

Bowie & Red River County Discretionary Grant Closeout Evaluation

Public Defender Initiative



September 2013

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Bowie and Red River County Public Defender Initiative

Grant Closeout Report

I. Introduction

Program Overview and Background

In September 2007 the Task Force on Indigent Defense (now the Texas Indigent Defense Commission, or TIDC) awarded Bowie and Red River Counties a multi-year discretionary grant to help create a regional public defender office. The program provided representation to most indigent defendants in felony, misdemeanor and juvenile cases in the two counties. TIDC provided the grant over four years on the following schedule: 80% grant funding of project budget in the first year, 60% in the second year, 40% in the third year and 20% in the fourth year. This report will assess the implementation of the grant program, the extent to which the programs' objectives were achieved, and the overall impact of the program from the perspective of nationally recognized principles of indigent defense.

Jurisdictional Overview

Bowie County is located in the northeast corner of Texas on the Arkansas border. The 2010 census of 92,565 ranks Bowie as 40th in population among the state's 254 counties. Texarkana is the largest municipality, with the county seat in New Boston. The county's justice system is served by three district courts with felony jurisdiction and one county court-at-law with misdemeanor jurisdiction. Before the grant program the county relied on an assigned counsel model of indigent defense. In 2011, the final year of the grant program, total indigent defense expenditures were \$718,623, including 1,377 non-capital felonies, 1,523 misdemeanors, and 67 juvenile cases.

Red River County is adjacent to Bowie County on the west along the Oklahoma border. The 2010 census of Red River County was 12,860 and the largest municipality is Clarkesville, the county seat. Red River County is served by two district courts with felony jurisdiction, and the constitutional county judge presides over misdemeanor dockets. Prior to the grant program the county relied on an assigned counsel model of indigent defense. In 2011, total indigent defense expenditures in Red River County were \$86,554, including 170 non-capital felonies, 133 misdemeanors, and eight juvenile cases.

The Bowie and Red River Public Defender Office began operations in January 2008. In March 2011, assistant public defender Rick Shumaker was promoted to become the office's second chief defender. During the grant period the office consisted of the chief public defender, five assistant public defenders, an investigator and two administrative assistants. The office represents indigent defendants in felony, misdemeanor and juvenile cases. The Justices of the Peace, who conduct magistration hearings, are

authorized by the district and county courts to appoint the public defender for all non-conflict indigent defendants. As a result, the public defender represents the vast majority of indigent defendants, while private assigned counsel are occasionally appointed in cases of conflicts or other special circumstances. Since the grant period ended, the program has continued in Bowie County. Red River County, which had been served by one assistant public defender, has withdrawn in favor of operating its own program.

Grant Project Expenditures

Fiscal Year	Grant Award	Reported Expenditures	Grant Funds Disbursed	County Match
2008	\$621,516.80	\$658,490.32	\$526,792.26	\$131,698.06
2009	\$448,137.60	\$678,687.03	\$407,212.13	\$271,474.90
2010	\$298,758.40	\$782,037.39	\$298,758.40	\$483,278.99
2011	\$174,276.00	\$799,526.29	\$174,275.95	\$625,250.34
Total	\$1,542,688.80	\$2,918,741.03	\$1,407,038.74	\$1,511,702.29

The Goals of the Program

The counties' main grant objectives were laid out in their grant application:

1. To create an institutional presence to advocate for defendants in order to reduce the occasions where indigent defendants get lost in the system.
2. To provide early representation by defense counsel to ensure that indigent defendants' rights are more adequately protected in the criminal justice system.
3. To facilitate representation for quicker dispositions, alleviate jail overcrowding, and to move the court's docket more efficiently, when appropriate.
4. To provide specialized attorneys to participate in Drug Courts, helping the process to be more efficient and creating more continuity of representation of indigent defendants in drug court sanction hearings.
5. To allow for evaluation of case assignments and provide more uniformity in training, experience and specialization of defense counsel for indigent defendants.

Program Evaluation Questions

The implementation of the public defender office is a major structural change in the counties' indigent defense system. In addition to considering the degree to which the program achieved the counties' stated objectives, this report will also assess the program's compliance with key statutory requirements, evaluate impacts on case outcomes, analyze costs under the new office, and assess whether the office improved compliance with the American Bar Association's national indigent defense standards. The complete list of evaluation questions to be addressed is outlined below.

General Public Defender Program Implementation Standards

1. Did the county create a public defender oversight board?
2. Did the public defender adopt caseload standards, and were caseloads monitored?
3. Did all courts cooperate with the public defender office, and was the public defender appointed sufficient cases to utilize the office's capacity?

Standards Derived From Stated Objectives

4. Did the public defender provide representation to criminal defendants early in the process?
5. Did the public defender provide highly trained and specialized representation?
6. Did the public defender mitigate challenges to providing timely access to counsel in Red River County?
7. Did the public defender help to reduce the time from appointment to disposition for indigent clients?
8. Did the public defender participate effectively in the operation of the specialized drug court?
9. Did the public defender contribute to a reduction in jail population?
10. Did the public defender regularly monitor jail rosters to ensure that inmates are represented and to prevent delays?
11. Did the public defender supervise the quality of representation and enhance accountability?

Case Outcomes Analysis

12. Did the public defender contribute to an increase in case dismissals?
13. Did the public defender increase the likelihood that cases were disposed with alternatives to incarceration?

Cost Analysis

14. What impact did the public defender have on cost per case?

Assessment of Structural Benefits of Public Defender and Compliance with ABA Principles

15. Did the program improve compliance with ABA Principles?

Methodology, Site Visits, Data Collection

TIDC staff conducted a site visit on May 21-23, 2012 for data collection and stakeholder interviews. For this report the following data were collected and reviewed:

- Electronic case data from the Bowie County Clerk's office for 2006, 2009 and 2010.
- A randomly selected sample of case files in the clerk's office.
- Electronic case data from the public defender office database.
- Jail population data from the Texas Commission on Jail Standards.
- Data reported to the Office of Court Administration on cases added and case dispositions.
- Data reported to TIDC on indigent defense cases paid, county indigent defense expenditures, and grant program expenditure reports and grant progress reports.

- Stakeholder interviews, including the Constitutional County Judges of Bowie and Red River Counties, two district judges, the Bowie County Sheriff and the Chief Public Defender.
- Stakeholder survey responses.

In addition to the qualitative analysis of the program based on interviews, stakeholder surveys and review of program structure, policies and operations; we performed quantitative analysis to assess program impact on case outcomes, disposition time, jail population and costs. Data sources and methodology for each analysis are explained in those sections below.

II. Stakeholder Assessments of Program Effectiveness

In both interviews conducted for this report and in stakeholder surveys, county officials have generally provided positive feedback on the Bowie and Red River County Public Defender's Office, with a clear consensus that the office has improved indigent defense services.

Stakeholder Surveys

The TIDC grant was issued with a requirement that the county survey stakeholders solicit feedback on the performance of the public defender office. Two brief stakeholder surveys were conducted: the first in fall 2008, and the second a year later. Respondents included the judges presiding over felony, misdemeanor and juvenile cases, constitutional county judges, district and county attorneys, justices of the peace (who preside over examining trials and bond reduction hearings requested by the public defender), juvenile probation officers and the sheriff. The surveys indicate that stakeholders had favorable views of the public defenders' work and recognized improvements in the quality of representation.

In the 2008 survey, 47% of respondents reported they were "completely satisfied" with "the overall job the Public Defender's Office has been doing," and 53% reported they were "satisfied." When asked the same question in 2009, 58% were "completely satisfied" and 42% were "satisfied." Stakeholders were also asked if they agreed that the quality of representation of indigents has improved as a result of the public defender's office. In 2008, 47% said they "completely agree" and 53% said they "agree" that the public defender had improved the quality of representation. When asked again in 2009, 68% of respondents said they "completely agree" and 32% said they "agree."

Stakeholder Interviews

In 2012 TIDC staff visited Bowie and Red River Counties to gather data and interview stakeholders for this report. During this visit, key stakeholders expressed positive views about the public defender office. Their comments addressed the confidence in the quality of work, the continued improvement in the program over time, and the participation in coordinated stakeholder efforts to reduce unnecessary delays in case processing.

