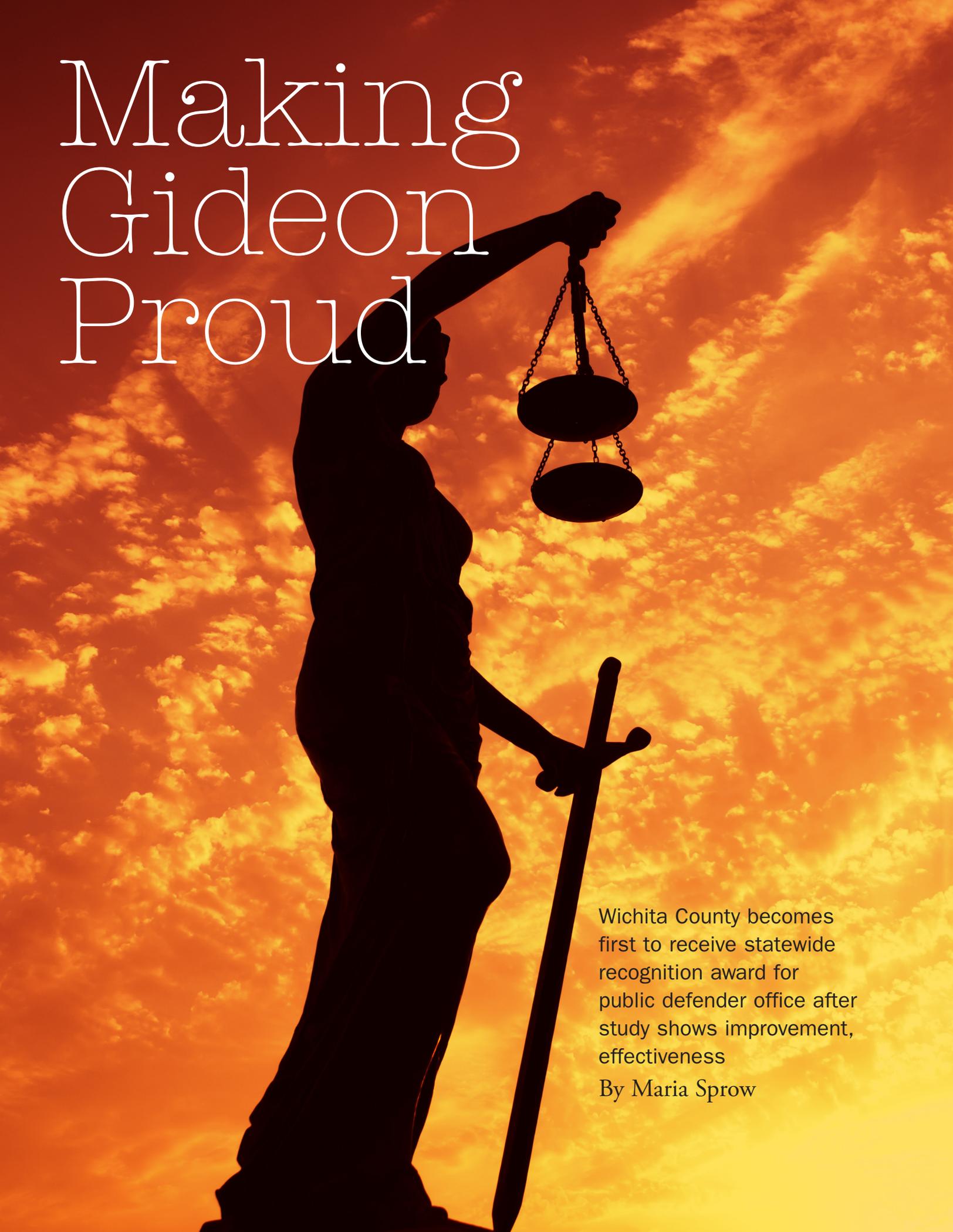


Making Gideon Proud

A silhouette of the Lady Justice statue is set against a vibrant, orange and yellow sunset sky filled with clouds. The statue is shown from the waist up, holding a pair of scales in her right hand and a sword in her left. The scales are positioned in the upper right quadrant of the image, and the sword points downwards towards the bottom center.

Wichita County becomes first to receive statewide recognition award for public defender office after study shows improvement, effectiveness

By Maria Sprow

About 10 years ago, the Wichita County Office of the Public Defender (OPD), like all county indigent defense programs across the state, was facing a crisis.

