



August 5, 2016

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

Vice Chair:
The Honorable Olen Underwood

Ex Officio Members:
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Honorable Linda Rodriguez
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Honorable Olen Underwood
Honorable Jon Burrows
Mr. Anthony Odiorne
Mr. Don Hase
Executive Director:
James D. Bethke

Honorable Robert Hebert
Fort Bend County Judge
Via E-mail: ann.werlein@fortbendcountytexas.gov

RE: FY2017 Statement of Grant Award – Grant Number 212-67-D05

Dear Judge Hebert:

I am pleased to inform you that the Texas Indigent Defense Commission has awarded Fort Bend County a **FY2017 Continued Discretionary Grant** in the amount of **\$497,591** in response to your application titled **Fort Bend County Public Defender**. Your Statement of Grant Award for fiscal year 2017 is attached. Please sign, scan, and return via e-mail the Statement of Grant Award to **Edwin Colfax** at ecolfax@tidc.texas.gov on or before **9/5/2016**. You do not need to mail a copy.

Congratulations to Fort Bend County on taking the lead in Texas by developing this new indigent defense program. If you have any questions or need clarification of the information contained in this letter or the attached Statement of Grant Award, please contact Edwin Colfax, the Commission Grant Program Manager at (512) 463-2508.

Sincerely,

Sharon Keller
Chair, Texas Indigent Defense Commission
Presiding Judge, Court of Criminal Appeals

Copy:

Robert Strudivant, County Auditor, ed.sturdivant@fortbendcountytexas.gov
Roderick Glass, Program Director, roderick.glass@fortbendcountytexas.gov



**TEXAS INDIGENT DEFENSE COMMISSION
Statement of Grant Award
FY2017 Discretionary Grant**

Grant Number: 212-67-D05
 Grantee Name: Fort Bend County
 Program Title: Public Defender
 Grant Period: 10/1/2016-9/30/2017
 Grant Award Amount: \$497,591

The Texas Indigent Defense Commission (herein, the Commission) has awarded the above-referenced grant to Fort Bend County (herein, the County) for indigent defense services. The authorized official named on the grant application must sign this Statement of Grant Award and return it to the Commission by August 5, 2016. The grantee will not receive any grant funds until this notice is executed and returned to the Commission. Funding is provided as listed in the categories in the table below:

Direct Costs:	
1) Personnel (Total Number of FTEs: 9)	\$557,456
2) Fringe Benefits	\$241,863
3) Travel and Training	\$9,000
4) Equipment	\$0
5) Supplies	\$21,000
6) Contract Services	\$0
7) Indirect Costs	\$0
Total Proposed Costs	\$829,319
Less Cash from Other Sources- County Match	\$331,728
Total Amount Funded by Commission	\$497,591

Standard Grant Conditions:

- The authorized official for the grantee accepts the grant award.
- The authorized official, financial officer, and program director, referred to below as grant officials, must comply with the terms of the grant as written in the Request for Applications issued in January 2016, including the rules and documents adopted by reference in the Commission’s Grant Rules in Title 1, Part 8, Chapter 173, Texas Administrative Code.
- The grant officials understand that a violation of any term of the grant may result in the Commission placing a temporary hold on grant funds, permanently de-obligating all or part of the grant funds, requiring reimbursement for funds already spent, or barring the organization from receiving future grants.
- Disbursement of funds is always subject to the availability of funds.
- The grant officials agree to follow the grant terms contained in the “Required Conditions and Report” contained in Attachment A which includes the final grant application.
- Any indigent defense plan documents submitted to the Commission must continue to meet all grant eligibility requirements.
- The judges hearing criminal and juvenile matters must amend the Indigent Defense Plan for their respective courts to include the program funded under this award and submit it to the Commission by November 1, 2015.

The authorized official for this grant program has read the preceding and indicates agreement by signing the Statement of Grant Award included below.

Signature of Authorized Official

Name & Title (must print or type)

Date

Attachment A

Terms, Conditions, and Deliverables

In addition to the program requirements stated in the Request for Applications (RFA) these specific program requirements apply to this funded program.

Grant Term

- The budget appearing in the Statement of Grant Award was developed under the assumptions that the grant be based on a 12-month period. The schedule provides the county twelve months of funds at each of the original agreed upon funding levels. If the county has a delayed start in the first year, it may necessitate an adjustment in future years to allow the county to fully expend grant funds. The intention is to follow a declining schedule of 80 percent in the first year; then, 60 percent in the second year; then, 40 percent in the third year; and 20 percent in the final year of the Commission support. The grants will remain on a fiscal calendar (October to September), but future awards will reflect any needed modifications to implement this policy.
- Equipment costs listed in the first year start-up budget will not be carried forward into subsequent years of funding.

