

Blueprint for Creating a Public Defender Office in Texas

Texas Task Force on Indigent Defense and
The Spangenberg Group, Robert Spangenberg, President
Second Edition, June 2008

Texas Task Force on Indigent Defense

OFFICERS:

Honorable Sharon Keller Chair – Presiding Judge, Court of Criminal Appeals
Honorable Olen Underwood Vice-Chair – Presiding Judge, 2nd Administrative Judicial Region of Texas

EX OFFICIO MEMBERS:

Honorable Sharon Keller Austin, Presiding Judge, Court of Criminal Appeals
Honorable Wallace Jefferson Austin, Chief Justice, Supreme Court
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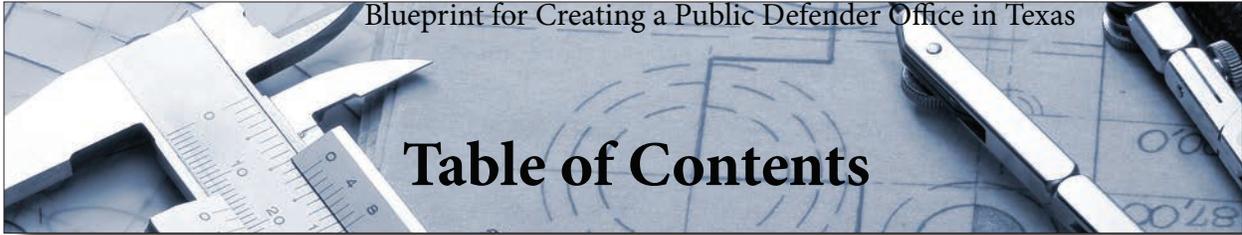
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Mr. Anthony Odiorne Wichita Falls, Chief Public Defender, Wichita County
Honorable Olen Underwood Conroe, Presiding Judge, 2nd Administrative Judicial Region of Texas
Honorable B. Glen Whitley Hurst, Tarrant County Judge

STAFF:

James D. Bethke Director
Carol Conner Fiscal Monitor
Joel Lieurance Research Specialist, Program Monitor
Wesley Shackelford Special Counsel
Whitney Stark Grants Administrator
Terri Tuttle Executive Assistant
Sharon Whitfield Budget and Accounting Analyst

Contact Information:

Task Force on Indigent Defense
Post Office Box 12066, Austin Texas 78711-2066
205 West 14th Street, Suite 700, Austin, Texas 78701
www.courts.state.tx.us/tfid
512.936.6994 (in Austin)
866.499.0656 (toll-free in Texas)
512.475.3450 (fax)



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Acknowledgments

A publication such as the *Blueprint for Creating a Public Defender Office in Texas* would be inadequate without the contributions and insight of a diverse and talented team of professionals that practice within the Texas criminal justice system. The Spangenberg Group and the Task Force on Indigent Defense gratefully acknowledges the participation and assistance of the following persons and organizations with the original and revised publication:

Jim Allison, Constitutional County Judges and Commissioners Association
Andy Barbee, Office of Court Administration
Bill Beardall, Equal Justice Center
John Dahill, formerly with Conference of Urban Counties
Shannon Edmonds, Texas District and County Attorneys Association
Raman Gill, formerly with Texas Appleseed
Rex Hall, Texas Association of Counties
Emily Jones, Texas Legal Services to the Poor in Criminal Matters Committee
Joseph Martinez, Texas Criminal Defense Lawyers Association
Robert Riley, First Assistant Public Defender, El Paso County
Marshall Shelsy, Harris County Criminal Courts
David Slayton, Director of Court Administration, Lubbock County
Ken Sparks, Colorado County and District Attorney
Jerry Wesevich, Texas Rio Grande Legal Aid
Presiding Judges of the Nine Administrative Judicial Regions
Task Force staff

This publication would also not be possible without the contributions made by the following Chief Public Defenders in Texas, who the Task Force recognizes below:

Kevin Dunn, Louis Gimbert, Colorado County Public Defenders
Jaime Gonzalez, Hidalgo County Chief Public Defender
Melissa Hagan, Val Verde Chief Public Defender
Charlie Hall, Bowie and Red River Chief Public Defender
Clara Hernandez, El Paso County Chief Public Defender
Julie Hernandez, Cameron County Chief Public Defender
Kameron Johnson, Travis County Chief Juvenile Public Defender
Andrew Jordan, Kaufman County Chief Public Defender
Jeanette Kinard, Travis County Mental Health Public Defender
Brad Lollar, Dallas County Chief Public Defender
Hugo Martinez, Webb County Chief Public Defender
Angela Moore, Bexar County Chief Appellate Public Defender
Anthony Odiorne, Wichita County Chief Public Defender
Mary Kay Sicola, Willacy County Chief Public Defender
Jack Stoffregen, Lubbock County Chief Capital Public Defender

The Task Force would also like to say a special thank you to Jeremy Wells, University of Texas School of Law student and Legal Intern to the Task Force, who was the primary drafter of the new sections contained in this revised *Blueprint*.



The *Blueprint for Creating a Public Defender Office in Texas* is intended to be a tool for Texas local and state officials who seek a deeper understanding of what a “public defender” is and whether creating one makes sense for their county or region. Texas jurisdictions vary widely in population, resources, and legal culture. Officials in each jurisdiction must independently weigh the advantages and disadvantages of creating a public defender for their country or region.

Since the original *Blueprint* was published in 2004, eight new public defender offices have opened in Texas bringing the total to fifteen. The new offices provide representation in a variety of case types, including misdemeanor trials, capital cases, appeals, and criminal defense for defendants with mental health issues. Expanded profiles of the existing offices can be found in Chapter 5.

This *Blueprint* is comprised of five chapters to accommodate Texas officials who are at varying stages of exploring their public defender options: Chapter One: Indigent Defense Overview; Chapter Two: Advantages and Disadvantages of a Public Defender; Chapter Three: Feasibility Study; Chapter Four: How to Create a Public Defender; and Chapter Five: Public Defenders in Operation.

Special appreciation is extended to the people acknowledged on the previous page who provided extensive input and guidance in the creation of this *Blueprint*. The Task Force believes, through the collective and collaborative efforts of many, that this publication should prove to be a valuable tool in determining whether a public defender office is right for your community.

Sharon Keller
Chair, Task Force on Indigent Defense



Executive Summary

Local officials in each Texas county decide how to comply with the constitutional and statutory requirements that lawyers be provided to indigent criminal defendants. These laws promote fairness and public confidence in criminal justice. Local governments pay most indigent defense costs, and these costs increased after the implementation of the Texas Fair Defense Act in 2002. As more money and attention are focused on indigent defense, however, a broad array of officials—from prosecutors to judges to county executives—have found that indigent defense is a critical tool for promoting efficiency throughout the entire criminal justice system. This efficiency matters because law enforcement consumes the largest share of county budgets.

Establishing a public defender is but one indigent defense option that is available to local officials. Where officials are satisfied with the quality and cost of another indigent defense method, there is no reason to consider switching to a public defender. Many officials, however, wish to explore whether a public defender can provide adequate quality for less cost than alternative methods. The number of Texas public defender offices (PDOs) has grown from five to fifteen over the past six years, and public defenders now serve in at least some types of cases in roughly 134 of Texas's 254 counties. Public defenders require effort to create, but once in operation, they offer quality, cost, and administrative advantages over the alternatives. The Texas Task Force on Indigent Defense offers this *Blueprint* to help local judges and county officials make informed decisions about whether a PDO makes sense for a particular Texas jurisdiction.

Help is available. Help is available free of charge. In addition to this *Blueprint*, site specific information from the Task Force, consultants who work with the Task Force, and experienced public defenders throughout Texas, are available for assistance. The Task Force also makes grant money available to help counties create and operate new PDOs.

The public defender option merits consideration. The key choice to be made by local officials is what methods will be used to select counsel for indigent criminal defendants. All other decisions required by the Fair Defense Act follow from this choice. Three appointment methods are used throughout Texas and the United States: (1) assigned counsel, where a judge assigns a private lawyer to each case involving an indigent defendant, usually on a rotating basis from a list maintained by each group of courts; (2) contract counsel, where a judge assigns groups of cases to one or more private lawyers who have signed contracts covering payment and scope of representation; and (3) public defender, where a judge assigns cases to a unit of local government or a non-profit office which employs attorneys whose only job is to serve indigent defendants.

Where public defenders operate in Texas and elsewhere, they operate in conjunction with one of the other appointment methods, so that the private bar is assigned a share of the same kinds of cases that the public defender handles. This is necessary to avoid conflicts of interest in multi-

defendant cases, but it also fosters cooperation between the public and private defense bars, and it allows cost comparisons between two appointment methods used in the same place.

Public defenders serve almost all urban jurisdictions in the United States outside Texas. Fewer public defenders serve in Texas than elsewhere in the nation. The reasons have not been clearly documented, but the Task Force has observed that the time and cost of changing appointment systems presents a barrier. Accordingly, the Task Force is making information and grants available so that the costs of change alone do not prevent counties from selecting the best appointment method available to them.

Public defenders offer quality, cost, and administrative advantages. Public defender offices operate for the defense in the same way that district and county attorney offices operate in every Texas county for the prosecution, and they do so for the same reason: proficiency. This proficiency explains why most civil lawyers work in law firms rather than operate individual offices. Group law practice not only allows attorneys to share office and library space and administrative functions like billing, but it also improves their ability to learn from one another, match staff experience to work demands, develop and preserve institutional methods of performing work, and avoid “reinventing the wheel” for each new case.

As institutions, public defenders can attract additional resources that private attorneys cannot, including grants, fellowships and law-student assistance. Some non-profit public defenders can also offer indigent defendants civil legal services, particularly on mental health issues, that can minimize the costs of involvement in the criminal justice system. PDOs also enable judges, county executives, law enforcement officers, and the bar to access a single point of contact to secure the cooperation and input of defense counsel when improvements to operation of the criminal justice system are considered, making improvements easier to identify and implement. Finally, public defender budgeting is simpler and more predictable than budgeting for payment of private attorneys whose identity, work practices, billing practices, and caseloads fluctuate every month of every year. All of this is equally true of prosecution offices in Texas counties. It is so true that a move from centralized prosecution offices to hiring individual private attorneys to prosecute cases would be unthinkable.

Disadvantages of public defender offices include start-up costs and minimum caseload requirements. Switching from an assigned or contract counsel system to a public defender may require significant start-up costs (hiring staff, securing office space and equipment, establishing the public defender’s internal office practices and procedures, and modifying administrative procedures to transition from the existing appointment method to a public defender). The Task Force aims to minimize the barrier presented by start-up costs through its discretionary grant program, which enables counties to apply for state reimbursement of at least a portion of the costs in the first years of operation. Although its funding methodology may change, at least through FY 2009 grant program the Task Force will pay 80% of grantee county’s entire public defender costs for the first year, 60% in the second, 40% in the third, and 20% in the fourth. The Task Force also offers free ongoing advice to those who seek information on the details of planning a public defender office.

Counties with fewer than 750 felony and misdemeanor cases combined annually are unlikely to realize the efficiencies of a PDO unless they participate in a regional effort that includes an urban area or a group of nearby rural counties. Texas law specifically allows regional public defenders, and the Task Force has

experience in creating them (Bexar’s appellate PDO serves the 4th appellate region, one operates in Val Verde and surrounding counties, one in Bowie and Red River counties, and a capital PDO operates in Lubbock spanning 85 surrounding counties). At least one non-profit organization has shown its ability to operate a rural, regional public defender, and will consider expanding its efforts. The circumstances of each local jurisdiction vary, however, and each merits individual examination.

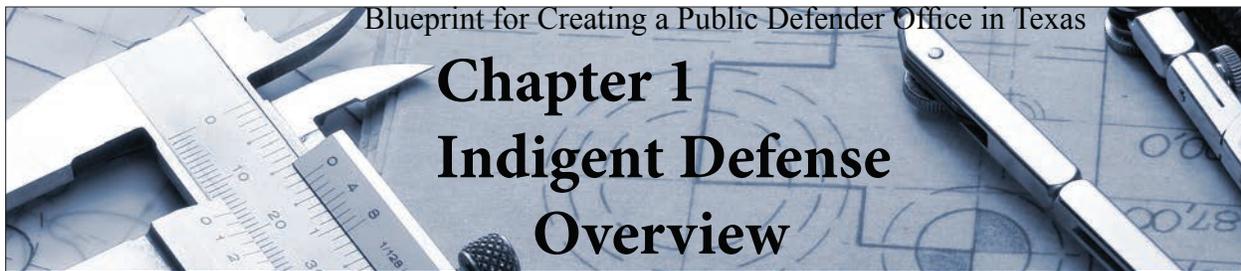
A simple feasibility study indicates whether a public defender is viable. The rough cost per case of a public defender can be easily compared to the actual cost per case under existing practices. This comparison will enable officials to decide what cost and caseload numbers will be necessary to justify serious exploration of whether to create a PDO. A sample feasibility worksheet is provided in Appendix B.

The Task Force offers this guide to creating a public defender. For those who want to know what is required to create a public defender, this Blueprint discusses the recommended steps. These include: (1) convening stakeholders to discuss options, methods and impact; (2) decide what categories of cases the public defender will be assigned; (3) write a Request for Proposals (examples abound); (4) evaluate RFP responses and select a governmental or non-profit organization to operate the public defender; (5) negotiate a contract or establish a budget; (6) hire or approve the chief public defender; and (7) modify procedures to transition from the existing system to the public defender. Chief public defenders in every region of Texas, Task Force staff, and indigent defense consultants are available to assist judges and county officials who are interested in exploring the public defender option.

The Public Defenders Model is working in Texas. Task Force staff and consultants have studied Texas public defenders that have operated for decades, and have helped create new public defender offices during every one of the past few years. This experience enables the Task Force to offer several important generalizations about public defender offices:

1. Cost per case for public defenders is almost always lower (by roughly 5%) than costs for assigned counsel in the same county.
2. The most significant cost savings resulting from PDOs are found in decreased pretrial incarceration costs.
3. Judges and county administrators find that less administrative work is necessary to oversee indigent defense under a public defender model than under their previous models.
4. Stakeholders find that significant work is required to create a PDO, but they are generally satisfied, and dissent is quite limited, once the offices are in operation.
5. Public defenders are willing to share their ideas and experiences with interested members of the bench, bar, executive branch of county government, and public. Over time, public defenders emerge as an institutional voice that public officials and the defense bar view as a resource, not an adversary.

