

New Reporting Requirements and the IDER
AND
Fiscal Monitor Review / Findings

<http://tidc.texas.gov>



Due November 3, 2014

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

Vice Chair:
 The Honorable Olen Underwood

Ex Officio Members:
 Honorable Sharon Keller
 Honorable Nathan Hecht
 Honorable John Whitmire
 Honorable Royce West
 Honorable Roberto Alonzo
 Honorable Abel Herrero

Members Appointed by Governor:
 Honorable Olen Underwood
 Honorable Sherry Radack
 Honorable Jon Burrows
 Honorable B. Glen Whitley
 Honorable Linda Rodriguez
 Mr. Anthony Odiorne
 Mr. Don Hase

Executive Director:
 James D. Bethke



The mission of the Texas Indigent Defense 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.

Indigent Defense

- The Right to Attorney for Indigent Defendants is a Constitutional Right
- 6th Amendment Right to Counsel

Fair Defense Act of 2001

1. Established Texas Indigent Defense Commission (formerly the Task Force)
2. Appropriated State Funds
3. Required Judges to Develop a Plan for providing Indigent Defense services
4. Required Auditors (or Treasurers) to Report Financial and Case information
5. Set time frames and other portions not covered today

Technical Support & Grants

Section 79.037, Local Gov't Code, provides that:

The commission shall:

- a. **Assist** counties in improving their indigent defense systems;
- b. **Promote** compliance by counties with req't's of State law;
- c. **Provide** Grants;
- d. **Monitor** each county that receives a grant and enforce compliance by the county with the conditions of the grant.

83rd Texas Legislature - HB 1318

New Reporting Requirements

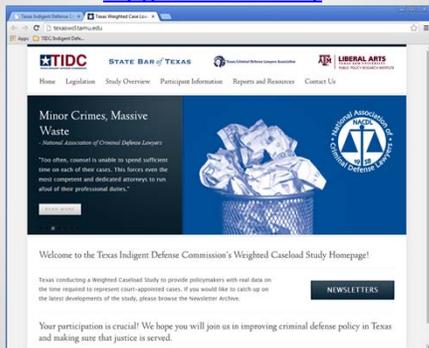
- Weighted Caseload Study (State – TIDC)
- Judicial Reporting Requirements – (all Courts and Juvenile Boards)
- Attorneys Reporting Requirements (all attorneys receiving an appointment)
- County Reporting Requirements (Auditors and Treasurers)

Weighted Caseload Study

- TIDC partnering with Public Policy Research Institute at Texas A&M (PPRI) to conduct the study
- Attorneys tracked how they used their time and on what types of cases for up to 12 weeks
- Results will document what it takes to represent defendants in various case types

Weighted Caseload Study Site

<http://texaswcl.tamu.edu/>



Judicial Reporting Requirements

Starting **November 1, 2013**

- Summary of documents that must now be submitted with Indigent Defense Plans which were due Nov 1, 2013 (if applicable):
 - Public Defender Plan or Proposal under Article 26.044, Code of Criminal Procedure
 - Managed Assigned Counsel Plan of Operation under Article 26.047, Code of Criminal Procedure
 - Contracts for Indigent Defense Services

New Attorney Reporting Requirement

Starting October 15, 2014

Code of Criminal Procedure Article 26.04. Procedures for Appointing Counsel.

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

(4) not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code.

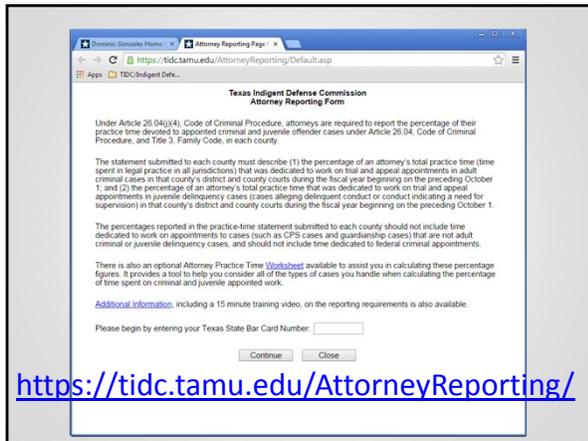
New Attorney Reporting Requirement

Starting October 15, 2014

- Report covers prior 12 months (Oct 1-Sept 30)
- TIDC promulgated optional worksheet in 2014 to assist attorneys estimate their practice time
- Report applies to public defenders, contract attorneys, and all assigned counsel
- Penalties for failing to submit practice-time statement by October 15 due date may be set by judges
- Penalties may include an attorney's removal from appointment list as many do for late CLE report

Practice Time Paper Form Submission

- If attorneys were directed in the local plan to use paper form then the “county” will need to report attorney practice-time figures



Additional Information

For questions related to the attorney reporting and plan submission requirements, contact Deputy Director/Special Counsel Wesley Shackelford

wshackelford@tidc.texas.gov
512-936-6997

New County Reporting Requirement Starting November 1, 2014

Government Code Section 79.036. Indigent Defense Information.

