

# TEXAS TASK FORCE ON INDIGENT DEFENSE

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Presiding Judge, 2nd Administrative Judicial Region

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July 21, 2011

The Honorable Mark Henry  
Constitutional County Court Judge  
Galveston County Courthouse  
722 Moody St., Ste 200  
Galveston, Texas 77550

## Re: Galveston County Fiscal Monitoring Visit

Dear Judge Henry:

A monitoring visit of your county was conducted on January 25-27, 2011. The financial aspects of the county were monitored to adequately review fiscal records and documentation to ensure compliance with the Task Force on Indigent Defense grant.

A copy of the final monitoring report including your county response is enclosed. The Task Force on Indigent Defense would like to thank county officials and employees for their assistance and courtesy during the course of the monitoring visit. We greatly appreciated the time and cooperation of Galveston County's staff.

If you have any questions or need further clarification, do not hesitate to contact me at (512) 936-7561.

Sincerely,



Carol Conner  
Fiscal Monitor

cc: The Honorable John Ellisor, Local Administrative District Court Judge  
The Honorable John Grady, Local Administrative Statutory County Court Judge  
Mr. Cliff Billingsley, County Auditor  
Ms. Bonnie Quiroga, Program Director  
Mr. Bryan Wilson, Grants Administrator, Task Force on Indigent Defense  
Mr. Wesley Shackelford, Deputy Director, Task Force on Indigent Defense  
Mr. James D. Bethke, Director, Task Force on Indigent Defense



**TEXAS TASK FORCE ON INDIGENT DEFENSE**

**Fiscal Monitoring of Indigent Defense Expenses**

**Galveston County, Texas**

**on**

**January 25-27, 2011**

**Final**

**July 21, 2011**

## TABLE OF CONTENTS

<b>I. INTRODUCTION.....</b>	<b>4</b>
Task Force Background .....	5
Objectives .....	5
Scope.....	5
Methodology .....	5
Summary of Findings.....	6
<b>II. INDIGENT DEFENSE EXPENDITURE REPORT .....</b>	<b>6</b>
Indigent Defense Expenditure Report (IDER).....	6
<b>III. Accounting Operations.....</b>	<b>7</b>
Accounting Procedures .....	7
<b>IV. INDIGENT DEFENSE PAID VOUCHERS .....</b>	<b>8</b>
A. Summary of Attorney Fee Payments .....	8
1. Fee Schedule .....	8
2. Reviewed Attorney Fee Vouchers .....	8
3. Summary of Investigations, Experts, and Other Direct Litigation Expenses .....	10
B. Public Appointment List.....	12
1. Approval of Qualified Attorneys by the Judges .....	12
2. Applied for Public Appointment List .....	12
3. Continuing Legal Education (CLE) Requirements.....	12
<b>V. PROCESS-IMPROVEMENT RECOMMENDATION.....</b>	<b>13</b>
Internal Reviews .....	13
<b>VI. SUMMARY .....</b>	<b>13</b>
General Comments.....	13
 <b>APPENDICES:</b>	
A. Section 71.0351, Texas Government Code.....	15
B. Section 71.062, Texas Government Code.....	16
C. Financial Management, UGMS.....	17
D. Article 26.04, Code of Criminal Procedure .....	18
E. Article 26.05, Code of Criminal Procedure.....	20
F. Chapter 174, Rule, 174.1, Texas Administrative Code .....	22

## I. INTRODUCTION

Galveston County on-site fiscal monitoring visit was conducted on January 25-27, 2011. Bryan Wilson, grants administrator, and Dominic Gonzales, grant program specialist, assisted the fiscal monitor in reviewing financial records and internal control activities to determine whether funds were spent in accordance with the terms and conditions of the Task Force grant.

Galveston County is located on the Gulf Coast of Texas, 50 miles south of Houston and 80 miles southwest of the Louisiana state line.

Galveston County's court system is comprised of three statutory county courts and five district courts hearing criminal cases. In 2010, the county received \$132,746 in formula grant funds. The county also received \$203,571 in equalization disbursement for the increased cost of indigent defense services. Additionally, the county collected \$188,114 for reimbursement of attorney fees from defendants.

