



**Texas Indigent Defense Commission**  
*Evaluation of the Willacy County Public Defender Program*

June 22, 2012



Texas Indigent Defense Commission  
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**COMMISSION BACKGROUND**

In January 2002, the Texas Fair Defense Act (FDA) became effective after its passage by the 77<sup>th</sup> Texas Legislature in 2001. The FDA established an organization, the Texas Task Force on Indigent Defense (Task Force), to oversee the provision of indigent defense services in Texas. In the 82<sup>nd</sup> Texas Legislative Session, a bill was passed that changed the name of the organization to the Texas Indigent Defense Commission (Commission) and gave greater independence to the Commission. The mission of the Commission is to provide financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

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## **Acknowledgments**

This review would not have been possible without the participation of the team of professionals in Willacy County's criminal justice system Texas RioGrande Legal Aid. The Commission gratefully acknowledges the cooperation and contributions of the following:

Mr. Abner Burnett, Chief Public Defender, Willacy County Public Defender Office

Ms Becky Chapa, Indigent Defense Coordinator

The Honorable Terry Flores, Willacy County Clerk, and staff

Ms Angelita Garcia, Investigator, Willacy County Public Defender Office

The Honorable John Gonzales, Constitutional County Judge of Willacy County

Mr. David Hall, Executive Director, TRLA

The Honorable Migdalia Lopez, 179<sup>th</sup> District Court Judge

The Honorable Gilbert Lozano, Willacy County District Clerk, and staff

Ms Ida Martinez, Willacy County Auditor, and staff

Mr. James McDermott, Public Defender Division Director, TRLA

Ms Mary Ortegon, CFO, TRLA

Ms Kate Sauer, Office of Capital Writs

The Honorable Juan Silva, Jr., Willacy County Justice of the Peace Precinct 3

The Commission also recognizes Jennifer Willyard, Ph.D. who served as the primary author of this report.

## Executive Summary and Conclusions

In FY2007, Willacy County received a Discretionary Grant from the Commission to establish a public defender office. The County signed a contract with Texas RioGrande Legal Aid, a legal nonprofit organization, to provide representation to those identified as eligible for court appointment through a screening process in the jail.

Grant funding for the program expired early in July of 2011, and the County has continued the program since the conclusion of grant funds. The program now consists of two defense attorneys, a full-time investigator, and a part-time legal secretary. This report analyzed the impact of the program by looking to see if the program met the objectives laid out by the County and if it met the requirements of the Fair Defense Act and the Grant Program Requirements. A summary of conclusions is presented below.

**Conclusion 1:** TRLA is commended for maintaining and producing copies of the invoices used to request payment from Willacy County. The content provided the level of detail necessary for the County to complete the Discretionary Grant Quarterly Progress Report. The itemization in the invoice was also consistent with the Indigent Defense Expenditure Report manual requirements that expenditures and cases be linked.

**Conclusion 2:** TRLA should reconcile the budget categories to ensure fair and accurate carryover accounting has occurred each year.

**Conclusion 3:** TRLA should submit an amended budget to the county under this contract that contains the same categories as the accounting system.

**Conclusion 4:** Willacy County and TRLA must reconcile the program budget in the contract.

**Conclusion 5:** Willacy County and TRLA should reconcile wage and FTE attribution with the contract.

**Conclusion 6:** TRLA needs to ensure that overtime paid is attributable to the operation of the Willacy County PDO.

**Conclusion 7:** TRLA needs to ensure that the nature of “non-case related” work is still for the operation of this program.

**Conclusion 8:** The County did create an oversight board to supervise the operation of the program.

**Conclusion 9:** Willacy County and TRLA must reconcile maximum allowable caseloads under the agreement and monitor compliance.

**Conclusion 10:** Willacy County should consider available methods to manage the large caseload.

**Conclusion 11:** The County did provide the Commission the minimum job requirement and full job descriptions of the positions required under the program.

**Conclusion 12:** Attorneys hired by the public defender office have been in good standing with the State Bar of Texas. TRLA and Willacy County should be commended for building an investigator and expert witness fees into the contract.

**Conclusion 13:** TRLA provided funds for attorneys to obtain CLE. Willacy County officials are not required to obtain or monitor attendance of public defender attorneys at CLE programs.

**Conclusion 14:** Willacy County magistrates’ warnings must document whether the defendant requests counsel at the time of magistration in line with Article 15.17 of the Code of Criminal Procedure.

**Conclusion 15:** Willacy County should document when attorneys are appointed to represent defendants through the use of an order appointing contemporaneous with the appointment to demonstrate compliance with Article 1.051(c) of the Code of Criminal Procedures and the local indigent defense plan.

**Conclusion 16:** Willacy County must continue to evaluate the magistration system to ensure timeliness of all Article 15.17 hearings.

**Conclusion 17:** The Willacy County Public Defender Program should be commended for providing indigent defendant with representation that is equipped with legal research materials and a full-time investigator.

**Conclusion 18:** Willacy County Public Defender Program attorney outcomes are in line with non-program attorney outcomes. Additional analysis with larger sample sizes could reveal specific areas of strength and weaknesses in the indigent defense system as a whole.