In sum, the public defender option is worth exploring even though it is not a silver bullet that will automatically solve every county’s indigent defense challenges.



The U.S. Constitution’s Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial... and to have the assistance of counsel for his defense.

Texas’s Constitution mirrors this language: “In all criminal prosecutions the accused ... shall have the right of being heard by himself or counsel.”¹ Prior to the 1963 landmark case of *Gideon v. Wainwright*,² counsel was only constitutionally guaranteed to criminal defendants who had enough money to hire an attorney. Indigent defendants could only access legal representation if a state law created a right to appointed counsel, or if a court ordered an attorney to provide representation.

In *Gideon*, the U.S. Supreme Court required states to provide attorneys to indigent defendants accused of a crime. The Court emphasized that increased accuracy and public safety result from adequate legal representation. The Court also recognized that the public perception of fairness in the criminal justice system is promoted when access to representation does not depend on a defendant’s ability to pay a lawyer. The Court also relied on the fact that the Sixth Amendment’s text provides a right to counsel “[i]n all criminal prosecutions.” In several cases after *Gideon*, the Court has clarified that no indigent defendant can be sentenced to jail for any criminal offense, or be denied an appeal, unless appointed counsel was available to the defendant.³ Texas’s Court of Criminal Appeals has embraced *Gideon* and its rationale as a matter of Texas constitutional law.⁴

During the past 40 years, *Gideon* and its progeny⁵ have caused officials in all branches at all levels of state and federal government to explore how best to make attorneys available to indigent criminal defendants. “Indigent defense” has grown into its own specialized area of legal practice and generated its own body of case law throughout the United States.

In Texas the financial burden of paying the costs associated with indigent representation has historically been carried exclusively by the county in which each criminal case is filed. Today, the responsibility for providing counsel to represent indigent defendants in criminal proceedings is still primarily a local responsibility.⁶ Each county is free to select the type of system it will use to represent indigent defendants. Three primary models have evolved:

- The *assigned counsel model* involves the assignment of indigent criminal cases to qualified private attorneys on a neutral basis, such as a rotation system.
- The *contract model* involves a contract with an attorney or a group of attorneys who

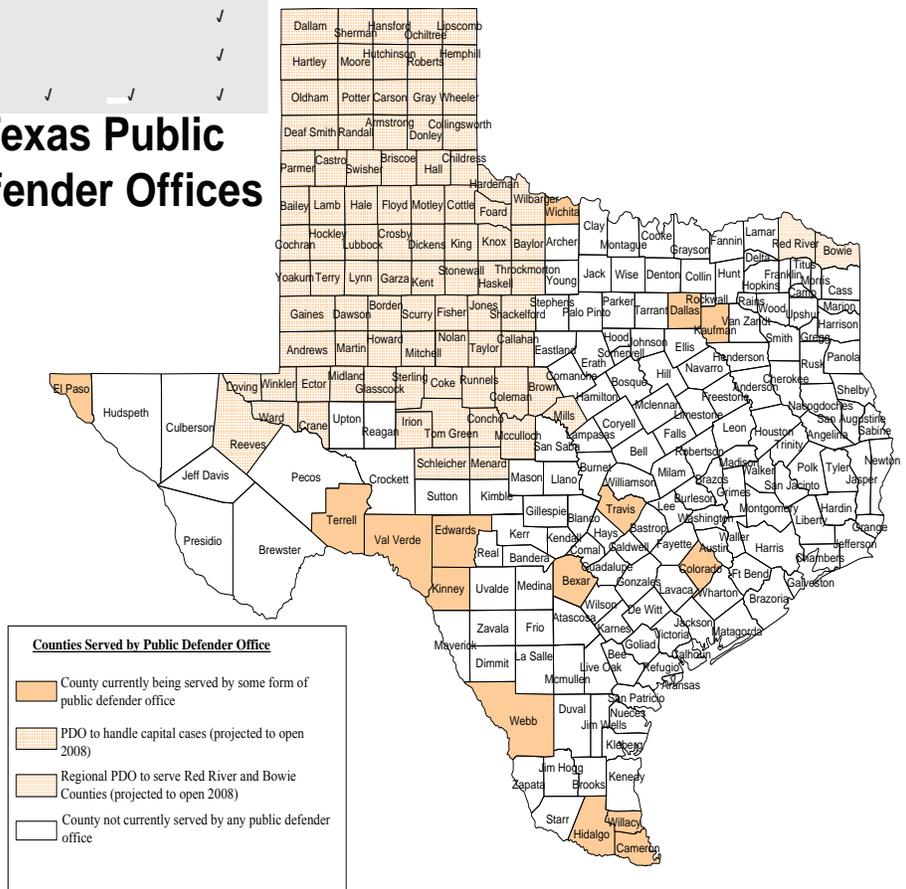
provide representation in some or all of the indigent cases in the jurisdiction.

- The *public defender model* involves a public or private non-profit organization with full or part-time salaried staff attorneys and support personnel.

The vast majority of Texas counties use assigned counsel as the primary service delivery method. But the number of individual and regional public defenders is growing in Texas, as shown in Figure 1.1 below.⁷

Figure 1.1	Year Operations Began	Capital Trial	Felony Trial	Misdemeanor Trial	Juvenile Trial	Mental Health	Appellate
Bexar Regional	2005					✓	✓
Bowie Regional	2008		✓	✓	✓		✓
Cameron	1999				✓		
Colorado	1987	✓	✓	✓	✓		
Dallas	1983	✓	✓	✓	✓	✓	✓
El Paso	1987	✓	✓	✓	✓	✓	✓
Hidalgo	2006			✓			
Kaufman	2007		✓	✓			
Lubbock Regional	2008	✓					
Travis	Juvenile 1971 Mental Health 2007				✓	✓	
Val Verde Regional	2006	✓	✓	✓	✓	✓	✓
Webb	1988	✓	✓	✓			✓
Wichita	Late 1980's	✓	✓	✓			✓
Willacy	2007	✓	✓	✓	✓	✓	✓

Texas Public Defender Offices



Texas Fair Defense Act

The Texas Fair Defense Act of 2001 continues to change the indigent defense landscape across Texas. The Act is still criticized for the increased costs, but its efficacy and value are now more widely accepted. County indigent defense costs increased in the wake of the Act from approximately \$91 million in FY 2001 to nearly \$161 million in FY 2007. However, state funds have offset a significant share of the cost increase, and state funding has increased every biennium. Also, many local officials acknowledge that new practices under the Fair Defense Act have promoted efficiency in the administration of criminal justice, notably by saving jail costs. The Fair Defense Act contains six basic requirements:

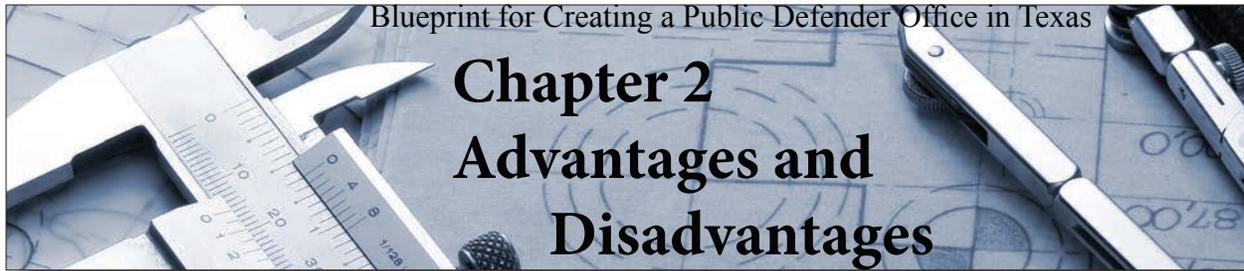
1. Conduct prompt magistration proceedings:
 - Inform and explain right to counsel to accused;
 - Provide reasonable assistance to accused in completing necessary forms to request counsel;
 - Maintain magistrate processing records.
2. Determine indigence according to standard in local indigent defense plan.
3. Establish minimum attorney qualifications.
4. Appoint counsel promptly.
5. Institute a fair, neutral, and non-discriminatory attorney selection process.
6. Promulgate standard attorney fee schedule and payment process.

The Fair Defense Act also established the Task Force on Indigent Defense as a standing committee of the Texas Judicial Council with administrative support from the Office of Court Administration. The Task Force is charged with administering state grants to the counties for indigent defense services. It ensures compliance with the standards set out in the Fair Defense Act through fiscal and program monitoring. In addition, each county is required to submit its plan for delivering indigent defense services and its indigent defense expenditures. The Task Force publishes each plan and expenditure data on its website.

The Task Force promotes evidence based practices to develop the most proficient delivery of indigent defense services. For instance, publishing indigent defense plans for each county, as well as publishing the resulting data, serves to promote the promulgation of uniform indigent defense policies. The Task Force also funds various research projects regarding indigent defense policies, and conducts workshops for those responsible for delivering defense services. See Figure 1.2 for some of the online resources provided by the Task Force.

Figure 1.2: Online Resources

- Public Access to county expenditures and county plans
- Evidence for Feasibility of Public Defender Offices in Texas
- A Strategic Plan for Improving Texas Indigent Defense Criminal Justice Systems
- Discretionary Grant Request for Application
- Texas Administrative Code Standards for Grant Administration
- Uniform Grant Management Standards



Although the number is growing, public defenders serve in fewer than 10% of Texas counties (excluding the regional capital murder public defender serving the 7th and 9th judicial regions and the appellate defender serving the 4th Court of Appeals), and their work is often limited, i.e. to juvenile, appellate, or misdemeanor cases. Figure 1.1 contains summary information on each public defender in Texas.

While a scientific study has not been conducted to determine why more counties in Texas have not established PDOs a likely explanation based on Task Force experience is that change requires work and money. Officials have neither the time nor the resources needed to seriously explore the public defender option, even though many may wish to do so.

The Task Force regularly fields questions from court and county officials across the state including:

- What effect would a public defender have on the quality of criminal justice delivered?
- Would a public defender be as good, better, or worse than a privately assigned counsel?
- Would the local criminal defense bar support a PDO or rebel against the establishment of such an office?
- How much would a PDO cost?
- How would the cost of a PDO compare to current expenditures?
- What will be the long-term financial impact to the county?
- Would the judiciary utilize the PDO so that economies of scale can be realized?
- Does the county have the resources to adequately fund such an office?
- Why change if the current system appears to be functioning adequately?
- How much effort and time will be needed to obtain the local political buy-in to put in place an effective and efficient PDO?

Prior to the Fair Defense Act, local officials were left entirely to their own devices to address these questions and to fund such systems. No longer must local court and county officials work in isolation. Local officials may now turn to the Task Force and its staff to assist in answering these questions as well as the possibility of state financial assistance to fund such a program.

The Task Force has awarded numerous multi-year grants to counties who sought to create public defender offices, including Bexar, Bowie, Hidalgo, Kaufman, Lubbock, Travis, Val Verde, and Willacy Counties. Task Force staff and consultants have carefully studied PDOs that were created

in Texas prior to the Fair Defense Act. Details on all public defenders in the state and in other parts of the nation are included in Chapter Five. Part of the increased local interest in PDOs results from the fact that many indigent defense services in other state and federal courts throughout the United States are delivered through urban and rural public defenders.⁸ These jurisdictions outside Texas have grappled with the same questions and concerns now facing Texas local court and county officials. Having examined all of the public defender information over the past six years, the Task Force can offer several important generalizations about PDOs, including what benefits may be gained by expanding the use of public defenders, and also what the pitfalls may be.

While public defenders are by no means the instant solution to any budget or quality difficulties that a county has with its indigent defense system, when carefully implemented in a PDO, they may prove to be the most effective use of limited resources for indigent defense.

Advantages of Switching to a Public Defender

State and local governments choose public defenders for a mix of three basic reasons: to be more cost-effective, to improve the reliability of indigent defense services, and to create an institutional resource that is valuable to the bench, the bar, county officials, and the community.

Cost

When considering cost advantages, officials must recognize that the choice of appointment method, whether public defender or assigned counsel or contract counsel, is only one of many factors that affect cost. The factor that affects cost the most is not the appointment method, but rather the number of cases in which counsel is appointed and how much is charged per case. Thus, of course, large urban counties spend more on indigent defense than do small rural counties. Historical practice in many Texas counties has been that counsel is rarely appointed in misdemeanor cases, which always vastly outnumber the felony cases in which counsel are appointed. To the extent that the Fair Defense Act makes clear that counsel will have to be appointed for indigent defendants in all Class A and B misdemeanor cases⁹, this will increase indigent defense costs regardless of whether those services are provided by a public defender or by assigned counsel. These kinds of cost increases do not result from selection of the public defender option. To the contrary, inevitable cost increases such as these may best be minimized by use of the public defender option.

Public defenders can provide comparable quality legal services at less cost than any other indigent defense delivery method. While individual private attorneys are certainly capable of performing the same or better quality work as public defenders, they ordinarily cost more to do so. Public defenders cost less to operate because of the same basic economic factors that lead most attorneys to work in law firms rather than operate individual offices, and the same factors which enable prosecutor offices to operate more efficiently as a cohesive unit.

1. Economies of Scale

Consider a small public defender office consisting of five attorneys. These attorneys share an office in or near the courthouse, which eliminates inefficient travel expenses. They also share support staff who quickly gain experience in working on specific types of cases. They divide their work on cases so that the work done by each attorney best matches that attorney's experience and abilities. Over time, the staff of a PDO learns to efficiently provide quality indigent defense services, to systematically train and supervise newer attorneys and staff, to implement new technology that improves quality and efficiency, and to share information and skills among more experienced attorneys and staff. They develop model forms, pleadings, and briefs that can be shared and reused by other attorneys.

By contrast, if these same five attorneys worked on the same cases as individual private attorneys, the county would have to fund part of the overhead of five smaller offices. Also, the individual attorneys would not reap the benefits of division of labor, as each attorney must handle every type of case to which he is appointed. Further, should a private attorney build up a retained practice and stop accepting indigent defense cases, all benefit of institutional knowledge regarding how to efficiently perform this work is lost. Thus, counties that primarily rely on private attorneys under an appointment system expend a lot of resources paying new attorneys to reinvent the same wheel time and time again.