<b>Galveston County Indigent Defense Expenditures</b>			
<b>Expenditures</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Population Estimate	286,987	286,987	291,309
Juvenile Assigned Counsel	\$160,131	\$147,726	\$140,788
Adult Misdemeanor Assigned Counsel	\$438,751	\$452,056	\$344,454
Adult Non-Capital Felony Assigned Counsel	\$1,526,322	\$1,375,022	\$1,364,440
Capital Murder	0	\$74,432	\$198,093
Adult Felony Assigned Counsel Appeals	\$32,919	\$53,084	\$89,139
Licensed Investigation	\$53,204	\$45,059	\$52,747
Expert Witness	\$20,397	\$7,855	\$110,412
Other Direct Litigation	\$245,562	\$134,738	\$38,984
<b>Total Court Expenditures</b>	<b>\$2,477,286</b>	<b>\$2,289,972</b>	<b>\$2,339,056</b>
<b>Total Administrative Expenditures</b>	<b>\$103,343</b>	<b>\$80,116</b>	<b>\$80,117</b>
<b>Total Indigent Defense Expenditures (for Public Defense)</b>	<b>\$2,580,629</b>	<b>\$2,370,088</b>	<b>\$2,419,173</b>
Formula Grant Disbursement	\$134,176	\$133,523	\$132,746
Equalization Disbursement	\$148,055	\$308,241	\$203,571
Reimbursement of Attorney Fees	\$96,054	\$174,081	\$188,114
<b>Total Assigned Counsel Cases</b>	<b>9,029</b>	<b>7,661</b>	<b>7,161</b>

Source: Task Force on Indigent Defense records

## **Task Force Background**

In January 2002, the 77<sup>th</sup> Texas Legislature established the Task Force on Indigent Defense (Task Force). The mission of the Task Force is to improve the delivery of indigent defense services through fiscal assistance 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. As a result of the legislative requirement, the Task Force promulgated Section 173.401(a), Texas Administrative Code, which provides, “the Task Force or its designees will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.”

## **Objectives**

The objectives of this review were to:

- obtain an understanding of the county’s internal control activities related to indigent defense services.
- determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.
- validate policies and procedures of fiscal departments relating to indigent defense services.
- provide recommendations pertaining to operational efficiency.
- assist with any questions or concerns on the indigent defense program requirements.

## **Scope**

The scope of review was limited to obtain a sufficient understanding of internal control activities and operational effectiveness in capturing the amount spent on indigent defense expenses. We reviewed fiscal records at the Galveston County Courthouse (auditor’s office) and Galveston County Justice Center.

## **Methodology**

To accomplish the objectives, the fiscal monitor met with the county’s chief of staff, legal liaison, auditor, accounting supervisor, accounts payable clerk, program director, and case management specialist. The fiscal monitor reviewed:

- random samples of paid attorney fee vouchers, licensed investigators, expert witnesses, or other direct litigation for verification of expenses;
- general ledger transactions, purchase orders, and invoices;
- indigent defense expenditure report and attorney fee schedule;
- public appointment list, and
- county’s local indigent defense plan.

The expenditure period of October 1, 2010 to September 30, 2010 (FY 2010) was reviewed during the fiscal monitoring visit.

Galveston County's Criminal Courts			
Courts	Courts		Percent Sampled
	Total	Reviewed	
County Courts-at-Law	3	3	100%
District Courts	5	5	100%

Percent Sampled: courts reviewed / courts total

### Summary of Findings

- The county did not report indigent defense expenditures and case information associated with those expenditures in the manner prescribed by Section 71.0351, Government Code.
- The county did not have written accounting procedures relating to criminal indigent defense expenses.
- A total of 22 paid attorney fee vouchers were not correctly itemized for criminal and/or juvenile matters.
- The county incorrectly placed twelve (12) other direct litigation expenses (\$408.44) in the attorney fee category of services.