**Conclusion 19:** The Willacy County Public Defender Program should be commended for providing continuous representation to indigent defendants.

The analysis revealed more systematic record keeping and contract monitoring (on behalf of the County and the Commission) would benefit the program. In addition, many fundamental benchmarks were difficult to measure in this analysis because of incomplete or missing paperwork. The County should continue to analyze the criminal justice system as a whole to continue to make improvements to the system and demonstrate compliance with the Fair Defense Act. Ensuring that the rights of the accused are at the forefront of the criminal justice system may require cooperation and collaboration from all key players in the system, including law enforcement, prosecutors, judges, probation departments, community services, and the like. While the public defender attorneys in this program should be commended for taking on cases in a system that was described to the review team as one with a “talk to the prosecutor” mentality, they require the full support of the criminal justice system in order to maximize success.

## Introduction

The Texas Indigent Defense Commission (Commission) provides funding to help counties improve the quality of defense services provided for indigent defendants. Funds are distributed to all Texas counties through the Formula Grant program, but counties may also apply for competitive funding through the Discretionary Grant program. This funding stream is meant to help counties implement new models of indigent defense delivery.

In FY2007, Willacy County received a Discretionary Grant from the Commission (then known as the Task Force on Indigent Defense) to provide public defense services to indigent defendants through the creation of the Willacy County Public Defender Program. Following statutory requirements at the time, Willacy County issued a Request for Proposals for nonprofit legal corporations to implement the program. Texas RioGrande Legal Aid (TRLA) submitted a proposal to the County, the proposal was accepted, and a contract was executed between TRLA and Willacy County. According to the original Statement of Grant Award (SGA), the program was developed to provide representation “for indigent defendants in all courts and all levels of crime except in cases where the death penalty is sought” or in cases of conflict of interest. The contract was signed on 7/27/2007 and the office began to accept cases on 8/1/2007. Over the course of the grant, the County expended \$898,320.00 on the program, with \$509,048.00 in funds paid to the County from the Commission through the Discretionary Grant. Grant payments were made to the County in each of the following fiscal years:

**Table 1: Willacy County Discretionary Expenditures and Grant Payments**

<b>Fiscal Year</b>	<b>Expenditures</b>	<b>Grant Payments</b>
FY2007	\$37,430.00	\$29,944.00
FY2008	\$224,580.00	\$179,664.00
FY2009	\$224,580.00	\$134,748.00
FY2010	\$224,580.00	\$89,832.00
FY2011	\$187,150.00	\$74,860.00

Grant funding for the program expired July 31, 2011, and the County has continued the program since the conclusion of grant funds. The program now consists of two defense attorneys and a full-time investigator, as well as a part-time legal secretary. This report will evaluate the impact of the program through an analysis of program met the Commission’s grant requirements, the objectives laid out by the County and the requirements of the Fair Defense Act (FDA).

## Program Overview and Background

Willacy County is a rural county in the Rio Grande Valley of South Texas with a 2010 census population of 22,134.<sup>1</sup> The county seat, Raymondville, has a population of 11,284<sup>2</sup> and is located about 45 miles northwest of Brownsville, TX.

In its grant application, the County stated, “Revenue sources for rural counties are extremely limited and counties on the Texas-Mexico border are historically home to a large economically distressed population.” These observations are supported by 2010 Census data, which revealed

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<sup>1</sup> *Willacy County QuickFacts from the U.S. Census Bureau*, (2012, January 31), <http://quickfacts.census.gov/qfd/states/48/48489.html>

<sup>2</sup> Id.

that 43.4% of people in the county lived below the poverty line based on a 2006-2010 average.<sup>3</sup> The median Willacy County income over the same period was \$22,881, compared with a national median of \$49,646.<sup>4</sup> Per capita income for 2010 in the County was \$10,800—less than half the national per capita income of \$24,870.<sup>5</sup> In addition, the County noted in its application that indigent defense costs in the County increased eightfold between 2003 and 2006.

As described in the following section, the County's application and the SGA outlined several goals for the grant program that emphasized the ability to provide quality, early, and consistent representation for indigent defendants. This program evaluation will attempt to determine whether these goals were met and to determine the impact of the grant on Willacy County.

## Program Evaluation Questions

Several documents were consulted to develop questions appropriate for evaluation of the Willacy County Public Defender Program. First, the Discretionary Grant Program Requirements set Discretionary Grant obligations that are specific to the type of program. Program Requirements research questions for public defenders' offices include:

- RQ1a.** Did the County submit reports of expended funds based on actual expenditures to obtain reimbursement?
- RQ1b.** Did the County maintain a Public Defender board to supervise the operation of the department?
- RQ1c.** Did the program maintain a written policy that includes caseload standards for each attorney and for the operation of this program?
- RQ1d.** Did the County provide to the Commission staff the minimum job requirements and a full job description of the positions specific under this project before a person was selected?