2. Institutionalization

Beyond economies of scale, the institutional nature of public defender offices itself can save money. A simple example is that public defenders can seek grants from the federal and Texas governments, legal organizations, and private foundations, grants that are not available to private assigned counsel. Public defenders are also much more likely to attract free or low-cost assistance from law students, paralegal students, and retiree volunteers. Another critical institutional cost advantage of public defenders is that they reliably help find efficiencies in each county's criminal justice process. Over time, officials who establish PDOs usually choose to explore a range of new cost-saving measures, including evaluation of incarceration alternatives for non-violent misdemeanor defendants, periodic case review of jailed defendants, payments by partially indigent defendants, and indigence verifications. Defense counsel may be assigned an appropriate role in implementing these ideas, and the standardization that is available through public defenders makes them the most reliable and cost-effective choice for doing so.¹⁰ Public defenders often present judges and county officials with new ideas for promoting efficiency throughout the criminal justice system. For example, public defenders may make attorneys dependably available at the time that they are most needed in court, whether on the court's schedule or whenever a need for emergency coverage arises (e.g., an unrepresented indigent defendant walks into court on a warrant). Public defenders may also staff a full docket, such as arraignments, as opposed to multiple private attorneys who are more likely to have conflicting schedules, which can lead to greater court efficiency.

3. Decreased Administrative Costs

Public defenders save administrative time for judges, numerous other court personnel, and the county auditor. For example, having a public defender dramatically reduces the number of decisions judges have to make about attorney appointments, training and experience qualifications, caseload management, and fee vouchers. It reduces the time court personnel have to spend notifying individual attorneys of their appointment, following up on attorneys who fail to appear, and dealing with attorney scheduling conflicts. The number of individual checks that must be prepared and tracked by the county auditor is reduced. This translates into cost savings for the county.

4. Budget Predictability

Public defenders can improve the dependability and efficiency of indigent defense budgeting. Judges and commissioners can focus once annually on the public defender budget rather than returning to the subject each time a case or group of cases is concluded. The public defender may be required to report all information that judges and commissioners believe is necessary to decide upon a budget, and that information can be explored in detail as the matter is decided once each year. Public defender budgeting becomes easier over time as a performance and cost history develops, and the matters to be decided concern adjustments to an existing system.

A study regarding the feasibility of a public defender system was conducted in 2006 by the Task Force on Indigent Defense, and the Public Policy Research Institute at Texas A&M University (PPRI), which may be viewed at http://www.courts.state.tx.us/tfid/pdf/PD%20Feasibility_Final.pdf. This study noted that with the economies of scale and institutional advantages of a public defender office taken into consideration, workload in a PDO should be able to fluctuate considerably without causing tremendous shifts in cost. Obviously, such stability is beneficial to a county which can not predict caseloads in a given year. In fact, the study found that when the number of misdemeanor cases rose 23 percent between 2003 and 2004, associated public defender attorney costs went up only 7 percent. Similarly, a 14 percent decline in cases in 2005 resulted in a four percent budgetary response.

The PPRI study also reflects the cost saving qualities of a PDO. According to the study, in 2005, misdemeanor cases handled by PDO in the state of Texas were on average \$35 cheaper than misdemeanor cases handled by an appointed private counsel. Similarly, felony cases were on average \$38 cheaper. Such savings could save millions of dollars across the state in spending on indigent defense. It should be noted that the difference in average cost per case between a PDO and an assigned counsel system has been dropping over the last three years. However, the narrowing of the cost gap may be attributed to counties improving indigent defense systems in the wake of requirements and standards stated in the Fair Defense Act. Another study by the Texas Comptroller concluded that El Paso's public defender was more cost effective than assigned counsel, and recommended expansion of public defender offices in Texas.¹¹

5. Reduced Jail Populations

Public defender offices are often able to make significant impacts on pretrial misdemeanor jail populations. By having strong communication links with the jail and respective inmates, the public defender can identify persons needing bond reduction hearings and can identify persons awaiting case filings. The experience of Hidalgo County is illustrative of the sort of savings that a county may see as a result of opening a PDO. The office has placed a special emphasis on removing case filing and disposition road blocks. If an arrestee has been in jail for six days without a case filing, the public defender calls to find out if the offense report has been handed over to the prosecution. This extra follow-up helps to speed the average time from arrest to disposition for jailed clients from 15.1 days for private assigned counsel to 11.0 days for the public defender. These extra four days of incarceration would otherwise be paid at the county's expense.¹² These efforts by the public defender have reduced the Hidalgo pretrial misdemeanor jail population from an average of 288 to an average of 176. Kaufman County has had a similar experience with reducing the local pretrial misdemeanor jail population and has cut this population from an average of 40 to an average of 30.¹³

Total incarcerated jail populations may be reduced in addition to the pretrial misdemeanor population. The Kaufman County Public Defender was able to dispose of cases at a much faster rate than assigned counsel and has reduced the local jail population from an average of 306 to an average of 245. The Val Verde Regional Public Defender has been able to make its mark on the Val Verde County jail population by cutting the number of inmates from an average of 78 to an average of 61.¹⁴ The sheriff attributes most of that decrease to the operational efficiencies brought by the new public defender system. Public defenders are often able to dispose of cases faster than the private bar by having an active presence at the jail. Quick disposition of incarcerated persons' cases then directly lowers the local jail population. See chapter 5 for analysis of the effects on the Hidalgo, Kaufman, and Val Verde jail populations from the presence of a public defender office.

Quality

An adequately funded public defender system should result in the same or better quality representation, better dependability, and less cost for the same scope of indigent defense representation. This improvement results from the economies of scale and institutional nature of public defender institutions, not because public defenders are better attorneys than private assigned counsel.

Individual private attorneys may be more or less competent and committed than individual public defenders. Further, the average skill level of indigent defense counsel under either appointment method will vary from time to time and place to place. However, the performance of private attorneys is more difficult to assess, control, and maintain. Even if the appointed caseloads of private assigned counsel could be reliably tracked, these lawyers also have a retained caseload that is even more difficult, if not impossible, to measure. High caseloads are inextricably linked to poor performance, so inability to accurately track caseloads of private counsel compromises the ability to objectively gauge quality. One of the main advantages of public defenders is that their caseloads are readily known, and it is much easier to oversee the quality of each attorney's work.

Public defenders provide judges with a single point of contact for any quality issues that arise. The chief public defender has direct supervisory authority over each public defender. If a judge has questions about whether a public defender has the necessary skills to adequately represent a client, for example, the judge can simply contact regarding these concerns and ask the chief public defender to address the problem.

Public defender offices also offer important quality controls that assigned counsel and contract programs do not have, including office policies, in house training, and supervision. These three key tools assure officials that decisions about how to perform the work of indigent defense are deliberately considered and refined over time, effectively communicated to staff, and properly implemented by the office. Thus, when a new legal standard is handed down by courts or by the legislature, it is more likely to be promptly and accurately applied by a team of criminal law specialists than by a cross-section of individual private attorneys who practice criminal law with varying levels of frequency and ability.

A critical quality advantage of PDOs is that their caseload volume usually enables them to hire the necessary number of full-time investigators and social workers. The work of these non-attorney professionals is often as essential to the results of criminal cases as is the work of the attorneys. Yet individual private lawyers often lack the caseload volume that would enable them to hire investigators and other professionals in every necessary instance. The PPRI study referenced above concludes that average investigation expenditures are more than two times higher per case for felony public defender cases. This shows that public defenders have the capacity to put resources where they are most needed in each case, whether in investigation or in advocacy. Skeptics who wonder whether criminals deserve the help of investigators to escape responsibility must consider that prosecutors rely heavily on a well-trained and funded police force to present their cases in court. Also, if an investigator can find a serious flaw in a criminal case, public money will not be wasted in pursuing a bad case, and public safety may be aided by timely focusing police resources on a new and more promising target.

Finally, Public Defender offices allow counties to maintain better and more accurate metrics of indigent defense, such as knowing the precise number of cases assigned to each attorney and knowing how much time each client has spent in jail.

Institutional Resource

Particularly at the outset, public defenders may be perceived as a threat to the private criminal defense bar. This perception may even present an insurmountable barrier to creation of a public defender, as discussed below. Candid, complete discussions with members of the organized or informal criminal defense bar are essential to the success of any public defender proposal. These discussions should include the concrete benefits that public defenders offer to the private criminal defense bar, and to the overall quality of criminal justice in the community.

Existing Texas public defenders and local bar associations describe the important benefits that become available when the indigent defense function is institutionalized in a public defender. PDOs provide new attorneys a place to gain the mentoring and experience needed before joining or beginning a private practice. They develop and make available to the private bar forms, pleadings, and substantive briefs. Public defenders often make available free CLE to members of the private bar. They consult with the private bar on special issues as they arise in cases, even to the point of second-chairing complex trials. They are reliable sources of up-to-date courthouse information. Generally, the institutional knowledge that is gained by a PDO is available to private appointed counsel, which improves the cost efficiency of private counsel and the quality of justice. For judges, commissioners, and the community at large, a PDO provides a unique institutional voice for indigent defense that is comparable to the necessary voice that a district attorney provides for the prosecution. Through the public defender, judges, commissioners, and the community may learn of specific facts that they seek, of criminal justice trends and their impact on various members of the community, of ideas for procedural improvements, and of the many ways in which the criminal justice system interacts with other government functions.

Disadvantages of Switching to a Public Defender

Public defenders may be cost-effective, but there are relatively few of them in Texas. This is an important fact, particularly considering the budget pressure that counties face in many areas including indigent defense. Three likely explanations are: 1) natural resistance to change; 2) start-up costs; and 3) absence of the caseloads large enough to make a public defender cost effective.

Resistance to Change

Satisfaction with the status quo can be a powerful and perfectly appropriate reason for declining to invest the work that is necessary to switch to a public defender. In evaluating the status quo, two considerations are paramount: what are the reasons for satisfaction with the status quo, and what options (short of switching to a public defender) are available to address any concerns with the current system?

If, upon examining a county's actual indigent defense practices, the judges and commissioners are satisfied with the quality and cost of indigent defense in their county, there is little reason to consider a public defender at this time. Minor concerns about quality may be addressed by upgrading the attorney qualifications in the county's indigent defense plan, closer screening of attorney qualifications by judges, and placing reporting requirements upon appointed counsel. Options for addressing minor cost concerns without a public defender are limited and largely untested, but they include creating a pretrial services office or designate other staff to conduct indigence verifications, bond evaluations, and partial-indigence copayments. Another option may be to expand the use of misdemeanor pre-trial diversion programs.

The impact that a public defender would have on the work currently made available to the private bar merits candid discussion in every county. Officials may reasonably conclude that the demonstrated

quality of service currently provided by the private bar justifies increased costs when compared to cost estimates for a public defender. Before doing so, however, an attempt should be made to gauge the realistic share of any type of case that would be assigned to the public defender, the extent to which members of the private bar would seek employment in the PDO, and the extent to which creation of a public defender would provide an opportunity for officials to exclude the most unproductive and least competent attorneys from representing indigent defendants.¹⁵ Only after exploring these numbers can the actual impact of a public defender on legitimate indigent defense providers be estimated.

Start-up Costs

Creating a public defender requires a significant one-time start-up investment to cover costs for planning the operation of the office, conducting a bidding and hiring process, purchasing furniture and electronic equipment, and preparing office space. Unavailability of start-up resources may pose an absolute barrier to counties that would otherwise benefit from a public defender. Grant resources have been available from the Task Force to assist some counties with necessary public defender start-up costs. The Task Force's multi-year public defender grants have historically been designed to more than offset public defender start-up costs, and ensure that counties do not incur financial risk by beginning a PDO. To learn more about the Task Force Grant Process see Fig. 2.1 below.

Figure 2.1: Online Resources

- Discretionary Grant Request for Application
- Texas Administrative Code Standards for Grant Administration
- Uniform Grant Management Standards

Small Caseloads

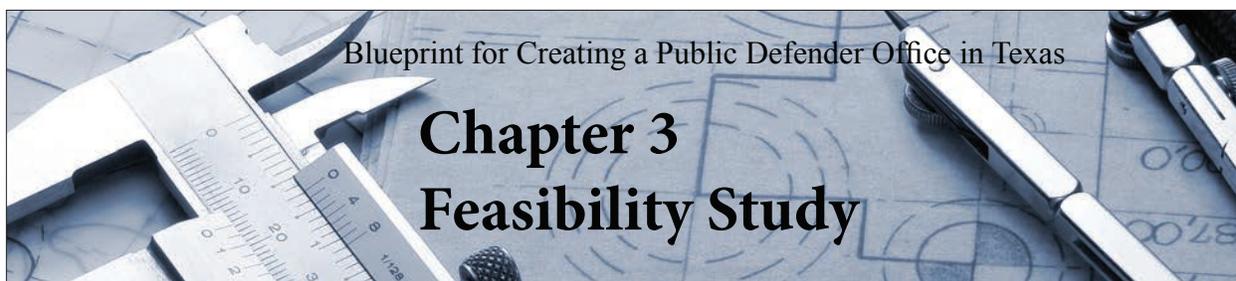
A public defender may not cost less to operate than an assigned counsel system when caseloads are small. This is because the economies of scale described above do not apply to public defenders with small caseloads. The other cost savings available from public defender offices--- institutional savings (particularly jail costs), grant opportunities, and decreased county administrative expenses--may still make small PDOs cost-effective, even without economies of scale. This is why each jurisdiction's cost factors deserve individual examination.

There are two primary reasons for small public defender caseloads. First, many rural counties do not have enough criminal cases to support a PDO. Roughly 1,000 misdemeanors and 200 non-capital felonies per year are the minimum number of cases needed to realize economies of scale in a three or four-lawyer PDO. Over half of Texas counties lack this case volume, but widespread and carefully planned use of regional public defenders could enable almost all counties to experience the cost, quality, and institutional advantages of public defenders. This is why the Fair Defense Act specifically allows smaller counties to join together in operating a regional PDO that serves two or more counties.