Program Policies and Standards

- The County will operate directly a Public Defender's Office as defined in Article 26.044 of the Texas Code of Criminal Procedure.
- The County must maintain a Public Defender Oversight Board in accordance with Texas Code of Criminal Procedure Article 26.045 to supervise the operation of this program. The County must submit a written policy on how the members are selected and which details the duties and procedures of the board with the first quarterly progress report.
- The program's Oversight Board is responsible for recommending to the commissioners court the selection or approval of the Chief Public Defender. The Chief Public Defender will be responsible for the implementation of this program and will hire staff sufficient to operate the department. Staffing with attorneys and support personnel must be supported by sufficient caseloads.
- The County must develop a written policy that includes caseload standards for each attorney and for the general operation of this program as required in Texas Code of Criminal Procedure Articles 26.044. In developing caseload standards, nationally recognized standards, research-based guidelines and standards used by other states shall be taken into consideration. **The written policy for caseload standards must be provided to the Commission staff prior to accepting appointments.** The caseload policy should require the Chief Public Defender to review actual caseloads at least quarterly. The Chief Public Defender may approve higher or lower caseloads than the adopted standard based on overall complexity of cases, overall type of cases, attorney experience, support staff experience, or other factors that affect the delivery of services. The Chief Public Defender must notify the program's Oversight Board in writing if an exception to the caseload standards is authorized.

Required Reporting

- The County must provide to the Commission staff the minimum job requirements and a full job description of the staff positions specified under this project before positions are publicly posted.
- A Public Defender Office Case Representation Policies and Procedures Manual must be developed and provided to the Commission with the 2nd quarterly progress report. The Public Defender Office should consider professional standards of representation such as the Texas State Bar Performance Guidelines for Non-Capital Criminal Defense Representation when developing the manual. Any revised versions of the Policies and Procedures Manual must be submitted with regular quarterly progress reports.

- This grant requires quarterly progress reports to provide information on the effectiveness of the program. The Commission grant manager will create an on-line progress report sufficient to document the work performed in this program, compliance with Fair Defense Act requirements and other information necessary to evaluate the impact of the program. The County will be able to request modifications to the on-line report when the performance measures are determined to not accurately reflect the work performed. See the Timeline for Reporting and Fund Distribution at the end of this document for dates.
- The County will submit quarterly expenditure reports to obtain reimbursement of the scheduled percentage of expended funds based on actual expenditures. The reimbursements will be proportional to the county's required match. See the Timeline for Reporting and Fund Distribution at the end of this document for dates.
- The County will develop a data collection plan in consultation with the TIDC grant program manager to be submitted with the first progress report. The data collection plan will include a list of data elements that the program will track to accurately document the work performed under this program as well as the data necessary to evaluate the impact of the program. For any data not directly available to the program director, the County must submit data collection agreements from county offices or departments to provide this needed data to the program director on a regular basis.
- The Public Defender's Office must record attorney and support staff work time in a manner that allows for accurate completion of the Indigent Defense Expenditure Report and Public Defender Addendum. Records must contain sufficient detail to allocate time and salary across categories of offenses (capital, non-capital felony, misdemeanor, juvenile, felony appeals, misdemeanor appeals, and juvenile appeals) and to document the number of cases disposed by attorney for each court.
- The County must conduct a survey of local stakeholders involved with the program during the 2nd and 4th years of operation of the program. The county must provide the Commission with a draft of any survey instrumental for feedback before it is distributed and provide to the Commission a copy of the analyses of responses. Survey results must be included with the final progress report submitted in both the 2nd and 4th year of the grant.

2016 Fort Bend County Discretionary Grant Application Narrative (Multi-Year Grant)

a. Application Form

Counties Represented: Fort Bend
 Fiscal Year: 2016
 State Payee Identification Number: 746001969
 Division To Administer Grant: County Auditor
 Program Title: Fort Bend County Public Defender
 Requested Grant Amount: \$756,911
 Financial Officer: Robert Ed Sturdivent
 Program Director: Roderick Glass
 Mailing Address: 301 Jackson Street; Richmond, TX 77469

b. Introduction (Executive Summary)

A public defender unit designed to take a specific set of cases will give Fort Bend County a hybrid indigent defense system that relies on appointed counsel as well as public defenders to provide indigent defense services in a manner that is more efficient and demonstrably effective and one that follows the principles of the American

Bar Association. It would provide much needed data that could also be used to evaluate court appointed counsel. It will allow the County to anticipate the cost of indigent defense for budgetary purposes and give the County some control over the indirect costs of pretrial incarceration

c. Problem Statement

Indigent Defense is currently handled by court appointed counsel with the exception of those mentally ill cases handled by the Mental Health Public Defender. The county pays the direct costs of court appointed attorneys and the indirect cost of pretrial incarceration in the County Jail.