In addition, the initial Discretionary Grant application included in the SGA was consulted to determine the original objectives of the program (see the Statement of Grant Award in Appendix A). Phrased as research questions, the objectives ask:

- RQ2.** Did the program provide qualified public defenders that are currently licensed and in good standing with the State Bar of Texas, and that exhibit proficiency and commitment to providing quality representation to criminal defendants and juvenile respondents?
- RQ3.** Did the program provide qualified public defenders that meet the required 6 hours a year of continuing legal education courses relating to criminal law and juvenile law as recognized by the State Bar of Texas?
- RQ4.** Did the public defender contact defendants within one working day of appointment and interview defendants within a reasonable period after appointment as required by Article 26.04(j)(1) of the Code of Criminal Procedure?

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<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

- RQ5.** Did the program provide indigent defendants [with] representation by a law office [that] is well-equipped with access to legal research materials and with an investigator in order to give said defendant equal footing as if he or she had retained a law firm?
- RQ6.** Did the program provide a public defender to represent defendants until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the public defender is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record?

Next, the evaluation sought to examine whether the program promoted fidelity to the core requirements of the FDA,<sup>6</sup> as well as whether the County as TRLA executed the contract as stated in contract documents. Passed into law by the 79<sup>th</sup> Legislature in 2001, the FDA requirements provide a brief outline for counties to examine how indigent defendants move through the criminal justice system. The FDA sets timelines that regulate the times from arrest until magistration, from request to appointment of counsel, and from appointment to contact by attorney/investigator. Additional elements of the FDA (such as continuing legal education requirements) are addressed in the document where appropriate.

Beyond the above considerations, the evaluation also addressed how outcomes for appointed public defender attorneys compare to outcomes achieved by non-program attorneys. This is addressed in a return to RQ2 that attempts to look at the impact of the program using several indicators of quality. The indicators in and of themselves do not ensure quality, nor is the list of indicators in this report considered complete. Instead, the evaluation team attempted to open a dialogue about how to measure quality using a variety of measures, including case outcomes for the program's clients.

According to a report published jointly by the Commission and the Public Policy Research, one advantage of a public defender's office is budget stability over time.<sup>7</sup> The study notes, "When the number of misdemeanor cases rose 23 percent between 2003 and 2004, associated public defender attorney costs went up only 7 percent."<sup>8</sup> The study indicates that the implementation of a public defender office may allow caseloads to increase without a corresponding one-to-one increase in costs due to economies of scale gained through a dedicated office. A second area where a public defender office may provide an advantage is in controls over case quality. Caseload maximums are required to receive grant funding, there is often an opportunity for professional development through the program by working directly with others and budgets for training, and there are frequently investigators on staff. Traditionally assigned counsel must request an expert from the court, and those requests may have strict funding limitations. In addition, an institutional presence like a public defender's office allows for attorneys to develop case specialization and provides both supervisory and administrative benefits over other types of indigent defense systems.<sup>9</sup> To the extent possible, these factors were measured in the analysis below.

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<sup>6</sup> For a full explanation of the requirements of the Fair Defense Act, with commentary, see *2011 Fair Defense Law* (Texas Indigent Defense Commission, 2011), available at <http://www.courts.state.tx.us/tidc/pdf/FDACodifiedFinalDec2011.pdf>.

<sup>7</sup> *Evidence for the Feasibility of Public Defender Offices in Texas* at 6 (Texas Task Force on Indigent Defense 2010), available at [http://www.courts.state.tx.us/tidc/pdf/PD%20Feasibility\\_Final.pdf](http://www.courts.state.tx.us/tidc/pdf/PD%20Feasibility_Final.pdf).

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 10-13.

This review speaks to the broad goal of the Commission, which is to promote local compliance and accountability to the requirements of the FDA through evidence-based practices and provide technical assistance to improve processes where needed. This analysis was intended to assist the local jurisdiction to develop procedures to measure and monitor the impact of its discretionary grant program. The evaluation process will also help the Commission to develop a knowledge base of successful indigent defense models.

## **Methodology**

Upon conclusion of the Willacy County Discretionary Grant, the Commission constructed an evaluation plan to analyze the program. The evaluation team consisted of Jennifer Willyard, Commission Research Specialist, and Bryan Wilson, Commission Grants Administrator. The evaluation made use of both quantitative and qualitative methods. Each methodology provides a unique lens for program evaluation and was conducted as described below.

### ***Quantitative Methods***

Several relevant samples were selected for this analysis, based upon the records available in the County and from TRLA. First, the evaluation team obtained a list of all misdemeanor and felony criminal cause numbers for FY2009-FY2010 from both the County and District Clerks. Based on these lists, random samples of case files were selected for analysis. The evaluation team reviewed 86 County Court files and 82 District Court files for:

- Defendant name
- Arrest date
- Date of magistration
- Whether the defendant requested an attorney at magistration
- Attorney of record
- Date an attorney was appointed
- Date defendant posted bond
- Bond amount
- Date the case was filed
- Offense
- Offense level
- Date case was disposed
- Disposition

