorney Appointments for 3<sup>rd</sup> Degree Felony Cases<sup>8</sup>**  
 (Based on AIS appointments from January through June 2011)



**Distribution of non-Spanish Speaking Attorney Appointments for 3<sup>rd</sup> Degree Felony Cases<sup>9</sup>**  
 (Based on AIS appointments from January through June 2011)

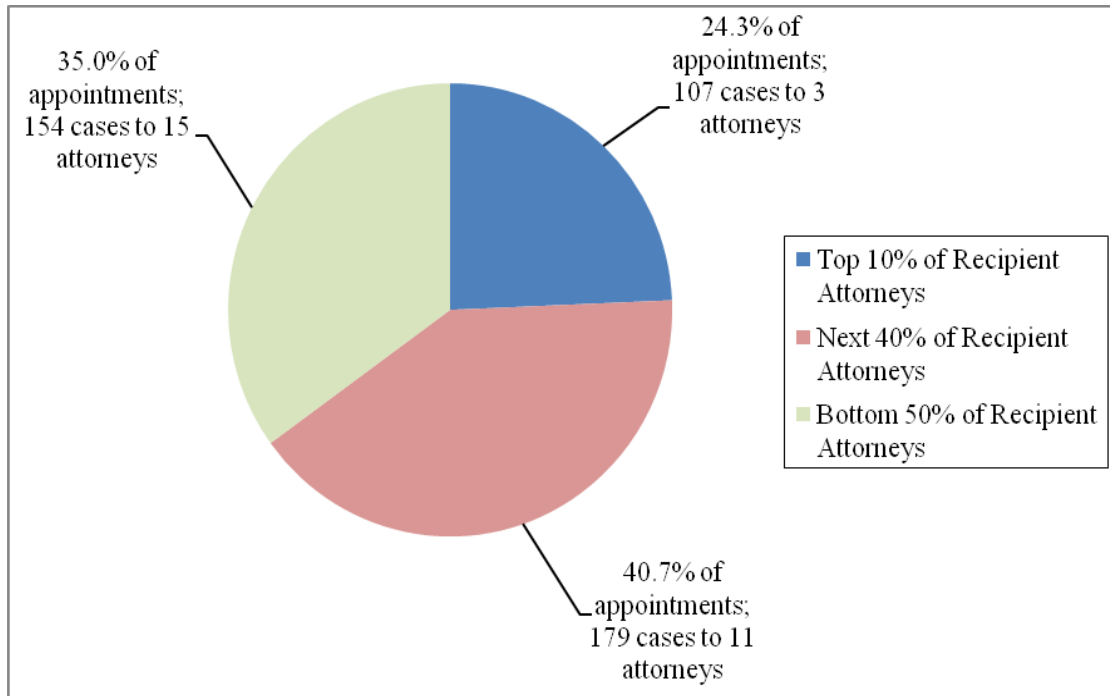


<sup>8</sup> This distribution includes all third degree felony appointments to Spanish speaking attorneys (not including the public defender). The top 10% of recipient attorneys is really the top 12.0%. The next 40% of recipient attorneys is really the next 36.0%. The bottom 50% of recipient attorneys is really the bottom 52.0%.

<sup>9</sup> This distribution includes all third degree felony appointments to non-Spanish speaking attorneys (not including the public defender). The top 10% of recipient attorneys is really the top 10.2%. The next 40% of recipient attorneys is really the next 39.8%. The bottom 50% of recipient attorneys is really the bottom 50.0%.

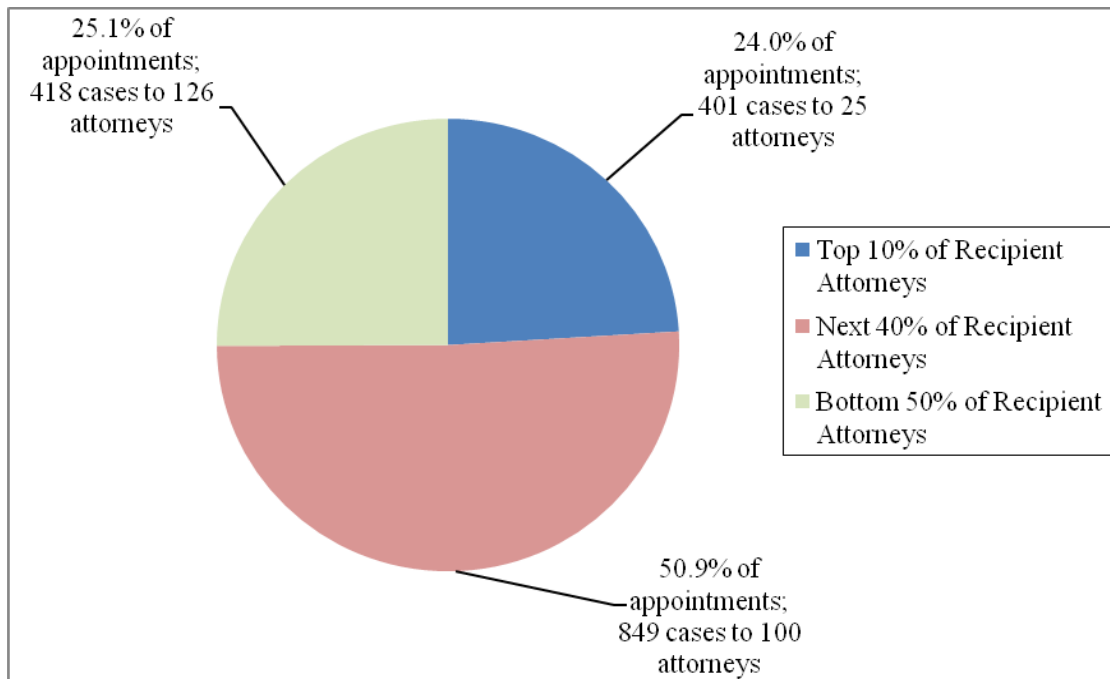
### Distribution of Spanish Speaking Attorney Appointments for State Jail Felony Cases<sup>10</sup>

(Based on AIS appointments from January through June 2011)



### Distribution of non-Spanish Speaking Attorney Appointments for State Jail Felony Cases<sup>11</sup>

(Based on AIS appointments from January through June 2011)