Judge Sterling Lacy is the Constitutional County Judge of Bowie County. According to Judge Lacy, the Public Defender Office is “just as dedicated to their job as the District Attorney.” Judge Lacy noted that the public defender participates in regular weekly docket review meetings at the jail with prosecutors, judges and probation officials at which they go through the jail docket to identify anyone who may be eligible for a personal recognizance bond. Judge Lacy was also found monthly case status reports from the Public Defender’s Office helpful in keeping him more informed of the operation of the indigent defense system.

Judge Morris Harville is the Constitutional County Judge of Red River County and presides over misdemeanor dockets. Judge Harville reported that overall he is “very pleased with the office and how it operates.”

District Judge E. Clifford is based in Lamar County and travels to Red River County one week per month. Judge Clifford said he believes that indigent defendants are getting representation earlier in the process because of the public defender. He noted that “if you did not have [the public defender] in Red River it would be very difficult to come up with attorneys who would take cases in that county.” Judge Clifford also expressed confidence in the quality of the public defenders work. “If I was in trouble,” he said, “I would have no problem with [the public defender] representing me.” Judge Clifford also reported a favorable impression of improvements in case processing. “When I got on bench 1200 plus cases were pending and they are down to very few cases, now about 150 pending. . . .If there’s any slowness, it is usually [because of] law enforcement and the DA.”

TIDC staff also interviewed Bowie County Sheriff Prince and jail administrator Amy Connor. Sheriff Prince noted that from his perspective that representation was coming late prior to the creation of the public defender. Ms. Connor confirmed that the public defenders now make routine and frequent visits to defendants in the jail. Sheriff Prince also reported that he believes the public defender has been partly responsible for reductions in jail population. “We routinely had over 400 defendants in the jail (before the program) and now the count is in the 300s. For example, today the jail count was 346 and last Wednesday, the count was 315.” Both Sheriff Prince and Ms. Connor mentioned the public defenders participation in the weekly jail staffing meeting as a very helpful tool to identify cases that need action and help reduce unnecessary pre-trial jail days.

Local Administrative District Judge Leon Pesek presides exclusively in Bowie County. He noted that before the program existed, representation was often delayed, with initial contact by defense attorneys often not occurring for weeks, and that the public defender gets involved much earlier. Judge Pesek also credited the regular Tuesday morning meetings as very helpful in resolving issues and avoiding delays. “In terms of zealous advocacy, people are getting representation and they are being represented well,” said Judge Pesek.

III. General Public Defender Program Implementation Standards

New public defender offices must comply with several statutory and regulatory requirements, including the creation of an oversight board and the adoption and monitoring of caseload standards. In addition, for public defender programs to be successful, it is important to have sufficient support and participation of courts that have appointment authority to ensure that the office's capacity is utilized appropriately. The Bowie and Red River County Public Defender is assessed on these points below.

1. Did the county create a public defender oversight board?

The counties created a public defender oversight board as required by statute. The formal activities of the board included the selection of the Chief Public Defender. Records of other activities and meetings of the oversight board were not available, and the board may not have formally convened except in regard to the selection and hiring of the Chief Public Defender. Membership on the oversight board consists of judges and county officials with whom the public defender office has regular interaction; however, TIDC recommends that the oversight board hold regular official meetings at least annually to review the program and operations of the public defender, and that records of these meetings be maintained. In addition to the creation of the oversight board, the county completed other essential start-up requirements, including development of thorough job descriptions for Chief Defender, first assistant public defender, assistant public defender, investigator and administrative assistant. In addition, the office put in place a comprehensive Policies and Procedures Manual.

2. Did the public defender adopt caseload standards, and were caseloads monitored?

One of the benefits of the enhanced oversight and accountability that a public defender provides is the ability to monitor and control caseloads and provide safeguards against excessive workloads. It is exceedingly difficult to monitor the caseloads of private counsel taking indigent appointments, particularly since most appointed counsel have substantial private practices. Because the public defender's caseload is exclusively court appointed cases, the Chief Defender can easily monitor the number of cases per attorney.

The Bowie and Red River County Public Defender's Policies and Procedures Manual sets caseload standards based on the National Advisory Commission on Criminal Justice Standards and Goals¹ (NAC Standards). According to the NAC standards, an individual attorney working full-time should represent clients in no more than 150 non-capital felony, 400 misdemeanor, 200 juvenile, 200 mental health, or 25 appellate cases within a twelve-month period. If an attorney has a mixed caseload, proportional calculations may be used to determine maximum mixed caseload.

While the implementation of the public defender provided much more visibility of caseloads for attorneys handling indigent cases than existed previously, it appears that caseloads routinely and

¹ National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, 1973, *Courts*. Washington, DC: National Advisory Commission, 186.

substantially exceeded the office’s adopted policy². For example, in FY2009 the public defender disposed of 1459 misdemeanors, 628 felonies and 35 juvenile cases. Based on the office’s policy, these cases would require eight full time attorneys, with at least four dedicated full time to misdemeanor cases. In FY2011 the public defender disposed 1309 felonies and 1523 misdemeanors, which according to the caseload policy would call for a staff of over 12 attorneys. At full staffing, however, the office employed five attorneys to handle Bowie County cases (including the Chief Defender).

Bowie County Cases Disposed by Public Defender

Fiscal Year	Felony	Misdemeanor	Juvenile
2008*	384	816	22
2009	628	1459	35
2010	844	1001	62
2011	1309	1523	66
2012	1260	1468	62

*Partial Year

The Chief Defender reports that the public defender oversight board is routinely informed of caseload figures. The office is not strictly barred from exceeding its caseload standards; however, when limits are routinely exceeded, the Chief Defender should formally revisit the office policy in consultation with the oversight board to ensure that caseloads are consistent with the defender’s ability to provide appropriate representation to each client.

3. Did all courts cooperate with the public defender office, and was the public defender appointed sufficient cases to utilize the office’s capacity?

The Bowie and Red River County Public Defender’s Office had the support and participation of all courts within the jurisdictions and was regularly appointed in most indigent cases, except conflicts. Justices of the peace conduct magistration hearings and are authorized by the district and county judges to appoint the public defender for any indigent defendants, which they do routinely. As a result, public defenders are assigned to each court in the jurisdictions and handle the vast majority of indigent cases in those courts. This change has reduced the scheduling challenges posed by coordinating dockets with a number of appointed counsel and made dockets operate more efficiently. Because all courts fully participate in the program, the public defender is able to operate at full capacity.

² Because the assistant public defender assigned to Red River County practiced exclusively in that county, this analysis considers public defender staffing separately for each county. Caseloads for the Red River County-based public defender were well within the office’s adopted policy.

Percentage of Bowie County Indigent Cases Disposed by Public Defender

Fiscal Year	Felony	Misdemeanor	Juvenile
2008*	56.1%	77.9%	26.2%
2009	88.1%	98.8%	77.8%
2010	89.8%	99.6%	87.3%
2011	95.1%	100.0%	98.5%
2012	95.4%	99.7%	92.5%

* Partial year.

The Bowie and Red River County courts should be commended for their full support of the public defender program, which has ensured that the office operates at full capacity. However, the extremely low frequency of misdemeanor cases handled by private assigned counsel suggests that screening for conflicts may not be sufficient to identify all conflict cases. While it is not possible to estimate conflict rates with precision, experience in most public defender offices indicates that conflicts (and thus the need to appoint separate counsel) can be expected to occur at rates above those suggested by the table above. TIDC recommends that the public defender review conflict screening procedures to ensure that conflict cases are not routinely missed.

IV. Achievement of Program Objectives

4. Did the public defender provide representation to criminal defendants early in the process?

By consulting with the client early in the process, an attorney can evaluate the case, understand the client's perspective, and decide what additional follow-up and investigation may be needed.

Stakeholder observations as well as the operational policies of the public defender demonstrate that the office has provided earlier access to legal representation for indigent defendants. Because justices of the peace appoint the public defender to the vast majority of non-conflict indigent cases as a matter of course, the office staffing model provides that an attorney from the public defender is on "jail duty" every weekday conducting client interviews. These interviews often take place on the same day as the defendant's request for counsel or on the next business day. "Prior to our office the private bar was appointed by fax notification of a new indigent defendant," said Rick Shumaker. "Realistically, there was not much contact with the clients prior to the first court appearance. . . . Our office has a policy of attending the Magistrates Court daily when we are appointed. We meet with most appointed clients immediately after magistration and begin the process of handling their case."