During interviews with stakeholders, the evaluation team learned that magistration information is maintained separately from case information. Six different officials (five justices-of-the-peace and one municipal judge) may conduct magistrate's warnings in Willacy County every day based on the jurisdiction of the arrestee. Each of these officials maintains their files separately at their respective offices. In cooperation with the County Judge's office, the evaluation team was able to examine a convenience sample of 140 magistration files from Justices-of-the-Peace #2-5. Files from Justice-of-the-Peace #1 and the municipal judge were not reviewed for this evaluation. The evaluation team attempted to obtain the following data in the review of magistration files:

- Arrestee name
- Arrest date
- Arrest time
- Justice of the Peace precinct

- Magistration date
- Magistration time
- Whether the arrestee requested an attorney
- Attorney appointed
- Date appointed
- Bond amount
- Offense
- Offense level

In addition to case and magistration files, the evaluation team obtained activity reports from TRLA that outlined the general types of work conducted by public defender attorneys and staff without violating attorney-client privilege. TRLA was also able to provide the evaluation team with a key that would match TRLA file numbers with criminal cause numbers. This allowed for a much richer analysis of the type of work conducted in each case and further supplemented the program data collected by the Commission throughout the grant's required Quarterly Progress Reports.

Finally, the evaluation team conducted a review of the contract between Willacy County and TRLA to determine whether the contract met the grant program requirements and whether the County and TRLA executed the program as outlined in the contract.

### ***Qualitative Methods***

To collect qualitative data on the processes and outcomes of the Public Defender Program, semi-formal interviews were conducted with stakeholders, including the County Judge, the District Judge, a visiting judge, the Chief Public Defender, the program investigator, and one former Assistant Public Defender. Informal interviews were conducted with the County and District Clerks' offices and County Auditor to learn more about how files are maintained and how payments are processed.

### ***Limitations on Data***

One of the major limitations of the data for this analysis was that requests for attorneys at magistration are not documented for the vast majority of arrestees. This is due in part to a new-found efficiency gained from the public defender office. Staff from the office conduct a financial screening of jail inmate, often prior to magistration, and either appoint the public defender office or issue a conflict of interest letter for those they are unable to represent. It is generally known (but not formally documented) whether TRLA is the attorney of record prior to magistration. This process is simultaneously beneficial and problematic because, although defendants are appointed counsel early in the process, the County cannot demonstrate compliance with the FDA without proper documentation of requests for counsel.

A second limitation on data available to the evaluation team was the way the previous contract defense program was implemented in the County. Although the monthly attorney payments were recorded, itemized vouchers that indicated the cause numbers of disposed cases were not required for receive payment. In addition, investigative expenditures were paid by the attorney through the contract, rather than as a separate County cost, so the utilization of investigators prior to implementation of the program could not be determined. This speaks to a broad finding by the Commission that often one of the primary outcomes of a discretionary grant is the ability to accurate capture, track, and maintain indigent defense data.

## Results

### ***Program Requirements***

The first group of research questions addresses Discretionary Grant requirements that are specific to public defender programs. Each requirement is addressed below.

**RQ1a:** Did the County submit reports of expended funds based on actual expenditures to obtain reimbursement?

The evaluation team approached this question from two points of view to provide the best insight into the workings of a contracted public defender system. First, the team asked whether the County was provided with documentation to support payment. Second, we looked to see whether the documentation and payments comported with the contract between Willacy County and TRLA.

*Documentation to support payment* The Willacy County Auditor was able to provide the Commission review team with copies of information provided by TRLA to support payment of the contract. At the end of each month, TRLA sends Willacy County relevant sections of the progress report (number of people served, number of people screen by the public defender, number of cases active, etc., see Appendix B for an example) so the County may accurately complete the progress report each quarter. The monthly report submitted by TRLA also includes an invoice for the services listed in the progress report. The Auditor provided the evaluation team with purchase orders for the contract amount, the general ledger (GL) codes associated with TRLA payment, and copies of checks issued to TRLA.

**Conclusion 1: TRLA is commended for maintaining and producing copies of the invoices used to request payment from Willacy County. The content provided the level of detail necessary for the County to complete the Discretionary Grant Quarterly Progress Report. The itemization in the invoice was also consistent with the Indigent Defense Expenditure Report manual requirements that expenditures and cases be linked.**

*Consistency with contract* In addition to Willacy County records, the evaluation team requested that TRLA provide a summary of GL entries or documents that show that the funds received and/or carryover funds issued back to Willacy County, as required in certain situations by the contract, are consistent with the contract. This review revealed several issues, despite the fact that the contract contained all required elements (see Appendix C).

First, the contract budget line items and the GL report line items (including the reconciliation report line items) are incongruous. It is very difficult to reconcile a carryover amount for the program at year's end based on the contract budget without additional accounting of how the budgeted line item amounts were allocated to the GL categories. Further, an outside audit conducted for TRLA provides different categories than either the contract budget or the GL Reports. For example, the categories "printing copies" and "supplies" do not line up to specific items of cost in the GL but may be subcategories. A full comparison of budget categories in the contract, GL report, and outside audit is listed in Table 2 below.

