

Texas Task Force on Indigent Defense

**A Strategic Plan for
improving Texas indigent
defense criminal justice systems
2005-2010**

November 2005

Mission Statement

The mission of the Task Force on Indigent Defense is to improve the delivery of indigent defense services through fiscal assistance, accountability 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.

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Honorable Olen Underwood Vice-Chair – Presiding Judge, 2nd Administrative Judicial Region

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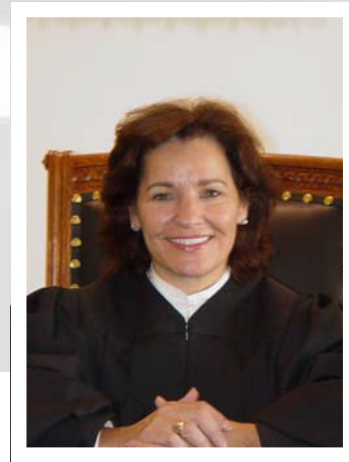
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Dear Fellow Citizens, Friends and Colleagues:

It is a distinct honor and privilege to serve the people of Texas as Presiding Judge of the Texas Court of Criminal Appeals and as Chair of the Texas Task Force on Indigent Defense. I am committed to building on the strong foundation of excellence established by the members of the Task Force and, by doing so, strengthening our judicial system's ability to serve the needs of the people of Texas. The Task Force has sought advice from and will continue to call upon citizens in every part of our state to take an active role in improving our indigent criminal defense system. Many of you have already answered our call for assistance by responding to our survey and offering feedback and suggestions as we developed the Strategic Plan set out in the following pages. I am grateful for your efforts and ask that you continue to offer input and support as we implement the Strategic Plan.

On behalf of the Task Force, we look forward to working with our many partners in improving the delivery of justice to all Texans.

Sharon Keller

A Strategic Plan for improving Texas indigent defense criminal justice systems 2005-2010

Executive Summary

In January 2002 the Texas Fair Defense Act (FDA) became effective after its adoption by the Texas Legislature in 2001. The FDA is a major landmark promoting fairness and justice in Texas. The legislation established, for the first time in the history of the state, an organization to oversee the provision of indigent defense services in Texas. The oversight organization is the Texas Task Force on Indigent Defense (Task Force), a permanent standing committee of the Texas Judicial Council, staffed as a component of the Office of Court Administration (OCA). The Task Force has authority to set statewide policies and standards for the provision and improvement of indigent defense, to grant state funds to counties for that purpose, and to monitor counties' compliance with policies and standards. The Task Force is a body of thirteen appointed and ex-officio members supported by six full-time staff members. It is headed by the Honorable Sharon Keller, Presiding Judge of the Texas Court of Criminal Appeals. Other members of the Task Force and staff are listed on page ii.

The Task Force and staff converged for a two-day (August 4 and 5, 2005) strategic planning session to take stock of the progress of indigent defense policies in Texas and to chart a strategic vision to guide further improvements. This report presents the results of this effort.

The challenges ahead involve three distinct but related goals:

- ▶ the exploration of standards development,
- ▶ the targeting of technical assistance to improve the delivery of services while creating the evidence to demonstrate positive outcomes, and
- ▶ the distribution of funding to maximize the impact of state funds.

The strategic plan is oriented toward exploring the best way to accomplish these three goals over the next five years.



In all criminal prosecutions, the accused shall enjoy the right to . . . Have the assistance of counsel for his defense.

—U.S. Const. Amend. VI

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Improving Indigent Defense by Policies and Standards Development

Strategic Goals

Goal One: Improving Indigent Defense by Policies and Standards Development

The Task Force is charged with improving indigent defense services through the development of policies and standards. Initiatives under this goal will be undertaken to provide additional consistency and improvement in the way Texas delivers indigent defense services. While the FDA contains a variety of statutory requirements, the Task Force is given broad authority to develop additional policies covering a wide range of indigent defense issues. In approaching this process the Task Force is always mindful of the potential costs associated with implementing additional requirements. In a system funded largely by the counties, the Task Force wants to ensure that any new requirements can be implemented in a cost effective manner.