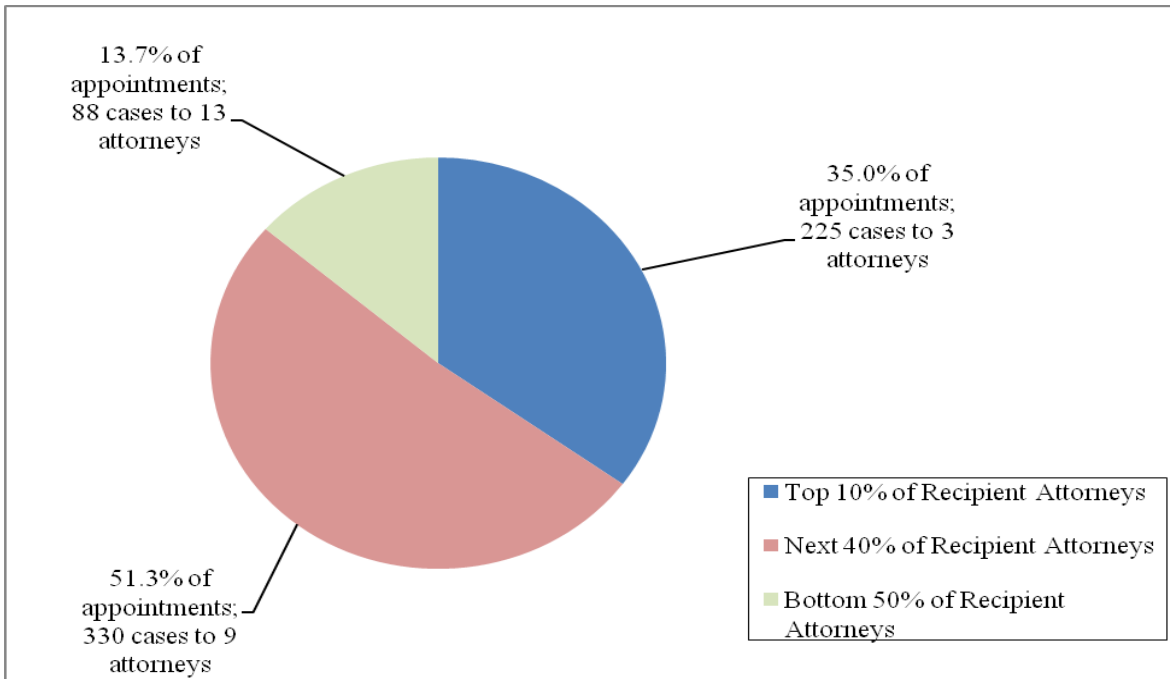


<sup>10</sup> This distribution includes all state jail felony appointments to Spanish speaking attorneys (not including the public defender). The top 10% of recipient attorneys is really the top 10.3%. The next 40% of recipient attorneys is really the next 37.9%. The bottom 50% of recipient attorneys is really the bottom 51.7%.

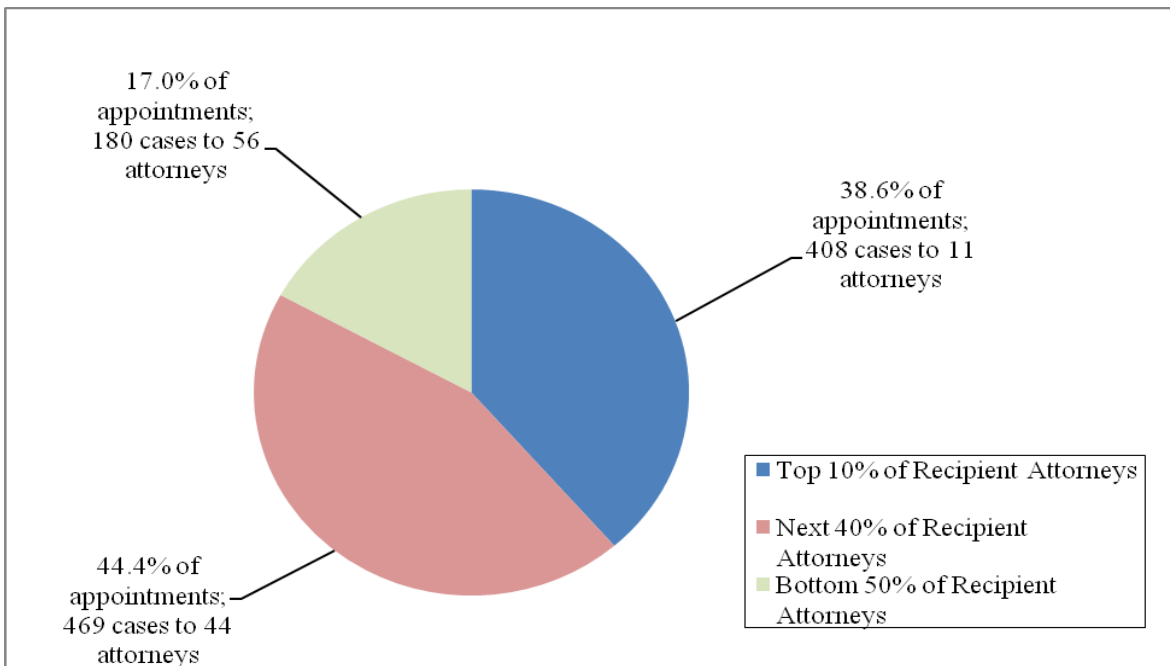
<sup>11</sup> This distribution includes all state jail felony appointments to non-Spanish speaking attorneys (not including the public defender). The top 10% of recipient attorneys is really the top 10.0%. The next 40% of recipient attorneys is really the next 39.8%. The bottom 50% of recipient attorneys is really the bottom 50.2%.