The jail interviews are part of a structured intake process through which information about all new clients' cases is gathered early in the process. By beginning substantive communication with clients early, the public defender can determine whether to file motions for bond reduction or request examining trials as soon as possible and can begin investigations while the facts are still fresh in the minds of witnesses.

5. Did the public defender provide highly trained and specialized representation?

Texas attorneys providing representation to indigent defendants are required to complete a minimum of six hours annually of continuing legal education in criminal law. The public defender goes beyond this minimum. Chief Public Defender Rick Shumaker reports that “each attorney is required to attend at least 25 hours of continuing legal education in the area of criminal law each year. We also hold regular office meetings and discussions where different legal authorities are discussed and spread throughout the office.” The office policies and procedures manual also sets out specific training protocols for newly hired attorneys and assigns them to more experienced attorneys in the office to serve as mentors. By organizing the defense function into a cohesive office, the public defender provides institutional resources for professional development that were not available previously.

In addition, public defender attorneys specialize exclusively in criminal and juvenile law. Prior to the creation of the office, most attorneys on the appointment list had mixed practices that included civil and family law matters. While attorneys with varied law practice can deliver competent representation, the public defender provides attorneys with the opportunity to specialize in certain areas of criminal law which better equips them to provide a high level of representation and to do so more efficiently. According to Chief Public Defender Rick Shumaker, “The benefit of our office is that we can devote the time necessary to each defendant's case in preparation for trial or plea that is required without the regard of ‘making a living’ as faced by private attorneys.” In addition to an exclusive criminal practice, most attorneys in the office (with the exception of the assistant defender assigned to Red River County) further specialize in felonies, misdemeanors or juvenile law. Attorneys are also assigned to a particular court, thus becoming more experienced with the procedures and other personnel assigned to that court. Taken together, these facets of the public defender office demonstrate that the office provides highly trained and specialized representation for its clients.

6. Did the public defender mitigate challenges to providing timely access to counsel in Red River County?

Red River County has a small population that includes very few attorneys. Prior to the creation of the public defender office, courts faced challenges in appointing attorneys for indigent defendants. Judges presiding in Red River County acknowledged that this lack of local attorneys often caused delays in representation and case processing. When the public defender office was created, one attorney was assigned exclusively to Red River County in order to provide timely access to representation and ready availability for court dockets.

7. Did the public defender help to reduce case processing time for indigent clients?

To analyze the impact of the public defender on case processing time, TIDC examined electronic case data provided by the Bowie County Clerk for 2006, 2009 and 2010. These years provide snapshots of case processing time both before and after the public defender’s office was created in 2008. In addition to comparing the case processing time before and after the public defender, we were also able to

compare case processing time for public defender cases to non-public defender cases in the same time period. In every comparison the public defender cases were disposed more quickly than non-public defender cases.³

Table 1: Median Case Processing Time (Arrest Date to Disposition Date)

Time Period	Attorney Type	County Court	District Court
Pre-Public Defender (2006)	Non-Public Defender	54 Days	386 Days
	Public Defender	36 Days	268 Days
Post-Public Defender (2009-2010)	Non-Public Defender	79 Days	444 Days
	Public Defender	36 Days	268 Days

Table 1 clearly shows that the public defender office reduced the time from arrest to disposition for indigent clients in both felonies and misdemeanors. For county courts, the median client represented by a public defender reaches disposition 43 days sooner than the median client represented by another type of attorney. For district courts, the impact is even more pronounced; the median public defender case are disposed about 176 days, or almost six months, sooner than the median non-public defender case.

8. Did the public defender participate effectively in the operation of the specialized drug courts?

Judges in Bowie and Red River Counties operate several special drug court programs in both county courts-at-law as well as most of the district courts. Prior to the creation of the public defender, most courts appointed a contract attorney to staff drug court dockets. The creation of the public defender has provided an institutional partner for the defense staffing of these drug courts that better integrates participation in these special programs with their clients’ overall defense representation through more continuity of representation. Because the public defender has usually represented participating defendants prior to their participation in a drug court (including negotiating for their clients’ eligibility to participate in the drug court program), public defenders tend to have a more substantive relationship with drug court defendants that puts them in a better position to counsel their clients on challenges and help them succeed in the program.

In addition to the advantages of the continuity of representation provided to drug court defendants, the public defenders who staff these programs annually attend the primary statewide drug court training conference as well as the main national training conference. This training is essential to equip the

³ For this analysis non-public defender cases include all appointed private counsel cases, retained attorney cases and *pro se* defendants.

defenders to successfully balance the collaborative dimensions of participating in a problem-solving court with zealous advocacy for the interests of their clients and the protection of their rights.

9. Did the public defender contribute to a reduction in jail population?

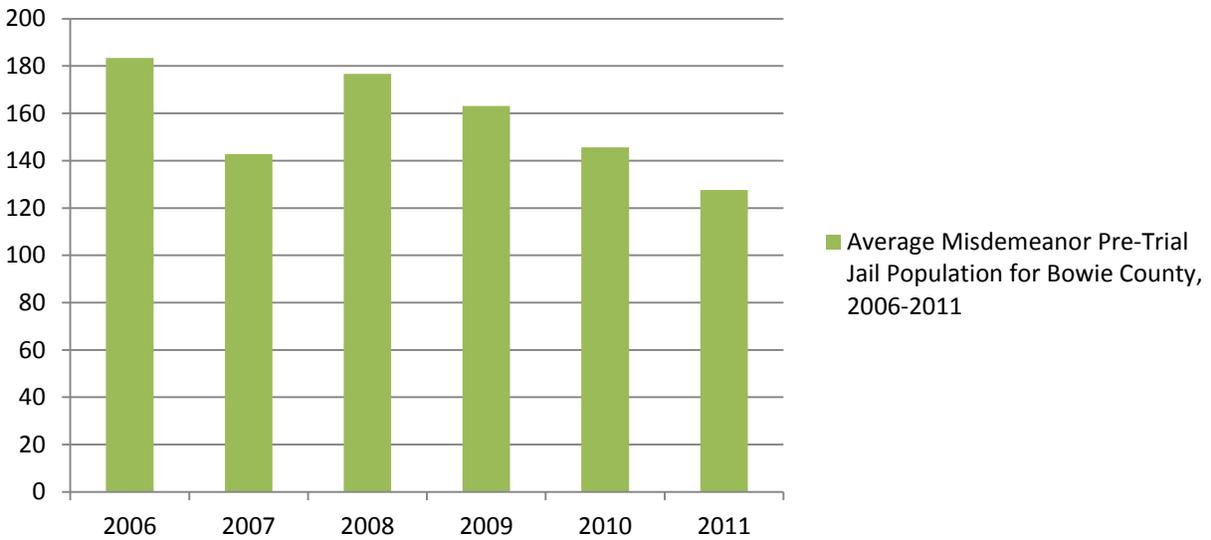
The public defender has engaged in a number of efforts to reduce the time inmates spend in the jail pre-trial. Chief Defender Rick Shumaker describes one of these, a standing meeting at the jail to improve case processing, as follows: “We have a jail board meeting every Tuesday morning where representatives from all county agencies (prosecution, probation, judges, public defender and jail staff) are present to discuss any issues with inmates. If a particular inmate has been housed for a substantial period of time we are able to discuss this case and find a resolution. . . . Our office keeps track over each of the pending cases in court and the Chief Public Defender monitors and makes sure that there are no backlogs of incarcerated inmates.”

In addition to these meetings and the early client contact described above, the public defender regularly files motions to reduce bond, moves for examining trials, and monitors incarcerated clients to expedite their cases as much as possible. “Our office is able to track each client in the respective courts and we monitor the inmates closely who have been in jail over 100 days,” Shumaker said. “Those inmates are given priority in our court settings. We now have very few inmates who are sitting in jail awaiting their trial dates.”

While jail population is influenced by many factors, only some of which are influenced by activities of the public defender, reviewing jail population before and after the creation of the office provides some useful information on the impact of the office. We obtained the monthly pre-trial jail populations for both counties served by the program from the Texas Commission on Jail Standards for both felony and misdemeanor arrestees. Next, we calculated the average monthly pre-trial jail population for each calendar year.