## II. INDIGENT DEFENSE EXPENDITURE REPORT

### Indigent Defense Expenditure Report (IDER)

The county did not report indigent defense expenditures and case information associated with those expenditures on the indigent defense expenditure report in the manner prescribed by Section 71.0351, Government Code. On the IDER, the county checked the box that states, “the case counts are estimates or are for some other reason unreliable.”

According to the county auditor, the accounts payable system is only capable of recording one case number, even though, there may be multiple criminal cases per indigent defendant. Therefore, the auditor office relies heavily on the program director’s court records to provide the total number of cases associated with the amount spent on indigent defense services.

### Recommendation

The Task Force recommends that the county develop and implement policy and procedures to comply with the Procedure Manual for the Indigent Defense Expenditure Report at: <http://www.courts.state.tx.us/tfid/pdf/FY10IDERManualFinal.pdf>. The county auditor is required to annually report indigent defense expenditures and the number of cases associated with those expenditures on the indigent defense expenditure report in the manner prescribed by Section 71.0351, Government Code.

Note: The Task Force staff is available to provide technical assistance to improve indigent defense services. Targeted specific, technical support, or discretionary grants may be available to the county for improving indigent defense services and to meet the Fair Defense Act requirements. Should you need any technical assistance or interested in applying for a grant,

please contact Bryan Wilson, Grants Administrator, at 512-936-6996 or Bryan.Wilson@txcourts.gov.

### **Galveston County Action Plan**

The Galveston County Auditor has modified and implemented changes to the accounts payable system, process and procedures, to accommodate this requirement.

**Contact person(s):** Cliff Billingsley, County Auditor

**Completion date:** March 01, 2011

## **III. ACCOUNTING OPERATIONS**

### **Accounting Procedures**

The county did not have written accounting procedures to include staff responsibilities and oversight for processing of indigent defense expenses. Written procedures provide instruction and guidance, uniformity and completeness, and ensure correct processing of fiscal information.

### **Reimbursement of Expenses**

An attorney appointed to represent an indigent defendant submits an itemized voucher with court services performed to the judge with dispositive jurisdiction over the case. Galveston County submission deadline for vouchers occurs within sixty days of the judgment. Article of 26.05(c), Code of Criminal Procedure, provides in part that "No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount."

The approved voucher is routed to the auditor office, which creates a purchase requisition order. The auditor reviews the voucher and issues a check for the amount approved by the judge to the attorney or service provider. The auditor examines and enters the submitted voucher or invoice and amount of payment for itemized services with each case into the general ledger.

### **Verification of the Effectiveness of County Procedures**

The grant team reviewed the county's internal control activities and local procedures for effectiveness as related to indigent defense expenditures. Based on the accounts payable process, the indigent defense expenditures and case totals are not consistent with Section 71.0351, Texas Government Code. The accounts payable system is only recording one case number, even though, there may be multiple criminal cases per indigent defendant.

### **Recommendation**

Task Force recommends that the county develop and implement data collection and accounting procedures for indigent defense expenses. The data collection framework will increase accuracy and simplify collecting data that is necessary to complete the indigent defense

expenditure report. The courts and commissioners court will also be able to more effectively rely on the payment and case data. Formal accounting policies and procedures provide an effective framework for internal controls and financial reporting requirements.

**Galveston County Action Plan**

(1) Justice Administration has a separate database where all payment data is recorded. All case numbers are in this system, as well as all other voucher items. The system is available online in order for attorneys to track payment vouchers. Several reports are available through this database and those reports gather information necessary for the annual report. This database is a temporary resolve.

(2) Galveston County is participating in the Odyssey project and expects to go-live with criminal case management in March 2012. The Odyssey program will store all data required of the indigent defense report within the separate case files and then use that data to generate the annual indigent defense report.

**Contact person(s):** Bonnie Quiroga, Director

**Completion date:** (1) was completed in 2009, (2) estimated completion date March 2012.

**IV. INDIGENT DEFENSE PAID VOUCHERS**

**A. Summary of Attorney Fee Payments**

**1. Fee Schedule**

The attorney fee vouchers reviewed were paid in accordance with the fee schedule adopted by the formal action of the judges hearing criminal cases.

In FY 2010, the attorney fee payments ranged from \$65 to \$52,085 per attorney with an average of \$7,750 and a median of \$2,225.