The Texas Legislature had just passed the Fair Defense Act (FDA), a costly mandate on counties to adopt formal procedures for promptly providing qualified attorneys to indigent defendants.

At the time, Wichita County was one of just a handful of counties across the state to have a public defender's office; it had been established back in 1987 to replace a more traditional appointed attorney system. It was the only public defender office that had attempted to take on the responsibility of providing attorneys for all the county's indigent defense cases. (Today, there are 19 public defender offices across the state, though many are still geared toward managing special needs defendants, such as those charged in a capital case or those with mental health issues.)

Prior to the FDA, the office had been focused mostly on assisting defendants in felony cases, but the law greatly increased the number of defendants who utilized their right to an appointed attorney. The office's caseload jumped from 1,337 felonies and 338 misdemeanors in 2001 to 1,611 felonies and 849 misdemeanors in 2002. At the same time, the office lost half its attorneys. The increased caseload and diminished staff meant that the office was in danger of shutting its doors, said Jim Bethke, the executive director of the Texas Indigent Defense Commission (TIDC), during a recent commission meeting in which Wichita County was honored with the state's first Texas Gideon Recognition Award.

The award is named after the 1963 U.S. Supreme Court case *Gideon vs. Wainwright*, in which indigent defendants were assured access to quality counsel. The award seeks to recognize the state's highest-performing and most innovative indigent defense programs.

The road the county took to rehabilitate and transform its public defender office into an award-winning system wasn't easy, but it was worth it, according to a recent study published by Texas A & M University's Public Policy Research Institute (PPRI). (The study, *Wichita County Public Defender Office: An Evaluation of Case Processing, Client Outcomes, and Costs*, can be found on the TIDC website at txcourts.gov/tidc.)

"Through its leadership, and through (County) Judge (Woodrow) Gossom's leadership and the county commissioners' leadership, they really turned it around," Bethke said, following a presentation on the study's conclusions.

The PPRI study, lead by Research Scientist Dottie Carmichael, shows that the Wichita County Public Defenders Office makes contact with clients one to three days earlier than private appointed attorneys, spends more time on each case than private appointed attorneys and achieves more dismissals than private appointed attorneys, among other findings. In addition, the study concluded that the Public Defender's office now generates a net benefit of \$204 per case to the county.

"Public defender attorneys provide a higher level of service, and their work is supported by investigators in the majority of cases," the study states. "These findings should give Texas local jurisdictions the confidence to explore whether a public defender office might be a



Court of Criminal Appeals Presiding Judge Sharon Keller, chair of the Texas Indigent Defense Commission, presents the Gideon Recognition Award to Wichita County Judge Woodrow Gossom and Wichita County Chief Public Defender James Rasmussen during a commission meeting.

good fit in their community."

Wichita County earned the Gideon award partly because of its willingness to study its system.

"The study establishes the efficacy of public defenders in Wichita County and is a significant contribution to the indigent defense knowledge base that will help develop and improve standards-driven programs in Texas and nationally," stated the commission in a press release.

Transforming an Office

In 2003, Wichita County officials were so concerned about the productivity and administration of the public defender's office that the Task Force on Indigent Defense commissioned The Spangenberg Group (a research and consulting firm focused on improving justice systems) to study the office and make recommendations for improvements.

The Spangenberg report, issued in 2004, was not pretty. The report discussed how officials' uncertainty over the office impacted its ability to find and retain qualified attorneys. The increased workload resulted in more cases being handed to private court-appointed attorneys, which drove the county's indigent defense costs up.

"The period between late 2002 and 2003 was a real crisis for the OPD and for the county, and it was a time in which much needed to be done in the office in terms of administration, leadership and development of performance standards, workload standards, a conflict policy and other written requirements for the public defender office," the Spangenberg report stated. "Virtually none of this was done, in part because there seemed to be no time for it since all the lawyers, including the chief public defender, were substantially overworked."

Still, the Spangenberg report supported the public defender office and its existence, giving it a new plan and goals to reach, including the development of a training program, written performance standards, methods for supervision and evaluation and caseload standards.

To reach the new goals, the Wichita County commissioners court hired a new senior administrator for the office. The administrator was charged with creating a written plan for the office that

would help assure the office's success. Through the help of a grant, the county also hired a full-time indigent defense coordinator to review applications for counsel and assign defendants to either the OPD or to a private attorney. The county utilizes a randomized appointment wheel to determine which private attorney gets a case.