The counties that may benefit the most from a regional solution are those where too few qualified lawyers are available to represent indigent defendants. Local officials are most likely to know which of their neighbors may consider joining in a regional effort, but local community leaders, including local bar associations and providers of free civil legal services to indigent citizens, may also have contacts that can help groups of counties explore regional solutions. Two regional public defenders have been created to offer general services in misdemeanor and felony cases, one in Val Verde County that also serves the three surrounding counties of Terrell, Kinney, and Edwards, and one in Bowie County that also serves Red River. The Val Verde PDO is Texas's first public defender to be operated by a private non-profit corporation, Texas RioGrande Legal Aid (TRLA at www.trla.org). TRLA also operates a public defender program for Willacy County in the Lower Rio Grande Valley, where it has experimented with the use of its civil legal services staff with criminal law experience to cover a full range of cases, from misdemeanors to capital felonies, in a small county with a limited caseload. That model may prove to be an alternative to a regional defender program where suitable partnering counties are not available.

A regional option that has proved promising elsewhere in the nation but has not yet been implemented in Texas is that of an urban public defender serving surrounding rural counties. Not only would urban-rural regional public defenders offer cost-effective representation, they would provide a level of stability and experience that would enable smaller jurisdictions to transition to a regional public defender with a simple “turnkey” decision.

The second reason for small caseloads applies equally to urban and rural jurisdictions. Specialized public defenders may be created to address special needs identified in a particular area, even when caseloads are small. For example, a public defender office operates in Bexar County to exclusively handle appeals from indigent defendants and was expanded in 2007 to cover the 31 other counties served by the Fourth Court of Appeals. Additionally, a public defender office operates in Travis County exclusively to handle misdemeanor criminal cases against indigent defendants with severe mental disabilities, specialized juvenile PDOs operate in Cameron and Travis Counties, and a regional PDO has been created in Lubbock County to handle capital cases that arise throughout an 85-county area in the Panhandle and West Texas. These cases are often more labor intensive than ordinary misdemeanor or felony cases; they also require special qualifications for defense counsel, and special teams of support staff, such as investigators and social workers. Specialized public defenders are created to improve a county's ability to provide specialized services when other appointment methods have not attracted an adequate number of qualified counsel. Unmet needs often drive the decision to create a specialized public defender, as much as the desire to achieve economies of scale. Many officials have explained that a specialized public defender is a good way for leaders throughout a county to become familiar with a PDO, and consider expansions based on experience with a smaller office.



Should you explore creating a Public Defender in your County?

A public defender should not be forced on judges and commissioners in a county, but instead must be the product of consensus on the direction that indigent defense should take in the jurisdiction. The first step is to discern whether a majority of judges and county commissioners are at least open to the idea. Their openness will likely depend on the difference in cost between a public defender and the current method of providing counsel, as well as any expected changes in the quality of counsel provided.

So anyone who wants to explore the public defender option may begin by preparing an estimate of the cost difference between a public defender and the alternative selection method, which is usually the existing selection method. This difference is expressed on a “cost-per-case” basis that is calculated by subtracting the current cost per case (typically available from the county auditor) from the public defender cost per case (entire budget estimate divided by the number of cases to be assigned to the public defender). This work can ordinarily be completed in a few hours. The Task Force has attached a feasibility worksheet for this purpose as Appendix B, and its staff are always available to help any local official prepare the calculation.

The calculation can be prepared multiple times for a variety of different possible public defender configurations (e.g. public defender representation in 25% of all non-capital cases, 50% of misdemeanors, or 75% of all trials and appeals). This exercise may provide important information about the optimum size and scope of a public defender office in a particular area.

The Task Force offers a few critical observations about the calculation:

The calculation only makes sense, and can only be useful, if it compares apples to apples, i.e. the cost of the same number, type, and quality of indigent defense services under a public defender as compared to another appointment method. Thus, indigent defense costs in 100 felony cases cannot usefully be compared to indigent defense costs in 100 misdemeanor cases. Similarly, if a public defender is expected to handle five times the number of misdemeanor cases currently paid by the county, the public defender may not usefully be expected to do so within the county’s existing misdemeanor defense budget.

To calculate the existing cost per case, do not forget to include expert and investigator costs, which county auditors should track in a line item that is separate from attorney costs. Also, existing costs per case are most reliable if they are based on a large pool of cases that are concluded over the two most recent years.

Public defender staffing/caseload numbers are necessary to perform the calculation. The commonly referred to National Advisory Commission maximum caseload standards are 150 felony cases per public defender attorney per year or 400 misdemeanor cases per public defender attorney. One investigator and one support staff for the first three attorneys, and one more for every five more attorneys, are also common numbers.

Salaries for public defenders are necessary to perform the calculation, and these vary by area. Use any salary guide that you find realistic for your county, such as those for county employees including prosecutors with like responsibilities.

The quality of public defender staff is the most important predictor of the office's efficacy. This is why special care is required in recruiting each chief public defender. It is also why salaries of the chief and staff should be commensurate with those of their counterparts in the prosecutor's office. In fact, a goal of any public defender should be to not only make the salaries commensurate, but the workloads, resources and support staff as well. In fact the American Bar Association lists this parity of resources as one of its Ten Principles of a Public Defender System, which may be viewed at: <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf>

Once the cost study is complete, it should be discussed with local leaders as part of a broader discussion of whether to invest more effort in exploring the public defender option. As this examination proceeds, the cost figures may be refined either to reduce costs or to expand coverage or quality, as each individual circumstance indicates is appropriate. The initial cost figures are only necessary to begin the discussion.

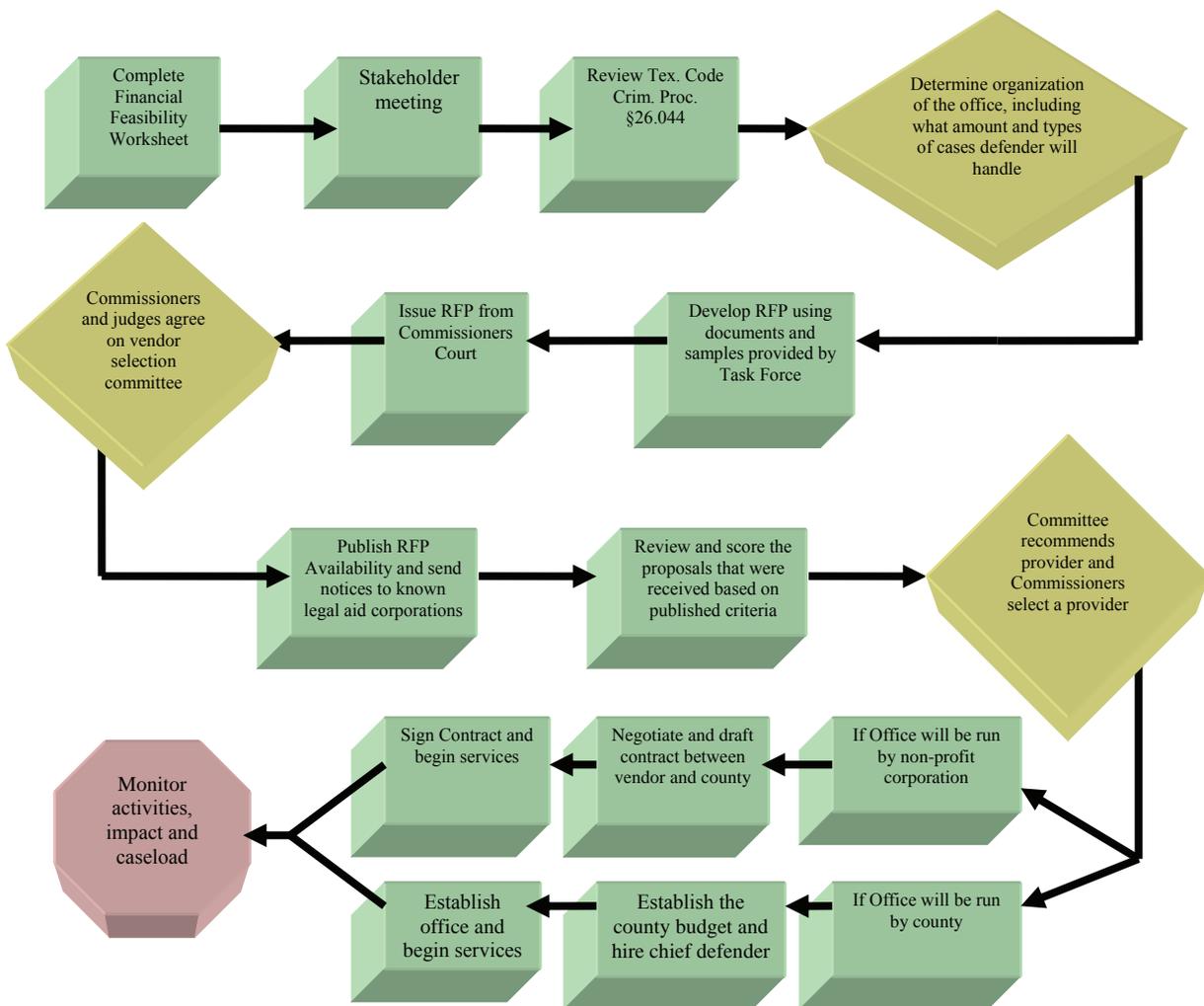
Blueprint for Creating a Public Defender Office in Texas

Chapter 4

How to Create a Public Defender

Once officials decide to create a public defender office, the following flowchart shows the steps necessary to do so. Task Force staff will also be available to offer support and guidance along the way.

Figure 4.1: Flowchart for Creating a Public Defender



Stakeholder Meeting

While decision-making authority on all features of a public defender plan rests exclusively with judges and commissioners, the creation of a PDO has a broad impact on the functioning of the overall criminal justice system. Thus, it is recommended that after the feasibility study, the county hold a meeting with all affected stakeholders. These stakeholders may include defense attorneys, prosecutors, court administrators and coordinators, indigent defense coordinators, district and county clerks, pre-trial services officers, the county auditor, the county treasurer, heads of law enforcement agencies, magistrates, and local providers of civil legal services to the poor. The object of involving all of these stakeholders is not to find consensus on every issue that needs to be decided, but to provide a forum to be heard so that they may make constructive suggestions and criticisms that will improve the end product. Also, by participating in the planning process all stakeholders may gain a better understanding of how a public defender may impact the efficiency and effectiveness of their work.

In addition to stakeholders, you may wish to involve others who have gained expertise on public defender issues. These individuals include the federal public defender in your jurisdiction, the chief public defenders from Texas, Task Force staff, the Texas Criminal Defense Lawyers Association, Texas Association of Counties, and the County Judges and Commissioners Association of Texas, Conference of Urban Counties, and various public interest groups or other associations in Texas and throughout the nation who consult with jurisdictions on public defender implementation issues.¹⁶

From this initial meeting, a core group of interested individuals will emerge, who may meet as one group or by committees once or more to assemble a plan that will serve as the basis for a proposal.

Review Texas Public Defender Statute and Other Resources

Texas has a single statute that governs public defenders: Texas Code of Criminal Procedure Art. 26.044. A working knowledge of this statute is necessary for all members of a public defender planning team. Appendix A provides the text of the statute.

A number of national standards and guidelines have been developed over the past 15 years to assist in establishing indigent defense organizations and in evaluating the quality of services provided. There are national and state standards and guidelines in the areas of attorney performance, attorney eligibility, caseloads, conflict of interest, indigency screening, and administration of indigent defense systems. When developing a public defender system from scratch, these standards and guidelines can serve as useful reference resources not only for planning the PDO, but also for evaluating the adequacy of other indigent defense delivery methods used in your jurisdiction. While these standards and guidelines are not binding on any local program, they can serve as a benchmark and facilitate compliance with the Fair Defense Act.¹⁷ See Figure 4.2 below for helpful online resources.

Figure 4.2: Online Resources

- ABA Ten Principles of a Public Defender System
- National Advisory Commission on Criminal Justice Standards and Goals
- Information from counties and county indigent defense plans

Determine Organization of the Public Defender Office

Next, the group must decide on the organization of the public defender office and its role in the county. The issues described below should provide a framework for the office.

- ***What type and number of cases will be assigned to the public defender?***

The core decision to be made in creating a public defender is what type and number of cases it will be assigned. The Fair Defense Act allows a public defender to be assigned any combination of any types of cases, including cases assigned to a particular court or courts, appeals, felonies, state jail felonies, capital felonies, sex offenses, murders, Class A and B misdemeanors, DWI's, juvenile delinquency cases, multiple-defendant cases, and cases involving a defendant with a severe mental disability. See Figure 1.1 for a chart of existing public defender offices and what types of cases each office handles and when the office was formed.

Case numbers assigned to the public defender can realistically range from about 50 percent to 80 percent of the county's caseload in each case type selected for public defender assignment.¹⁸ Those counties who choose to run more specialized offices (such as an appellate or juvenile public defender) will likely be able to handle a larger percentage of cases.

Begin the planning process for a public defender office by selecting case types and numbers that result in a modest-sized office for your jurisdiction. Presumably all rural offices would be modest. In urban areas, a public defender consisting of roughly ten to fifteen attorneys would enable you to compare the cost and performance of a public defender to your alternative system over time. Gradual expansion of the public defender can be accomplished as cost and performance justify it, and as the office overcomes the challenges of start-up, initial recruiting, standardization of its indigent defense practices, and acceptance and respect in your community.

Below are some common questions that should be considered regarding the type and number of cases being assigned to the public defender:

- What case types and numbers are most supported by the district judges?
- What percentage of cases will be assigned the public defender?¹⁹
- How will conflict cases be handled?
- If your county does not have sufficient caseload to warrant the establishment of a public defender office, are there contiguous counties where efforts and resources could be combined to create regional PDO?

After deciding what type and number of cases you plan to assign to the public defender, consider specifying what other responsibilities you want to place with the public defender, including administrative duties like collecting, reporting and publishing facts and policies concerning office operations. You may also wish to consider having the public defender determine indigence, although some believe this creates at least the appearance of a conflict of interest.

- *What staff will be necessary to cover the public defender's caseload?*

Next, consider what staff is realistically necessary to do the work that you expect the public defender to perform. The size and type of staff that is necessary can be gauged by considering the experiences of other jurisdictions.