**Table 2: List of Line Items in Willacy County Contract Budget, GL Report, and Outside Audit Report**

*(Headings in Blue, consistent items bolded)*

The Contract Budget Categories Are:	The GL Report Line Items Are:	Annual Outside Audit Report Categories Are:
Personnel	Personnel	Personnel
Salary – Listed by Position	Salary – Split between Professional and Non-professional	Salaries
Fringe	Fringe – Professional and Non-professional together	Employee Benefits
Non-Personnel		Litigation Costs
Travel Local	Contract services	Contract Services
Printing Copies	Travel	Travel
Supplies	Training/Conference	Telephone
Space + Furniture Cost	Space Costs	Equipment Expense
Litigation Expense	Office Expense	Office Expense
Telephone	Equipment	Rent
Training	Library	Utilities
Admin Costs	Litigation	Library Expense
Legal Research	Sub Grants	Miscellaneous
Capital Expenditures	Gen Cli / Activity	Oper & Deprec
Software	Miscellaneous	In- Kind Contributions
Computers	Oper & Deprec	
Videoconferencing Equipment	In- Kind Contributions	

**Conclusion 2:** TRLA should reconcile the budget categories to ensure fair and accurate carryover accounting has occurred each year.

**Conclusion 3:** TRLA should submit an amended budget to the county under this contract that contains the same categories as the accounting system.

The inconsistencies in the contract and budget documents extend beyond the line items reviewed by the team. In fact, the review team noted that the program budget itself was found to differ across parts of the document. Term 7 of the contract indicated a program budget of \$224,580. However, age 3 of the TRLA proposal budget, which was incorporated into the contract, listed a program budget of \$227,526. It may be wise for TRLA and Willacy County to sit down with all budget documents, reconcile them, and negotiate any needed changes.

**Conclusion 4: Willacy County and TRLA must reconcile the program budget in the contract.**

*Salaries in the Budget for March 2010 for Willacy County* To further test the contract budget, TRLA was asked to produce documentation that shows that the salaries included in the budget were attributable to the Willacy County program for the month of March 2010. Although the FTEs paid for that month matched the number of employees called for in the contract, the TRLA actual salaries paid are different than the amounts in the proposal budget, required under Article 26.044 (c-1)(1) of the Code of Criminal Procedure, as shown in the following table:

**Table 3: Budgeted and Actual Salary Expenditures for June 2010**

<b>Staff</b>	<b>FTEs and 1/12 Salary in TRLA Proposal</b>	<b>Actual FTEs and Salary in July 2010</b>
<b>Attorneys</b>	2	2
<b>Investigators</b>	1	1
<b>Support Staff</b>	0.5	0.5
<b>Total FTEs</b>	3.5	3.5
March 2010	\$12,325	\$15,298

If that was calculated over the course of FY2010, the actual salary line item expended could have exceeded the budgeted salary line item by \$35,676.

**Conclusion 5: Willacy County and TRLA should reconcile wage and FTE attribution with the contract.**

The time sheets indicate a significant amount of overtime for the month of March 2010 for support staff (\$672.13) in the TRLA office in Harlingen, which is dedicated to various civil and criminal programs. Since the office is not located in the county of operation, and because support staff also work in other TRLA service areas, TRLA should provide accounting and support to ensure that the overtime is only generated by activities related to this program. The nature of work for these overtime hours is not indicated in the time sheets. The time sheets also revealed that significant time is spent on “other service” hours by employees. TIDC requests follow-up on the activities for those hours, as the nature of work for these hours is not indicated in the time sheets.

**Conclusion 6: TRLA needs to ensure that overtime paid is attributable to the operation of the Willacy County PDO.**

**Conclusion 7: TRLA needs to ensure that the nature of “non-case related” work is still for the operation of this program.**

While the program itself cannot control slow dockets, the program can address budget overages and ensure that overtime and other hours are spent on the Willacy County program. If additional dollars and hours are required due to the much larger than estimated caseloads, Willacy County and TRLA should consider adding additional staff to the public defender office.

*Additional Contract Considerations Noted by Review Team* In addition to the items listed above, the review team noted the following issues that should be addressed by TRLA, Willacy County, and/or TIDC.

- 1) The budget calls for provision of videoconferencing equipment. No evidence of this equipment could be identified.
- 2) TRLA and Willacy County indicate that there have not been carryover funds during the operation of this program, even though the office was not fully staffed for several months at the time of the evaluation team’s visit.
- 3) TRLA needs to consider the impact of exceeding the statutorily required budget without providing notice or reconciliation to the County.

The second program requirement asked:

**RQ1b:** Did the County maintain a Public Defender board to supervise the operation of the department?

According to the County’s progress reports, an oversight board was established on March 12, 2007. The board was created as described in the grant conditions and included Judge Migdalia Lopez, 19th District Court; Judge Eliseo Barnhart, Sr, County Judge; and attorney Oscar Cavazos. The evaluation team could not determine the current status of the oversight board, as criminal indictments of county officials necessitated a change in membership and prevented oversight board meetings for approximately two years.

**Conclusion 8: The County did create an oversight board to supervise the operation of the program.**

Now that the program is not subject to TIDC grant conditions, the County and TRLA should follow the current public defender statute which states that a county may form a public defender oversight board.