Section 71.060, Government Code, lists **15 specific** areas that may be addressed, as well as a general provision encompassing all other areas related to indigent defense. Below is a listing of the specific policy areas for potential standards development:

- Performance standards for counsel appointed to represent indigent defendants
- Caseload standards for ensuring appropriate workload for counsel appointed to represent indigent defendants
- Standards of indigence to determine whether a person accused of a crime or juvenile offense is too poor to hire counsel
- Policies and standards governing the organization and operation of an ad hoc assigned counsel program
- Policies and standards governing the organization and operation of a public defender office consistent with recognized national policies and standards
- Standards for providing indigent defense services under a contract defender program consistent with recognized national policies and standards
- Standards governing the reasonable compensation of counsel appointed to represent indigent defendants

Improving Indigent Defense by Policies and Standards Development

Section 71.060, Government Code continued:

- Standards governing the availability and reasonable compensation of providers of indigent defense support services for counsel appointed to represent indigent defendants
- Standards governing the operation of a legal clinic or program that provides legal services to indigent defendants and is sponsored by a law school approved by the Supreme Court
- Policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code
- Qualification standards under which attorneys may qualify for appointment to represent indigent defendants
- Qualifications appropriate for representation of mentally ill defendants
- Qualifications appropriate for representation of non-citizen defendants
- Qualifications appropriate for representation of defendants in death penalty cases
- Attorney testing and certification standards

Primary Strategic Initiatives

- ▶ Conduct a study to identify methods to improve the process of determining whether a person is indigent and the extent to which verification is cost-effective. The study will review the procedures used to determine whether a person is qualified for court appointed counsel in a small, medium and large county.
- ▶ Develop best practices to improve the process of determining indigence. The results of the study discussed above will be used to prepare recommendations for the development of an efficient method for determining whether a person is indigent, including a verification process that is cost-effective.
- ▶ Develop minimum standards for managing contract defender systems. The standards will provide counties with guidance that is not provided by the statute and will address key elements that are needed in contract defender systems, consistent with recognized national policies and standards.

Improving Indigent Defense by Policies and Standards Development

- ▶ Seek ways to increase qualification standards for attorneys to improve the quality of appointed counsel. In doing so, the Task Force will assure that increased standards do not lead to a reduction in the pool of qualified attorneys available.
 - This will include work on innovative ways to increase the pool of qualified attorneys in rural areas, since these areas of the state tend to have fewer attorneys available for indigent defense services. Creation of regional public defender offices or a Special Assistance Unit to help rural counties will be considered.
- ▶ Clarify the unique issues related to representation of children in juvenile courts, such as prompt appointment, indigency determination, and attorney training requirements. Once these have been clarified, a short informational booklet on indigent defense requirements for juvenile court will be developed and published.
 - This will include exploring how these issues relate to increasing the pool of eligible attorneys since there is a limited number of attorneys qualified to represent juveniles. Reduced rate or free CLE for attorneys who agree to accept juvenile appointments will be considered.
- ▶ Identify strategies to track attorneys' eligibility for public appointments in death penalty cases under statutory qualification factors and identify how to share that information with local jurisdictions. Develop strategies in collaboration with the regional presiding judges and Court of Criminal Appeals.
- ▶ Explore development of best practices for improving regional and local capital representation qualifications and for assuring attorneys meet the minimum requirements. Develop strategies for mentoring new death penalty capable defense lawyers.

Improving Indigent Defense by Policies and Standards Development

Other Strategic Initiatives

- ▶ Monitor fees paid to counsel appointed to represent indigent defendants and the cost per case to assure reasonable compensation is paid to attorneys. Increasingly stringent ineffective assistance of counsel requirements may be leading attorneys to spend more time on appointed cases, which may impact costs.
- ▶ Develop a best practices model to measure the performance of attorneys with a focus on the core elements of the FDA.
- ▶ Develop a framework to understand how to manage indigent defense support services such as experts and investigators for all indigent cases.
- ▶ Explore special issues related to representation of the mentally impaired in criminal or juvenile courts and consider the need for increased attorney qualifications and additional support services such as caseworkers and investigators.

Successful implementation of evidence-based principles can be achieved when equal emphasis is placed on organizational development and collaboration.

—U.S. Department of Justice

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Promote Local Compliance and Accountability with the Requirements of the FDA through Evidence-Based Practices

Goal Two: Promote Local Compliance and Accountability with the Requirements of the FDA through Evidence-Based Practices

The Task Force is charged with promoting local compliance with the fiscal and legal requirements of the Fair Defense Act. The purpose of the Fair Defense Act is to ensure that competent qualified counsel is appointed in a timely manner in all criminal cases where the accused is too poor to hire a lawyer. Moreover, the Task Force is responsible to ensure that state indigent defense money is used appropriately by local governments.

An evidence-based practice strategy was selected as the best vehicle to promote compliance and encourage improvements in outcomes related to indigent defense. The Task Force believes that issuing more compliance “rules” and requiring more monitoring reports may only lead to the promotion of “paper outcomes” — meaning that the outcomes become the production of the paperwork and not necessarily the production of a more effective indigent defense system.