Throughout the United States, state and county public defender programs have developed caseload and workload standards for their public defender attorneys to assure that they are working at maximum capacity but are not undertaking a workload that jeopardizes their ability to provide adequate representation to each of their clients. In developing caseload standards, reference should be made to this document and other national standards developed by the National Advisory Commission, the American Bar Association and the National Legal Aid and Defender Association.

Most of caseload standards adopted by individual jurisdictions are similar to the caseload limits developed by the National Advisory Commission in 1973:

- 150 Felonies per attorney per year (excluding capital cases), or
- 400 Misdemeanor cases (excluding traffic) per attorney per year, or
- 200 Juvenile cases per attorney per year, or
- 200 Civil Commitment Cases per attorney per year, or
- 25 Appeals per attorney per year.

The above standards address the maximum number of cases that a full time attorney should handle in a 12 month period. So at any one point in the year, a public defender's open caseload should include fewer cases than the annual numbers set out in the standards. The standards are disjunctive, thus, if a public defender is assigned cases from more than one category, the percent of the maximum caseload for each category should be assessed and the combined total should not exceed 100 percent.

At this point a county may seek funding from the Task Force. Please see the Task Force website or call staff to explore this option.

Selecting a Provider

Texas law affords local officials complete freedom in choosing whether to create a public defender "in house" as a new county agency, or by contracting with a non-profit legal services corporation. Texas law simply requires counties to consider bids from non-profits that wish to provide public defender services. So far most counties have created public defenders as new county departments. Each type of model has advantages.

A public defender office operated as a county department eliminates the need to negotiate a contract for services with a non-profit corporation. Such an office may also enjoy more immediate access to

the other county departments and officials and to be considered part of the local criminal justice system. County departments would also be on par with the prosecutor's offices in the county when it comes to budget review, rather than being treated as a contract service provider.

Non-profit corporations also offer possible advantages, such as turnkey operation by offering counties a complete solution to its requirements through recruitment and hiring of staff, locating and furnishing suitable office space, providing caseload and reporting software, furnishing efficient technology, established management, personnel and accounting systems, and broad institutional knowledge. An established non-profit legal services provider may also be able to initiate operations more quickly than the county could establish a new department, for (TRLA began operations in Val Verde County 30 days after signing a defender contract and in only 5 days in Willacy County). Depending on its structure, a non-profit may agree to coordinate public defender and existing civil legal services in a way that promotes efficient resolution of criminal cases, for example, by ensuring that people with serious mental illness have access to treatment options outside jail. Non-profits may also have more reliable and extensive recruiting networks that are not available to counties.

While it is not uncommon for non-profit organizations to provide public defender services in other parts of the country, so far Texas RioGrande Legal Aid ("TRLA"), which is the principal provider of civil legal services in 68 counties in southwest Texas, is the only non-profit in Texas that has done so in Texas. TRLA serves Willacy County under one contract, and Val Verde, Edwards, Terrell, and Kinney counties under another contract. TRLA staff is available to answer questions about its operations and to provide the documents and software that it uses to operate its public defender offices. See www.trla.org.

When selecting a provider, the commissioners court must follow the Texas Code of Criminal Procedure article 26.044. First, a Request for Proposal must be issued by the commissioners court. This RFP should be published and distributed to known legal aid corporations who may be interested in handling the office. This process must be completed regardless of whether the stakeholders and the commissioners court favor an office operated by the county.

Providers should consult National Legal Aid and Defender Association guidelines prior to formulating their proposal. Any proposal should include at a minimum the following:

- A budget for the Office (with special care not to underestimate)
- A description of personnel positions, including chief defender
- Caseloads for each attorney
- Training provisions
- Anticipated overhead
- Policies regarding the use of investigators and expert witnesses

Once all proposals are submitted, the selection committee must review and make a recommendation to the commissioners. The commissioners will then choose a provider.

Establishing the Office

If the office is to be run by the county, the county must establish the budget for the office. Next, the County must hire a chief public defender. The chief should then hire staff for the office with guidance from the commissioners court.

If the office is to be run by a non-profit corporation, the county must first negotiate and draft the contract between the vendor and the county. The contract should include the caseload of the office, the cost of the office, and the method of funding. Once the contract is signed, the office may begin services.

Regardless of who runs the office, the county's indigent services plan must be amended to reflect the changes brought by the public defender office.

Checklist: Actions Needed to Establish a Public Defender Office

The following checklist is designed to further assist the planning group in forming an action plan. This is by no means an exhaustive list. No doubt it will be expanded with use and experience. The Task Force is always available as a resource for counties, judges, and members of the defense bar seeking assistance in developing a public defender office. The items in the checklist are recommended to be part of any developmental process for a public defender in Texas.

Stakeholder Meeting

- Consensus building begins with the commissioner's court, an interested judge or judges, or jointly, but enlarge the group to include attorneys practicing criminal law in the county or district, and the local elected prosecutor.
- Determine if there is general consensus to consider a public defender as a local alternative. If there is consensus then continue the process.

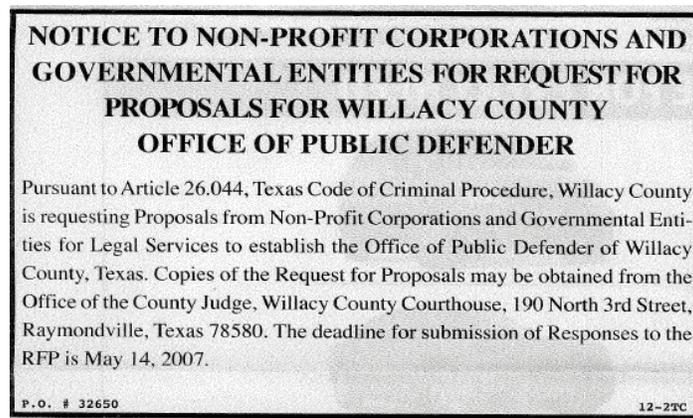
Organization of Defender Office

- What type(s) of cases will be assigned to the public defender?
- In which courts will the public defender be required to appear?
- What will the duties of the public defender be?
- What is the case appointment mechanism?
- Using prior reports prepared for the Task Force and any other local records, determine how many cases of the type that will be handled by the public defender were disposed of in the previous three years.²⁰
- Were attorneys appointed in those cases? If not, estimate how many cases will be eligible to be served by a public defender.
- What was the cost per case, and is this cost rising?
- Is the trend in filings increasing? If so, project the number of cases that will be filed in the first year the public defender will be in operation.

- Evaluate overhead, costs for assigned counsel in conflict cases and other litigation costs.
- Based on estimated caseloads, determine how many attorneys will be needed.
- Determine compensation of attorneys.
 - Parity with similarly qualified assistant district attorneys is a recommended benchmark.
 - Basis of compensation should be an objective standard of some kind.
- Determine job descriptions for other positions in the office
- Determine training program development and costs of the program
- Add the amount expended by the county for the type(s) of cases to be handled by the public defender and the related amount of the general grant from the Task Force for the last reporting year, and then compare the total with the draft budget for the public defender.
- Evaluate the cost effectiveness of creating a public defender program.
- Consider applying for grant funds from the Task Force for the purpose of starting a public defender program

Request for Proposals

- Prepare a Request for Proposals
 - Run a Notice of Request for Proposals in locally circulated newspaper such as the one shown below
 - Request for Proposals should also be sent to any potential interested parties



Determine Whether Applicants are Eligible to Bid to Operate the Public Defender Office.

- government entity; or
- non-profit corporation organized under Texas law.

What a Proposal Must Contain

- a detailed budget for operation of the Public Defender Office for a specified two year period, including all salaries;
- a description of the responsibilities for each personnel position, including the position of Chief Public Defender;
- a detailed description of the policies and methods the applicant will use to ensure that defendants whom the PDO is appointed to represent receive good quality legal representation provided by qualified attorneys in a cost-effective manner;
- the maximum allowable caseloads for each attorney who will provide indigent defense services through the applicant;
- a description of all training that will be available to attorneys and other personnel employed by the applicant;
- a description of anticipated overhead costs for the PDO; and
- proposed policies regarding use of licensed investigators and expert witnesses.

Qualifications of the Proposed Chief Public Defender

- member of the State Bar of Texas;
- practiced law for at least three years;
- substantial experience in the practice of criminal law;
- will not engage in the private practice of criminal law outside service with the Public Defender Office, nor allow any employee to do so; and
- will not accept anything of value not authorized by law for providing indigent defense services, nor allow any employee to do so.

Selecting a Provider

Should the public defender be a government entity or a non-profit corporation?

Should more than the minimum statutory chief public defender qualifications be adopted? If yes, what additional qualifications should the person possess?

- A specific and clearly defined history of experience.
- Attorney of record in a given number of cases?
- Board certified in criminal law?
- Administrative experience?
- Prior government experience?
- Budgetary experience?

Should the public defender be appointed to serve a term or serve at the pleasure of the commissioner's court, the courts, or some other entity?

- If a term, for how long?
- Method of removal?
- Grounds for removal

Establishing the Office

If Office will be run by a non-profit corporation:

- Negotiate terms of contract
 - Caseload: What types and number of cases the office will accept
 - Price: What will the total annual cost of the program be
 - Payment Method: How will the moneys be distributed to the office
- draft a contract detailing the obligations of the county and the non-profit corporation which will be operating the PDO
- Sign contract and begin services

If Office will be run by county:

- Establish the county budget authority in line item of county budget
- Determine to whom the office will report
- Hire chief public defender
- Establish office and begin services

Amending the County Plan for Indigent Defense

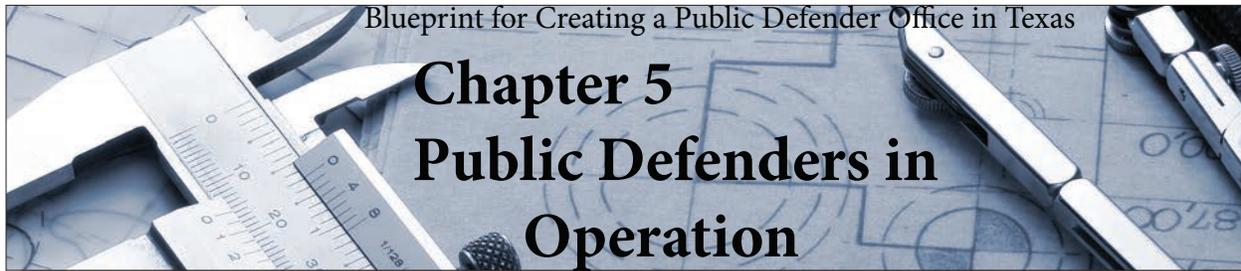
In order to comply with state law a county must reflect any changes to their indigent defense program in their county plans on record with the Task Force.

Does your plan supplement adequately reflect your new program?

Monitoring

Develop standard procedures and methods for handling cases and training attorneys and see that these procedures and methods are followed.

Counties should also monitor the caseload of the office so that it does not become overloaded and ineffective.



Below is a brief summary of the public defender offices in Texas currently in operation as of this writing. Also included for reference are a few selected offices from around the country. For the Texas public defender offices, we have listed program overviews, highlights, as well as caseload and funding data for FY07. Please note that contact information for all Texas offices may be found on the Task Force website at: www.courts.state.tx.us/tfid/pdoffices.asp, or may be found on each individual office's website. For the out of state public defender offices, we have included program highlights and contact information. We have also included brief descriptions and online resources for other state systems in the region.

Public Defender Offices in Texas

Bexar County has an estimated population of 1,522,142 and a poverty rate of 20.14%. The appeals caseload for the county in FY07 was 168. The following chart shows a breakdown of how appealed cases were handled by the county.

	Cases Paid	Briefs Filed by Public Defender
Adult Appeals	150	126
Juvenile Appeals	18	14
Totals	168	140

The Bexar County Appellate Public Defender Office (APDO) through a grant from the Task Force on Indigent Defense opened in late 2005. The County saw the APDO as an answer to increasing costs and delays in the appellate system. The APDO was also seen as an opportunity to improve the quality of appellate briefs submitted on behalf of indigent defendants. Previously, the County had assigned all appellate cases to a handful of private attorneys. The APDO would help to relieve any appearance of impropriety in such a closed loop appointment system.

The APDO handles a caseload of approximately 150 cases per year. It is staffed by 4 attorneys, and 2 full-time support staff. In addition, the APDO has sponsored several clerks and interns from the local schools. The office is also supported by the local community.

The APDO caseload represents about 83% of indigent criminal and juvenile direct appeals. The remaining appeals are assigned to private attorneys that have met the required qualifications as outlined by their plan. Appointments to the APDO are made by the trial judge, but the Chief Public Defender determines which attorney in the office will handle an incoming case.

The APDO has implemented several policies designed to improve the quality of their work product. First, the office has established policy and procedural manuals in order to guide attorney procedures. The manuals lay out in detail work standards, including client contact, preparation of appellate briefs, and the scope of representation. The office has a training budget, and the plan requires that each attorney must have completed 10 hours of continuing legal education. In addition, the office asks that all attorneys in the office read a particular brief before it is submitted. Such practices have led to praise from the fourth court of appeals for the quality of the work being produced, and for the already evident reduction in delays on appellate cases.

The office has also implemented several policies to help control costs. The office benefits from the help of unpaid volunteers, clerks and interns from the local schools. The APDO's relationship with the county has also allowed the office to tap other free resources such as technical support and budget specialists. Such practices have allowed the office to get by on a limited budget.

The Chief Appellate Defender ensures that the caseload and workload are evenly spread throughout the office. Cases are evenly distributed amongst the attorneys. The APDO has regular meetings where caseloads may be adjusted according to the complexity of cases.

In 2007 the Task Force awarded Technical Assistance funds to Bexar County to expand the APDO to cover the entire 4th Court of Appeals region.

In March 2008 the office expanded further to include a new mental health unit staffed with two attorneys. The unit represents defendants with mental health issues charged with misdemeanor offenses and was created to staff the new mental health court started by the county with a grant from the Bureau of Justice Assistance. The public defender office was also expanded in March 2008 to add two attorneys who represent persons involuntarily detained pending civil commitment hearings because of behaviors alleged to constitute a danger to themselves or others based in serious mental illness. Previously, these functions were performed by appointment of ad litem attorneys from a rotating list of attorneys in private practice.