The third program requirement asked:

**RQ1c:** Did the program maintain a written policy that includes caseload standards for each attorney and for the operation of this program?

As noted above, the contract did include provisions for maximum allowable caseloads. An issue identified by the review team, however, is that the contract and the TRLA proposal adopted into the contract include three different caseload standards. The caseloads were listed as follows:

**Table 4: Willacy County Caseload Maximums**

Document	Caseload
Contract page 2	500 cases maximum
TRLA Proposal pages 4-5 (adopted into the contract)	405 maximum as aggregate across all attorney positions
TRLA Proposal page 9 (adopted into the contract)	473 cases maximum

TRLA must reconcile and clarify within the contract and with Willacy County the **maximum allowable caseloads** under this agreement. Actual caseloads appear to far exceed contract, grant and national standards, largely related to infrequent dockets in Willacy County. Rural counties are often not able or willing to hold sufficient dockets to clear backlogs, but it is an option for the County to consider.

**Conclusion 9: Willacy County and TRLA must reconcile maximum allowable caseloads under the agreement and monitor compliance.**

Caseload considerations are particularly important because, as noted earlier in this report, control over caseload is one of the advantages in a public defender office. Upon first glance, it may appear that the Willacy County public defender office has not come close to meeting even the lowest of the above caseloads because the program reported is disposed 310 cases in FY2010. Further analysis, however, shows us that the courts have had unusual circumstances regarding available docket days and have not been able to dispose of cases in a timely manner. For

example, as of the last day of September 2011, the Public Defender Office had 1104 active cases but only reported 310 disposed cases for the year, for a total of 1414 cases over the year. The direct consequences of the budget overage and the slow dockets are that any potential for carryover is reduced for the next cycle, attorney active caseloads balloon, and cost per disposed case calculations artificially increase. Without proper context, the increased cost per disposed case appears to undermine the cost-effectiveness of this model of indigent defense and diminishes its ability to be sustained in Willacy or other counties.

**Table 5: Budgeted vs. Actual Costs per Case**

FY2010 Budgeted Versus Actual PDO Costs per Case						
	Amount	Cases Disposed	Average Cost Per Disposed Case		Active Cases	Average Cost Per Active Case
<b>Budgeted</b>	\$224,580	500	\$449.16			
<b>Actual</b>	\$276,079	310	\$890.58		1104	\$250.07

The review team has since learned that inaccurate data management in the public defender office may have left some disposed cases reported as active cases. This impacts the cost per disposed case on face value but it does not impact the total number of cases handled by the office. If the total number of cases handled by the office was 1414, the average cost would be \$195.25 per case (active and/or closed).

The caseload has not been managed by the county or the contractor.. If the highest caseload estimate is taken, the office represented 104 cases beyond their capacity and could make great use of an additional attorney. This would allow the chief to perform necessary administrative tasks like attorney performance reviews and data tracking or reporting. If TRLA hired an additional attorney at the stated rate of the assistant attorney, it would add about \$40,000 to the budget. This would include attorney and investigator time. Comparable calculations of assigning these cases to appointed counsel are difficult because the Willacy County fee schedule requires approval for more than 30 hours of out-of-court case prep, places presumptive maximums on investigation fees, and does not indicate a presumptive investigation maximum for misdemeanor cases (Appendix D). Guideline #12 of the Guidelines for Fee Schedule (Appendix E) does indicate that reasonable expenses may be paid, but as the County has not reported any investigative expenditures to assigned counsel in the Indigent Defense Expenditure Report over the course of the public defender program (with the exclusion of \$4,557 paid in a capital case), it is difficult to estimate how often these expenditures are requested or granted.

**Conclusion 10: Willacy County should consider available methods to manage the large caseload.**

The final program requirement asked:

**RQ1d:** Did the County provide to the Commission the minimum job requirements and a full job description of the positions specific under this project before a person was selected?

As part of the proposal submission, nonprofit legal corporations who apply to provide indigent defense services in a county must include a description of personnel who will be hired to implement the program. In the TRLA proposal to Willacy County’s RFP is a section dedicated to “Personnel Descriptions” and states that “TRLA will meet all statutory and Willacy County

grant requirements as to each staff position funded through the PD grant.” It goes on to describe minimum and preferred qualifications and responsibilities for the Chief Public Defender, Assistant Public Defender, Investigator, and Legal Secretary.

**Conclusion 11: The County did provide the Commission the minimum job requirement and full job descriptions of the positions required under the program.**

### *Commitment to Quality*

The second full research question addressed public defender attorneys and asked:

**RQ2:** Did the program provide qualified public defenders that are currently licensed and in good standing with the State Bar of Texas, and that exhibit proficiency and commitment to providing quality representation to criminal defendants and juvenile respondents?

According to the State Bar of Texas webpage, both attorneys who were employed by the TRLA office in Willacy County were in good standing. Neither had any disciplinary history. The team also heard very positive reviews of the public defender attorneys from the judges interviewed for the evaluation. Although the county did not appear to adopt any formal measures of proficiency or commitment to quality representation, those who observe the attorneys in action appear to be satisfied with their performance.

