



**TEXAS INDIGENT DEFENSE COMMISSION**

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Executive Director:  
James D. Bethke

May 22, 2012

The Honorable Ty Prause  
Constitutional County Court  
Colorado County Courthouse  
P.O. Box 236  
Columbus, Texas 78934

**Re: Colorado County Fiscal Monitoring Visit**

Dear Judge Prause:

A monitoring visit of your county was conducted on April 3-4, 2012. The financial aspects of the county were monitored to adequately review fiscal records and documentation to ensure compliance with the Texas Indigent Defense Commission grant.

A copy of the final monitoring report including your county response is enclosed. The Texas Indigent Defense Commission 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 Colorado 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 Dwight E. Peschel, Local Administrative District Court  
The Honorable W.C. Kirkendall, Chairman of the Juvenile Board  
Ms. Raymie Kana, County Auditor  
Mr. Kevin Dunn, Chief Public Defender  
Mr. Louis A. Gimbert, Public Defender Officer  
Mr. James D. Bethke, Executive Director, Texas Indigent Defense Commission (Commission)  
Mr. Wesley Shackelford, Deputy Director, Commission  
Mr. Bryan Wilson, Grants Administrator, Commission

**TEXAS INDIGENT DEFENSE COMMISSION**

**Fiscal Monitoring of Indigent Defense Expenses**

**Colorado County, Texas**

**on**

**April 3-4, 2012**

**Final**

**May 22, 2012**

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## I. INTRODUCTION

Colorado County's on-site fiscal monitoring visit was conducted on April 3-4, 2012. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Commission's formula grant.

Colorado County is located in south central Texas, 74 miles west of Houston. Columbus, the county seat and largest city, is at the junction of Interstate Highway 10 and State Highway 71 on a small rise south and west of a lazy horseshoe bend in the Colorado River. The county has an estimated population of 20,874.

Colorado County's court system is comprised of a county court and two district courts with criminal jurisdiction. Colorado County operates a public defender's office (PDO) created by statute prior to the Fair Defense Act. In 2011, the county received \$16,427 in formula grant funds. The county also collected \$21,071 for reimbursement of attorney fees from defendants.

<b>Colorado County Indigent Defense Expenditures</b>			
<b>Expenditures</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Population Estimate	21,813	20,874	20,874
Juvenile Assigned Counsel	\$250	\$1,740	\$1,000
Capital Murder	0	0	0
Adult Non-Capital Felony Assigned Counsel	\$2,600	\$2,000	\$9,750
Adult Misdemeanor Assigned Counsel	0	\$1,563	\$2,725
Juvenile Appeals	0	0	0
Adult Felony Appeals	0	0	0
Adult Misdemeanor Appeals	0	0	0
Licensed Investigation	0	0	\$500
Expert Witness	\$1,100	0	0
Other Direct Litigation	\$7,540	0	\$26
Total Court Expenditures	\$11,490	\$5,303	\$14,001
Total Public Defender Administrative Expenditures	\$33,070	\$139,867	\$145,318
Total Court and Public Defender Administrative Expenditures	\$144,560	\$145,170	\$159,319
Formula Grant Disbursement	14,870	\$14,670	\$16,427
Reimbursement of Attorney Fees	\$17,025	\$21,210	\$21,071
Total Assigned Counsel Cases	13	11	22
Total Public Defender Cases	243	209	328

Source: Texas Indigent Defense Commission records

## **Commission Background**

In January 2002, the 77<sup>th</sup> Texas Legislature established the Texas Task Force on Indigent Defense (Task Force). In May 2011, the 82<sup>nd</sup> Texas Legislature changed the name of the Texas Task Force on Indigent Defense to the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council and administratively attached to the Office of Court Administration (OCA). The Texas Indigent Defense Commission provides 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. The purpose of the Commission 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 Commission promulgated Section 173.401(a), Texas Administrative Code, which provides, “the Commission 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:

- 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 regarding operational efficiency.
- assist with any questions or concerns on the indigent defense program requirements.