**2. Reviewed Attorney Fee Vouchers**

<u>Attorney Fee Vouchers</u>	
District Courts	250
County Courts-at-Law	150
Juvenile	25
Total	425

In reviewing, 22 paid attorney fee vouchers (10 assigned and 12 limited term assignment) were not correctly itemized for criminal and/or juvenile matters. Attorney fee vouchers were not correctly filled out and were missing required information (e.g., case number, number of cases disposed, court number, offense, and description of court services). As an example, an attorney fee voucher indicated that “about 25” cases were disposed without case numbers.



An attorney fee voucher must capture all of the data elements prior to being submitted to the judge for approval in accordance with Article 26.05, Code of Criminal Procedure. The specific data elements include defendant name, case/cause number, court number, offense, description of court services, amount paid, attorney signature, and presiding judge signature and are required for the auditor to accurately complete the indigent defense expenditure report in accordance with Section 71.0351, Government Code.

<b>County Courts-at-Law</b>				
<b>47 Different Paid Attorneys</b>				
<b>Courts</b>	<b>Total</b>			
	<b>Paid Vouchers</b>	<b>Attorney Fee Vouchers</b>		
		<b>Fees</b>	<b>Reviewed</b>	<b>Reviewed Value</b>
County Court-at-Law No. 1	1,330	\$124,238	50	\$15,346
County Court-at-Law No. 2	1,309	\$124,192	50	\$19,118
County Court-at-Law No. 3	1,423	\$96,023	50	\$22,872
Juvenile Court	587	\$140,788	25	\$17,375
<b>Total</b>	<b>4,649</b>	<b>\$485,241</b>	<b>175</b>	<b>\$74,711</b>

County Courts-at-Law = adult misdemeanor + juvenile expenses  
 $\$485,241 = \$344,454 + \$140,788$

<b>District Courts</b>				
<b>44 Different Paid Attorneys</b>				
<b>Courts</b>	<b>Total</b>			
	<b>Cases</b>	<b>Attorney Fee Vouchers</b>		
		<b>Fees</b>	<b>Reviewed</b>	<b>Reviewed Value</b>
10 <sup>th</sup> District Court	471	\$282,128	50	\$30,557
56 <sup>th</sup> District Court	512	\$253,027	50	\$24,711
122 <sup>nd</sup> District Court	498	\$354,708	50	\$71,220
212 <sup>th</sup> District Court	552	\$436,427	50	\$44,631
405 <sup>th</sup> District Court	479	\$325,382	50	\$42,176
<b>Total</b>	<b>2,512</b>	<b>\$1,651,672</b>	<b>250</b>	<b>\$213,295</b>

District Courts = adult felony expenses + capital murder + felony appeals  
 $\$1,651,672 = \$1,364,440 + \$198,093 + \$89,139$

### **Recommendation**

The county must ensure that attorney fee vouchers are correctly itemized for criminal and/or juvenile matters. The attorney fee voucher must indicate the actual case number(s) and all performed court services. Article 26.05(c), Code of Criminal Procedure, states, "no payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment." Fully complete attorney fee vouchers are necessary for the auditor to capture all needed data elements for the annual indigent defense expenditure report.

Additionally, all counties must report indigent defense expenditures and case information associated with expenditures, regardless of the counsel system (e.g., assigned, limited term assigned, managed assigned, contract, or public defender) in the form and manner prescribed by Section 71.0351 of the Government Code.

**Note:** Failure to follow instructions for submitting the indigent defense expenditure report, which is required for all Texas counties as prescribed by Section 71.0351, Government Code may result in a finding of noncompliance and the Task Force may impose a remedy under Rule 173.307, Chapter 173, Texas Administrative Code, such as withholding of grant payments.

### **Galveston County Action Plan**

(1) Justice Administration has implemented an audit process that requires all payment vouchers contain the required information, including: case number(s), number cases disposed (term assignments), court number, offense, description of court services, itemized services, total amount requested, attorney signature, amount ordered paid, judge's signature and, if applicable, reason for denial. Payment vouchers which do not contain the required information are returned to the court, along with a form identifying the missing information.