The public defender office was without one attorney during the time of the evaluation, and several judges did mention that the chief seemed overworked. One judge in particular mentioned that the chief handled the majority of every docket. If the judge decided to take a break from a docket and move to another to give the prosecutors a few minutes to prepare for the next case, the chief defender would be the one to represent defendants on the next docket as well. The program has since hired an assistant attorney as required in the program contract.

In addition to qualitative reports from judges, a glimpse into the proficiency and commitment of public defender attorneys can be gained from the office’s internal activity reports. Copies of the reports were provided to the evaluation team in ways that allowed the analysis to focus on the kinds of activities that are conducted, their duration, and their frequency, without revealing any information protected by attorney-client privilege. Activity reports described in the methodology section allowed the team to analyze the kinds of work conducted by the public defender office.

We examined felony and misdemeanor cases in which the public defender provided representation in FY2008 and FY2009. This examination showed that staff spent an average of 10.6 hours of time on felony cases, with attorneys spending an average of slightly more than 7.7 hours per case and non-attorneys spending an average of slightly more than 2.8 hours per case. For misdemeanors, staff spent an average of 3.1 hours per case, with attorneys spending an average of 2.0 hours per case and non-attorneys spending an average of 1.1 hours per case.

The use of non-attorney staff is very instrumental in making proficient use of the attorney’s time. Non-attorney staff can be particularly helpful with regard to case file management, conducting interviews, performing investigations, and gathering records. In particular, investigative work conducted by staff may allow for information to come to light that may change a case disposition. For instance, a company’s security camera video may capture evidence that is relevant to a criminal case, but this information may not be in the possession of the prosecutor. If

the defense attorney were to obtain this video, a truer picture of a criminal case may be shown, and this information may change the case disposition.

This information is particularly important when compared to the system of indigent defense in Willacy County prior to implementation of the public defender office. The County utilized a contract defender until 2007, and the Commission conducted a site visit with the County and the site visit in 2006 that revealed several indigent defense challenges. For example, the contract with the lone contract defense attorney did not require him to report caseload data or list the cases he disposed under the contract. In turn, the auditor had no data from the contract attorney necessary to complete the annual Indigent Defense Expenditure Report. The Commission met with the sheriff, who said it is very rare for appointed attorneys to go to the jail to meet with arrestees.

The site visit team also met with the contract attorney who provided representation to all indigent misdemeanor and felony defendants. At the time of the grant, he was about to leave to a neighboring county to begin a term as justice-of-the-peace. He expressed some concerns about the scope of the public defender proposal because the County had been strapped for cash in the previous years. Prior to 2004, the attorney stated that Willacy County spent approximately \$150,000 on appointed counsel, but the contract defender received \$66,000 to represent all adult misdemeanor and noncapital felony cases in the county. The contract attorney also stated that the workload under the contract had increased significantly during its two year term. According to this attorney, the cases under the Willacy contract represented 85% of the contract defender's total caseload. He appeared in court in Willacy County between 75 and 100 days per year to handle the contract caseload (six days/month for the felony court, up to two days/month for the misdemeanor court) and conducted his own investigation, but the attorney stated that the percentage of his time dedicated to contract cases was less than 85 percent. Funds for auxiliary defense services came out of the attorney's contract, so he very rarely used outside investigators or experts.

By comparison, the public defender office has a full-time investigator on staff who conducts intake evaluations, interviews clients, provides case management, conducts investigations, and provides court support as necessary among other functions. The program budget also includes \$3,000 per year for expert witness fees, which are used as needed.

**Conclusion 12: Attorneys hired by the public defender office have been in good standing with the State Bar of Texas. TRLA and Willacy County should be commended for building an investigator and expert witness fees into the contract.**

### ***Training and Education***

The third research question asked:

**RQ3:** Did the program provide qualified public defenders that meet the required 6 hours a year of continuing legal education courses relating to criminal law and juvenile law as recognized by the State Bar of Texas?

Although the training requirements included in the Fair Defense Act apply only counsel specifically appointed through a rotation system, the contract did adopt provisions to allow public defender attorneys to obtain CLE. Each attorney was allowed a training a travel budget of

\$1000 to attend relevant criminal law CLE, a provision that TRLA has successfully used in other programs.

**Conclusion 13: TRLA provided funds for attorneys to obtain CLE. Willacy County officials are not required to obtain or monitor attendance of public defender attorneys at CLE programs.**

### *Time to Appointment of Counsel*

The fourth research question asked:

**RQ4:** Did the public defender contact defendants within one working day of appointment and interview defendants within a reasonable period after appointment as required by Article 26.04(j)(1) of the Code of Criminal Procedure?