The use of evidence-based practices moves away from this traditional and often ineffective approach. The purpose of an evidence-based practice is to encourage:

- ▶ Local commitment to conduct systematic periodic evaluation of indigent defense services to identify weaknesses and areas in need of improvement;
- ▶ State commitment to provide proactive technical assistance to localities as a means of improving the system; and
- ▶ State and local collaboration in developing evidence-based knowledge to guide future policy development at the local and state level.

For example, counties might review jail and court documents to determine if they are meeting the prompt appointment of counsel requirements. Documents might include offense reports, magistrates warning forms, affidavits of indigency, appointment of counsel forms, and jail logs.

Promote Local Compliance and Accountability with the Requirements of the FDA through Evidence-Based Practices

The Task Force will continually be looking for ways to improve the system by working with local jurisdictions. For instance, this might include collecting evidence on how courts make attorney appointments to defendants on bond in contrast to those who are unable to post bond. Another example might be to document the efforts of court appointed counsel in contacting the defendant after the attorney is appointed. Then based upon the findings, the Task Force will make recommendations on how to improve the process in compliance with the law.

The Task Force will continue to collaborate with local jurisdictions and outside researchers to evaluate key aspects of the indigent system. For instance, the Task Force through a pilot study will collect information on how indigence determinations are made and also show the efficacy of verifying financial information. The results will then form the basis for recommended best practices that could be implemented locally across the state.

To implement an evidence-based practice, a process must be developed for collecting the evidence to show whether particular practices are producing the desired outcomes. The FDA provides the following core outcomes for courts:

- ▶ appoint counsel promptly;
- ▶ specify objective qualifications for court appointed counsel for providing representation in misdemeanor and felony cases;
- ▶ provide an attorney selection process that is fair, neutral, nondiscriminatory and ensures that appointments are reasonably and impartially allocated among qualified attorneys;
- ▶ adopt procedures and standards to determine whether a person is indigent;
- ▶ adopt an attorney fee schedule that provides reasonable compensation for court appointed counsel and provides a process to pay expert and other litigation expenses; and, ensure that the juvenile board adopts a plan for juvenile offenders that addresses procedures and payment processes.

Promote Local Compliance and Accountability with the Requirements of the FDA through Evidence-Based Practices

Primary Strategic Initiatives

- ▶ Develop strategies and methodologies to measure the core outcomes and to set and encourage the adoption of local mechanisms to measure these outcomes.
- ▶ Coordinate with local stakeholders in establishing the measuring mechanism.
- ▶ Prepare and publish suggested methodologies to measure the outcomes.
- ▶ Test the methodologies by collecting the evidence in particular localities that want to participate as part of a technical assistance initiative.
- ▶ Provide technical and fiscal support, as needed, to localities to produce evidence-based outcomes to promote compliance with the FDA.
- ▶ Explore methodologies for the Task Force to receive, investigate, and react to specific complaints raised about the implementation of policies and standards, and set a strategy to assist in policy improvements in those areas in which complaints are found to be legitimate.
- ▶ Continue to collect, publish and monitor county expenditure data and indigent defense plan information.

Other Strategic Initiatives

- ▶ The Task Force must build upon the research infrastructure and relationships established with the Public Policy and Research Institute (PPRI) at Texas A&M University and other expert researchers to continue to conduct data-driven research projects at the state level and support long term policy development. Providing information about the Task Force activities with the public and interested groups is critical to its overall success. Effective communication strategies will build awareness of indigent defense issues and facilitate improvements in the system.

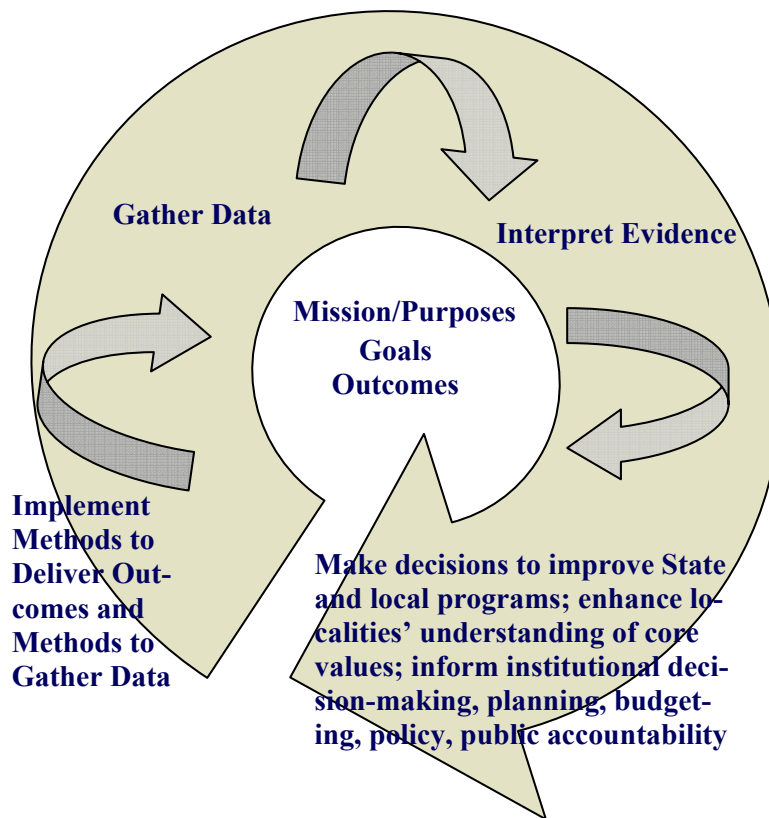
Promote Local Compliance and Accountability with the Requirements of the FDA through Evidence-Based Practices