**Appendix C – Distribution of Appointments in Misdemeanor Cases**

**Distribution of Spanish Speaking Attorney Appointments for Misdemeanors<sup>12</sup>**  
 (Based on cases paid as recorded by the auditor from January 2011 through June 2011)



**Distribution of non-Spanish Speaking Attorney Appointments for Misdemeanors<sup>13</sup>**  
 (Based on cases paid as recorded by the auditor from January 2011 through June 2011)



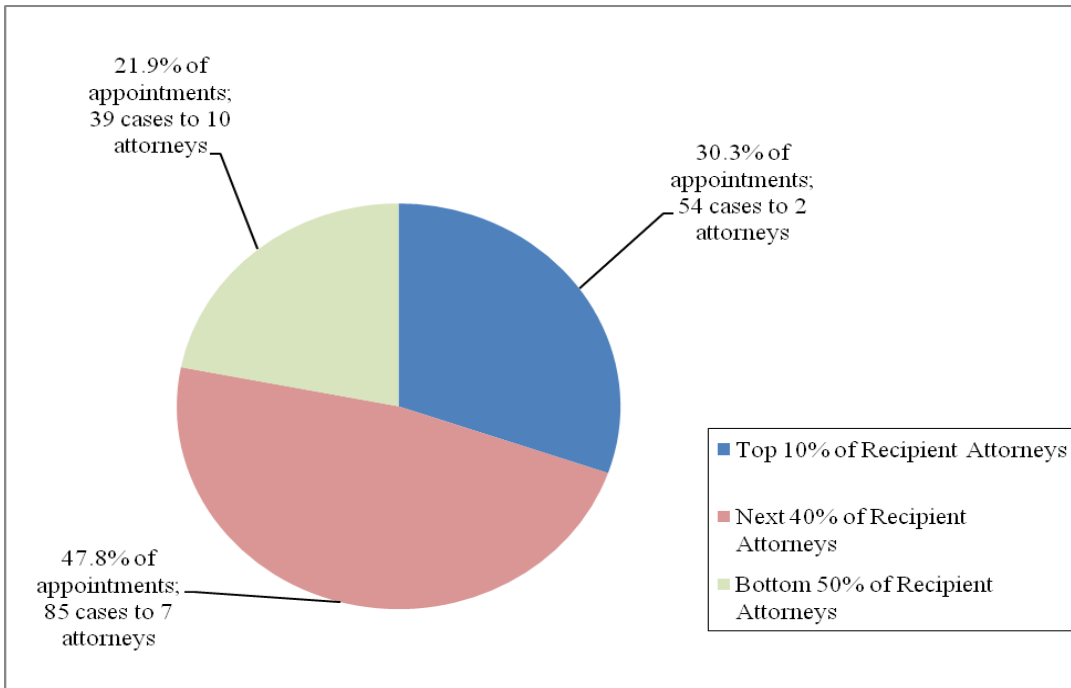
<sup>12</sup> This distribution includes all misdemeanor cases paid to Spanish speaking attorneys (not including the public defender). The top 10% of recipient attorneys is really the top 12.0%. The next 40% of recipient attorneys is really the next 36.0%. The bottom 50% of recipient attorneys is really the bottom 52.0%.

<sup>13</sup> This distribution includes all misdemeanor cases paid to non-Spanish speaking attorneys (not including the public defender). The top 10% of recipient attorneys is really the top 9.9%. The next 40% of recipient attorneys is really the next 39.6%. The bottom 50% of recipient attorneys is really the bottom 50.5%.

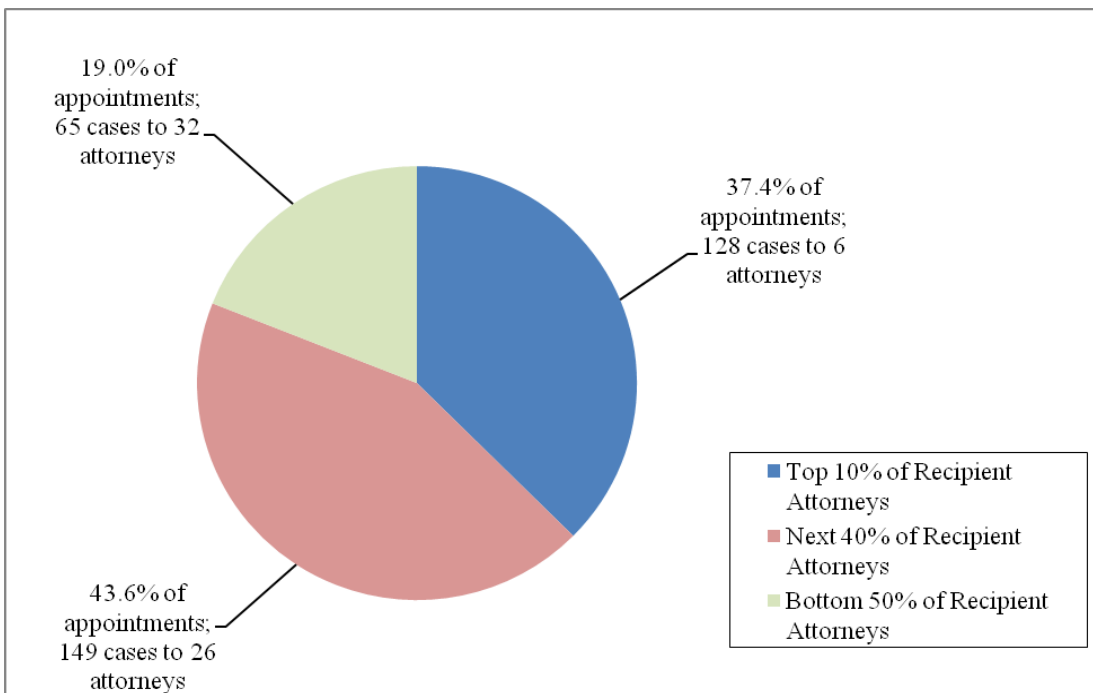


**Appendix D – Distribution of Juvenile Appointments in the 304<sup>th</sup> District Court**

**Distribution of Spanish Speaking Attorney Appointments for Juveniles in the 304<sup>th</sup> District Court<sup>14</sup>**  
 (Based on cases paid as recorded by the auditor from January 2011 through June 2011)



**Distribution of non-Spanish Speaking Attorney Appointments for Juveniles in the 304<sup>th</sup> District Court<sup>15</sup>**  
 (Based on cases paid as recorded by the auditor from January 2011 through June 2011)