(2) Additionally, Justice Administration is working on a program that would allow attorneys to file payment vouchers online and the requirements of that program would prevent submission of incomplete vouchers.

**Contact person:** Bonnie Quiroga, Director

**Completion date:** (1) completed February 01, 2011, (2) no later than January 01, 2012

### **3. Summary of Investigations, Experts, and Other Direct Litigation Expenses**

As a result of reviewing expenses, the county incorrectly placed twelve (12) other direct litigation expenses (\$408.44) in the attorney fee category of services. Other direct litigation expenses are services other than counsel that may include, but are not necessarily limited to, postage, copies, and travel mileage.

Investigations, Experts, and Other Direct Litigation Expenditures				
Expenditures	Total Vouchers			
	Paid	FY 2009	Reviewed	Reviewed Value
Investigation	43	\$52,747	43	\$52,747
Expert Witness	84	\$110,412	84	\$110,412
Other Direct Litigation	44	\$38,984	44	\$38,984
Total	171	\$202,143	171	\$202,143

Other Direct Litigation Expenses Placed in Attorney Fee Category of Services				
No.	Court	Date	Amount	Expenses
1	56th District Court	7/30/2010	\$67.51	Copies - brief
2	56th District Court	8/6/2010	\$8.50	Postage - certified letter
3	405th District Court	1/14/2010	\$27.35	Ridgeway / postal service
4	405th District Court	9/23/2010	\$65.00	Copies - brief
5	212th District Court	11/13/2009	\$34.55	Photos and copies
6	212th District Court	4/12/2010	\$49.47	Clothes - defendant
7	212th District Court	8/29/2010	\$42.14	Clothes - defendant
8	122nd District Court	1/21/2010	\$5.54	Postage - certified letter
9	122nd District Court	7/1/2010	\$11.08	Postage - certified letter
10	County Court-at-Law No. 2	5/19/2010	\$8.88	Postage - certified letter
11	County Court at Law No. 10	12/4/2009	\$49.21	Postal services
12	County Court at Law No. 10	12/4/2009	\$39.21	Postal services
		Total	\$408.44	

The correct classification of expenses is the precursor to accurate reporting under the Fair Defense Act. Please refer to Procedure Manual for the Indigent Defense Expenditure Report FY 2010, page 3-7 at:  
<http://www.courts.state.tx.us/tfid/pdf/FY10IDERManualFinal.pdf> and Uniform Grant Management Standards: [www.governor.state.tx.us/files/state-grants/UGMS062004.doc](http://www.governor.state.tx.us/files/state-grants/UGMS062004.doc).

**Recommendation**

Task Force recommends that the county develop process to correctly place other direct litigation expenses in the appropriate category of services to ensure the proper documenting of attorney fee vouchers/expenses in accordance with Section 71.0351, Government Code.

**Galveston County Action Plan**

For FY2012, Galveston County has added a separate budget line item for “Other Direct Litigation Expenses” in order to insure expenses are categorized and reported correctly. For the period ending September 2011, Justice Administration will manually gather the data from the vouchers.

**Contact person(s):** Bonnie Quiroga, Director

**Completion date:** To be implemented with new budget cycle, October 01, 2011

**B. Public Appointment List**

**1. Approval of Qualified Attorneys by the Judges**

Galveston County maintained support documents that indicated a majority of the judges approved the attorneys on the public appointment list pursuant to Article 26.04(d), Code of Criminal Procedure.

**2. Applied for Public Appointment List**

Courts	Number of Attorneys		Percent Sampled
	public appointment list	applications reviewed	
County/District Courts	121	121	100%

Percent Sampled: applications reviewed / number on public appointment list

**Monitor Comment**

Galveston County criminal courts maintained attorney applications for placement on the public appointment list in accordance with Article 26.04(d)-(e), Code of Criminal Procedure.

**3. Continuing Legal Education (CLE) Requirements**

The contact person for CLE was unavailable during the fiscal monitoring visit. Therefore, the fiscal monitor was unable to review CLE records.