(a-1) Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j) (4), Code of Criminal Procedure.

County Report- Number of Appointments by Attorney

- Attorney level case reports build on existing infrastructure -Indigent Defense Expenditure Report (IDER) which requires aggregate figures:
 - Cases paid by case type (Juvenile, Capital Murder, Adult Felony, Adult Misdemeanor, Juvenile Appeals, Felony Appeals, and Misdemeanor Appeals)
 - By court each year by November 1st (the same date as the new reporting requirement)
- Above information must be reported by attorney with total amount paid to each attorney

Court Attorney Report

- Total of Court Attorney Report should be the IDER Court Report

Sample Template Errors So far

- Blank Lines Inserted
- Not using the bar number (counties had duplicate payee numbers with slightly different names)
- Subtotal lines
- Using wrong data type in field (text in place of interger)

2 DIFFERENT ATTORNEY REPORTS

Attorney Practice Time

Attorney's Responsibility
Counties & Percentages

Paper Form = County has to enter.

Court Attorney Report

"county shall" - 79.036 GC
Number of Cases by Type by
Court & Total Paid by Court

Fiscal Monitor Review/Findings

Debra Stewart

<http://tidc.texas.gov>



Re-create IDER

- Can I verify that the information you are providing to me was used to prepare the IDER under review.
- Basically, Can I re-create the IDER with the information (i.e. General Ledger and or spreadsheets) provided? Do I have the universe of data to sample?
- Once information is verified, selection of sample invoices will be made.

Findings from G/L support

- Expenditures for Civil Cases included with Criminal Cases

The county included civil expenses, such as child protective services and guardianship cases, with the criminal indigent defense expenses in the FY 2013 Indigent Defense Expense Report submitted under Texas Government Code 79.036 (e)

Examples of Findings for Expenditures of Civil Cases included with Criminal

INDIGENT DEFENSE REPORTING							
DISTRICT COURT							
OCTOBER-DECEMBER 2012							
010.435.419 CONTRACT SERVICES							
DATE	pp	VENDOR NAME	DESCRIPTION	INV#	CASES	AMOUNT	CHK#
10/31/2012	112012	AMAND [REDACTED]SON	CS#18224 R BUSTAMANTE	18224	2	1,200.00	441141C
0/							
10/22/2012	112	[REDACTED]	CS#43997 CHILDREN	43997	1	300.00	441142C
10/24/2012	112	[REDACTED]	CS#43562 FATHER	43562	1	400.00	441142C
10/24/2012	112	[REDACTED]	CS#34075 FATHER	34075	1	400.00	441142C
10/30/2012	112	[REDACTED]	CS#45145 MOTHER	45145	1	525.00	441142C
1/31/2013	122	[REDACTED]	CS#45669-MOTHER	45669	1	575.00	442460C
xy							
10/29/2012	112012	C H [REDACTED]	C. CS#3314 JUVENILE	3314	1	100.00	441169C
10/29/2012	112012	C H [REDACTED]	C. CS#3350 JUVENILE	3350	1	250.00	441169C
1/3/2013	122012	C H [REDACTED]	C. CS#3352 JUV	3352	1	150.00	442048C
/3 500.00 ./							
10/22/2012	112012	D, B& C	CS#37774 FATHER	37774	1	400.00	441180C
10/22/2012	112012	D, B& C	CS#45121 FATHER	45121	1	400.00	441180C
10/22/2012	112012	D, B& C	CS#45603 CHILD	45603	1	450.00	441180C
10/22/2012	112012	D, B& C	CS#45031 CHILD	45031	1	1,800.00	441179C
11/29/2012	112012	D, B& C	AUTO VOID CHECK	20121129	-1	-1,800.00	441179V
0/							
9/21/2012	102012	JAMES F [REDACTED]Z	CS#15997 R GARCIA	15997	1	300.00	440744C

Request for Information

Required prior to visit - Please forward electronically, if possible the following by **Date:**
 General Ledger of activities that support the FY13 Indigent Defense Expenditure Report (IDER).