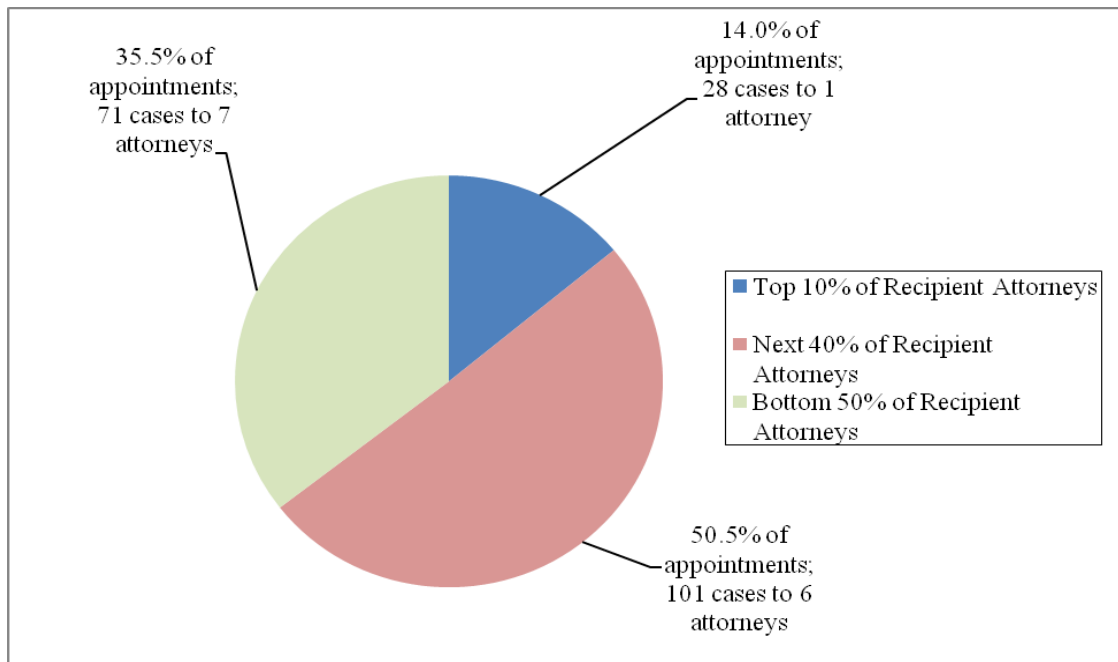


<sup>14</sup> This distribution includes all juvenile cases paid to Spanish speaking attorneys in the 304<sup>th</sup> District Court (not including the public defender). The top 10% of recipient attorneys is really the top 10.5%. The next 40% of recipient attorneys is really the next 36.8%. The bottom 50% of recipient attorneys is really the bottom 52.6%.

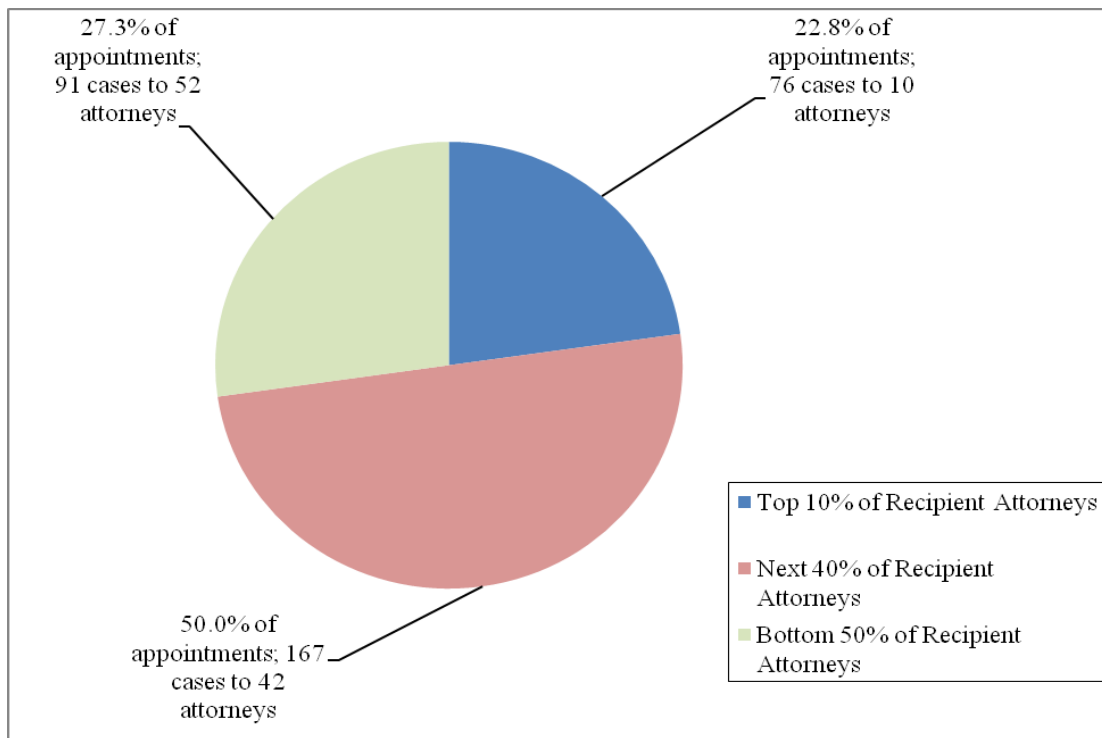
<sup>15</sup> This distribution includes all juvenile cases paid to non-Spanish speaking attorneys in the 304<sup>th</sup> District Court (not including the public defender). The top 10% of recipient attorneys is really the top 9.4%. The next 40% of recipient attorneys is really the next 40.6%. The bottom 50% of recipient attorneys is really the bottom 50.0%.

**Appendix E – Distribution of Juvenile Appointments in the 305<sup>th</sup> District Court**

**Distribution of Spanish Speaking Attorney Appointments for Juveniles in the 305<sup>th</sup> District Court<sup>16</sup>**  
 (Based on cases paid as recorded by the auditor from January 2011 through June 2011)



**Distribution of non-Spanish Speaking Attorney Appointments for Juveniles in the 305<sup>th</sup> District Court<sup>17</sup>**  
 (Based on cases paid as recorded by the auditor from January 2011 through June 2011)



<sup>16</sup> This distribution includes all juvenile cases paid to Spanish speaking attorneys in the 305<sup>th</sup> District Court (not including the public defender). The top 10% of recipient attorneys is really the top 7.1%. The next 40% of recipient attorneys is really the next 42.9%. The bottom 50% of recipient attorneys is really the bottom 50.0%.