## **Scope**

The county’s indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grant during fiscal year 2011. The fiscal monitor reviewed records located in the Colorado County Courthouse Annex.

## **Methodology**

To accomplish the objectives, the fiscal monitor met with district court judge, county auditor, first assistant auditor, and public defender’s office administrative assistant. The fiscal monitor reviewed:

- paid attorney fee vouchers, public defender’s monthly reports, licensed investigations, expert witnesses, and other direct litigation for verification of expenses;
- general ledger transactions and invoices;
- indigent defense expenditure report and attorney fee schedule;
- public appointment list, attorney applications; and
- county’s local indigent defense plan.

The expenditure period of October 1, 2010 to September 30, 2011 (FY 2011) was reviewed during the fiscal monitoring visit.

<b>Colorado County's Criminal Courts</b>			
<b>Courts</b>	<b>Courts</b>		<b>Sampled</b>
	<b>Total</b>	<b>Reviewed</b>	
County Court	1	1	100%
District Court	2	2	100%

Percent Sampled: courts reviewed / courts total

Note: As reported on the FY 2011 Indigent Defense Expenditure Report

**Summary of Findings**

- The county incorrectly placed 1 expert witness and 2 licensed investigation expenses totaling \$3,174 in the attorney fee category of services.
- The continuing legal education hours were not documented for 4 of the 4 court appointed attorneys on the public appointment list in accordance with Title 1, Chapter 174, Texas Administrative Code.
- The county’s public defender’s office did not establish a clear basis to calculate percentage of time spent on the types of cases as outlined in the Indigent Defense Expenditure Report Manual.

**II. INDIGENT DEFENSE GRANT**

**A. Formula Grant**

The county submitted the FY 2011 indigent defense online grant application to assist in the provisions of the Fair Defense Act. Colorado County met the formula grant eligibility requirements.

**B. Indigent Defense Expenditure Reporting (IDER)**

The county submitted the indigent defense expenditure report in a timely manner. The indigent defense expenditure report is due November 1 of each year. The annual indigent defense expenditure report is critical in establishing grant eligibility. Please refer to the Procedure Manual for the Indigent Defense Expenditure Report FY 2011, page 4 at: <http://www.txcourts.gov/tidc/pdf/FY11IDERManual.pdf>.

**C. Public Defender Administrative Expenditures**

The county reported the public defender’s office administrative costs for three county employees (chief public defender, public defender, and administrative assistant).

<b>Administrative Expenditures</b> October 1, 2010 – September 30, 2011	
<b>Description</b>	<b>Total</b>
Chief Public Defender	\$49,711.69
Public Defender	\$49,711.69
Administrative Support	\$37,380.66
Total Personnel Costs and Fringe Benefits	\$136,804.04
Travel and Training	\$445.00
Direct Operating Expenditures	\$5,144.65
Subtotal Public Defender Administrative Expenditures	\$142,393.69
Public Defender Court Related Expenditures*	\$2,924.00
Total Public Defender Expenditures	\$145,317.69

\*PDO court related expenditures: communication, books, journals and on-line subscriptions.

**Disclaimer:** Fiscal monitor reviewed only expenses related to the indigent defense expenditure report.

**Monitor Comment**

The county public defender’s office employs two public defenders and an administrative assistant. The records for these positions are included in the county’s general ledger transactions under the public defender expenditures.

**Colorado County Response**

The Public Defender’s Office expenses including salary and benefits are included on the County’s General Ledger under the Public Defender Department (Dept 428) and then the transactions are reviewed and then transferred to the Indigent Defense Expenditure Report.

**III. ACCOUNTING OPERATIONS**

**Accounting Procedures**

On April 18, 2012, a copy of the accounting procedures relating to indigent defense expenditures was provided to the fiscal monitor. The accounting procedures have designated codes to identify indigent defense expenses. Written procedures provide instruction and guidance; uniformity and completeness; and ensure correct and secure processing of fiscal information.

## IV. INDIGENT DEFENSE PAID VOUCHERS AND MONTHLY REPORTS

### A. Review of Assigned 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 2011, the assigned attorney fees ranged from \$250 to \$7,275 with an average of \$3,200 and a median of \$2,125.