District and County Court at Law dockets continually increase because of the number of cases filed each year. The increase is also due to delays, absent counsel, or excessive resetting of cases and; the County expects to add (1) County Court at Law and (1) District Court, thereby increasing the number of cases. The number of days before court appointed counsel visit their client after appointment is not currently tracked. Additionally, court appointed Attorneys are not evaluated on a regular basis throughout the year.

The majority of investigation of cases, if any, are handled by the court appointed counsel which, in turn, increases the time and expense of each case. Fort Bend County has no control over court appointed counsel and/or the number of needless resets. The county has no control over the number of days of pretrial incarceration. And, there is currently no accountability for court appointed counsel. Further, the county expense for indigent defense cannot be anticipated as it changes from year to year.

Attorney of the Day system, as it is currently implemented, does not provide continuity of representation as suggested by the Indigent Defense Commission. As the name implies, the "Attorney of the Day" represents the indigent person for only one day.

d. Objectives

A Fort Bend County Public Defender unit would be evaluated on a regular (monthly) and transparent basis throughout the year.

The Fort Bend County Public Defender system would have a budget that can be easily anticipated and provide accountability. The county and judges would know exactly how many open and closed case are handled by the Public Defender, whether clients have been visited in jail or in the office and the length of pretrial incarceration. A Public Defender would replace Attorney of the Day in at least one of the County Courts at Law and provide continuity of representation and place the county's indigent defense system more in compliance with the Office of Court Administration (Indigent Defense Commission) standards. Investigators employed by Public Defender system would insure that each case is investigated properly and would be available for other court appointed counsel.

A Fort Bend County Public Defender would provide closer parity of resources with the District Attorney's Office thereby insuring equality in the justice system for indigent defendants. Trained Public Defenders would provide efficient and effective assistance of counsel with proper investigation and discovery. Public Defenders would also be supervised by the Chief Public Defender and would be systematically reviewed thus ensuring that the Public Defender system would consistently give the best defense possible to indigent defendants. Moreover, it would provide accountability and much needed data that can be used for evaluating court appointed counsel. The Fort Bend County Public Defender with Court Appointed counsel would be a hybrid system of representation. It would enhance the representation of indigent defense in Fort Bend County and provide a much needed benchmark for court appointed counsel.

e. Methodology or Project Design (Activities)

Startup Tasks

- 1) Hire/appoint Chief Public Defender on or before November 1, 2015. Begin writing Policies and Procedures including case load limits and conflict policies. Expand current Mental Health Public Defender Advisory Board to include reports from Chief Public Defender.
- 2) Build out of office space complete on or before January 1, 2016. Office furniture, computers, printer, phones, and supplies ordered or received by January 1, 2016.
- 3) Hire Assistant Public Defenders, Investigator, and Support Staff on or before January 1, 2016.
- 4) Begin replacing Attorney of Day in at least one County Courts at Law on or before February 1, 2016.
- 5) Begin accepting appointments in both misdemeanor and felony courts by indigent defense coordinator on before February 1, 2016. Appointment made through indigent defense coordinator. Complete Policies and Procedure with case load limits.
- 6) Begin entering cases into Defender Data, a case management system, by February 1, 2016.

- 7) Begin reporting case data to Advisory Board and/or Commissioners Court by April 1, 2016.
- 8) Begin reporting average days clients spend in County Jail to Advisory Board and/or Commissioners Court by April 1, 2016.
- 9) Investigators to take on appointments of other indigent court appointed cases on or before April 1, 2016.
- 10) June 1, 2016 begin review and evaluation of staff by Chief Public Defender.

On-going Program Activities

- 1) Public Defender to accept minimum of 10 percent of all non-capital cases. (2014 number = 458 cases); Driving While License Suspended/Invalid (DWLS/DWLI 2015 number = 180). A total of 638 or more in a mixture of misdemeanor and felony cases anticipated each year. At least one District Court and one County Court have agreed to participate. Other judges have tentatively agreed.
- 2) Chief Public Defender to meet with Advisory Board (Oversight Board) bi-monthly providing the Board with number of accepted cases, active case load, number of pretrial incarceration days, number of cases closed, running average of jail days, average days after appointment before first contact with client, number of cases investigated by investigator. Data collected to be used to create evaluation for court appointed counsel by judges or appropriate board.
- 3) Chief Public Defender to present to Commissioners Court monthly on the total number of active cases, total closed cases, number of days of pretrial incarceration for the month preceding, and the average days of pretrial incarceration.
- 4) Chief Public Defender to meet with counsel of judges and/or any other stake holders periodically to facilitate any problem areas or preferences in running of court dockets or in data collection.