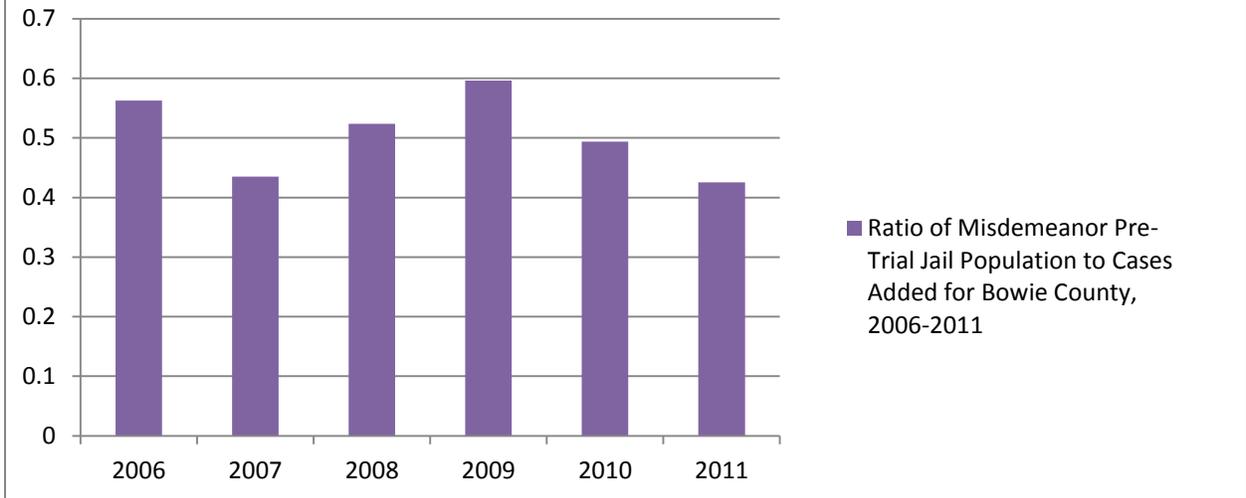
Table 2A below displays the average misdemeanor pre-trial jail population for Bowie County from 2006 to 2011. While this population increased in the first year of the program, it steadily declined in each successive year of the grant period. By 2011, the last year of the grant, pre-disposition jail populations for misdemeanor arrestees were at their lowest levels in six years.

Table 2A: Average Misdemeanor Pre-Trial Jail Population for Bowie County



One factor influencing pre-disposition jail population beyond the control of the public defender is the number of new cases added. In order to control for any variations caused by changes in the number of cases added, we divided the average monthly pre-trial jail population by the average monthly new cases added, creating a ratio of pre-trial jail population to cases added for each calendar year. After controlling for cases added in this way there is still a clear downward trend beginning in 2009, the second year of the program. As Figure 2B shows, for 2011, the last year of the grant, the pre-trial jail population was the lowest in the six years analyzed.

Table 2B: Misdemeanor Pre-Trial Jail Population Controlled for Cases Added for Bowie County



The same analysis conducted for felony arrestees shows that pre-disposition jail populations were somewhat higher since the public defender was created, but that the figures began a modest downward trend beginning in 2009, the second year of the program. These findings remain intact after controlling for changes in new cases added. Table 3A below displays the average felony pre-trial jail population for Bowie County from 2006 to 2011. Table 3B shows the average monthly pre-trial jail population divided by the average monthly new cases added, in order to control for fluctuations in case volume.

Table 3A: Average Felony Pre-Trial Jail Population for Bowie County

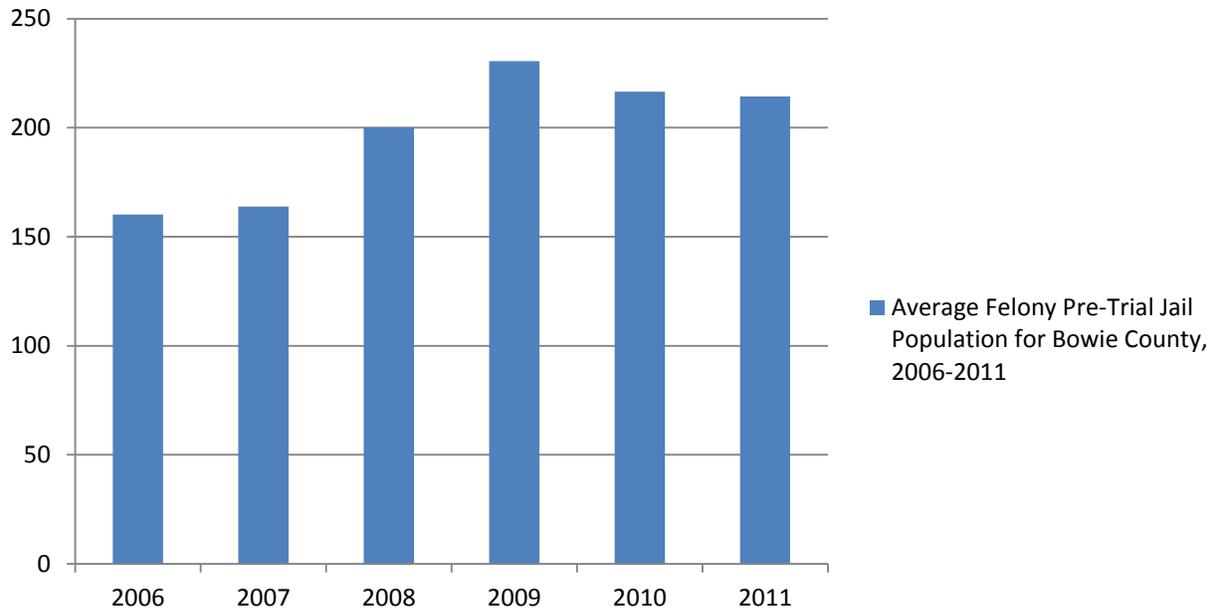
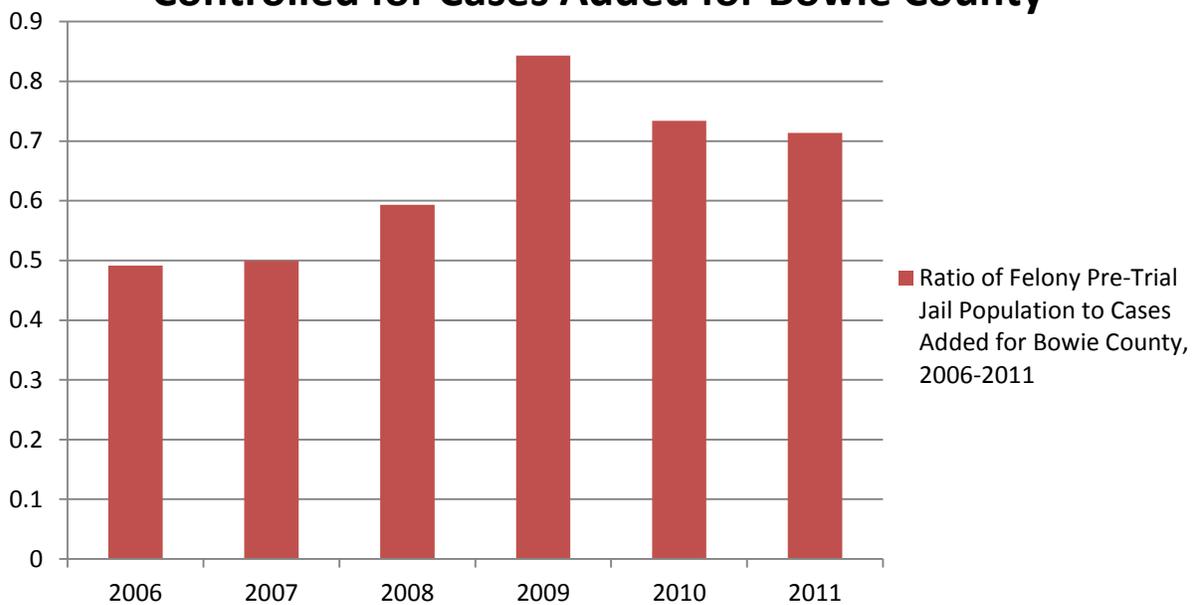


Table 3B: Felony Pre-Trial Jail Population Controlled for Cases Added for Bowie County



TIDC also analyzed jail populations in Red River County. It is important to note that Red River is a much smaller jurisdiction with very small jail populations. Typical felony inmates number in the teens, and misdemeanor inmates in the single digits. As such, it is much more difficult to discern any statistically significant impact of the program. As the graphs below indicate, jail population figures for Red River County do not appear to indicate any clear trends relative to the implementation of the public defender. Average pre-trial jail populations for both felonies and misdemeanors remained relatively constant after the public defender office opened.