Bexar County Appellate Public Defender
Heritage Plaza
410 South Main Street, Suite 214
San Antonio, TX 78204
Website: <http://www.courts.state.tx.us/tfid/BexarPD.asp>

Bowie and Red River Counties Bowie County has an estimated population of 92,735 people and a poverty rate of 17.4%. Red River County has an estimated population of 13,944 and a poverty rate of 18.4%. These two counties joined together to create a regional public defender's office. The overall new cases added for the county in FY07 (prior to the establishment of the public defender) was 4504 cases. The following chart shows a breakdown of how these cases were handled by the two counties.

	Cases Added	Cases Paid
Felonies	1247	758
Misdemeanors	3194	829
Juvenile	63	197
Totals	4504	1784

The Bowie and Red River County Public Defender's Office (PDO) through a grant from the Task Force on Indigent Defense officially opened January 1, 2008. The staff of the PDO consists of the Chief Public Defender, six Assistant Public Defenders, two Administrative Assistants and one Investigator. The PDO has two offices, one located in Texarkana and another located in Clarksville.

The PDO represents indigent defendants who are charged with a felony or a misdemeanor punishable by confinement, both adults and juveniles. Daily jail visits are made by PDO staff to interview defendants appointed to the PDO. A letter is mailed to defendants who make bond before they can be interviewed. Through early contact and interviews the PDO ensures that indigent defendants are properly represented and afforded their constitutional rights.

Overall the PDO is providing competent and effective defense in an ethical, timely, and cost-efficient manner to indigent clients. Jail rosters are being reviewed and motions to reduce bond are being filed regularly. The PDO is also filing motions to dismiss charges, as well as waivers of grand jury indictment in cases where defendants express a desire to waive indictment and enter a plea of guilty.

Bowie/Red River County Public Defender
 424 W. Broad Street
 Texarkana, Texas 75501
 Phone: (903) 794-2224

Cameron County has an estimated population of 380,992 and a poverty rate of 35.25%. The juvenile caseload for the county in FY07 was 2020 cases.

	Cases Added	Cases Paid	Cases Appointed to Public Defender*
Juvenile	812	2020	1941

***Note:** the number of cases paid exceeds the number of cases added in juvenile cases because many attorneys are appointed to represent youth at detention hearings where no petition (i.e. case) is ultimately filed by the prosecutor.

Cameron County established a juvenile public defender’s office (PDO) in 1999 in response to a number of challenges that the county was facing in providing counsel to indigent juvenile offenders. Previously, the county contracted with private attorneys to provide indigent juveniles with representation, but due to conflicts with the attorneys’ other clients and schedules, court appointments were often rescheduled. In addition, indigent clients were often shifted to different attorneys, hampering relationship-building and continuity of representation. The PDO currently employs one part-time administrative support staff, no investigators, and two full-time attorneys.

Through the PDO, clients are more likely to be represented in a timely manner by one attorney throughout the case. Through the dedication of the PDO attorneys, indigent juveniles are provided with fair and professional legal services. The PDO currently represents juvenile indigent defendants who are arrested for or charged with a felony or a misdemeanor punishable by confinement.

Cameron County Juvenile Public Defender
 Post Office Box 1690
 San Benito, TX 78566
 Phone: (956) 399-3075

Colorado County has an estimated population of 20,935 people and a poverty rate of 20.07%. The overall indigent caseload for the county in FY07 was 190 cases. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	390	123	115
Misdemeanors	791	56	53
Juvenile	30	11	11
Totals	1211	190	179

Colorado County established a public defender’s office (PDO) in 1987 because local attorneys in the county were reluctant to handle cases through court appointments. The PDO currently represents

most indigent defendants, adult and juvenile, who are arrested for or charged with a felony or a misdemeanor punishable by confinement.

The PDO may not represent a client if there is a conflict of interest, insufficient resources, or other good cause. If a public defender is unavailable, the district or county court judge may appoint private counsel from an approved list who is in good standing with the State Bar of Texas and who has practiced in the area of criminal law for at least one year. An appointed attorney is required to make reasonable effort to contact the defendant for an interview in person or by phone.

The PDO currently employs one full-time administrator, no investigators and two part-time attorneys. Colorado County is unique in its use of part-time attorneys, which are no longer permitted under the Fair Defense Act. The PDO was established under a statute that has since been repealed; however the county is permitted by the Fair Defense Act to continue the existence and operation of the PDO under its original terms.

The Colorado County Public Defender strives to deliver their defense services in a prompt and timely manner in accordance with standards outlined in the Fair Defense Act. In the vast majority of cases, the defender will contact the defendant on the same day they were notified. To facilitate this meeting, the jail is very flexible in taking telephone calls from the public defender to jailed arrestees. Without the telephone arrangement with the jail, timely contact would be difficult as the public defenders each have residences about 100 miles from the jail. After appointment, counsel is to represent clients until final disposition of the case.

Colorado County Public Defender
316 Spring Street
Columbus, Texas 78934
Website: <http://www.co.colorado.tx.us/ips/cms/othercountyoffices/PublicDefender.html>

Dallas County has an estimated population of 2,304,909 and a poverty rate of 11.30%. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	32,791	24,149	11,641
Misdemeanors	72,703	27,966	18,671
Juvenile	4,013	13,338	10,498
Adult Appeals		502	112
Totals	109,507	65,955	40,922

Dallas established a public defender’s office (PDO) in 1983. The county administrator submitted the idea in a “working paper” to the county judge and the commissioner’s court. The original proposal suggested that the chief public defender be a non-lawyer. The commissioner’s court liked the idea but insisted that the chief PD be an attorney. From there, the PDO has grown to handle

some misdemeanor and juvenile cases. The PDO currently employs 90 attorneys, 9 administrative staff and 7 investigators.

The PDO has attorneys assigned to 37 courts in Dallas County. There are public defenders assigned to each of the 15 Criminal District Courts with felony jurisdiction, in 12 out of 13 County Criminal Courts with misdemeanor jurisdiction, two District Juvenile Courts handling both delinquency and child welfare cases, seven District Family Courts hearing child welfare cases and IV–D child support issues, and one Probate Court that hears civil commitments of mentally ill patients.

The PDO is focused on the use of cost effective means to provide zealous legal defense to individuals who cannot afford representation. The PDO accomplishes this through hiring and training competent attorneys and providing meaningful investigation of cases. The PDO aims to provide effective representation to clients at all levels of the trial proceedings. In addition to these goals, the chief PD is responsible for expanding the scope of the office by convincing judges that the PDO is more cost-effective than other forms of representation.

It is within the discretion of each individual judge as to whether they will have a public defender in their courtroom. Once a judge determines that he or she would like to utilize a public defender, a request is made to the County Budget Office. The Budget Office then informs the commissioners court whether the addition of a public defender will be cost effective, including how many cases the new court must appoint to be cost effective. In making this assessment, the Budget Office considers the number of cases the requesting judge intends to assign and calculates a cost-per-case based on this projected number of cases.

The PDO operates at a higher level of efficiency when it is handling larger numbers of cases. In recognition of this, judges tend to assign lower level felonies to the public defenders in their courtrooms so that the public defenders can move cases along more quickly. By providing the PDO with simpler cases and appointing more complex cases, the PDO does not get bogged down in complex litigation, and can focus on resolving a high number of cases.

The PDO can handle larger caseloads than appointed counsel in part because in general they have a better working relationship with both the District Attorneys office and with judges. Thus, the PDO will typically write fewer motions and be less likely to be hampered in complex litigation. The attorneys from the PDO are assigned to a specific court room, so they become quite familiar with the judge, the prosecutor and the operations of the court.

Dallas County Public Defender
133 N. Industrial Blvd, 9th Floor
Dallas, Texas 75207

Website: http://www.dallascounty.org/department/pubdefender/pd_index.html

El Paso County has an estimated population of 731,534 people and a poverty rate of 27.89%. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	6,139	5,591	3,319
Misdemeanors	17,212	7,166	3,458
Juvenile	1,318	2,802	2,106
Adult Appeals		61	16
Juvenile Appeals		2	2
Totals	24,669	15,622	8,901

In 1987, El Paso County established a Public Defender’s Office (PDO) as a direct result of the settlement of a suit in which jail inmates claimed to have been incarcerated too long before obtaining counsel. The PDO handles felony, misdemeanor, juvenile, capital murder and appeals cases. The PDO and private attorneys share representation of indigent defendants in El Paso County through the El Paso Plan.²¹

Some of the PDO’s objectives in providing quality legal representation to clients are to assist members of the private bar with complex cases, be available on short notice to enforce and protect an individual’s rights, and help to speed up the criminal justice process and keep the jail population down.

The PDO currently employs 32 attorneys with two division chiefs specializing in litigation and capital murder. Staff attorneys are assigned to cases in teams of three or four, then each team is assigned to specific courts. There are four felony units (although they also handle misdemeanors), a juvenile unit, an appellate unit, a child support unit (criminal non-support), a capital murder unit, and a mental health unit. In 2004, the PDO was awarded a grant from the Task Force to develop and staff its Mental Health Unit. This unit consists of two full-time attorneys and two full-time social workers. The PDO has 20 full-time support staff, which includes three social workers, and a number of legal secretaries and data entry clerks. There are also two caseworkers, two investigators, and one mitigation specialist who assist in collecting records, evidence and witnesses.

The PDO primarily engages in the practice of a hybrid vertical representation system. This practice is good for managing a case (i.e. one attorney is assigned to a case at its inception, and that attorney handles the case to its conclusion). The PDO adheres to this philosophy, though not completely. During the first years after the creation of the office, all of its cases were handled in this vertical manner. Though this may be the best method of handling each case, vertical representation has logistical and monetary drawbacks.

When the PDO was completely vertical, every attorney in the office practiced in every court in the courthouse. The office would then find itself with three attorneys (or more) sitting in one courtroom waiting for arraignments, motion hearings, or any other proceeding. Meanwhile, another court would call to advise that nobody was in their court for some other scheduled event. Thus, the PDO sought to convert to a hybrid system.

This hybrid involved creating units who would handle all of the cases passing through their assigned courts. Though the unit system is much more manageable and cost effective, the PDO did not want to stray too far from the concept of vertical representation. Thus, the office decided to make one of the units the “Pre-indictment Unit.” This unit would handle all cases until such time as there is an indictment or other charging instrument. Once a defendant is charged, the case is transferred within the office to another unit, which handles it vertically. On appeal, a case would then transfer to the appellate unit.

The PDO initially handled only felonies pursuant to a federal lawsuit which was the basis for its establishment only mandated as much. Today, in response to various requests from the different courts (as well as the commissioners court) the office handles misdemeanor cases, juvenile cases, Capital-death penalty cases, and criminal non-support/child support cases.

El Paso County Public Defender
 500 E. San Antonio, Suite 501
 El Paso, Texas 79901
 Website: <http://www.co.el-paso.tx.us/pdefender/>

Hidalgo County has an estimated population of 688,029 people and a poverty rate of 37.70%. The following chart shows a breakdown of how misdemeanor cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Misdemeanors	13,888	7,020	1,406

The Hidalgo County Public Defender Office (PDO) was opened through a grant from the Task Force on Indigent Defense in October of 2005. The county saw the PDO as an answer to delivering legal services more promptly. A direct collateral benefit to the county establishing the PDO is the office’s ability to reduce overcrowding in the county jail. The county also sought to improve the quality of the defense provided to indigent defendants, and to ensure that all defendants who need assistance receive the same in a timely manner.

In its first year, the PDO handled approximately 1600 cases, and anticipates this number to grow. It is staffed by 5 attorneys, and 4 full-time support staff, including an administrative assistant and an investigator. The administrative assistant has assisted in establishing the infrastructure of the office, maintains the computer system, and tracks defendants who have been in jail for longer than 6 days so that the office may contact the prosecutor and determine why charges have not been filed. The investigator assists the attorneys in obtaining police reports, witnesses, and prior records of new clients. The PDO is supposed to handle about every fourth case from the wheel, or 25% of all misdemeanors paid for by the county. However, some judges have also been appointing cases directly from the bench. The remaining misdemeanors are assigned to private attorneys.

Each new attorney in the Hidalgo PDO is assigned to a senior attorney to act as a mentor during the training process. The mentor will serve to introduce the new attorney to the judges, prosecutors and court personnel. The mentor helps the new attorney with hearings and proceedings, and assists them in managing new cases. All attorneys in the Hidalgo PDO are required to average 10 hours annually of continuing legal education.

The specialization of the office on misdemeanors allows the office to quickly turn over cases. Not only are the cases more simple than felony cases, but many clients who post bond will not appear for arraignment. Thus, attorneys are able to handle more cases. The PDO seeks to manage the caseload per the guidelines set forth by the National Advisory Commission (NAC).

As noted above one goal of the office was to reduce jail overcrowding. This has largely been accomplished by filing motions for bond reduction and by speeding case dispositions. Prior to establishment of the public defender, cases were being filed at a higher rate than they were being disposed by the courts. During this period, defendants would often initially consult with attorneys just prior to a court appearance.²² Under the former system, appointed attorneys could do little to reduce the pretrial misdemeanor jail population. The public defender, however, has been able to focus on the jail population by finding persons with a delayed case filing and then making calls to determine causes for the delayed filing and by filing motions for bond reductions. The public defender's efforts began to have a noticeable impact by September of 2006. From September, 2006 through September, 2007, the average pretrial misdemeanor jail population dropped from 288 in the 18 months prior to September, 2006 to 176 in the 12 following months.²³

Hidalgo County Public Defender
100 E. Cano, Ste. 206
Edinburg, Texas 78539
Website: <http://www.co.hidalgo.tx.us/template.asp?Key=10091>

Kaufman County has an estimated population of 91,610 people and a poverty rate of 14.07%. The overall adult indigent caseload for the county in FY07 was 1,819 cases. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	1,319	1,170	404
Misdemeanors	2,382	649	334
Totals	3,701	1,819	738

The Kaufman County Public Defender Office (PDO) opened through a grant from the Task Force on Indigent Defense in November of 2006. Kaufman County has experienced rapid growth in both population and the number of indigent defendants (which has jumped from 630 in 2002 to 1,533 in 2005). In response, the county seeks to establish a public defender system in order to ensure that indigent defendants are properly represented and afforded their constitutional rights. Further, costs for indigent defense services have escalated from \$300,000 in 2002 to \$757,000 in 2005. A public defender system was also sought to augment the current system in a cost effective manner while still protecting the rights of indigent defendants.