#### 2. Reviewed Assigned Attorney Fee Vouchers and Monthly Reports

Colorado County Courts					
6 Different Paid Attorneys					
4 Assigned Attorneys			2 Public Defenders		
Courts	Total				
	Cases		Fee Vouchers/Monthly Reports		
	Assigned Attorney	Public Defender	Assigned Attorney	Public Defender*	Reviewed Total
County Court	7	200	\$3,725	\$19,885	\$23,610
25 <sup>th</sup> District Court	10	70	\$4,450	\$39,769	\$44,186
2 <sup>nd</sup> 25 <sup>th</sup> District Court	5	58	\$5,300	\$39,769	\$44,979
<b>Total</b>	<b>22</b>	<b>328</b>	<b>\$13,475</b>	<b>\$99,423</b>	<b>\$112,775</b>

\*Expenses were arbitrarily assigned to categories by the county auditor.

County Court = juvenile expenses + adult misdemeanor expenses

\$3,725 = \$1,000 + \$2,725

District Courts = assigned adult non-capital felony expenses

\$9,750

**Note:** FY 2011 Indigent Defense Expenditure Report as reported to the Commission.

#### Monitor Comment

All attorney fee vouchers reviewed met the statutory requirements for payment, which states, “no payment shall be made until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and approves the payment” in accordance with Article 26.05(c), Code of Criminal Procedure. The attorney fee vouchers reviewed captured the specific data elements (defendant name, case/cause numbers, court number, offense, amount paid, attorney signature, and presiding judge signature).

Additionally, the public defender’s office provided monthly reports of cases closed or disposed during the fiscal year as set forth in Article 26.044 of the Texas Code of Criminal Procedure.



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

The county incorrectly placed 1 expert witness and 2 licensed investigation expenses totaling \$3,174 in the attorney fee category of services.

<b>Investigations, Experts, and Other Direct Litigation Expenditures</b>				
<b>Expenditures</b>	<b>Total Vouchers</b>			
	<b>Paid</b>	<b>FY 2011</b>	<b>Reviewed</b>	<b>Reviewed Value</b>
Investigation	1	\$500	2	\$1,424
Expert Witness	0	0	1	\$2,000
Other Direct Litigation	1	\$26	1	\$26
<b>Total</b>	<b>2</b>	<b>\$526</b>	<b>5</b>	<b>\$3,450</b>

<b>Placed in Attorney Fee Category of Services</b>				
<b>Services</b>	<b>Date</b>	<b>Court</b>	<b>Inv No.</b>	<b>Expense</b>
Sergio Orozco, Ph.D., South Texas Forensic Psychology	12/13/2010	2-25 <sup>th</sup> District Court	10019	\$2,000
Davenport Investigations	5/17/2011	25 <sup>th</sup> District Court	131464	\$250
Ash Investigations	9/12/2011	25 <sup>th</sup> District Court	3415	\$924
			<b>Total</b>	<b>\$3,174</b>

**Recommendation**

The Commission recommends that the county review indigent defense procedures to accurately identify, capture, and report expert witnesses, licensed investigations, and other direct litigation expenses in the appropriate category of services as required by law relating to indigent defense.

**Colorado County Action Plan**

The County Auditor has implements procedures to capture and report expert witnesses, licensed investigations, and other direct litigation expenses in the appropriate category of services as required for the annual indigent defense expenditure report.

**Contact person(s):** County Auditor

**Completion date:** April 9, 2012

**B. Public Appointment List**

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

A majority of the judges approved the attorneys on the public appointment list.