f. Evaluation

- 1) Court appointments of indigent defendants accepted online through indigent defense coordinator. Public Defender will be added to the case rotation by the indigent defense coordinator. Number of appointments would be gathered both electronically by indigent defense coordinator and the Public Defender office database (Defender Data).
- 2) Public Defender will visit clients in jail within 24 hours of appointment during the week or the next business day if appointed over a weekend. (Record of first visit kept in Defender Data). Public Defender will mail letter to last known address if indigent defendant has bonded out of jail. Public Defender will keep in contact with defendant during pendency of the case (number of visits noted in Defender Data).
- 3) Number of jail days clients spend in jail pretrial counted before plea or trial. (That information is already shared by the Sheriff's Office). Separated by misdemeanor cases and felony cases.
- 4) Article 39.14 Discovery Motion filed in each case and noted in Defender Data. If Discovery Motion waived by defendant, it will also be noted Defender Data.
- 5) Number of clients or witnesses investigated by Investigator kept by log both electronically and physically. Number of outside court appointed cases investigator is assigned to kept both electronically and physically.
- 6) Total number of cases closed and active cases kept electronically by Defender Data and physically by closed file list.
- 7) Criminal history reports gathered by investigator kept by log (as required by TCIC) and electronically on Defender Data.
- 8) Number of cases investigated and type of investigation kept both physically (log) and electronically by Defender Data.

g. Future Funding

Fort Bend County already pays for indigent defense by paying for Court Appointed counsel. The County, however, has no control over the costs and cannot anticipate the cost during the budget season. County also has no control over the indirect of costs pretrial incarceration. There is currently no accountability. Of the number of cases the Public Defender is proposed to take on, the county in 2014 spent approximately \$700,000 or more not including the indirect costs of pretrial incarceration spent in the County Jail. The county would use the monies that it would have spent on court appointed counsel and fund the Fort Bend County Public Defender. Any increase in cost would be offset by savings in the indirect costs of defendant's jail days. The success of the Mental Health Public Defender program in cutting the number of days defendants spend in

jail plays a large part in the County's indirect cost savings. The increase in efficiency by a Public Defender program is also expected to cut the number of days defendants spend in the County Jail

h. Budget Narrative and Budget Form

Start Up Costs - 1 time costs, non-recurring.

Equipment - 9 computers - \$8,100.00; 9 desks \$25,200.00; 9 desk chairs \$3,100.00; 8 reception chairs \$500.00; 1 Printer/Copier/Fax \$5,500.00; 9 desk top phones \$6,840.00; 9 small book shelves \$3,100.00; 1 county vehicle (investigator) - \$17,800.00; 3 lateral file cabinets \$1,000.00. Total Equipment Start Up = \$71,140.00

Supplies: - extra \$2,000.00 added to supplies for 1-time purchase of permanent supplies including staplers, hole punches, desk materials, and other general office supplies for 9 FTEs.

Contract Services - build out costs is \$43,680.00. Offices will be within walking distance to courthouse and jail.

Indirect Costs - moving a 5-person office out of build out space to another building so that Public Defender can be within walking distance to the courthouse.

Operating Costs- recurring costs

Salaries and Fringe Benefits - Salaries and Benefits are based on a minimum salary. This cost may go up slightly and is an ongoing costs during the grant.

Travel and Training - Travel and Training costs include CLE for 6 attorneys and continuing education for investigator. Amount includes fee costs of the event, mileage costs, hotel costs, and meal allowance. County policy requires in-state travel only unless Commissioners Court approval is sought.

Supplies - on going supplies include toner and paper for copier, penal codes, other law books, file folders, labels, pens, paper clips, legal pads, and other general office supplies. Also included are yearly costs for Defender Data, Lexis/Nexis, ProDoc, cell phones, bar dues, TCDLA dues. Total = \$23,000.00

All purchases will comply with the Fort Bend County Purchasing Policy and State of Texas Procurement Act. The administration of applicants and personnel will comply with all policies adopted by Fort Bend County.

Timeline for Reporting and Fund Distribution

Reports will be submitted on-line at tidc.tamu.edu

Reporting Period	Report Due	Report Due Date	Fund Distribution Date
October 2016 through December 2016	Expenditure Report Progress Report	January 15, 2017	February 2017
January 2017 through March 2017	Expenditure Report Progress Report	April 15, 2017	May 2017
April 2017 through June 2017	Expenditure Report Progress Report	July 15, 2017	August 2017
July 2017 through September 2017	FINAL Expenditure Report Final Progress Report and Conclusion. Delivery of Final Product and Demonstration	November 15, 2017	December 2017