<sup>17</sup> This distribution includes all juvenile cases paid to Spanish speaking attorneys in the 305<sup>th</sup> District Court (not including the public defender). The top 10% of recipient attorneys is really the top 9.6%. The next 40% of recipient attorneys is really the next 40.4%. The bottom 50% of recipient attorneys is really the bottom 50.0%.

Appendix F – Election of Counsel Form listed in Dallas County District Courts’ Plan

Cause# \_\_\_\_\_ **ELECTION OF COUNSEL** Special Needs: \_\_\_\_\_

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ Sex: \_\_\_ Race: \_\_\_

**Select and initial one:**

\_\_\_\_\_ **NO, I DO NOT WANT AN APPOINTED LAWYER.** I have been warned by the magistrate that I have the right to request a determination of indigency to decide whether I am entitled to the appointment of a lawyer and I understood the warnings given to me by the magistrate. **I will hire my own lawyer.**

\_\_\_\_\_ **YES, I DO WANT AN APPOINTED LAWYER.** I have been advised by the magistrate of my right to representation by counsel in the trial of the charge against me. I certify that I am without means to employ a lawyer of my own choosing and I now request the court to select and appoint a lawyer for me. I understand that I may be required to repay Dallas County for a court-appointed lawyer.

My total monthly income, including spouse’s income, SSI, child support, disability or other is:  
\$ \_\_\_\_\_

The total value of my assets, including house, cars, cash, stocks, bonds or other is:  
\$ \_\_\_\_\_

I swear that the above information is true and correct.

*\*All information is subject to verification. Falsification of information is a criminal offense.*

\_\_\_\_\_  
Arrested Person

\_\_\_\_\_  
Date

## Appendix G - Targeted Assistance Memo



November 18, 2011

Chair:  
The Honorable Sharon Keller  
Presiding Judge, Court of Criminal Appeals

Vice Chair:  
The Honorable Olen Underwood

Ex Officio Members:  
The Honorable Roberto Alonzo  
The Honorable Alfonso Charles  
The Honorable Pete Gallego  
The Honorable Wallace B. Jefferson  
The Honorable Sherry Radack  
The Honorable Jeff Wentworth  
The Honorable John Whitmire

Members Appointed by Governor:  
The Honorable Jon Burrows  
Mr. Knox Fitzpatrick  
Mr. Anthony Odiorne  
The Honorable B. Glen Whitley

Executive Director:  
James D. Bethke

The Honorable Clay Jenkins  
411 Elm Street  
2nd Floor  
Dallas, TX 75202

Dear Judge Jenkins,

The Texas Indigent Defense Commission (formerly Task Force, now Commission) distributes funds to counties to improve indigent defense services and to promote compliance with the Fair Defense Act. The Commission is required to monitor each county that receives grant funding to ensure compliance with the conditions of the grant. In addition to conducting a Policy Monitoring visit between July 25<sup>th</sup> and July 28<sup>th</sup>, Commission staff traveled to Dallas County to monitor the implementation of the FY2010 Targeted Specific Award 212-TS-057 "Enhanced & Expanded Videoconference System."

The accompanying Policy Monitoring report will contain its own corresponding findings and recommendations, but this document will focus exclusively on the implementation of the Targeted Specific Award 212-TS-057. Since it was issued to bring all of the municipalities within Dallas County into compliance, the Targeted Specific Award's implementation could have an impact on Dallas County's eligibility for Indigent Defense funding. At this moment, the most significant challenge facing this program is the actual expansion into the municipalities included in the funding proposal (attached as a part of the Statement of Grant Award). A much greater level of participation may be required from the county's highest elected officials in order to ensure the successful implementation of the program, particularly in expanding county-wide.

### **Background**

The Commission's January 2008 Policy Monitoring report included recommendations regarding timely appointment of counsel and the distribution of appointments in Dallas County. After a response from Dallas County, the Commission conducted follow-up activities and issued an August 2009 report with related recommendations. Dallas County's response to the follow-up findings included a number of significant changes to its indigent defense system, including a new Election of Counsel (EOC) form, a new software system for managing appointments, and plans to implement a videoconferencing system that would allow the County to conduct magistrate warnings at municipal jails. The County began the implementation of the videoconferencing system but did not have sufficient funds to complete the project.

#### **Texas Indigent Defense Commission**

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Mail: P.O. Box 12066, Austin, TX 78711-2066 • Phone: 512.936.6994 • Fax: 512.475.3450

## Summary of Program Objectives

The original proposal from Dallas County to the Commission is included in the Award Statement, along with a detailed description of the evaluative measures that will be used to assess the effectiveness of the program. The following objectives are taken directly from the proposal:

- 1) To complete installation of videoconference assets in all municipal jails so that all indigent defendants may request appointment of counsel
- 2) To provide video conferencing assets to the individuals involved in determinations of indigency to provide timely appointment
- 3) To increase the number of video endpoints available for use by attorneys in making client contact within the time limits set by the Fair Defense Act
- 4) To create the capability to conduct hearings on competency and related issues (MHMR) by means of videoconferencing

## Installation of Videoconference Assets

Before the Technical Support Award was issued, Dallas County installed 7 videoconferencing units that were purchased with county funds. An additional 3 units were purchased by Dallas County but had not yet been installed. The Commission provided funding to install equipment in 13 municipalities. To date, only Coppell and Sachse have installed equipment with the funds provided. Commission staff visited seven of the remaining municipalities to speak with local court and jail officials about the program. Officials in Irving and Addison expressed interest in installing equipment. An official in the Tri-Cities reported that the physical arrangement of the jail would not accommodate videoconferencing equipment, but expressed interest in using a 'movi' [Tandberg Precision HD] unit.

The following chart was provided to the Commission staff by Judge McVea. The municipalities with asterisk marks (\*) had videoconferencing equipment before the Targeted Specific Award was issued.

Municipality or Jail	As of July 18,2011, the following municipalities are connected:
Addison	
Balch Springs	
Carrollton *	X
Cockrell Hill *	X
Combine	
Coppell	X
Duncanville*	X
Farmers Branch	
Garland	
Glenn Heights	
Grand Prairie	
Highland Park	
Hutchins *	X

### **Texas Indigent Defense Commission**

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Irving	
Mesquite	
Richardson	
Rowlett *	X
Sachse	X
Seagoville *	X
University Park	
Tri-Cities (Cedar Hill, DeSoto and Lancaster)	
Wilmer *	X
Wylie	

Judge McVea has undertaken the coordination of the expansion, but a more active level of involvement from the county's highest elected officials may be required.