**Monitor Comment**

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

**2. Applied for Public Appointment List**

Courts	Number of Attorneys		Sampled
	public appointment list	applications reviewed	
County and District Courts <i>(Assigned Attorneys)</i>	4	4	100%
Public Defender's Office	2	2	100%

Percent Sampled: applications reviewed / number on public appointment list

**Monitor Comment**

Colorado County 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 continuing legal education hours were not documented for 4 of the 4 attorneys on the public appointment list. Without the CLE documentation for court appointed attorneys, the county auditor may not make proper payments consistent with Sections 174.1 and 174.2 of the Texas Administrative Code. Attorneys accepting appointments are required to obtain 6 hours of criminal and/or juvenile law during each 12-month reporting period as indicated in Colorado County's local indigent defense plan.

Courts	Number of Attorneys		
	public appointment list	criminal/juvenile CLE documents	
		reviewed	met minimum hours
County and District Courts <i>(Assigned Attorneys)</i>	4	0	0
Public Defender's Office	2	2	2

**Recommendation**

The Commission recommends that the county develop a system to document the continuing legal education hours for all assigned attorneys on the public appointment list.

**Colorado County Action Plan**

Colorado County has developed a system to maintain the continuing legal education hours for our court appointed attorneys who are on the public appointment list. Letters were sent to the assigned court appointed attorneys requesting proof of the required six hours of continuing legal education hours by May 15, 2012 for continuation of court appointments. The County has received proof.

**Contact person(s):** County Court Administrator

**Completion date:** May 15, 2012

**Note:** On May 18, 2012, Colorado County provided support documents of continuing legal education hours for the four-assigned court appointed attorneys.

**C. Public Defender's Office**

Prior to the Fair Defense Act, Colorado County established a Public Defender's Office (PDO), which was approved by the commissioners' court on April 9, 1987. The PDO staff consists of two part-time public defenders and a full-time administrative assistant. The public defenders provide legal representation and services to indigent defendants and juvenile respondents.

In reviewing the public defender expenditure report addendum, the county did not establish a clear basis to calculate percentage of time spent on the types of cases as outlined in the Indigent Defense Expenditure Report Manual. The percentage of time spent on the types of cases (felony, misdemeanor and juvenile) must be based on percent of actual time or reasonable estimate spent on cases. To capture a clear picture of the average cost per case, the public defender's office is required to report how each public defender and other salaries are allocated between the types and time spent on cases. Please refer to the Indigent Defense Expenditure report procedural manual for reporting PDO information at: <http://www.txcourts.gov/tidc/pdf/FY11IDERSupplement.pdf>

**Recommendation**

The Commission recommends that the county auditor in conjunction with the PDO establish a clear basis to calculate percentage of time spent on the types of cases (felony, misdemeanor and juvenile) as outlined in the Indigent Defense Expenditure Report Manual.

**Note:** The Commission is available to provide technical assistance to improve reporting of the public defender's office information and meet the Fair Defense Act requirements.

Should you need any technical assistance, please contact Bryan Wilson, Grants Administrator, at 512-936-6996 or Bryan.Wilson@txcourts.gov.

**Colorado County Action Plan**

The County Auditor and Public Defender Office met on April 18, 2012 to establish a clear basis to calculate the percentage of time spent on the types of cases as outlined in the Commission's Indigent Defense Expenditure Report Manual. In addition, the administrative assistant has improved the form to monitor the PDO time spent on the types of cases for reporting as well as the specific number of cases per court to the auditor's office.

**Contact person(s):** County Auditor

**Completion date:** April 18, 2012

**V. SUMMARY**

**General Comments**

The Commission wishes to express its appreciation to local county officials and employees of Colorado County for the time and courtesy extended during the fiscal monitoring visit. In particular, my gratitude extends to Judge Ty Prause, Constitutional County Court; Judge Dwight Peschel, Local Administrative District Court; Judge Chris Maddux, Precinct 2 Justice of the Peace; Ms. Raymie Kana, County Auditor; and Ms. Melissa Garza, Public Defender's Office Administrative Assistant, for accommodating the fiscal monitor activities. These activities included providing workspace, allocating employee time, and exercising flexibility in meeting the schedule of the fiscal monitor. Thank you for your time and cooperation during the monitoring visit.

