

STATE MANDATES: UNFUNDED AND UNDER-FUNDED
[PREPARED FOR COUNTY OFFICIALS BY THE TEXAS ASSOCIATION OF COUNTIES]

Introduction

There are many state-to-county mandates. Some are unfunded while others may be partially or even fully subsidized. The character of mandates may depend upon a number of factors such as the state appropriations process for a given biennium. Some mandates have been “on the books” prior to the adoption of the Texas Constitution of 1876 and are among the core responsibilities of county government, such as the duty of a county to provide a safe and suitable jail, a law dating back to the year 1846.

The dynamics of state-to-county mandates are often complex and varied. There may be off-setting factors that affect their nature such as criminal justice grants designed to promote a new program, the funds for which have, over time, been redirected or even depleted.

A substantial part of the mandate protection to be derived from an amendment to the Texas constitution is prospective—to deal with future legislation in a manner that will not materially disrupt county operations and adversely affect its important bond ratings.

Finally, it is not the intent of counties to contend that every statutory duty be funded by the State of Texas. This is an effort to identify some of the more apparent county mandates and to comment on their financial impact. It is offered as a beginning point to foster a better understanding among public servants and persons interested in the subject.

Indigent Defense Costs

The following is an example of an “under-funded” state-to-county mandate sometimes referred to as “The Fair Defense Act” that became law by acts of the 77th Legislature, effective January 1, 2002.

Vernon’s Ann. C.C. P. Art. 1.051 (a) through (k) provides for entitlement to counsel by an indigent defendant in an adversarial judicial proceeding (includes misdemeanor offenses where confinement can be taken into account as part of the punishment) together with mandatory time periods for judicial appointments; an enumeration of actions including appellate and post

conviction proceedings; establishment of minimum periods for counsel preparation; and procedures for waiver, withdrawal and reappointment.

Comprehensive Procedures: Vernon's Ann. C.C.P. Art. 26.04 sets forth the obligations to establish, publish and disseminate county wide procedures for appointing counsel together with mandated specifications for the process.

County Public Defender Program: Vernon's Ann. C.C.P. Art 26.044 enumerates the requisites for county public defender programs and systems including the establishment of maximum caseload maintenance and eligibility requirements for attorneys.

Juveniles: Vernon's Ann. Family Code Section 51.101 Appointment of counsel for juveniles.

Task Force & State Assistance: V.T.C.A. Government Code Section Chapter 71.058 Texas Judicial Council, Subchapter D. Task Force on Indigent Defense establishes the Fair Defense Account (appropriations for implementing the Task Force).

The state began issuing grants to counties in August 2002 to assist with implementing the Act. For state fiscal year 02 (Oct. 1, 2001-Sept. 30, 2002), counties received \$7,079,677.00 in formula (non-competitive) grants from the state. However, total county expenditures reported during FY02 were \$113,960,219.10, so the state's financial contribution covered about 6% of what counties spent to implement the Act during that fiscal year.

For state fiscal year 03 (Oct. 1, 2002-Sept. 30, 2003), counties were eligible to receive state funding in two categories: formula grants and discretionary (competitive) grants.

The amount of formula grants issued to counties during FY03 was \$10,410,103.00. The amount for discretionary grants was \$1,383,403 (These grants were issued on a competitive basis and required counties to forward proposals to the Task Force on Indigent Defense for consideration. Counties have used discretionary grant funds to fund public defender programs and other programs related to implementing the Act).

The total amount of state funding received in FY03 was \$11,793,506. However, total county expenditures reported during FY03 were

\$129,602,731.70, so the State's financial contribution covered about 9% of what counties spent to implement the Act.

For FY04, the state issued \$9.6 million in formula grants and \$1.1 million in discretionary grants (\$10.7 million total). The state's financial contribution for FY04 will be able to be determined in late 2004 after the county expenditure totals for FY04 are reported (reports are due in November).

Since the Act became effective, the state has contributed \$18,873,183 (\$29,573,183 if FY04 grants are included) and counties have reported expenditures of \$243,562,950.80 (through FY03).

