

Task Force on Indigent Defense

The Val Verde County Regional Public Defenders Office

May 2, 2006

The Val Verde County Regional Public Defender Program (PD) is intended to be cost effective advocates and ensure proper legal representation for indigent defendants. Goals include creating a public defenders office that will serve indigent defendants in Edwards and Val Verde County. Two other counties, Terrell and Kinney, will be offered the opportunity to participate. The program was implemented by contracting with a non-profit corporation as allowed under Texas Code of Criminal Procedure Article 26.044. This is the first time in Texas that indigent defense would be provided by a non-profit corporation and a first time it is provided on a regional basis.

Funding for the program is provided by the Task Force on Indigent Defense along with matching county funds. State funding derives from a state bar fee paid by attorneys to renew their law licenses. By statute the Task Force receives one-half of the money paid to fund “...*demonstration or pilot projects that develop and promote best practices for the efficient delivery of quality representation to indigent defendants in criminal cases at trial, on appeal, and in postconviction proceedings.*”¹ The PD office will provide court appointed counsel to people accused of crime and too poor to afford to hire their own attorney. Each county, statutory, and district (63rd and 83rd district) courts will participate in the program. Adult defendants and juvenile respondents are covered in this program. Occasionally, some individual appointments may occur outside this contract due to conflicts in representation (multiple defendants in a case, etc...) or death penalty cases not covered by this contract.

Program Development:

Val Verde County commissioners and judges began looking for possible solutions to rapidly increasing costs associated with indigent defense in 2003. The commissioners requested the Task Force staff be present as they listened to a presentation by TLRA. This presentation informed the commissioners and the courts in Val Verde County that one option to improve indigent defense with possible costs savings was to create a Public Defender office. It was presented that a public defender office could provide cost savings and improve defense services. The commissioners and courts also held a indigent defense forum with all of the local judges, law enforcement, prosecutors, Task Force staff, local defense bar representatives, and a representative of the County Judges and Commissioners Association. The courts and county made every effort to make an informed decision through forums and research.

The County applied for the FY2006 Discretionary Grant in October of 2005. Under the multi-year discretionary grant program, counties’ match amounts will rise each year of the grant as the counties’ share moves up to full funding. The grant match is 20%, 40%, 60% and 80% for each successive year. Thus, over the four year period the counties pay for one-half of the cost of the program (see Appendix A). Under the grant rules for regional programs the counties may still receive their formula grants. The grant funds provided the counties incentive way to accept higher risks of establishing a new program to improve indigent defense.

After the announcement of the grant award, the county quickly set up an oversight board to administer the implementation of a public defender system. The oversight board is made up of one district judge, the Val Verde County constitutional county judge, a Val Verde County commissioner and two members of the defense bar. Each county in the region that joins will provide one member to serve on the board. County commissioners issued a request for proposals to solicit eligible entities to offer to

¹ Texas Government Code 81.054(c)

provide services to Val Verde County. Only one proposal to operate a public defender system was received. The oversight board selected the proposal and recommended that the county commissioners enter into a contract. Under the authority of the commissioners court and with Task Force staff participation, two negotiations were conducted. One negotiation dealt with the business and financial terms. The other session reviewed the document amendments from the first session and discussed court process and legal issues. Texas Rio Grande Legal Aid (TRLA) was awarded the contract. The contract document is comprised of the Request for Proposals, the modified proposal submitted to the county and plain language of an annual contract with two renewal periods. The Chief Public Defender was hired by TRLA and approved by the oversight board.

Implementation:

The office opened on May 1, 2006. Edwards County commissioners court joined the Regional Public Defender program by inter-local agreement effective May 1, 2006. The inter-local agreement with Val Verde County requires Edwards County to pay the county’s population portion of a grant match for the public defender office to provide indigent defense to the county and district courts. If more counties join the regional program then each county’s portion will decrease slightly.

Several key elements of the program as implemented conceptualize indigent defense differently than what is found in most of Texas. These are: 1) daily investigative attorney client privilege interviews with newly incarcerated defendants; 2) use of video teleconference (VTC) equipment between the PD office and the county jails; and 3) initial indigency screening and recommendation conducted by the PD. The PD office commits to interview each incarcerated defendant daily at the jail. Arrangements will be made to determine the best strategy for weekend interviews. The interviews will consist of an investigator or staff from TRLA to conduct both a client intake and determination of indigency interview. They will use the VTC equipment to conduct the interviews in the other counties’ jails. Some routine ministerial court functions may be performed by the courts or PD using the equipment also. After the defendant interviews are complete the PD office will provide the proper courts with a summary report of defendants under their jurisdictions. The report will classify defendants into four categories: indigent, indigent but conflict exist, not indigent, or need court hearing to make determination. Orders appointing the PD will be completed and provided to the courts on all defendants determined to be indigent and eligible for PD services.

Background:

Since the implementation of the Fair Defense Act the counties covered by the 83rd Judicial District have provided indigent defense plans in accordance with the statute. Indigent Defense costs have risen in all of the counties of the designated region. Table 1 shows the amount of expenditures for each year since FY2001. The percent increase in the last column shows how much the counties have risen in FY2005 over the baseline year. It is important to note that some counties have had higher percentages in previous years than the FY2005 percentage.