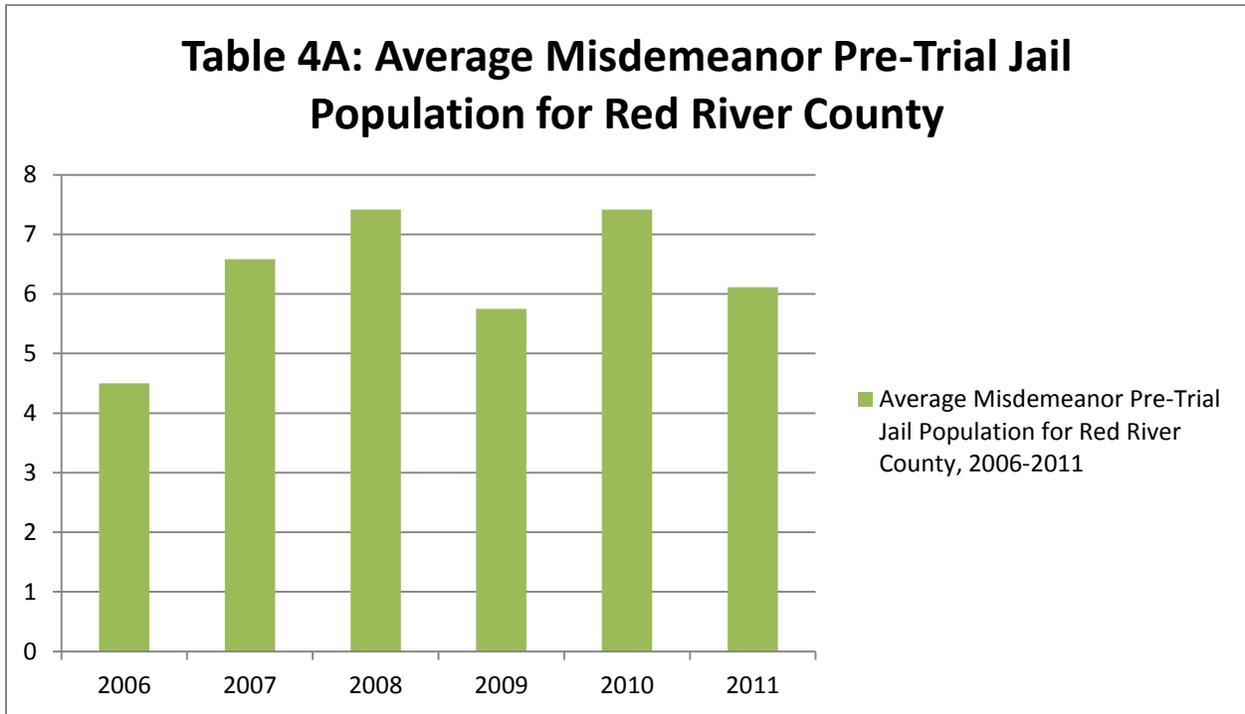


Table 4B: Misdemeanor Pre-Trial Jail Population Controlled for Cases Added for Red River County