Courts	Number of Attorneys			Percent Sampled*
	public appointment list	criminal/juvenile CLE documents		
		reviewed	met minimum hours	
County/District Courts	121	N/A	N/A	N/A
Total	121	N/A	N/A	N/A

Percent Sampled: documents reviewed / number on public appointment list

### **Recommendation**

Task Force recommends that the county conduct a self-evaluation on maintaining the annual minimum CLE documents for court appointed attorneys on the public appointment list. Attorneys accepting appointments are required to obtain six (6) hours of criminal and/or juvenile law during each 12-month reporting period as indicated in Galveston County's local plan and Title 1, Chapter 174, Texas Administrative Code. The minimum CLE requirement is a grant funding condition.

Note: A six (6) month follow-up monitoring visit will be conducted to review CLE documents.

### **Galveston County Action Plan**

Galveston County does require attorneys to submit a written affidavit no later than December 1<sup>st</sup> of each year, verifying each attorney has acquired the mandatory CLE hours. All CLE affidavits are on file with the Indigent Defense Coordinator and available for viewing. Attorneys who do not submit the affidavit on or before December 1<sup>st</sup> are removed from the list of qualified attorneys. The Indigent Defense Coordinator also maintains a database listing all attorneys and whether the attorney's CLE affidavit was received for the adult plan and/or the juvenile plan.

**Contact person(s):** Bonnie Quiroga, Director

**Completion date:** 2001– has been a requirement since the program began.

## **V. PROCESS-IMPROVEMENT RECOMMENDATION**

### **Internal Reviews**

Task Force recommends that the county implement periodic reviews to verify internally control activities and local procedures as related to the indigent defense expenditures. An internal review can be a valuable management tool for:

- protecting institutional knowledge;
- training employees; and
- ensuring familiarity with operational practices and the county's local indigent defense plan.

## **VI. SUMMARY**

### **General Comments**

The Task Force wishes to express its appreciation to local county officials and employees of Galveston County for the time and courtesy extended during the fiscal monitoring visit. In particular, my gratitude extends to Judge Mark Henry, Constitutional County Court; Judge John Ellisor, Local Administrative District Court; Ms. Patricia Grady, Legal Liaison; Mr. Freeman Mendell, Chief of Staff; Mr. Cliff Billingsley, County Auditor; Mr. John Sanchez, Accounts Payable Supervisor; and Ms. Bonnie Quiroga, Program Director, for accommodating the grant team activities. These activities included providing workspace, allocating employee time, and exercising flexibility in meeting the schedule of the grants administrator, grant program specialist, and fiscal monitor. Thank you for your time and cooperation during the

monitoring visit. We look forward to a successful resolution of findings and implementation of all recommendations contained in this report.

**Galveston County Response**

Galveston County is dedicated to providing and improving the delivery of indigent defense services to insure justice and fairness to all indigent persons accused of criminal acts. We will continue to work with the Task Force to insure we are in compliance with all grant requirements. The Task Force has been a tremendous asset to our county in establishing and maintaining a successful indigent defense program in Galveston County. The assistance and guidance offered by the Task Force is greatly appreciated.

## Appendix A

### **Texas Government Code, Section 71.0351. Indigent Defense Information**

- a) In each county, not later than November 1 of each odd-numbered year and in the form and manner prescribed by the Task Force on Indigent Defense, the following information shall be prepared and provided to the Office of Court Administration of the Texas Judicial System:
- (1) 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;
  - (2) any revisions to rules or forms previously submitted to the office of court administration under this section; or
  - (3) verification that rules and forms previously submitted to the office of court administration under this section still remain in effect.
- (b) Except as provided by Subsection (c):
- (1) the local administrative district judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the district courts trying felony cases in the county; and
  - (2) the local administrative statutory county court judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county.
- (c) If the judges of two or more levels of courts described by Subsection (b) adopt the same formal and informal rules and forms, 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 perform the action required by Subsection (a).
- (d) The chair of the juvenile board in each county, or the person designated by the chair, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the juvenile board.
- (e) 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 Office of Court Administration of the Texas Judicial System in the form and manner prescribed by the Task Force on Indigent Defense 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 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.
- (f) 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 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).