The PDO is staffed by the Chief Public Defender and three additional full-time attorneys. The support staff consists of a secretary, a paralegal and an investigator. The secretary handles all the administrative duties in the office and the paralegal provides legal research, records client information and drafts legal documents. The investigator conducts all investigations required by the public defenders and to assist in the preparation of motions, orders and any other documents required by the courts.

Like other public defenders, the Kaufman County Public Defender has been successful at reducing pretrial misdemeanor jail populations. The pretrial misdemeanor jail population began a noticeable reduction in February of 2007. In the 12 months prior to February, 2007, this population averaged 40 persons, and in the 8 following months, the population averaged 30 persons.²⁴

The Kaufman County Public Defender serves felony arrestees as well as misdemeanor arrestees. This allows the public defender to drastically affect the total jail population. The introduction of the public defender had an immediate impact on the total county jail population, but a more apparent impact began in February of 2007. In the 12 months prior to February, 2007, the county jail population averaged 306 persons, and in the 8 following months averaged 245 persons.²⁵

Kaufman County Public Defender
 205 South Jackson
 Kaufman, Texas 75142
 Phone: (972) 932-0248

Lubbock County The West Texas Regional Public Defender for Capital Cases office opened through a grant from the Task Force on Indigent Defense November 13, 2007. The office was conceived to provide an effective capital defense team (two attorneys, a mitigation specialist and an investigator) to indigent capital defendants where the district attorney is seeking the death penalty. The office will cover up to 85 counties in the Seventh and Ninth Administrative Judicial Regions (with a combined population estimate of 1,592,037). It was created partially in response to a shortage of qualified attorneys available to represent indigent capital defendants throughout the area covered by the West Texas Regional Public Defender. The following chart shows the number of capital murder cases added across the region over the past three years.

	FY 2005	FY 2006	FY 2007
Capital Murder Cases Added	23	21	18

The West Texas Regional Public Defender office will, when fully operational, be staffed by the Chief Public Defender, four assistant Public Defenders, two mitigation specialists, two fact investigators, and two legal assistants. The main office is centrally located in Lubbock, Texas, with satellite offices to be opened in the Amarillo and Midland/Odessa areas.

West Texas Regional Public Defender for Capital Cases
 P. O. Box 10536
 Lubbock, Texas 79408
 Phone: (806) 775-5650

Travis County has an estimated population of 907,922 and a poverty rate of 13.09%. The juvenile indigent caseload for the county in FY07 was 3,332 cases.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Juvenile	2,402	3,312	3,164
Juvenile Appeals		20	5

Travis County is served by a juvenile public defender office and a mental health public defender office.

The Travis County Juvenile Public Defender’s Office (JPDO) became the first juvenile defender office in the United States in 1971. The JPDO currently employs four full-time administrative staffers, one full-time investigator, and eight attorneys. The office strives for excellence through vigorous and zealous representation of its clients. The attorneys and staff pride themselves on providing clients with superior representation while maintaining high ethical standards to ensure that no client is ever wrongfully adjudicated or incarcerated. With experienced attorneys, most of whom are board certified specialists, the office is able to handle every aspect of juvenile representation from the trial to appellate level.

In 2007, Travis County through a grant from the Task Force on Indigent Defense established a mental health public defender devoted solely to indigent defendants charged with misdemeanor offenses with serious mental illnesses. The office handles approximately 500 cases a year, and is staffed by two attorneys, two social workers, two case workers, and two support staff.

Travis County Juvenile Public Defender
 2201 Post Road, Suite 201
 Austin, Texas 78704
 Phone: (512) 854-4128
 Website: http://www.co.travis.tx.us/juvenile_public_defender/default.asp

Mental Health Public Defender
 2201 Post Road, Suite 200
 Austin, Texas 78704
 Phone: (512) 854-3030
 Website: <http://www.courts.state.tx.us/tfid/TravisMHPD.htm>

Val Verde County has an estimated population of 47,255 and a poverty rate of 30.86%. The overall indigent caseload for the county in FY07 was 687 cases. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	390	119	71
Misdemeanors	1,118	455	334
Juvenile	98	113	29
Totals	1,606	687	434

Val Verde County was paying for a larger number of cases than other counties of comparable size. In addition, the county was also seeing an increase in the average cost per indigent defense case. In response to these concerns, Val Verde County opened the first privately run public defender office (PDO) in the State of Texas in 2006. The county sought bids for the program, and eventually contracted with Texas Rio Grande Legal Aid (TRLA) a non-profit organization. In addition to Val Verde County, the PDO serves Edwards, Terrell and Kinney counties as well. Previously, the county had assigned all indigent defense cases to private attorneys.

The PDO is staffed by 5 attorneys, and 2 full-time support staff. In addition, the PDO has sponsored several clerks and interns from the local schools. The office will also benefit from the knowledge of the network of over 105 lawyers who work for TRLA across the entire state of Texas.

As the PDO continues to establish itself in the community its caseload continues to represent a larger portion of cases paid in the region. Cases not assigned to the PDO are assigned to private

attorneys in the community. Appointments to the PDO are made by the trial judge, but the Chief Public Defender determines which attorney in the office will handle an incoming case. In addition to trial representation, the office is also now handling some appeals, several post-conviction writs, and requests for DNA testing.

As noted above, the Val Verde PDO is the first regional PDO in the state of Texas which is run by a non-profit private entity. The regional nature of the program should help smaller counties provide adequate services to their indigent population, as individually they would be unable to open a public defender office. The TRLA contract should help stabilize costs and efficiency. In addition, the private organization can take advantage of the experience of the other attorneys in the organization who have served indigent defendants in Texas for decades.

The PDO plans to implement several policies designed to improve the quality of the defense services they offer to indigent clients. First, the office has committed to daily investigative attorney client privilege interviews with newly incarcerated defendants. To further assist in communication with defendants, the PDO plans to use video teleconference equipment between the office and the county jails. With the assistance of this technology, the office plans to communicate with each incarcerated defendant every day. After the interviews, incarcerated defendants will be classified into one of four categories: indigent, indigent with conflict, not indigent, or in need of hearing to determine indigence. The office will then draft and provide to the court orders of appointment for those defendants deemed to be indigent and in need of counsel from the PDO.

As the office is contracted to a private entity, the cost for the office will be fixed over the life of the contract. TRLA was selected in part because they believed they could improve the quality of defense provided to indigent defendants, while at the same time decreasing the average cost per case. The financial efficiency of the program will be closely monitored during its nascent stages.

The case load has steadily increased during the tenure of the PDO. At present, attorneys in the office are handling approximately 60 cases each at any one time. As of now, no caseload issues are apparent.

The Val Verde Regional Public Defender had an immediate impact on the total county jail population, but a more apparent impact began in December of 2006. In the 12 months prior to December, 2006, the county jail population averaged 78 persons, and in the 11 months following the date averaged 61 persons.²⁶

Val Verde County Public Defender
902 E. 11th Street
Del Rio, Texas 78841-0964
Website: <http://www.trla.org/office/?of=11>

Webb County has an estimated population of 231,643 and a poverty rate of 35.17%. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	1,244	934	748
Misdemeanors	2,058	1,496	1,054
Adult Appeals		6	3
Totals	3,302	2,436	1,805

Webb County established a public defender’s office (PDO) in 1988. The PDO is confident that when an indigent person is arrested and hears these words of the Miranda warning, “...you have the right to an attorney, if you cannot afford an attorney, one will be appointed to you...” he can be assured a quality defense. The PDO currently employs 15 attorneys, 8 administrative staff, and 2 investigators.

The PDO maintains staff persons to meet with clients promptly at the county jail. These staff persons monitor their jailed clients, and if a client is in jail for more than a few days, the public defender makes a motion for bond reduction. Moreover, the office will routinely file Writs of Habeas Corpus when the bonds are excessive or when the client’s time in jail exceeds the statutory time limits. Typically, private attorneys do not give jailed clients the same attention as the public defender staff and do not regularly file motions for bond reductions.

The PDO is currently assigned to represent 75% of all misdemeanor and felony cases filed in Webb County. Normally, the representation will commence as soon as the client is booked. The PDO staff is committed to rendering good, competent legal representation to all of its clients from the day of appointment to final disposition.

Webb County Public Defender
 1110 Victoria Ste 208
 Laredo, Texas 78040-4439

Website:

http://www.webbcountytexas.gov/OtherDepartments/Public_Defender/public_defender.html

Wichita County has a population estimate of 129,069 and a poverty rate of 16%. The following chart shows a breakdown of how indigent defense cases were handled by the county.

	Cases Added	Cases Paid	Cases Appointed to Public Defender
Felonies	1,712	1,382	765
Misdemeanors	4,492	1,184	773
Adult Appeals		16	4
Totals	6,204	2,582	1,542

Wichita County created a public defender's office (PDO) in the late 1980's to handle all indigent criminal and juvenile delinquency cases, except those in which there was a conflict of interest. The PDO replaced the previous system in which all practicing attorneys in Wichita County accepted appointments to indigent defendants, regardless of the attorney's area of practice. The PDO currently employs six attorneys, six administrative staff and two investigators.

The PDO's mission is to provide effective and competent defense in an ethical, timely, and cost-efficient manner to indigent citizens accused of crimes, regardless of the cost. Some important concerns and objects for the PDO include: improving availability of counsel on short notice; providing assistance to the private bar with complex case issues; locating and correcting situations where a client's rights are in jeopardy; ensuring that the client does not spend unnecessary time in jail; working with other groups to develop programs to reduce overall indigent defense expenditures.

Wichita County Public Defender
900 7th Street Rm. 405
Wichita Falls, Texas 76301

Website: http://www.co.wichita.tx.us/pub_def.htm

Willacy County has an estimated population of 20,610 people and a poverty rate of 41.01%. The overall caseload for the county in FY07 was 317 cases. The following chart shows a breakdown of how these cases were handled by the county.

	Cases Added	Cases Paid
Felonies	148	85
Misdemeanors	142	12
Juvenile	27	31
Totals	317	128

The Willacy County Public Defender Office (PDO) opened near the end of fiscal year 2007, accepting its first cases only three days after TRLA signed a contract with the county to provide indigent defense services. The Willacy County PDO is only the second program in the state operated by a non-profit corporation, Texas RioGrande Legal Aid. TRLA is the largest civil legal services provider in the state, and uses several of its civil lawyers who also have criminal litigation experience to supplement the operations. The office was conceived in response to sky-rocketing indigent defense costs. The PDO strives to provide the indigent defendant representation by a law office which is well-equipped with access to legal research materials and with an investigator in order to give defendants equal footing as if defendants had retained an average law firm.

The PDO is staffed by the Chief Public Defender and several part-time attorneys who assist the Chief with the caseload. In addition, the office has two full time support staff, consisting of a secretary and an investigator. The secretary handles the administrative duties of the office, and the investigator interviews all newly-detained inmates at the county jail within 24 hours of arrest and conducts all investigations required by the public defenders and to assist in the preparation of motions, orders and any other documents required by the courts.

TRLA is usually able to place 5 or 6 lawyers in court on days when the district or county courts have arraignments or “docket calls.” That practice, coupled with very early interviews of arrested persons at the county detention center, have permitted the PDO to stay ahead of the caseload, particularly with respect to routine guilty pleas and dismissals. In addition, the judges in the county recently amended the indigent defense plan and local rules to permit TRLA to make indigency determinations in most cases, thereby enabling TRLA to decide almost immediately whether it will establish an attorney-client relationship with a newly-arrested defendant. That practice makes it possible in a majority of cases for PDO attorneys to determine whether a case should be settled quickly by a plea bargain or will require more intensive representation. As a result, many cases are now resolved at the initial arraignment, eliminating multiple appearances and their concomitant delays.

Willacy County Public Defender
308 East Harrison Avenue
Harlingen, Texas 78550

Website: <http://www.trla.org/office/?of=WP>

A Few Examples of Public Defenders Throughout the Nation

California Indigent defense in California is provided primarily by individual counties, with the state providing about 6% of total expenditures. Most counties in California have a public defender office. The larger counties also have alternative public defender offices which handle conflict cases. However, in an effort to control costs, some counties have experimented with alternative forms of defense delivery, be it through a contract system, or assigned counsel.

In 1987, the State Bar of California adopted voluntary guidelines that established standards regarding all facets of indigent defense. A link to these guidelines and the websites to all of the California public defender offices can be found below.

The Los Angeles County Public Defender is the oldest and largest in the state. With over 700 Attorneys and a full staff of social workers, investigators and support staff, the office offers a wide range of services. These services include a juvenile and a mental health department, as well as a department devoted to contempt proceedings for violation of court orders, such as child support and child visitation or custody orders.

More information about the Los Angeles County Public Defender can be found in the links provided below.

Online Resources

- Los Angeles County Public Defender website
- State Bar of California Guidelines
- Links to Various Public Defenders throughout California

New York New York State provides approximately 36% of the total funding for indigent defense, with the rest of the costs falling to the county. Counties are required to have a public defender, a private legal aid society, an approved bar association plan that rotates the services of appointed counsel, or some combination of the three. As it is largely up to the counties to shape indigent defense services provided, delivery methods vary widely from county to county.

Los

The New York Indigent Defense Commission has been charged with examining the state's indigent defense systems to suggest ideas for reform. A wealth of information can be found on their website regarding indigent defense services throughout the state. A link to this website can be found below.

Indigent defense in New York City is handled primarily through non-profit organizations such as the Legal Aid Society and the Neighborhood Defender Service of Harlem. The Legal Aid Society is a law firm for poor people, and was founded over 125 years ago. Legal Aid provides a wide variety

of legal services for people who cannot afford a lawyer. Legal Aid is the single largest provider of criminal defense services for the City of New York and represents most of the juveniles appearing in Family Court as legal guardian.