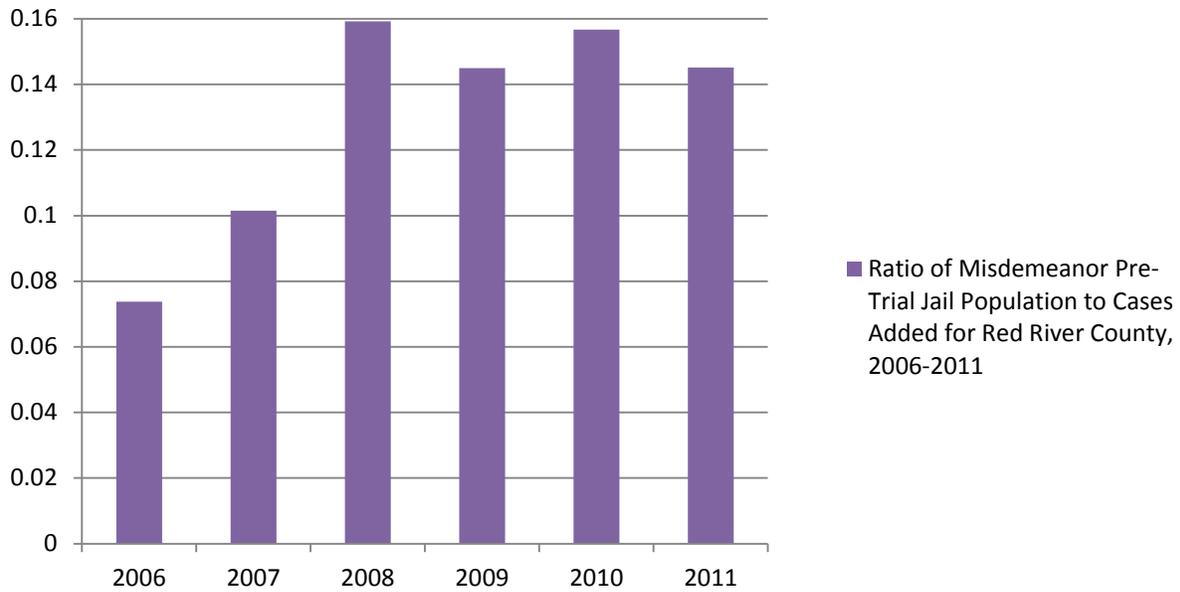


Table 5A: Average Felony Pre-Trial Jail Population for Red River County

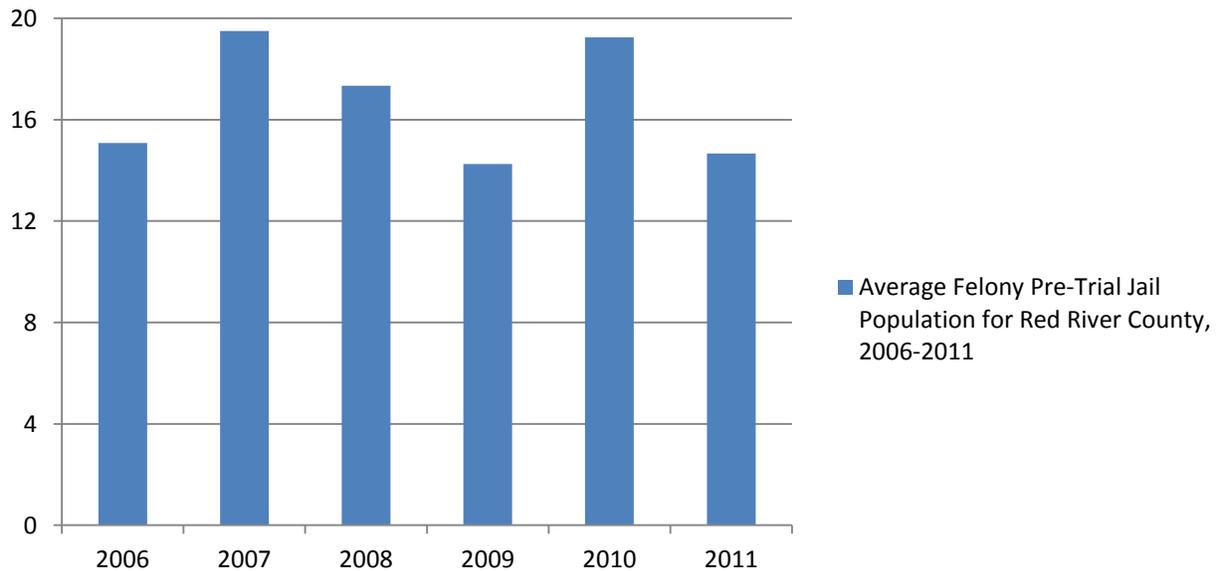
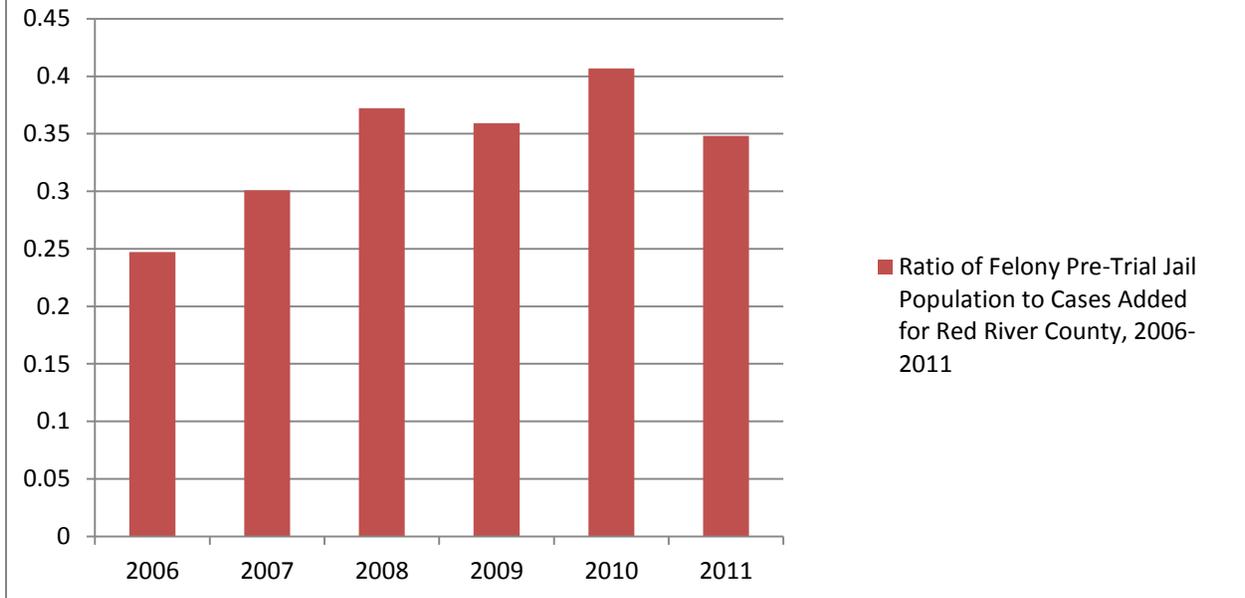


Table 5B: Felony Pre-Trial Jail Population Controlled for Cases Added for Red River County



10. Did the public defender regularly monitor jail rosters to ensure that inmates are represented and to prevent delays?

The public defender regularly monitors jail rosters to identify any uncounseled inmates, to identify delays in case filing and to reduce the risk of indigent defendants getting lost in the system. The Chief Defender described these focused efforts in a 2011 grant report: “The jail count is monitored daily and each attorney is responsible for a proportionate share of clients who remain in jail pending indictment. Each attorney is being monitored on the cases in their respective courts which are not progressing through the system.” Furthermore, the public defender participates in regular weekly meetings at the jail with judges, prosecutors and probation officers to identify any cases where jail inmates may be eligible for release or that need some issues addressed to avoid delays in the processing of their cases. As discussed above, many county officials credit these jail staffing meetings as having a positive impact on the operation of the criminal justice system. This type of systematic and coordinated case monitoring and troubleshooting was not possible under the de-centralized assigned counsel system.

11. Did the public defender supervise the quality of representation and increase accountability?

One of the most important benefits of the public defender office is the additional oversight and accountability that it provides compared to private assigned counsel. In the previous assigned counsel system, it fell upon judges to oversee attorney performance. While judges could see how attorneys conducted themselves in court, they had limited visibility of the majority of the work of attorneys that takes place outside the courtroom. Many aspects of representation, such as the frequency and

timeliness of contact with clients, plea negotiations, efforts to obtain pretrial release and the timing of discovery occur outside of court. As a result, there was limited oversight to ensure that assigned counsel provided quality representation in an efficient manner.

By organizing defense attorneys into a structured county office environment with supervision and management by a chief defender, such matters are addressed by office policy and are monitored by the chief defender, which enhances accountability. In addition to regular office meetings and day-to-day management activities of the chief defender, each employee of the public defender's office undergoes an annual employee performance review with the chief defender in accordance with the Bowie County Personnel Policy. Attorneys are evaluated on a number of performance measures, including client relations, courtroom presentation and case management. This structured review process, combined with day-to-day management oversight within a county office environment, provide better quality control and more accountability for attorneys representing indigent defendants.

V. Case Outcomes Analysis

12. Did the public defender contribute to an increase in case dismissals?

Having a filed case against a defendant dismissed is an unequivocally positive outcome from the perspective of a criminal defendant. A dismissal requires the defendant's attorney to conduct an investigation and analysis of the evidence and circumstances and to persuade the prosecutor to change course because the filed case is weak and should not go forward. In most cases this requires substantive engagement and effort by the attorney. As such, dismissals may be considered as one indicator of the quality of representation provided to defendants. While other factors, most notably the district attorney's charging practices and police conduct, can contribute to the rate of dismissals, barring any significant changes in these factors, the rate of dismissals provide some evidence of the quality of representation the attorneys provided. TIDC conducted an historical analysis of the frequency of case dismissals in order to assess the impact of the transition from an assigned counsel system to a public defender in Bowie and Red River Counties. Using data reported by the county to the Office of Court Administration (OCA), we obtained the number of dismissals in each county for 2003 through 2012. While available disposition data does not differentiate between cases handled by the public defender, private assigned counsel, retained counsel, and pro se cases, available data clearly shows that the public defender represents a clear majority of defendants in Bowie and Red River Counties. The public defender represented 76.5% of felony cases and 54.5% of misdemeanor cases in Bowie County and 53.4% of felony cases and 44.6% of misdemeanor cases in Red River County. Therefore, the disposition data from OCA is a good proxy for determining whether the transition to the public defender had any impact on the frequency of case dismissals.

Table 6 below provides the case dismissals for both felonies and misdemeanors in Bowie and Red River Counties from 2003 to 2012. The percentages represent the proportion of case dismissals to the overall case dispositions.⁴

Table 6: Dismissals, 2003-2012

Year	Bowie		Red River	
	Felonies	Misdemeanors	Felonies	Misdemeanors
2003	9.78%	17.65%	19.25%	15.79%
2004	15.32%	17.86%	17.14%	21.18%
2005	11.28%	36.21%	27.27%	40.73%
2006	10.54%	34.28%	28.33%	36.97%
2007	9.25%	29.90%	37.92%	33.74%
2008	7.54%	25.10%	27.81%	22.13%
2009	7.78%	21.83%	46.93%	37.31%
2010	14.64%	26.31%	39.13%	30.80%
2011	13.93%	18.20%	40.24%	20.53%
2012	14.27%	23.39%	42.94%	16.18%

The analysis of dismissal rates does not yield clear trends with respect to the impact of the public defender. As Table 6 illustrates, the dismissals for felonies in both counties tended to increase around 2009 or 2010. Since the public defender became operational in January 2008, the data provides some evidence that the public defender contributed to an increase in felony dismissals. Nonetheless, the dismissals for misdemeanors tended to decrease beginning in 2008. Table 7 below compares aggregated data for the five years before and after the creation of the office. While the operation of the public defender is correlated with a higher dismissal rate in felonies, especially in Red River County, it is also correlated with a lower dismissal rate in misdemeanors.

Table 7: Dismissals, Pre- and Post-Public Defender

Time	Bowie		Red River	
	Felonies	Misdemeanors	Felonies	Misdemeanors
Pre	11.27%	28.09%	26.56%	29.76%
Post	12.16%	23.19%	39.74%	26.13%

13. Did the public defender increase the likelihood that cases were disposed through deferred adjudication?

While case dismissals are an optimal outcome for a defendant, if a case proceeds, deferred adjudication is often a favorable outcome second only to acquittal. In deferred adjudication, if a defendant complies with certain conditions set by the court (akin to supervision under regular probation), the court defers a

⁴ For purposes of this analysis, we classified case dispositions into four possible outcomes: dismissals, deferred adjudications, convictions and acquittals.

finding of guilt. When the conditions are satisfied, the court dismisses the case without a conviction. Like dismissals, disposing of a case through deferred adjudication generally requires substantial effort and negotiation on the part of a defense attorney. As such, the frequency of dispositions through deferred adjudication can provide some indirect evidence of the quality of legal representation, although it is by no means a dispositive indicator.