**Conclusion**

On August 25<sup>th</sup>, the Texas Indigent Defense Commission voted to extend the Targeted Specific Award for 9 months as a response to Dallas County's request for more time to complete the program entitled "Enhanced and Expanded Videoconference System." The program must be completed by June 29, 2012 to avoid the return of funds. The Commission's staff is available to work with Dallas County officials to help ensure the successful implementation of the program. Please contact Mr. Dominic Gonzales at (512) 463-2573 for more information.

Thank you,

Dominic Gonzales  
Grant Program Specialist

CC: The Honorable Martin Lowy, Local Administrative District Judge  
The Honorable Mark Greenberg, Local Administrative Statutory County Court Judge  
The Honorable Cheryl Lee Shannon, Juvenile Board Chair  
The Honorable Terrie McVea,  
Mr. Ryan Brown, Program Director  
Ms. Virginia Porter, County Auditor  
Mr. Ron Stretcher, Director of Criminal Justice for Dallas County  
Mr. James D. Bethke, Director, Texas Indigent Defense Commission

Enclosure (1)



CONFIRMED  
30  
7/28/10

Task Force on Indigent Defense  
FY2010 Targeted Specific Award

Grant Number: 212-TS-057  
Grantee Name: Dallas County  
Program Title: Enhanced and Expanded Videoconference System  
Grant Period: 06/09/2010-9/30/2011  
Grant Award Amount: \$256,773

The Task Force on Indigent Defense (Task Force) has awarded the above-referenced grant to Dallas County for indigent defense services. The authorized official named on the application must sign this Statement of Award and return it to the Task Force by **July 29, 2010**. The grantee will not receive any grant funds until this notice is executed and returned to the Task Force. Funding is provided as listed in the categories in the table below:

<b>Direct Costs:</b>	
1) Personnel (Total Number of FTEs: __)	
2) Fringe Benefits	
3) Travel and Training	
4) Equipment	\$513,546
5) Supplies	
6) Contract Services	
7) Indirect Costs	
<b>Total Proposed Costs</b>	<b>\$513,546</b>
Less Cash from Other Sources	\$256,773
<b>Total Amount Funded by Task Force</b>	<b>\$256,773</b>

Standard Grant Conditions:

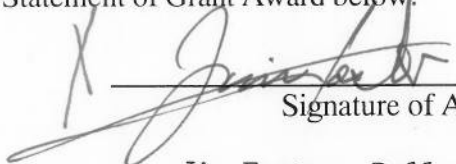
- The authorized official for the grantee accepts the grant award.
- The authorized official, financial officer, and program director, referred to below as grant officials, agree to the terms of the grant as written in the Request for Applications issued on December 18, 2009, including the rules and documents adopted by reference in the Task Force on Indigent Defense's Grant Rules in Title 1, Part 8, Chapter 173, Texas Administrative Code.
- The grant officials understand that a violation of any term of the grant may result in the Task Force placing a temporary hold on grant funds, permanently deobligating all or part of the grant funds, requiring reimbursement for funds already spent, or barring the organization from receiving future grants.
- Disbursement of funds is always subject to the availability of funds.
- The grant officials agree to follow the grant terms contained in the "Required Conditions and Report" contained in Attachment A.

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OFFICE OF  
COURT ADMINISTRATION



- Any indigent defense plan documents submitted to the Task Force must continue to meet all grant eligibility requirements.
- The Judges hearing criminal and juvenile matters must amend the Indigent Defense Plan to include the program funded under this award and submit to the Task Force by December 31, 2010.

The authorized official for this grant program has read the preceding and indicates agreement by signing this Statement of Grant Award below:

X  \_\_\_\_\_  
Signature of Authorized Official

Jim Foster, Dallas County Judge  
\_\_\_\_\_  
Name & Title (must print or type)

July 6, 2010  
\_\_\_\_\_  
Date

**2010 Dallas County Resolution**  
**Indigent Defense Targeted Specific Program**

WHEREAS, under the provisions of the Texas Government Code Section 71.062 and Texas Administrative Code Chapter 173, counties are eligible to receive grants and other funding from the Task Force on Indigent Defense to provide improvements in indigent defense services in the county; and


WHEREAS, this program will assist the county in the implementation and the improvement of the indigent criminal defense services in this county; and

WHEREAS, Dallas County Commissioners Court has agreed that in the event of loss or misuse of the funds, Dallas County Commissioners assures that the funds will be returned in full to the Task Force on Indigent Defense.

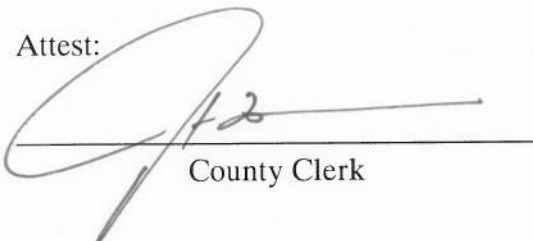
NOW THEREFORE, BE IT RESOLVED and ordered that the County Judge of this county is designated as the Authorized Official to apply for, accept, decline, modify, or cancel the award for the Indigent Defense Targeted Specific Program and all other necessary documents to accept said award; and

BE IT FURTHER RESOLVED that Ryan Brown is designated as the Program Director and contact person for this grant and the County Auditor is designated as the Financial Officer for this program.

Adopted this 6th day of July, 2010.