Other Strategic Initiatives, continued

- ▶ Conduct “demonstration” projects and perform research in priority areas integrating the evaluation component from evidence-based practices.
- ▶ Develop strategy for timely and informative issuance of press releases related to noteworthy activities of the Task Force or counties.
- ▶ Target releases to news outlets in affected jurisdiction(s) and others with an interest.
- ▶ Promote collaboration with key stakeholders by continuing to meet frequently with county officials, the judiciary, the defense bar, and public interest groups so that the Task Force understands the key issues of each and can be more responsive to the needs expressed.
- ▶ Assess the impact of additional stakeholders, such as prosecutors and law enforcement, on the indigent defense system and recommend ways to promote their involvement in improving the system.
 - The results of the Task Force’s current study on direct electronic filing of criminal cases will be used as one tool to help demonstrate this impact.

Promote Local Compliance and Accountability with the Requirements of the FDA through Evidence-Based Practices

The following graph represents an Evidence-Based Practice Cycle*



*Adapted from Maggy Maki, Ph.D. by Marilee J. Bresciani, Ph.D. and used with permission by the Texas Task Force on Indigent Defense

In our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.
—Hugo L. Black

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Develop Effective Funding Strategies

Goal Three: Develop Effective Funding Strategies

Distributing state funds to counties to improve indigent defense services is a critical responsibility of the Task Force. State funds are distributed in a way that reinforces the Task Force's policies and promotes compliance with the requirements of the Fair Defense Act. Along with the substantive requirements of the FDA, the provision of state funding to assist the counties in meeting their constitutional and statutory duties is paramount for improving the delivery of indigent defense services. To maximize the impact of funding and the quality of services, the Task Force will act in three areas:

- ▶ Allocate and account for the distribution of state funds;
- ▶ Develop specific strategies to increase state funding; and
- ▶ Promote the effective use of state and local funds at the local level.

The initiatives that support this goal will assure funds available for indigent defense services are utilized in the most effective way and are sufficient to meet the state's obligations.

Since its inception in 2002, the Task Force has striven to distribute state funds in a fair manner that best meets the needs of state and local government. Critical decisions were made to allocate funds for a variety of programs. Overall, state funding has continued to increase incrementally over the last four years. During the last regular session, the legislature provided some additional funding for indigent defense by appropriating to the Task Force any excess funds from the juror pay raise bill, SB 1704. The Task Force first noted the variable revenue projections associated with this bill and the resulting uncertainty surrounding future cash flow for the program but agreed on a general strategy to distribute those new funds that parallels the present distribution strategy.

At the strategic planning session, the Task Force reached consensus that specific policies for increasing state funding must be explored. Although the Texas Legislature is ultimately the entity that must authorize any new sources of funding, the Task Force has specific authority to make recommendations to the legislature for needed improvements in the indigent defense system.



Develop Effective Funding Strategies

The Task Force also wants to maximize the effectiveness of the limited state and local resources available. The Task Force decided to continue to develop the knowledge base about effective policies and programs through the strategic use of state funds.

Primary Strategic Initiatives

- ▶ Continue to evaluate the appropriate allocation amounts to each of its main funding strategies, especially the amount devoted to new and innovative programs funded with discretionary grants.
- ▶ Assure financial commitment of counties to new programs initially funded by the state so that successful programs are continued even as state funding is phased out.
- ▶ Explore development of alternative sources of revenue to fund indigent defense, including consideration of seeking federal grant funds.
- ▶ Explore feasibility of state funded specialized programs to provide indigent defense services, including:
 - Appellate public defender offices
 - Capital public defender offices
 - Public defender offices focused on rural areas
 - Other specialized public defender offices focusing on representing mentally impaired or juveniles

Other Strategic Initiatives

- ▶ Target technical support funding on promising projects to assess various components of the indigent defense system and assist in the development of best practices.
- ▶ Target technical support funds to remediate issues encountered during program or fiscal monitoring.



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