**Colorado County Response**

Colorado County will continue to provide quality representation to indigent defendants and protect the constitutional rights of everyone in our community. This was Colorado County's first monitoring visit by the Texas Indigent Defense Commission and unaware of the entire fiscal monitoring process. Ms. Conner's professionalism and knowledge during the fiscal process was greatly appreciated by us. We are also grateful to have a familiar face to contact for technical assistance. Should you have questions or comments, please do not hesitate to contact me.

Sincerely,

*Raymie Kana*

Raymie Kana  
County Auditor

cc: Constitutional County Judge  
District Court Judge  
Chief Public Defender

## Appendix A

### **Texas Government Code, Section 79.036. 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 commission, the following information shall be prepared and provided to the commission:

- (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 under this section; or
- (3) verification that rules and forms previously submitted 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 commission in the form and manner prescribed by the commission and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county:

- (1) in each district, county, statutory county, and appellate court;
- (2) in cases for which a private attorney is appointed for an indigent defendant;
- (3) in cases for which a public defender is appointed for an indigent defendant;
- (4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and
- (5) for investigation expenses, expert witness expenses, or other litigation expenses.

(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 commission under this section.

*This section replaced Sec. 71.0351 effective Sept. 1, 2011 (HB 1754, §20).*

## Appendix B

### **Texas Government Code, Section 79.037. Technical Support; Grants**

- (a) The commission 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) to assist counties in providing indigent defense services in the county, distribute in the form of grants any funds appropriated for the purposes of this section; and
  - (3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by:
    - (A) withdrawing grant funds; or
    - (B) requiring reimbursement of grant funds by the county.
- (b) The commission shall distribute funds as required by Subsection (a)(2) based on a county's compliance with standards adopted by the board and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.
- (c) The board shall adopt 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 commission under this section.

*Addition of this Section effective Sept. 1, 2011 (HB 1754, §20).*

## 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 any applicable requirements under Articles 11.071 and 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
- (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. 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 Texas Indigent Defense Commission; 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:

(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.

(g) A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An

**Art. 26.04. Procedures for Appointing Counsel (Continued)**

alternative program for appointing counsel in felony cases may be established in the manner provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

- (1) the alternative program may:
  - (A) use a single method for appointing counsel or a combination of methods; and
  - (B) use a multicounty appointment list using a system of rotation; and
- (2) the procedures adopted under Subsection (a) must ensure that:
  - (A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement:
    - (i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in misdemeanor cases punishable by confinement; and
    - (ii) are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;
  - (B) attorneys appointed using the alternative program to represent defendants in felony cases:
    - (i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in felony cases; and
    - (ii) are approved by a majority of the judges of the district courts trying felony cases in the county;
  - (C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052; and
  - (D) appointments are reasonably and impartially allocated among qualified attorneys.

(h) In a county in which an alternative program for appointing counsel is established as provided by Subsection (g) and is approved by the presiding judge of the administrative judicial region, a court or the courts' designee may appoint an attorney to represent an indigent defendant by using the alternative program. In establishing an alternative program under Subsection (g), the judges of the courts establishing the program may not, without the approval of the commissioners court, obligate the county by contract or by the creation of new positions that cause an increase in expenditure of county funds.

(i) A court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused of a felony may appoint an attorney from any county located in the court's administrative judicial region.

## Appendix E

### **Art. 26.05. Compensation of Counsel Appointed to Defend**

(a) A counsel, other than an attorney with a public defender's office or an attorney employed by the office of capital writs, 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 appellate 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 or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act 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 or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, 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.

**Art. 26.05. Compensation of Counsel Appointed to Defend (Continued)**

(d) A counsel in a non-capital case, other than an attorney with a public defender's office, 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. 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 without prior court approval shall be reimbursed in the manner 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.

*Amendment to (a), (c), and (d) effective Sept. 1, 2011 (HB 1754 §20).*

## Appendix F

### **Texas Administrative Code**

<b><u>Title 1</u></b>	Administration
<b><u>Part 8</u></b>	Texas Judicial Council
<b><u>Chapter 174</u></b>	Indigent Defense Policies And Standards
<b><u>Subchapter A</u></b>	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.