Information Required during Site Visit - Please make available immediately upon our arrival:
 A copy of the published attorney fee schedules for criminal and juvenile cases.
 An itemized list of services performed or consistent with adopted attorney fee schedule.
 Policy and accounting procedures as related to criminal indigent defense expenses.

Policy and Procedures regarding grant reporting
 Copy of the public attorney appointment list
 The record of selection of the court appointed attorneys approved by the majority of the judges.
 The records that exist which document that an attorney applied to be included on the public appointment list.
 The records that exist that document continuing legal education (CLE) of attorneys on the public appointment list.
 If applicable, provide a copy of any written contract(s) for indigent defense services.
 If applicable, a copy of the open bidding and selection process used to solicit contract attorneys, such as a Request for Qualification.
 If applicable, documentation to support contractual and equipment expenses.
 If applicable, inventory records of grant funded equipment purchases.
 If applicable, records which outline equipment with more than 1 year of usefulness and items of equipment with an acquisition cost of \$5,000 or more.
 If applicable, documentation to support salaries allocated to Administrative Expense.

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**Fiscal Monitoring
 Payment Elements (Legal)**

- Attorney Fee Vouchers and Invoices
 - Itemized
 - Submitted
 - Approved
- Proper Payment
 - Classification of Expenses
 - Attorneys on Wheel w/Judge Approval
 - Attorneys CLE Requirements

Examples of Invoice Findings

Attorneys do not include all cause numbers related to the cases disposed on the streamlined form. There were several of the consolidated forms submitted that listed one cause number; however, more than one case was indicated as disposed. Without a cause number for each case disposed, it

Examples of Invoice Findings



That is:

1. If a single indictment or information names more than one defendant, there is more than one case: as an example, if three defendants are named in one indictment, count this as three cases.
2. If the same defendant is charged in more than one indictment or information, there is more than one case: as an example, if the same person is named in four separate indictments, count this as four cases.
3. Finally, if an indictment or information contains more than one count (Article 21.24, CCP), report this as one case and report the case under the category for the most serious offense alleged."

Examples of Invoice Findings

During the review period the attorney fee schedule changed and the auditor's office made corrections to the attorney fee vouchers to support the fee schedule in place on the date of service reported by the attorney's. As these invoices were changed to support the fee schedule in effect there was no evidence that the corrected amount was approved by the presiding judge and no written explanation by the judge as statutorily required.

Examples of Invoice Findings

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

Case No. **24178 P. 001874**

Attorney: **SEAN S. BARRON**

Client: **EL PASO COUNTY ATTORNEY'S OFFICE**

Case Title: **EL PASO COUNTY ATTORNEY'S OFFICE USE ONLY**

Multiple total of court time by \$15.00 per hour: **118.50**

Multiple total of court time by \$60.00 per hour: **2430.00**

Multiple total of court time by \$100.00 per hour: **2430.00**

DATE: **10/24/12**

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- ### Fiscal Monitoring Payment Elements (Legal)
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IDER

- The statute (Texas Code of Criminal Procedure Article 26.05 (c)) states 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”

The Transaction

1. Qualification (ID Plan and fee schedule)
 - Defendant was informed of Rights, asked if they want attorney, a record of the response in county
 - Defendant Requested Counsel
 - Magistrate or Court Designees determined defendant qualified
2. Legal Authority Appoints Attorney (TLGC §262.022. (6))
3. Service is Rendered (ID Plan and fee schedule)
4. Invoice Submitted By Attorney (TxCCP Art. 26.05)
5. Invoice Approved by Judge (TxCCP Art. 26.05)
6. Invoice Paid (TLGC §113.064)

IDER

Completing the Report

1. Arrange Information by Court
 - a. Amount Spent
 - b. Cases Disposed on Itemized Invoice
 - c. Other Costs
 - d. Special Considerations (PD, MAC, Contract)
2. Complete Report On-line
 - a. Input Information by Court
 - b. Ignore Case Filing Arrangements in Clerks' Office
 - c. Ensure All Payments are sorted to Statutory Categories
3. Final Review by Stakeholders

IDER

- 4 Items of Costs Mentioned in Statute
 - Attorney Fees
 - Licensed Investigators
 - Expert Witness
 - Other Direct Litigation Costs
- 2 Types of Systems Mentioned in Statute
 - Private Attorney – Includes Assigned Counsel, Managed Assigned, and Contract Counsel Systems
 - Public Defender
- 4 Types of Courts
 - district, county, statutory county, and appellate court

Formula Grant

- Only to Counties
- November 21, 2014

Thank you!
Dominic Gonzales
512-463-2573

Debra Stewart
512-936-7561