This represents roughly an 8% contribution from the state (12% if FY04 grants are included) and a 92% contribution from counties (88% if you include FY04 state grants).

Based on FY 02 and FY 03 reporting, counties have expended the majority of costs to cover attorney's fees (about \$90 million in FY02 and about \$104 million during FY03).

Juvenile Probation Personnel

Vernon's Ann. Human Resources Code, Chapter 152 requires the commissioners court to pay the salaries of the juvenile probation personnel and other expenses certified as necessary by the juvenile board chairman from the general funds of the county.

The Indigent Health Care and Treatment Act

V.T.C.A. Health and Safety Code, Chapter 61, enacted in 1985, establishes the duty of a county, as the payor of last resort, to provide health care for indigent residents of the county under prescribed circumstances—if there is no hospital district or public hospital or other available source that serves in the area where the indigent resides.

The Act sets the limit of financial responsibility of a county at 8% of the county's general tax levy, including sales tax revenue. Once this annual financial threshold is reached, state assistance [reimbursement of 90% of eligible expenditures] is available depending upon the amount appropriated by the state and the availability of other authorized state managed revenue, if any. State reimbursement is not guaranteed and funding is subject to the appropriations

process, a venue where counties can, and sometimes do, become subordinated to a myriad of other considerations and interests.

Counties are not liable for indigent health care above the 8% amount—the public hospitals and hospital districts must continue to provide treatment however. The Act has been an unfunded mandate since its inception in 1985.

A county's financial participation beyond the 8% amount is not required. However, if counties do go over the 8% and seek reimbursement from the state for expenses incurred above that, they still lose 10% since the state reimburses for 90%, depending on state appropriations. Therefore, the state may not view indigent health care above the 8% threshold as an under-funded mandate, but in trying to protect county hospital emergency rooms from higher costs, it becomes one from the county perspective.

Prisoner & Inmate Mental Health Care

State Appropriations Act—Counties are mandated to provide both physical and mental health care services to indigent prisoners in their custody and control. State reductions in mental health care services may cause an increase in expenses for mental health care of persons incarcerated in county, particularly in providing psychotropic medications to treat illnesses such as schizophrenia, major depression, or bipolar disorder.

With reduced services due to state budget cuts, oftentimes, an adult or juvenile cannot tap into needed mental health services unless they enter the criminal justice system, or qualify for the jail diversion program. Under Appropriations Rider 55, Health and Human Services Commission, a study was ordered to determine the feasibility of closing or consolidating state MHMR facilities, state hospitals and state schools. Subject to the effect of the new jail diversion programs, closing these facilities may result in an undetermined increase in populations in county hospitals and jails.

Government Re-organization

HB 2292 from the 78th Legislature in 2003 is a massive reorganization law for all the state's health and human services agencies. Parts already have been implemented, and others are in the process of discussion and/or implementation. Currently, at least 45 counties have passed resolutions, requesting the state to reconsider one part of the reorganization. That part is

closing 217 of its 381 local Department of Human Services (DHS) offices and having clients or potential clients use call centers and the Internet.

Counties fear that closing local offices will impact them financially, due to increased costs to their indigent health care programs. Counties also fear that eligibility changes and reduction of Medicaid and CHIP funding could leave local entities to make up the difference in much more expensive ways such as emergency treatment.

Because it is too early to analyze the specific effects of HB 2292 – since its implementation is not final – it is classified as a potential unfunded or underfunded mandate that needs more study in the future.

Parole and Mandatory Supervision Violators

Persons (former inmates or “releasees”) who are detained in a county facility pursuant to a warrant issued on an alleged violation of an administrative condition of release—V.T.C.A., Government Code, Section 508.282 (Blue Warrants) requires disposition of the administrative charges against the inmate or releasee before the 41st day after the date on which one or several conditions apply [see 508.282 (A) & (B)].

This section of the Government Code imposes an unfunded mandate on counties because the state requires the (former state inmate) releasee be detained for up to forty days without compensation to the county. Even though the law requires the state to take action before the 41st day, administrative inaction beyond that period plainly adds to the financial impact of housing inmates pending a disposition of the blue warrant.