Table 1						Percent Increase Over Baseline for FY05
County	FY01 Expenses (Baseline)	FY02 Total Expenses	FY03 Total Expenses	FY04 Total Expenses	FY2005 Total Expenses	
Edwards	\$6,463.00	\$8,688.41	\$23,797.59	\$23,214.62	\$15,623.11	259.19%
Kinney	\$5,086.00	\$14,297.21	\$13,392.78	\$24,383.00	\$20,787.25	379.41%
Terrell	\$45.00	\$8,432.84	\$15,495.68	\$5,505.88	\$3,089.65	12135.29%
Val Verde	\$176,404.00	\$184,167.88	\$301,472.00	\$268,681.00	\$323,659.48	52.31%

The Task Force has provided funds to most Texas counties through the formula grant program. The state portion of funding has been significant in Edwards, Kinney and Terrell counties despite the large indigent defense expense increases. This large percentage of state funding is largely due to a formula grant floor or minimum of \$5,000 per grant. The counties are estimated to save money as a result of receiving the discretionary grant. The major impact will be the improvement to the indigent defense system. Table 2 shows the spending by the Task Force in the counties prior to the Discretionary Grant establishing the Val Verde County Regional Public Defender Office.

Table 2	FY02 Grant Disbursed	FY03 Grant Disbursed	FY04 Grant Disbursed	FY05 Grant Disbursed
County				
Edwards	\$5,728.00	\$0.00	\$0.00	\$11,196.00
Kinney	\$6,086.00	\$6,580.00	\$6,562.00	\$6,792.00
Terrell	\$5,409.00	\$5,506.00	\$5,460.88	\$3,045.00
Val Verde	\$18,286.00	\$22,919.00	\$25,729.00	\$28,798.00

Of 17 Texas counties in the population range from 38,000 to 49,000, Val Verde County was above average in total number of cases paid. The total cases paid mean for this group of counties is 575 cases paid and the median is 507 cases paid. Val Verde County had total cases of 592 paid. This data indicates that Val Verde County had a higher appointment rate than other counties of similar size in the state. Additionally, a comparison of counties with high poverty rates indicates Val Verde County had more total cases paid than almost all of the counties with poverty rates of greater than 30%. Only the much larger counties of Cameron, Webb, and Hidalgo were the exceptions.

Table 3	FY2003	FY2004	FY2005
Val Verde County Cases Paid			
Felony	251	325	288
Misdemeanor	210	313	265
Juvenile	105	46	39
County Totals*	569	763	592

* County Totals may include appeals and other miscellaneous categories not listed above.

Beyond the comparative high number of cases paid, Val Verde County also had high average cost per case compared to the other counties between populations of 38,000 and 49,000. Table 4 shows that Val Verde County paid on average over 40% more than the median cost per case of the sample group. Val Verde County was well above the median average cost per case in all categories. They were near the maximum on juvenile average cost per case.

Table 4	Average Expense Per Juvenile Case	Average Expense Per Adult Case	Average Expense Per Case
Counties 38,000 to 49,000 population			
Median	\$370.73	\$373.41	\$361.67
Max	\$793.69	\$716.91	\$698.04
Min	\$126.42	\$280.28	\$272.03
Val Verde County	\$720.70	\$534.45	\$546.72

Finally, it is important to note that Val Verde County had 38% of the cases added to the court dockets resulted in a case paid. The median for the 17 counties between population of 38,000 and 49,000 was

26%. These financial and case elements point to the fact that Val Verde County had signs of improving indigent defense system prior to the establishment of the public defender office. The establishment of a public defender office should result in increased appointments to defendants and improved and prompt access to counsel.

Evaluation of the Public Defender Office:

A clear method of evaluation will be developed to demonstrate the success of this program. Like many jurisdictions, the courts and counties involved with the Val Verde County Regional Public Defender office did not keep definitive records on quality measures related to indigent defense. A true comparison will be unlikely between pre-implementation and post-implementation phases. Therefore excellent record keeping must be a priority of the new office. The TLRA demonstrated in their proposal that they will be able to alter their existing sophisticated tracking and monitoring system to accommodate the elements of the indigent defense program.

An effective system must track and provide summary reports of obvious program elements like number of cases, types of cases, dates of arrest, contact and case disposition. It must also attempt to track qualitative measure of improved effective assistance of counsel. The later elements tend to be inferential. No hard elements have been determined. The county, Task Force staff and TLRA will develop and improve upon case tracking and report systems. The group also needs to look at cost impacts not directly attributable to the indigent defense budget. One such point of evaluation will be how the daily interviews by the public defender affects jail populations and county bonding strategies. Financial systems will be monitored to help determine the cost effectiveness of the program.

Appendix A

**VAL VERDE COUNTY
FUNDING SCHEDULE**

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	
Direct Costs	Amount funded 80%	Amount funded 60%	Amount funded 40%	Amount funded 20%	
1) Personnel (Total Number of FTEs: __)		\$0	\$0	\$0	
2) Fringe Benefits		\$0	\$0	\$0	
3) Travel and Training		\$0	\$0	\$0	
4) Equipment		\$0	\$0	\$0	
5) Supplies		\$0	\$0	\$0	
6) Contract Services	\$587,880	\$587,880	\$587,880	\$587,880	
Total Direct Costs	\$587,880	\$587,880	\$587,880	\$587,880	
Indirect Costs:			\$0	\$0	
7) Indirect Costs	\$0		\$0	\$0	
Total Indirect Costs			\$0	\$0	
Total Proposed Costs	\$587,880	\$587,880	\$587,880	\$587,880	
Less Cash from Other Sources – County Match	\$117,576	\$235,152	\$352,728	\$470,304	Four Year State Total
Total Amount Funded by Task Force	\$470,304	\$352,728	\$235,152	\$117,576	\$1,175,760