Positive Outcomes

Six years later, the PPRI study began, with the research team first meeting with office stakeholders in November 2010. The first order of business was to gather information about the office's structure and operation.

The OPD office is staffed by its chief public defender, five defense attorneys, two investigators, the case administrator, a records director, two legal secretaries and a receptionist, according to the PPRI study.

Once the public defender's office is assigned a case, the first order of business is to make contact with the client. Contact is normally made via a letter delivered to the jail with the office's phone number. During the first contact with clients, public defenders discuss bond, then initiate a request for bond reduction. Staff investigators will then spend time interviewing witnesses, conducting background checks, visiting locations, reviewing security videotapes and performing other duties that can help attorneys negotiate a case resolution. To stay in contact with clients, the OPD utilizes videoconferencing.

"The public defender office's protocols allow for continuous close contact with the client in developing a case. A number of supports available exclusively through the public defender office, such as staff investigators and access to county and district court documents, help increase the chance of a positive case outcome. Every attorney has access to a pool of professional colleagues, all specializing in criminal law, available for consultation as needed," study states. "Together, these attributes enhance the public defender's capabilities to represent client interests."

In 2011, researchers began surveying private attorneys accepting indigent cases from the county about their caseloads, communication with clients, amount of time spent on cases, use of pretrial motions, use of investigators and experts, and training and experience. They also collected data from county records, including date of arrest and release, charges at arrest, defendant demographics, mental health, how cases were disposed, whether a defendant paid for private assigned counsel and other information.

Researchers wanted to use the data to address several key questions they felt would be helpful for other counties looking for ways to make their indigent defense systems more effective. They wanted to know what factors — outside of indigence — influenced whether a person requested a public defender or paid for a private attorney, so they looked at defendants' prior arrest record, current charges, mental health status, substance use, race and ethnicity and other factors. They also wanted to know whether attorney-type influenced a defendant's chances of making bond, how quickly a defendant is able to make bond and the number of pretrial days a defendant



Texas A & M University Public Policy Research Institute Scientist Dottie Carmichael explains the conclusions of the *Wichita County Public Defender Office: An Evaluation of Case Processing, Client Outcomes and Costs* study to the Texas Indigent Defense Commission board.

stays in jail, among other things related to case processing. Finally, they looked at how attorney type influenced case disposition, including dismissals, pleas, trials, outcomes and sentencing.

Together, the questions helped researchers determine the office's cost-effectiveness and quality of representation.

"We did what we called multivariate analysis. It allows you to see the effect of various aspects of criminal case processing while holding other things equal," explained Carmichael, who summarized the study's findings during the TIDC meeting. "We're measuring ... people that had equal crime severity, equal criminal

history."

According to the study:

- Wichita County public defenders were about 30 percent more likely to represent people with repeat misdemeanor charges, mental health issues and substance abuse programs and 60 percent less likely than retained attorneys to represent defendants with violent charges, mostly because those defendants found ways of paying for a private attorney.
- Defendants who make bond, regardless of their attorney type, have better case outcomes. They have 86 percent fewer pretrial jail days, 54 percent shorter jail sentences and a 30 percent greater chance of having charges dismissed. "Bond is a good thing," Carmichael emphasized.
- Indigent status is the greatest indicator of whether a person will make bond. Indigent defendants are 16 percent less likely to make bond than other defendants, regardless of the severity of charges.
- Indigent defendants assigned to public defenders have their charges filed 25 percent faster than those assigned to private court-appointed attorneys. Public defenders also dispose of cases 38 percent faster than retained attorneys.
- Public defenders also spend between 21 and 42 percent more time on each case and meet with clients 1 to 3 days earlier than private court-appointed attorneys. And while private appointed attorneys reported use of an investigator in less than 1 percent of all cases, the OPD spent an average of 1.3-2.5 hours investigating each case. "If you're in jail without the ability to make bond, the public defender is going to help you out," Carmichael said. "One of the most important things a public defender office can do for a county is provide an infrastructure for making that investigation cost-effective and something that can be applied in a large volume of cases."
- Defendants assigned to the public defenders office are 23 percent less likely to be found guilty than those assigned to private court-appointed attorneys. "That is the gold-standard of a defense, that they can build a case that produces a non-guilty finding," Carmichael said. And
- Use of a public defender versus a private court-appointed attorney saves the county \$204 per case. ☆