Note--although section 508 (d) implies that a sheriff may release an inmate, it requires a ten day advance notice to the department (Texas Department of Criminal Justice). It would be inappropriate as a matter of public policy and legally insufficient for the Sheriff to discharge these situated releasees.

Inmate Transfers from Jails

V.T.C.A., Government Code, Section 499.121(c) provides the state has a duty to accept inmates in a state correctional facility not later than the 45th day after the date on which all processing required for the transfer has been completed. This statutory requirement is an unfunded mandate because it does not provide for compensation to counties for prisoner care during the 45 day period.

Jail Standards

County jails must comply with the regulations promulgated by the Texas Commission on Jail Standards. V.T.C.A., Government Code, Chapter 511. The requirements of providing safe and suitable jails, V.T.C.A. Local Government Code, Section 351.001, are administered and managed by the Commission, and to the extent that counties are required to comply with its rules that involve expenditures, the Commission regulations constitute unfunded mandates.

Prisoner Expenses

Vernon's Ann. C.C.P. Art. 104.002 provides the following, in part: "(a) Except as otherwise provided by this article, a county is liable for all expenses incurred in the safekeeping of prisoners confined in the county jail or kept under guard by the county." The exceptions pertain to inter-county transfers and subrogation rights to recover medical costs provided by a county or a hospital district.

Reimbursement of Witnesses

State Appropriations Act—The 78th Legislature cut by half the \$1.2 million in annual appropriations to reimburse travel expenses for witnesses in criminal trials. The upshot in FY 2004 is that the state ran out of witness reimbursement money three months early. The Comptroller's office notified local officials by letter in the spring that this year's funds were about gone.

Witness reimbursement, with the approximately \$600,000 appropriated for FY 2005, is supposed to start up again in September, when the state's new fiscal year begins. More than likely, those funds will be depleted very quickly, since the state will have a number of this year's bills to pay then that cannot be paid now.

Visiting Judges

The 78th Legislature cut funding for visiting judges in the state's nine judicial districts by about 65 percent, leaving roughly \$6.8 million for the biennium, or \$3.4 million a year. That \$3.4 million a year compares to fiscal 2003 when the state spent \$11.1 million and 2002 when the state spent \$10.7 million on visiting judges.

Judges and court administrators expressed concern about the budget cuts in the March/April 2004 issue of *County* magazine. [See Page 36, “Lights Out at the Courthouse?”]

The Office of Court Administration (OCA) said it cautioned regional and local officials about the reduction in visiting judge funds when the fiscal year began last September. The OCA has not yet gathered statewide figures on the impact but said the number of visiting judge assignments has dropped this year, probably due to the warnings about less money being available. In terms of what the cuts have meant to caseloads, the OCA says it is too soon to know the impact.

Elections

According to numerous statutes in the Election Code, the burden of elections falls onto counties as mandated by the state. Yet counties do not receive funding from the state to conduct them. In Election Code, Sec. 1.014, it states that each county shall pay the expenses incurred to conduct an election. Special elections cannot be predicted as they are subject to the call of the governor or other entities, and therefore, adequate funds to cover potential special elections may not be included in a county's fiscal year budget.

State Reporting Requirements

Despite relatively recent efforts to relieve the burden of reporting to the state on the scope of county activities, a range of reporting requirements from the state constitute an under-funded mandate placed on counties and other local governments. (These efforts include a review and inventory of county and other local government reporting requirements with recommendations to streamline and reduce these reporting requirements--see Rider 9 in the General Appropriations Act, 77th Legislature and HB 2869, 77th Legislature).

In a May 2003 report, the state Department of Information Resources identified 292 reports required of local governments by 27 state agencies. Efforts to streamline and reduce reporting requirements are to be applauded but many of the mandates included here in this list nonetheless include often extensive reporting components. Although some of these required reports include within their statutes the authority to recover administrative costs, many others include no such provisions.