  
\_\_\_\_\_  
Jim Foster  
County Judge

Attest:

  
\_\_\_\_\_  
County Clerk

# Attachment A

## Required Conditions and Reports

### Program Requirements

In addition to the program requirements stated in the Request for Applications (RFA) these specific program requirements apply to this funded program

- The County commits that at the end of the grant period it will make a good faith effort to use any equipment or software purchased under this grant for the intended purpose for one full year after the expiration of the grant period. Documentation shall be provided to the Task Force explaining the county's position with regards to terminating the use of equipment or software for the intended purpose within 90 days after the grant period if such termination occurs;
- The County will submit both progress reports and expenditure reports to obtain reimbursement of expended funds based on actual expenditures;
- The County has wide latitude in the purchase of the equipment and materials to implement this program, however, the county must provide any excess funds to ensure the program is operational at least to the level proposed in the application.
- Travel costs in accordance with County's travel reimbursement policy are to reimburse County Judge, grant program director or their designee for travel while administering this grant or conducting site visits to see established technology. Only travel to outside the county to meet with vendors or inspect sites /counties where video-teleconferencing is used may be claimed by the County Judge, grant program director or their designee in executing this program.
- The County will not use the equipment for Texas Code of Criminal Procedure Article 15.17 magistration hearings unless it procures and operates a device(s) for recording the two-way communication in accordance with Article 15.17(a).
- The County will maintain conditions conducive to maintaining attorney client privileged communication. These conditions shall include confidential communication at both locations of the communication and provide that no recording of the communication shall be made.
- The County will not record communications between court officials/ court staff and defendants during ministerial proceedings unless conducted as part of the Texas Code of Criminal Procedure Article 15.17 hearings.
- The County will provide for reasonable protection from third party interception of communication between the video-teleconferencing sites when purchasing equipment with these funds.
- The County will cooperate with the Task Force staff to develop reasonable on-line reports that best reflect the work of the program and demonstrate that the program is operating as intended. The county will track all of the data elements presented in the proposal. The on-line reports may include some of the data elements in the proposal as well as standard program data elements developed by the Task Force.

**Introduction**

Dallas County will improve access to counsel by providing videoconferencing for magistration of defendants accused of greater than a class C misdemeanors in all municipal jails in the county. The Courts will use the system to provide a timely indigence determination process. Court appointed attorneys will use the system to conduct initial client contact and discuss cases in a secure environment. Some trial dispositions will be conducted without requiring prisoner transfer.

**Problem Statement**

Although initial indigency inquiry takes place for county prisoners, no such system exists in all municipal jails. The volume of defendants and cases stretches the ability of Courts to make determinations of indigency. Given the number of defendants and jail locations, not all attorney/client contacts are made within required time limits. Defendants with cases in more than one county experience delay in appointment of counsel and disposition due to the need to transport them.

**Objectives**

Objective #1: to complete installation of videoconference assets in all municipal jails so that all indigent defendants may request appointment of counsel.

Objective #2: to provide videoconferencing asset to the individuals involved in determinations of indigency to provide timely appointment.

Objective #3: to increase the number of video endpoints available for use by attorneys in making client contact within the time limits set by the Fair Defense Act.

Objective #4: to create the capability to conduct hearings on competency and related issues (mental illness, mental retardation; see Chapter 46B CCP) by means of videoconferencing

**Methodology**

**Objective #1**

Dallas County will purchase videoconferencing equipment to permit magistration in all municipal jails throughout the county. Videoconferencing for this purpose is currently in place and operational in 7 of 23 municipal jails. Equipment is waiting installation in 3 additional locations. Funding is sought to acquire necessary hardware to permit videoconferencing in the remaining 13 locations.

- Addison
- Balch Springs
- Carrollton \*
- Cockrell Hill \*
- Combine
- Coppell
- Duncanville\*
- Farmers Branch
- Garland
- Glenn Heights
- Grand Prairie
- Highland Park
- Hutchins \*
- Irving
- Mesquite
- Richardson
- Rowlett \*
- Sachse
- Seagoville \*
- University Park

Tri-Cities jail (cities of Cedar Hill, DeSoto and Lancaster)

Wilmer \*

Wylie

(\* indicates location in which video magistration is operational as of 6/1/2010)

Where this capability already exists the Criminal District Court Magistrates are able to conduct 24/7 arraignment of prisoners which includes initiation of the process by which any defendant may allege indigency. In municipal jails not currently a part of the system, this application for appointment of counsel is delayed until the defendant is physically transported to the county jail, which often does not occur until several days after arrest. When municipal video arraignment is made possible all arrestees will be magistrated and all will be given the opportunity to request appointment of counsel within the time limits established by the Fair Defense Act.

The additional video endpoints will be placed in each suburban jail as dictated by individual physical plant configuration and to meet the needs of each staff. The additional Magistrate endpoints will be located in the two Magistrate offices which currently have no videoconference capability.

### **Objective #2**

Dallas County will purchase videoconferencing equipment to permit those involved in the process of determining indigency and appointing counsel to do so within the time limits established by the Fair Defense Act. A defendant claiming indigency may be located in any of 28 different jails: 23 municipal and 5 county jail facilities, none of which is immediately contiguous to the criminal courthouse. As part of earlier initiatives, videoconference endpoints already exist in all five county jails and 10 municipal jails. If Objective #1 is accomplished they will be present in all municipal jails. The document signed initially by a defendant claiming to be indigent and therefore eligible for appointed counsel requires only minimal financial information. To proceed in the process of determining actual indigence may require the participation of the trial court Judges, the Court Coordinators, the Criminal Court Managers or Pre-Trial Release office staff. At this time none of the 30 trial Judges have videoconferencing capability. Only one Coordinator has access as does one of four members of the Court Managers' offices. There is one unit available for shared use by all members of the Pre-Trial Release office.

After application is made for appointed counsel the process may next require completion of a more in-depth financial information form. Except when done using the three video units already in operation, all other cases must proceed by having the defendant physically transported to the trial court so that a face-to-face interview may be conducted and assistance provided to the defendant to complete the financial information form. This cannot occur at all for defendants in municipal jails until they are transferred to the county jail. Once in the county jail a defendant requiring assistance in completing the form may not be brought to court for a period of at least several hours or perhaps until the next business day and then only if the court's other business, such as trial proceedings, make it possible to dedicate space for the face-to-face meeting. If video capability is provided to all of the parties listed who are involved in completing the financial information form and making the actual determination of indigency, the process can proceed irrespective of the physical location of the prisoner and thereby eliminating the delay inherent in transporting prisoners.

Videoconference equipment will be installed in each Coordinator's office in all 30 trial Courts and MOVI (MO bile VI deo) units established to allow each trial Judge to access the system from either bench or chambers. Video units will be placed in the existing work space of the Pre-Trial Release Office.