The Neighborhood Defender Service of Harlem (NDSNY) is a non-profit model public law office dedicated to providing the highest quality legal representation to inner city residents in Upper Manhattan. NDSNY's neighborhood-based services are available upon request. The service involves civil and criminal attorneys, social workers, investigators, paralegals, and law school interns in the defense of its clients. NDSNY is organized differently from traditional defender offices; each client is represented by a small team, rather than by an individual attorney. NDSNY's services go beyond direct legal representation, to helping clients avoid future contact with the criminal justice system.

Online Resources

- Legal Aid Society of New York Website
- Neighborhood Defender Service of Harlem
- New York Indigent Defense Commission

Washington D.C. The Public Defender Service of Washington D.C. (PDS) has been serving the City for over 30 years. PDS divides its services into the following divisions: trial, appellate, mental health, special litigation, civil legal services, and parole. The agency also participates in the local drug court program. PDS has over 200 employees, and 100 staff attorneys.

The PDS Mental Health Division is staffed by seven attorneys, two social workers and two investigators. This division represents those that have been involuntarily committed for mental health reasons. In addition, the division represents people who have been found not guilty by reason of insanity.

PDS also offers an Offender Rehabilitation Division (ORD), which is devoted to breaking the cycle of recidivism that plagues most indigent communities and those with mental illnesses. The division is staffed by 12 program developers who are trained in social work. The staff has at their disposal numerous rehabilitative services, community programs, and counseling services.

Public Defender Service for the District of Columbia
633 Indiana Avenue, NY
Washington, D.C. 20004

Website: <http://www.pdsdc.org/>

New Mexico has a completely state funded public defender system. The governor appoints the chief defender who controls the day to day operation of the entire department. The office employs about 200 attorneys. In addition, the State contracts with approximately 130 other attorneys throughout the state in areas where the department does not have an office. Public defenders handle misdemeanors, felonies, juvenile and appellate cases. The office handles about 60,000 cases per year.

Oklahoma Indigent defense services in Oklahoma are controlled by the Oklahoma Indigent Defense System. The system handles cases from all counties in the state except for Oklahoma and Tulsa Counties. The System handles all criminal cases where incarceration is possible, as well as appeals.

Oklahoma County Public Defender handles the bulk of cases in Oklahoma County. In addition to felonies, misdemeanors, and appeals, the office also has a civil division which handles contempt, adoptions, and acts as guardian ad litem in divorce proceedings. Tulsa County also has its own stand alone public defender office, which handles most felony, misdemeanor, and juvenile cases

Arkansas Starting in 1998, Arkansas has had a primarily state funded indigent defense system. The system is controlled by the Arkansas Public Defender Commission, which sets salaries of attorneys and staff. Counties are still responsible for providing facilities, equipment and supplies.

Summary

In sum, the preceding chapters outline how to make an informed decision about whether a public defender is right for your community. Like any other new governmental program or new non-profit initiative, there are risks and benefits associated with the implementation. Regardless of what decision your community makes, the authors of this publication wish you only the best in your efforts to improve the delivery of indigent defense services in your community. The Task Force looks forward to its continued work with the counties and courts to improve the quality and delivery of indigent defense services. It is only through all our efforts that the right to counsel is preserved and the interests of justice are assured for all Texans.

Appendix A: Article 26.044

Art. 26.044. Public Defender

(a) In this chapter:

(1) “Governmental entity” includes a county, a group of counties, a branch or agency of a county, an administrative judicial region created by Section 74.042, Government Code, and any entity created under the Interlocal Cooperation Act as permitted by Chapter 791, Government Code.

(2) “Public defender” means a governmental entity or nonprofit corporation:

(A) operating under a written agreement with a governmental entity, other than an individual judge or court;

(B) using public funds; and

(C) providing legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 71.001, Government Code.

(b) The commissioners court of any county, on written approval of a judge of a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity or nonprofit corporation to serve as a public defender. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a regional public defender. In appointing a public defender under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify, if appointing a regional public defender:

(1) the duties of the public defender;

(2) the types of cases to which the public defender may be appointed under Article 26.04(f) and the courts in which the public defender may be required to appear

(3) whether the public defender is appointed to serve a term or serve at the pleasure of the commissioners court or the commissioners courts; and

(4) if the public defender is appointed to serve a term, the term of appointment and the procedures for removing the public defender.

(c) Before appointing a public defender under Subsection (b), the commissioners court or commissioners courts shall solicit proposals for the public defender. A proposal must include:

(1) a budget for the public defender, including salaries;

(2) a description of each personnel position, including the chief public defender position;

(3) the maximum allowable caseloads for each attorney employed by the proponent;

(4) provisions for personnel training;

(5) a description of anticipated overhead costs for the public defender; and

(6) policies regarding the use of licensed investigators and expert witnesses by the proponent.

(d) After considering each proposal for the public defender submitted by a governmental entity or nonprofit corporation, the commissioners court or commissioners courts shall select a proposal that reasonably demonstrates that the proponent will provide adequate quality representation for indigent defendants in the county or counties.

(e) The total cost of the proposal may not be the sole consideration in selecting a proposal.

(f) To be eligible for appointment as a public defender, the governmental entity or nonprofit corporation must be directed by a chief public defender who:

- (1) is a member of the State Bar of Texas;
- (2) has practiced law for at least three years; and
- (3) has substantial experience in the practice of criminal law.

(g) A public defender is entitled to receive funds for personnel costs and expenses incurred in operating as a public defender in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the public defender serves more than one county.

(h) A public defender may employ attorneys, licensed investigators, and other personnel necessary to perform the duties of the public defender as specified by the commissioners court or commissioners courts under Subsection (b)(1).

(i) Except as authorized by this article, the chief public defender or an attorney employed by a public defender may not:

- (1) engage in the private practice of criminal law; or
- (2) accept anything of value not authorized by this article for services rendered under this article.

(j) A public defender may refuse an appointment under Article 26.04(f) if:

- (1) a conflict of interest exists;
- (2) the public defender has insufficient resources to provide adequate representation for the defendant;
- (3) the public defender is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or
- (4) the public defender shows other good cause for refusing the appointment.

(k) The judge may remove a public defender who violates a provision of Subsection (i).

(l) A public defender may investigate the financial condition of any person the public defender is appointed to represent. The defender shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this article.

(m) If it is necessary that an attorney other than a public defender be appointed, the attorney is entitled to the compensation provided by Article 26.05 of this code.

Appendix B: Feasibility Worksheet

Feasibility Worksheet For Counties Considering the Texas Public Defender Option

1. Caseload

Case Type (felony, misdemeanor, juvenile, mental, complex, etc.)	1	2	3
A. Total Annual Cases Paid (obtain from auditors' report submitted to Task Force on Indigent Defense/OCA)			
B. Share of Indigent Defense Cases for a Public Defender (choose a number close to 100% if rural and close to 50% if urban)			
C. Public Defender Caseload	$C = A \times B$	$C = A \times B$	$C = A \times B$

2. Staff

Case Type	1	2	3
A. Public Defender Caseload			
B. Attorney Staff Ratio (400 misdemeanor cases per attorney per year, 150 felony cases per attorney per year, consult caseload standards for other ratios)			
C. Number of Attorneys Needed (round to the next whole number)	$C = A \div B$	$C = A \div B$	$C = A \div B$
D. Number of Support Staff Needed (roughly 1 investigator and 1 staff assistant for each five attorneys; round upward)	$D = C \div 2.5$	$D = C \div 2.5$	$D = C \div 2.5$

3. Rough Budget

Case Type	1	2	3
A. Total Staff Salaries			
B. Fringe Benefits	$B = A \times .25$	$B = A \times .25$	$B = A \times .25$
C. Operating (Calculate based on actual county expenses if data is available e.g. prosecutor operating.)	$C = (A + B) \times .2$	$C = (A + B) \times .2$	$C = (A + B) \times .2$
D. Total Rough PD Costs	$D = A + B + C$	$D = A + B + C$	$D = A + B + C$

Endnotes

¹Tex. Const. Art. I § 10.

²372 U.S. 335 (1963).

³*Douglas v. California*, 372 U.S. 353 (1963) ; *Miranda v. Arizona*, 384 U.S. 436 (1967); *In re Gault*, 387 U.S. 1 (1967); *Coleman v. Alabama*, 399 U.S. 483 (1969); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Alabama v. Shelton*, 122 U.S. 1764 (2002).

⁴*Ex Parte King*, 550 S.W.2d 691 (Tex.Cr.App. 1977); *Ex Parte Gonzales*, 945 S.W.2d 830 (Tex. Cr.App. 1997).

⁵In addition to *Gideon*, which involved felony cases, the U.S. Supreme Court has found that the Sixth and Fourteenth Amendments to the United States Constitution require counsel to be provided to indigent defendants in state juvenile delinquency proceedings, *In Re Gault*, 387 U.S. 1 and state misdemeanor proceedings in which actual imprisonment is imposed, *Argersinger v. Hamlin*, 407 U.S. 25 (1972). In *Alabama v. Shelton*, 535 U.S. 654 (2002), the Court extended *Argersinger* by holding that a suspended sentence may not be imposed in misdemeanor cases unless the defendant was offered an attorney at trial. Further, the Court has held that the right to counsel attaches at various pre-trial stages, including custodial interrogations, *Miranda v. Arizona*, 384 U.S. 436 (1966), line-up identifications, *United States v. Wade*, 388 U.S. 218 (1967), and preliminary hearings *Coleman v. Alabama*, 399 U.S. 1 (1970).

⁶The exception is that the state pays for representation in capital post-conviction proceedings and the Task Force distributes supplemental state money to counties that qualify for formula and discretionary grants.

⁷See Chapter 5 for summaries of the structure, goals and budget of these 14 public defender offices.

⁸Public defender offices are the primary delivery system for indigent defense services in most of the nation's largest cities and counties. In 1999, public defender programs operated in 90 of the 100 largest counties in the United States. See Bureau of Justice Statistics Bulletin, "Indigent Defense Services in Large Counties, 1999," November 2000. Many rural jurisdictions also benefit from public defender programs, including statewide public defenders in states such as New Mexico, Kentucky, Florida, and Colorado, and the increased use of rural public defenders in states like North Carolina, Georgia, Virginia and others. In Texas, counties with public defender offices vary in size from large (Dallas, population 2,218,899) to small (Willacy, population 20,082).

⁹See also *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

¹⁰Public defenders are statutorily authorized to investigate the financial condition of any person they are appointed to represent, and they must report results of these investigations to the appointing judge, who may hold a hearing to determine whether any client is indigent and entitled to counsel. See Tex. Code Crim. Proc. Art. 26.044(l).

¹¹Carole Keeton Rylander, Comptroller of Public Accounts, *Financial Management Review of El Paso County* (1999).

¹² Jennifer M. Saubermann, Robert L. Spangenberg & David J. Newhouse, *The Spangenberg Group, Second Interim Report: An Evaluation of the Bexar and Hidalgo County Public Defender Offices After One Year of Operation* 66 (2007).

¹³ Source: Monthly Jail Population reports from Texas Commission on Jail Standards at <http://www.tcjs.state.tx.us/index.php?linkID=320>.

¹⁴ *Id.*

¹⁵ The percentage of cases handled by public defenders varies. Typically, Offices that handle a very specific subset of cases will handle a larger percentage of cases that fall into that area. For instance, the Travis County Public Defender is appointed only juvenile cases, and handles over 96% of such cases. The Dallas County Public Defender handles all types of cases, and handles about 76%. A public defender office should be expected to handle somewhere between 50% and 80% of cases that qualify for appointment.

¹⁶ The American Bar Association's Bar Information Program provides expert technical assistance as a resource to government agencies. Participating in training sessions and conferences also may enable those planning a public defender office to access strategies and ideas by interacting with public defenders from across Texas and the nation. The National Legal Aid and Defenders Association holds annual skills and management training sessions, and hosts an annual conference specifically designed for public defenders.

¹⁷ See Chapter 4, ABA STANDARDS FOR CRIMINAL JUSTICE PROSECUTION FUNCTION AND DEFENSE FUNCTION, THIRD EDITION (1993); Chapter 5, ABA STANDARDS FOR CRIMINAL JUSTICE PROVIDING DEFENSE SERVICES, THIRD EDITION (1992); ABA GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN DEATH PENALTY CASES (Rev Ed. Feb. 2003); Robert B. Shepherd, Jr. Editor, *Juvenile Justice Standards Annotated: A Balanced Approach*, ABA INST. OF JUDICIAL ADMIN. (1996); ABA STANDARDS OF PRACTICE FOR ATTORNEYS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996); National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services* (1984); National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems* (1989); National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (1995). See Figure 1.2 for a list of internet links to additional public defender resources.

¹⁸ A public defender office will not be able to handle all cases because some cases will present conflicts of interest. Co defendants pose the most common type of conflicts, but public defender offices will also be precluded from representing defendants who were previously prosecution witnesses. Juvenile delinquency and misdemeanor cases are somewhat more likely to involve co defendants than felonies. Workload issues will also impact the volume of cases a public defender may handle.

¹⁹ El Paso and Webb County assign about half of the indigent defense caseload to the public defender – this leaves room for the best private attorneys to continue serving indigent clients.

²⁰ Try to ensure, if possible, that case counts are accurate. For example, a felony and a subsequent probation violation on that felony should not be counted as two felony cases but rather as one felony and one probation violation.

²¹ Private attorneys under 55 years of age who practice law and live in El Paso County and cannot claim financial hardship must either accept appointments to represent indigent individuals or pay a fee to the county of \$600 per year. Cases that present potential conflicts of interest for the Public Defender’s Office must be assigned to a private attorney. If an attorney with no prior criminal law experience is assigned, the courts will sometimes appoint the Public Defender’s Office to “second-chair” the case.

²² Jennifer M. Saubermann, Robert L. Spangenberg, David J. Newhouse & Ross Shepard, The Spangenberg Group, *Initial Interim Report to the Texas Task Force on Indigent Defense: An Analysis of the Newly Established Bexar and Hidalgo PublicDefender Offices* at 17 (2006).

²³ Source: Monthly Jail Population reports from Texas Commission on Jail Standards at <http://www.tcjs.state.tx.us/index.php?linkID=320>.

²⁴ Id.

²⁵ Id.

²⁶ Id.