Neither is it certain that the allowances made for recovering administrative costs are adequate to cover the reporting costs. In the absence of specific authority or adequate provision for the recovery of reporting required by the state, counties must expend their own resources, whether these resources are additional county staff or staff time, technology and other demands on county resources.

On Site Sewage Facilities

Health and Safety Code Sec. 366.005 requires that electric utilities compile a weekly list of new electric service connections and forward to the county judge or designees. The judge or designee must then forward this list to each authorized agent with jurisdiction over addresses on this list. The authorized agent uses this list to ensure that those with recent electrical service have met OSSF installation and inspection requirements. The judge or designees must also forward this list to each appraisal district and each emergency services district in the county. No provisions exist for recouping these administrative costs.

Economically Distressed Areas Program

Health and Safety Code Sec. 366.035--In order for a county to qualify for Water Development Board Grants through the Economically Distressed Areas program, a county must receive and maintain the status of an authorized agent. Administrative, inspection and other costs of running an OSSF program may be recouped through fees, but the costs of starting the program must be born by the county.

Health and Safety Code Sec.366.036 The commissioners court must prepare and maintain a map of the county that lies outside municipalities, showing where what types of OSSF may be located. There is no direct reimbursement for this cost. Although a county is not required to participate in the program, the state has qualified eligibility for the benefits in such a fashion that the governing body of a county would, in most instances, be remiss in the performance of its duties if it ignored the under-funded “opportunity” to participate.

Platting

Local Government Code Sec.232.0025--Although a county may charge a fee to cover the costs of reviewing a plat application, mandated deadlines (1999)

added for approving the plat can require additional county staff. This is a partially funded mandate---review costs may be recouped through the fee but there are no provisions providing for the increased costs that may result (dependent on size and rate of growth of a county) from 60-day deadlines to take action on a plat application.

Local Government Code Sec. 242.0015--Counties and cities are required to reach agreements regarding the review and approval or disapproval of plat applications in the extra-territorial jurisdiction. If an agreement cannot be reached, arbitration is mandated, with the costs of the arbitration borne equally, regardless of the reasons for failing to reach an agreement--an unfunded mandate.

FEDERAL—CONGRESS-TO-COUNTY MANDATES

The federal government, acting through Executive Orders, Federal Agencies or the United States Congress, also imposes under-funded mandates on counties (and States).

Help America Vote Act [HAVA]

United States Code, HR 3295, a federal law enacted Oct. 2002 and HB 1549 acts of the 78th Legislature, June 2004: HAVA is a federal statute that imposes under-funded mandates on county government and other governmental entities. While some funding was appropriated by Congress for the states, the resulting amount is inadequate to cover all costs. Both the federal and state legislation requires that a direct recording electronic (DRE) voting system be available at each polling place by Jan. 2006 to allow people with physical disabilities to cast a vote as anyone else, privately and independently. House Bill 1549 specifies that this mandate should be in place not later than January 1, 2006.

The purchase of DREs will be reimbursed at around \$3000 each, which is the approximate cost of the unit itself. Items and administrative actions that will not likely be reimbursed that relate to the purchase of DREs include: set up costs, training, software, election judge's unit, back up DRE's in case of emergency, additional battery packs, public education, maintenance, printing of brochures and instruction sheets, *annual* software license and maintenance and optional extended warranties.

Air Quality Standards

Federal air quality standards (Clean Air Act) are a federal mandate, administered by the state through the state implementation plan. Grant programs administered by the state (Health and Safety Code Ch. 386) partially reimburse the cost of meeting air quality requirements, making it a partially funded mandate.

Water Quality Standards

Federal storm-water requirements under the Clean Water Act are administered by TCEQ. Abiding by the standards set forth under the Texas Pollution Discharge Elimination System program constitute an unfunded mandate for those counties that fall under the program's definitions. Any permissive authority related to environmental compliance and assumed by a county should not be considered a mandate. Violation of state environmental standards by a county should not be considered an unfunded mandate.