## Appendix B

### **Texas Government Code, Section 71.062. Technical Support; Grants**

a) The Task Force on Indigent Defense shall:

(1) provide technical support to:

(A) assist counties in improving their indigent defense systems; and

(B) promote compliance by counties with the requirements of state law relating to indigent defense;

(2) direct the comptroller to distribute funds, including grants, to counties to provide indigent defense services in the county; and

(3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by directing the comptroller to:

(A) withdraw grant funds; or

(B) require reimbursement of grant funds by the county.

(b) The Task Force on Indigent Defense shall direct the comptroller to distribute funds as required by Subsection (a)(2) based on a county's compliance with standards developed by the task force and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(c) The Task Force on Indigent Defense shall develop policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a fair manner.

(d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the Task Force on Indigent Defense under this section.



## Appendix C

### Uniform Grant Management Standards (As adopted June 2004)

paragraph 20, page 68. Standards for Financial Management Systems *[This section does not apply to procurement contracts.]*

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

- (1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
- (2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
- (3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- (4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- (5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
- (6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

## Appendix D

### **Art. 26.04. [494] [558] [547] Procedures for Appointing Counsel**

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(b) Procedures adopted under Subsection (a) shall:

- (1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;
- (2) apply to each appointment of counsel made by a judge or the judges' designee in the county;
- (3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;
- (4) require appointments for defendants in capital cases in which the death penalty is sought to comply with the requirements under Article 26.052;
- (5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.
- (6) ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.

(c) Whenever a court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines that a defendant charged with a felony or a misdemeanor punishable by confinement is indigent or that the interests of justice require representation of a defendant in a criminal proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to defend the defendant in accordance with this subsection and the procedures adopted under Subsection (a). If the court or the courts' designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the court or the courts' designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.

**Art. 26.04. [494] [558] [547] Procedures for Appointing Counsel (Continued)**

(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:

- (1) applies to be included on the list;
- (2) meets the objective qualifications specified by the judges under Subsection (e);
- (3) meets any applicable qualifications specified by the Task Force on Indigent Defense; and
- (4) is approved by a majority of the judges who established the appointment list under Subsection (e).

(e) In a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications; and

(2) the judges of the district courts trying felony cases in the county, by formal action:

(A) shall:

establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and

(i) establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications.

(f) In a county in which a public defender is appointed under Article 26.044, the court or the courts' designee may appoint the public defender to represent the defendant in accordance with guidelines established for the public defender.

## Appendix E

### **Art. 26.05. [494a] Compensation of Counsel Appointed to Defend**

(a) A counsel, other than an attorney with a public defender, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county.

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment and determine the appropriate amount of payment. In reviewing the disapproval, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

(d) A counsel in a noncapital case, other than an attorney with a public defender, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts.

**Art. 26.05. [494a] Compensation of Counsel Appointed to Defend (Continued)**

Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred provided for capital cases by Article 26.052(h).

(e) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as costs of court.

(g) If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

(h) Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

## Appendix F

### Texas Administrative Code

<u>Title 1</u>	Administration
<u>Part 8</u>	Texas Judicial Council
<u>Chapter 174</u>	Indigent Defense Policies And Standards
<u>Subchapter A</u>	Minimum Continuing Legal Education Requirements
<b>Rule §174.1</b>	<b>Appointment In Criminal Cases</b>

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An Attorney who meets the requirements of this rule may be appointed to represent an indigent person arrested for or charged with a crime, if the attorney is otherwise eligible under the procedures developed under Article 26.04, Code of Criminal Procedure. Crime has the meaning assigned by §173.2(2). An attorney may be appointed under this rule only if an attorney:

- (1) Completes a minimum of six hours of continuing legal education pertaining to criminal law during each 12-month reporting period. The judges of criminal courts of the county shall set the 12-month reporting period applicable to the jurisdiction. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. The judges may require attorneys to complete more than the minimum number of hours of continuing legal education in criminal law in the procedures developed under Article 26.04, Code of Criminal Procedure; or
- (2) Is currently certified in criminal law by the Texas Board of Legal Specialization.