### **Objective #3**

Dallas County will purchase videoconferencing equipment to increase the number of endpoints available for attorney/client meetings. As a result of prior initiatives five endpoints are currently in operation for use by counsel: 3 in the Public Defenders Office and 2 in spaces within the law library. However, as there are 134 attorneys currently certified to accept appointment on misdemeanor cases and 209 for felony cases as well as 60 in the Public Defender's Office, the five units are insufficient to provide adequate access to this resource. As noted in the discussion of Objective #2, the only other alternatives available to the lawyers are to travel physically to whichever of the 28 jails house their client or to wait until the prisoner can be transported to the court. Both alternatives necessarily involve delay, often beyond the 24 hour limit. Videoconferencing as currently available has also been shown to significantly reduce the delay in disposition of cases by making client contact for plea negotiations and trial preparation more efficient and independent of the ability to conduct face-to-face meetings.

The additional units will be placed in the same locations as those already in operation.

### **Objective #4**

Dallas County – Targeted Specific Award 2010

Dallas County will purchase videoconferencing resources to permit defendants and their counsel to have access to court for disposition of competency and related issues without requiring the physical transportation of the defendant from a state hospital. By establishing a small number of mobile in-court video endpoints which will be shared by the 30 trial judges as needed, many defendants will be able to obtain treatment Orders without waiting to be relocated to Dallas County. This will also eliminate the break in treatment regimen necessitated by transportation from the state hospital to the Dallas County jail.

### **Purchasing**

Dallas County will purchase all equipment using the same process as previously employed in acquiring existing videoconferencing assets and which is currently available for new purchases. Purchasing is through the DIR contract.

Selection of equipment will be from the vendor previously selected to insure interoperability of assets and uniformity of maintenance and support.

### **Court Participation**

Court participation will include 17 Criminal District Court Judges, 13 Criminal District Court Magistrates, 13 County Criminal Court Judges and 1 County Criminal Court Magistrate and support staff.

### **Defense Bar Participation**

The administration and many of the trial lawyers in the Public Defenders Office, the officers and members of the Dallas Criminal Defense Lawyers Association as well as many of the other attorneys accepting ad hoc appointments to represent indigent defendants were consulted during planning and implementation of the existing videoconference assets used for client contact.

### **Dallas County Indigent Defense Plan**

The current Dallas County plan will be amended to permit attorney/client contact for prisoners housed in municipal jails.

### **Evaluation**

#### **Objective #1**

Existing statistical measures are maintained on all defendants arraigned in all jails by the Criminal District Court Magistrates. Separate accounting is made of those in the county jail and those in municipal jails. Statistics are kept based upon District Court terms which correspond to annual quarters. A comparison of total arraignments from dates before and after implementation will yield a measurable result on effectiveness.

Each of the 13 Criminal District Court Magistrates will use the system to insure timely magistration of all defendants, including those in municipal jails. Endpoints will exist in 28 jails and will be utilized on a 24/7 basis.

#### **Objective #2**

The Dallas County Sheriff already maintains data on how many prisoners are brought daily to trial courts. A comparison of the decrease in that population from dates before and after implementation of equipment will yield a measurable result of effectiveness.

A total of 76 individuals, including Judges, Court Coordinators, Court Managers and Pre-Trial release staff will utilize equipment to assist defendants in completing forms necessary to request appointed counsel.

A comparison of dates in Election of Counsel forms showing the date of request and the date of appointment will provide indicia of compliance with the Fair Defense Act.

#### **Objective #3**

Log books are already maintained at each of the five endpoints for attorney use in making client contact. A comparison of total client contacts from dates before and after implementation will yield a measurable result on effectiveness. A comparison of dates on the Election of Counsel form and the logs maintained at each attorney video endpoint will provide indicia of compliance with the Fair Defense Act

Over 400 attorneys will use endpoints for making client contact.

#### **Objective #4**

Docket entries for each case will provide the measure of utilization.

A total of 33 courts will share use of five videoconferencing systems for this purpose

### **Implementation Schedule**

Based upon prior purchases from the vendor who will be utilized for acquisition of these resources, delivery of most components can be expected within 30 to 45 days after an order is placed. Installation of equipment for Objective #1, being in locations most remote from County facilities, should be accomplished within 30 to 45 days. The complexity of some components needed for Objective #2 and #4 will require at least an additional 45 to 60 days. Installation of equipment for Objective #3 should be completed within one week. In total, full system implementation should be accomplished within six months of delivery of all needed equipment and resources.

### **Future Funding**

No additional future funding for any objective will be necessary other than periodic renewal of service or maintenance agreements.

### **Budget**

30	T-150 video units	\$41,790.00
30	3-year T-150 maintenance agreements	\$11,970.00
5	T-3000 video units	\$72,270.00
5	3-year T-3000 maintenance agreements	\$32,632.50
5	T-3000 bases	\$4,305.00
5	NPP T-3000 software packages	\$5,460.00
64	MOVI video units	\$19,152.00
3	units of 25/each MOVI licenses	\$5,850.00
3	units of 25/each MOVI license maintenance agreements	\$3,078.00
1	unit of 10 traversal licenses	\$6,750.00
1	unit of 3-year traversal license maintenance agreement	\$3,847.50
1	MSE chassis	\$30,480.00
1	3-year MSE chassis maintenance agreement	\$13,110.00
1	MSE chassis installation	\$2,489.00
1	80 port MSE blade	\$62,340.00
1	MSE blade 3-year maintenance agreement	\$13,110.00
1	MSE blade installation	\$2,489.00
1	unit of 40 MSE licenses	\$105,600.00
1	3-year MSE license maintenance agreement	\$27,360.00
1	unit of 20 non-traversal licenses	\$5,900.00
1	unit of 3-year non-traversal license maintenance agreement	\$3,363.00
1	unit of 20 non-traversal licenses	\$5,900.00
1	unit of 3-year non-traversal license maintenance agreement	\$3,363.00
1	content server	\$21,960.00
1	3-year content server maintenance agreement	\$8,977.50
	<b>TOTAL BUDGET FOR GRANT APPLICATION</b>	<b>513,546.50</b>

## Timeline for Reporting and Fund Distribution

Reports will be submitted on-line over the Internet.

Reporting Period	Type Report Due	Date Report Due	Fund Distribution Date
June 2010 through September 2010	Budget Status Report Progress report	October 15, 2010	November 2010
October 2010 through December 2010	Budget Status Report Progress report	January 17, 2011	February 2011
January 2011 through March 2011	Budget Status Report Progress report	April 15, 2011	May 2011