FINANCIAL IMPACT ON COUNTIES—SPECIFIC INSTANCES:

[Factual examples of how mandates have affected county operations]

Reimbursement of Witness Travel Expenses

McLennan County: The high-profile trial of former Baylor basketball player Carlton Dotson, accused of murdering his former teammate Patrick Dennehy, is expected to involve witnesses from several states, along with several expert witnesses. "If the state says they don't have any money, what do you do?" questioned McLennan County Judge Jim Lewis in the *Waco Tribune Herald*. "Who do we sue to get the state to pay? They are mandating some of these programs, and they mandate us to do it, then they say we don't have the money...What they are doing is dumping it all on us." Added District Attorney John Segrest: "The state writes the criminal laws. If the state wants us to prosecute and if they want juries to have good evidence to consider, then it's the state's responsibility to see that our witnesses are available and reimbursed for their expenses."

Bexar County: At least a dozen trials could be delayed until the new fiscal year begins. Normally, Bexar receives about \$60,000 in as reimbursement for what is spent on witness travel, but local officials have already been told that pending bills of about \$35,000 will not be paid this fiscal year, according to the *San Antonio Express-News*. District Attorney Susan Reed told the newspaper she will turn to emergency funds and seek continuances after putting together a list of

cases that could be affected. “We’ll just have to wait and see how bad they’re cutting us off at the knees,” she said.

Visiting Judges

Randall County had to make up for some of the lost money by budgeting from their local funds for visiting judges. The county budgeted \$100,000 to pay for visiting judges. County Judge Ernie Houdashell noted, “We traded paved roads for visiting district judges.”

Harrison County: 71st District Judge Bonnie Leggat in Harrison County – the only district judge in the county – requested a visiting judge to handle a capital murder trial for six weeks but was only able to get one for three weeks due to the state budget cuts. She could not turn to her neighboring counties for relief because the district judges there were in the same boat. Nor could the Harrison County Commissioners Court do what Potter County did; due to the doubling of indigent defense costs under SB 7, the county could not budget money for the unanticipated state cuts to the visiting judge program.

Collin County: During the 1990s, Collin County’s growth exceeded the number of district courts available. County Judge Ron Harris said the visiting judge program was essential because use of visiting judges kept the courts flowing while at the same time slowed the need for new district courts, for which the county must pay salaries and space.

Indigent Defense

Midland County reported spending \$857,234 last year but received only \$52,326 from the state – meaning a cost of more than \$800,000 to local taxpayers, according to the *Midland Reporter-Telegram*.

Potter County spends \$1.5 million for court-appointed attorney fees, according to the *Amarillo Globe-News*.

Lamar County’s \$23,000 state grant for indigent defense covers only about 10 percent of its bills for the program, says the *Paris News*.

Taylor County’s indigent defense bills topped \$720,000 in FY 2003, with the state only paying \$62,181 of that cost, according to the *Abilene Reporter-News*.

Indigent Health Care:

With the high number of uninsured Texans, the demands continue to grow.

El Paso County's run Thomason Hospital saw a \$20 million increase in charity care from fiscal 2001 through 2002.

Tarrant County's John Petersmith Hospital has experienced a 52 percent jump in charity care and uncollected bills, to \$294 million, according to the hospital's financial officer speaking to the *Fort Worth Star-Telegram*.

Fannin County's Judge J. Derrell Hall reports that his county spends \$750,000 a year on both indigent health care and indigent defense.

Note: TAC earnestly encourages readers and interested parties to comment on this list of mandates. To make comments, suggestions, corrections and other remarks you may email them if that is convenient. Email to staff members at TAC is as follows: Examples: to Elna Christopher: Elnac@county.org or Carey Boethel: Careyb@county.org

Other methods of commenting are equally encouraged. Should you prefer, you may contact any staff member of the Legislative Department via telephone at the following numbers: 1-800-456-5974 or 512-478-8753.

Letters may be addressed as follows: Texas Association of Counties, Post Office Box 2131, Attention: Mandate Comments, Austin, Texas 78768.

The Texas Association of Counties appreciates your continuing interest in helping make Texas county government the best in the nation. Thank you.