TIDC conducted a historical analysis of data reported by the counties to the Office of Court Administration (OCA) on the frequency of case disposition through deferred adjudication.⁵ Table 8 below displays the rate of deferred adjudication cases for both felonies and misdemeanors in Bowie and Red River Counties from 2003 to 2012. The percentages represent the proportion of deferred adjudications to the overall dispositions.

Table 8: Deferred Adjudication, 2003-2012

Year	Bowie		Red River	
	Felonies	Misdemeanors	Felonies	Misdemeanors
2003	9.78%	8.24%	9.39%	4.14%
2004	15.01%	8.18%	4.57%	6.47%
2005	12.11%	3.03%	5.00%	2.13%
2006	11.28%	4.18%	13.89%	0.00%
2007	13.64%	5.07%	12.50%	0.00%
2008	11.30%	4.77%	22.52%	0.00%
2009	15.18%	4.62%	7.82%	0.00%
2010	11.52%	4.79%	19.02%	4.22%
2011	13.49%	5.25%	27.44%	30.53%
2012	16.02%	5.15%	14.71%	36.76%

A clear trend is not apparent. Deferred adjudications in felonies appear to increase in either 2008 or 2009, suggesting that the public defender may have increased the likelihood that a defendant would receive deferred adjudication. After 2005, deferred adjudications in misdemeanors in Bowie County remained fairly constant. (Although deferred adjudication dramatically increased for misdemeanors in Red River County in recent years, the reported data for misdemeanors in Red River County may be incomplete.) Table 9 below provides a clearer picture of deferred adjudication both before and after the arrival of the public defender. The result is that every category, except for a slight decrease in misdemeanors in Bowie County, experienced an increase in deferred adjudication after Bowie and Red River Counties opened their public defender offices.

Table 9: Deferred Adjudication, Pre- and Post-Public Defender

Time	Bowie		Red River	
	Felonies	Misdemeanors	Felonies	Misdemeanors

⁵ For purposes of this analysis, disposed cases were classified into four possible outcomes: dismissals, deferred adjudications, convictions and acquittals.

Pre	12.43%	5.49%	9.14%	2.66%
Post	13.52%	4.89%	18.04%	11.81%

VI. Analysis of Cost Effectiveness

14. What impact did the public defender program have on county indigent defense costs?

Providing indigent defendants with counsel is not a discretionary item in county budgets. The United States Constitution, Texas Constitution and Texas Fair Defense Act require counsel to be provided to help insure the rights of the accused and the integrity of the criminal justice system. As is the case with all functions of our criminal justice system, appropriate levels of funding are needed for each of the functions to operate effectively, and, together, to ensure just outcomes. Counties need to find cost-effective solutions to indigent defense that meet constitutional standards and ensure quality representation that provides good value to the county and taxpayers. How much a county spends, and how much that spending changes based on a new program, should not be the sole focus in evaluating cost effectiveness. More complex than the bottom line cost per case, cost effectiveness includes the value counties receive, whether public money is being used under oversight and with accountability, and most importantly, whether spending is sufficient to provide the level of indigent defense services that are constitutionally required and essential to justice. Evaluating the impact of a program on cost per case is just one part of a comprehensive program review that considers overall cost effectiveness and value.

An analysis of indigent defense expenditures in Bowie and Red River Counties clearly shows that, with the exception of juvenile cases, the Public Defender’s Office provided representation at a substantially lower cost per case when compared with the assigned counsel system. In addition, felony and misdemeanor costs per case were lower than statewide⁶ averages. This cost per case analysis is based on the counties’ Indigent Defense Expenditure Reports, filed annually with TIDC. Beginning in 2010, counties with public defender offices began allocating public defender costs among felony, misdemeanor and juvenile cases. For purposes of this analysis, the average of the allocations since 2010 was calculated and used to estimate the allocations for the two years of the public defender’s office for which allocated expenses were not required.

Tables 10A and 10B below display the costs per case for felonies. The costs per case for the public defender’s office decreased in each successive year and were less than the state average in every year for which data was available. In fact, for 2011 and 2012, the costs per case for the public defender’s office are roughly half of the statewide costs per case. Also, except for the initial year of the public defender in Bowie County (2008), the average costs per case for cases handled by the public defender are significantly lower than for cases handled by assigned counsel.

⁶ For all of the tables in this section, “statewide” refers to the average cost per case for cases handled by public defenders, assigned counsel, and contract counsel throughout Texas.

Table 10A: Felony Costs per Case, Bowie County

Fiscal Year	Assigned Counsel	Public Defender	Statewide
2003	\$792		
2004	\$444		
2005	\$567		
2006	\$445		
2007	\$442		
2008	\$537	\$747	
2009	\$943	\$555	
2010	\$971	\$482	\$553
2011	\$658	\$289	\$577
2012	\$1,748	\$282	\$572

Table 10B: Felony Costs per Case, Red River County

Fiscal Year	Assigned Counsel	Public Defender	Statewide
2003	\$394		
2004	\$260		
2005	\$427		
2006	\$514		
2007	\$521		
2008	\$1,412	\$747	
2009	\$769	\$555	
2010	\$1,243	\$482	\$553
2011	\$930	\$289	\$577
2012	\$808	\$282	\$572

Tables 11A and 11B below display the costs per case for misdemeanors. The average costs per case for cases handled by the public defender are significantly lower than for cases handled by assigned counsel for every year the public defender's office has been in existence, with the exception of Bowie County in 2008. In addition, except for 2010, the costs per case for the public defender's office are significantly

lower than the statewide costs per case. Bowie County’s costs per case for assigned counsel remained fairly constant until 2009, and they have risen steadily since that time. Red River’s costs per case for assigned counsel have not been consistent over the last ten years.

Table 11A: Misdemeanor Costs per Case, Bowie County

Fiscal Year	Assigned Counsel	Public Defender	Statewide
2003	\$268		
2004	\$201		
2005	\$200		
2006	\$200		
2007	\$215		
2008	\$211	\$200	
2009	\$267	\$122	
2010	\$313	\$190	\$181
2011		\$96	\$189
2012	\$350	\$146	\$198

Table 11B: Misdemeanor Costs per Case, Red River County

Fiscal Year	Assigned Counsel	Public Defender	Statewide
2003	\$179		
2004			
2005	\$393		
2006	\$158		
2007	\$130		
2008	\$1,841	\$200	
2009	\$5,908	\$122	
2010	\$725	\$190	\$181
2011	\$341	\$96	\$189
2012	\$371	\$146	\$198

Tables 12A and 12B below display the costs per case for juveniles. Unlike for felonies and misdemeanors, the costs per case for juvenile cases handled by the public defender appear to be much higher than the statewide costs per case and the costs per case handled by assigned counsel. Nonetheless, this result should be interpreted with caution. It is important to note that juvenile cases represent only a tiny fraction of indigent cases in the two counties: of the 3278 indigent cases paid in Bowie and Red River County in 2011, only 75, or about 2% were juvenile cases. Additionally, it should be noted that the juvenile cost per case calculations below are based on imprecise allocations of public defender expenditures across case types. Because juvenile cases represent such a small fraction of the indigent cases paid, even a relatively small over-estimation of the public defender's allocations of office expenditures to juvenile casework could lead to an artificially high cost per case estimate.

Table 12A: Juvenile Costs per Case, Bowie County

Fiscal Year	Assigned Counsel	Public Defender	Statewide
2003	\$97		
2004	\$96		
2005	\$89		
2006	\$93		
2007	\$91		
2008	\$119	\$2,913	
2009	\$135	\$1,638	
2010	\$75	\$1,225	\$252
2011	\$150	\$1,232	\$252
2012	\$530	\$1,445	\$295

Table 12B: Juvenile Costs per Case, Red River County

Fiscal Year	Assigned Counsel	Public Defender	Statewide
2003	\$144		
2004	\$182		
2005	\$136		
2006	\$231		
2007	\$195		
2008	\$233	\$2,913	

2009	\$375	\$1,638	
2010	\$1,100	\$1,225	\$252
2011		\$1,232	\$252
2012		\$1,445	\$295

VII. Assessment of Structural Benefits and Compliance with ABA Principles

In 2002 the American Bar Association issued its *Ten Principles of a Public Defense Delivery System*. The principles provide a basic set of benchmarks for assessing the effectiveness of indigent defense from a systemic perspective. While all of the principles are important, in the context of the transition in Bowie and Red River Counties several of the principles are particularly germane to the creation of the public defender and are considered below. By organizing the indigent defense function into a more cohesive, institutionalized structure, the Bowie and Red River Public Defender Office has more fully realized several key principles among the ABA’s standards.

The creation of the public defender office has helped Bowie County to better realize the ABA’s principle of independence: “The public defense function, including the selection, funding, and payment of defense counsel, is independent.” While the authority to appoint attorneys for the indigent technically resides with the judges, because the Bowie County Public Defender Office is fully operational and already funded by the county, the courts routinely appoint the public defender office for the vast majority of indigent non-capital cases as a matter of regular procedure. This essentially obviates any concern that the courts would select attorneys to appoint for inappropriate reasons, such as cronyism, or because the attorney is motivated to defer to concerns about the expediency of the court over appropriate representation for his or her client. In addition, the public defender does not need to persuade the courts for extra funds for an investigator, as private assigned counsel would, because investigative resources are part of the public defender’s team. The result is a system of delivering indigent defense which is more independent of judicial influence than the former assigned counsel system, with an associated reduction in the risk of inappropriate factors influencing the representation provided to poor defendants.

The creation of the office has also enhanced compliance with the ABA’s third principle: “Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.” Because virtually all indigent appointments go to the public defender as a matter of course, the public defender has staff in the jail on a daily basis conducting intake interviews with new clients. Early substantive engagement in clients’ cases usually begins within one day of the defendants’ request for counsel.

The office also helped the county meet the ABA's Principle 5: "Defense counsel's workload is controlled to permit the rendering of quality representation." Part of the benefit of the enhanced oversight and accountability is the ability to monitor and control caseloads and provide safeguards against excessive workloads. It is exceedingly difficult to monitor the caseload of private counsel taking indigent appointments, particularly since most appointed counsel have substantial private practices. Because the public defender's caseload is exclusively court appointed cases, the Chief Defender can easily monitor the number of cases per attorney. While caseloads were somewhat higher than the office's adopted policy, there was greater tracking and transparency of actual caseloads as compared to the assigned counsel system.

The public defender additionally helped the county better meet ABA Principle 6: "Defense counsel's ability, training, and experience match the complexity of the case." The attorneys in the public defender office have primary assignments to each of the courts in the jurisdiction, with practice focused on felonies, misdemeanors and/or juvenile cases. The Chief Public Defender hires and assigns attorneys based on their experience and qualifications. The exclusive criminal practice of Bowie County's public defenders provides more specialized representation. The office's training program includes assigning a more experienced attorney to mentor new hires. Finally, the Chief Defender has the ability allocate office resources to provide more support when complex cases demand it.

The public defender helped to move the county toward more (but not full) parity of resources for the defense as described in ABA Principle 7: "There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system." Among the challenges facing attorneys for the indigent is a disparity in the support resources available. While most prosecutors employ investigators and rely heavily on law enforcement to gather facts and conduct investigations, many appointed attorneys must persuade a court to approve funds for an investigator or other experts in each individual case and must absorb the cost of other support personnel. In contrast, the public defender was able to hire support staff and investigators, train new attorneys and allocate work between staff members. By including a staff investigator on the public defender's staff, the office ensures routine access to investigative support services. The availability of investigative support within the office makes it much more likely that attorneys will avail themselves of investigative assistance, which in turn increases the ability of the defense to fully challenge the state's evidence, develop mitigating information, and make sure that the final disposition of the case is fully informed of all relevant information.

Finally, the Public Defender has improved the county's compliance with ABA Principle 10: "Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards." By transforming indigent defense from a fragmented system of individual attorneys into a cohesive county department, oversight and accountability have been enhanced. The Chief Public Defender supervises the work of the attorneys in the office, conducts personnel reviews that address any problems, and provides ongoing professional development opportunities.

VIII. Other Program Implementation Issues

Institutionalized Seat at the Table

During the grant period Bowie County investigated and then implemented a direct file system intended to streamline case filing by having law enforcement personnel electronically file case information to the district attorney. During the exploration and implementation of this new system the public defender was able to represent the defense in stakeholder discussions and was able to communicate concerns and benefits of this systemic change from the defense perspective. Longstanding delays in obtaining pre-indictment information on probable cause and police reports had led to delays in the ability of defenders to engage in investigations and plea negotiations. The transition to the new system mitigates some of these delays, and the public defender's participation with other stakeholders is an example of institutional cooperation the office has facilitated.

Organizational Challenges

Although the Public Defender was conceived as a regional program that would provide many benefits throughout the served areas, it appears that the assistant public defender working in Red River was, practically speaking, operating autonomously from the Bowie County operation. As a result, some of the important institutional benefits the public defender office made possible were not fully realized with respect to representation in Red River. While the posting of a public defender in Red River did address a problem with attorney access there, that attorney was not integrated into the main operation in a way that would best ensure accountability, oversight and access to shared resources.

Improvement in Office Over Time

When the Public Defender Office was initially created, private attorneys were hired to staff the new office, and in ways both organizational and cultural, the attorneys continued to operate much like private attorneys, rather than as a cohesive public defender unit. For example, there was little to no coordination to cover court dockets during attorney absences. According to Chief Defender Rick Shumaker, "At the formation of this office the majority of the staff attorneys had been engaged in civil/criminal practices. It took some time for each of us to become acclimated to handling solely a criminal practice."

According to stakeholder interviews, these problems have been addressed, and after some changes in personnel and leadership, the office now functions as a much more cohesive unit. Bowie County Judge Lacy said, "When I came on [as County Judge] the word was that 'the system wasn't much better than it had been before [the creation of a public defender]. Now that the new chief is in place. . . it's not as big of a problem." The issue of arranging for colleagues to cover dockets and other responsibilities during absence is specifically addressed in the office's Policies and Procedures Manual: "Whenever an attorney or a member of the support staff is requesting leave, either sick or vacation, they will have another attorney or support staff cover their court docket or office duties."

Grant Management and Recordkeeping

Although the public defender was conceived as a regional program covering Bowie and Red River Counties, it appears that the counties did not formalize their relationship and specify funding responsibilities through an inter-local agreement. Recordkeeping regarding payments between counties related to the program were incomplete, and calculations regarding the basis of the amounts of these payments could not be readily reconstructed. TIDC recommends that both Red River and Bowie Counties formalize financial obligations for any joint programs and review recordkeeping and grant management procedures with the county auditors.

Regarding case-level data, many of the records reviewed were missing fields and information needed for the analysis in this report. Because of numerous gaps, some of the analysis included here relies on county-wide data reported to the Office of Court Administration. TIDC recommends that the county review record-keeping procedures to ensure that information is comprehensively tracked to be able to continually evaluate the program's effectiveness and budgetary needs.

Paid Appointments Outside of Participating Counties

The Bowie and Red River County Public Defender Policies and Procedures Manual generally prohibits outside employment, but does make an exception for the assistant public defender assigned to Red River County. During the site visit, the review team learned that the assistant public defender assigned to Red River had been appointed to at least one criminal case in Lamar County. The review team asked the judges and the public defender's office to examine the statute governing public defenders, particularly Texas Code of Criminal Procedure, Article 26.044(i), and recommended that, if the practice continues, such appointments should be handled through an inter-governmental agreement between Lamar and Bowie Counties.

IX. Conclusion

The Bowie and Red River County Public Defender has clearly had a positive impact on indigent defense. Many of these benefits would not have been realized without the coordination, oversight and economies of scale that the public defender made possible. The creation of the office has provided earlier access to counsel for indigent defendants, ensured specialized and well-trained representation, contributed to an improvement in case processing time, and reduced indigent defense costs for Bowie County. The office has also enhanced the county's compliance with key ABA standards for public defense and provided a framework for accountability and effective participation in the county's criminal justice system.