To answer this question, the evaluation team looked at the time from magistration to appointment of counsel in a sample of files (arrest dates between 2008 and 2011) obtained from four of six officials who provide magistrate's warnings.<sup>10</sup> Counties have 48 hours to provide arrestees with their magistrate's warnings, and a magistrate judge has 24 hours to transmit requests for counsel made at magistration to the appointing authority.<sup>11</sup> The appointing authority then has three working days to appoint counsel to those who qualify as indigent.<sup>12</sup>

As stated in the Methodology section, magistration information was not available in either the County or District Court files for the random sample of program defendants. Instead, the evaluation team reviewed magistration forms that were available from the justices-of-the-peace, or 140 files in total. While virtually all files contained magistration dates, almost no attorney requests were documented on the forms. The magistration form does include a place for the magistrate to indicate whether the arrestee requested counsel, but it was underused. Of the 140 files reviewed, 112 contained no indication of whether the arrestee requested counsel. Nineteen forms documented that an arrestee declined counsel, eight forms indicated that the arrested requested counsel, and one form was unclear.

The second factor that prevented the calculation from request for attorney to an appointment is that the County does not routinely use orders appointing counsel. The public defender office conducts the indigence screenings, takes the clients they can, and sends a conflict letter to the court coordinator for those clients they cannot represent. Those letters then initiate an attorney appointment from the rotation wheel, but those attorney conflicts do not appear to be documented in the case files.

The County elected a new County Judge during the last election cycle, and he has implemented the use of orders appointing counsel. These are not signed, however, until the defendant's first court appearance, which may occur weeks to months after the initial arrest. This skews the time to appointment that is available from the court and magistration files and does not allow the County to demonstrate compliance with either the Fair Defense Act or the local indigent defense

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<sup>10</sup> Magistration is governed by Article 15.17 of the Code of Criminal Procedure. At the hearing, a magistrate judge is required to ask newly arrested defendants if they are requesting appointed counsel. Article 15.17(e) requires the judge to record whether the defendant is requesting counsel at the hearing. In this manner, one can determine the date of a request for counsel by examining whether the defendant requested counsel at magistration.

<sup>11</sup> See Article 15.17(a) of the Code of Criminal Procedure.

<sup>12</sup> See Article 1.051(c) of the Code of Criminal Procedure.

plan (see Appendix F for Willacy County’s Indigent Defense Plan). The public defender began to provide representation after the jail screening, but they are not officially appointed according to court records until the first appearance. It may also complicate the ability of defendants to make valid waivers of counsel, which cannot occur when a request for counsel is pending.<sup>13</sup>

**Conclusion 14: Willacy County magistrates’ warnings must document whether the defendant requests counsel at the time of magistration in line with Article 15.17 of the Code of Criminal Procedure.**

**Conclusion 15: Willacy County should document when attorneys are appointed to represent defendants through the use of an order appointing contemporaneous with the appointment to demonstrate compliance with Article 1.051(c) of the Code of Criminal Procedures and the local indigent defense plan.**

Despite the inability of the evaluation team to measure time from request to appointment, the time from arrest to magistration was documented in the magistration forms. Of the 140 files reviewed, 129 contained both arrest and magistration times.<sup>14</sup> The sample revealed that 90.7% of magistrations occur within 48 hours. The shortest time to magistration was 40 minutes, and the median was 24.4 hours. Table 6 breaks down the time from arrest until magistration in further detail.

**Table 6: Time from Arrest to Magistration in Hours**

<b>Willacy Time to Magistration Data</b>	<b>Sample Size</b>	<b>Percent</b>
Magistrate warnings where time to magistration could be determined	129	
Magistration Occurs x hours after arrest:		
0 – 12 hours	25	19.4%
12.01 – 24 hours	36	27.9%
24.01 – 36 hours	37	28.7%
36.01 – 48 hours	19	14.7%
<b>Timely Magistration</b>	<b>117</b>	<b>90.7%</b>
More than 48 hours	12	9.3%

The Commission presumes a jurisdiction is in compliance with the time requirements if 98% of magistrations in a sample occur within 48 hours. Although just over 90 percent of the magistrations in this review were conducted timely, the findings should be read with caution. The sample obtained by the review team was not random and it did not include magistration forms from all who conduct magistration. Further research would be beneficial in this area to fully explore the system of magistration in Willacy County, gather a truer picture of the time magistration, and examine other factors such as the timeliness of probable cause findings,<sup>15</sup> bond setting practices at magistration and requests for attorneys at magistration.

**Conclusion 16: Willacy County must continue to evaluate the magistration system to ensure timeliness of all Article 15.17 hearings.**

<sup>13</sup> See Article 1.051(f)-(h) of the Code of Criminal Procedure.

<sup>14</sup> Some times to magistration contained negative numbers. This is likely due to arrestees who attend magistration, bond out of jail, and are subsequently re-arrested. Any time from arrest to magistration that revealed a negative number was excluded from the sample

<sup>15</sup> See Article 14.06 of the Code of Criminal Procedure.

### ***Access to Resources***

The fifth research question asked:

**RQ5:** Did the program provide indigent defendants [with] representation by a law office [that] is well-equipped with access to legal research materials and with an investigator in order to give said defendant equal footing as if he or she had retained a law firm?

As noted above, the public defender office does employ a full-time investigator who provides investigative and case management services to support the public defender attorneys. The office also uses Westlaw for legal research.

**Conclusion 17: The Willacy County Public Defender Program should be commended for providing indigent defendant with representation that is equipped with legal research materials and a full-time investigator.**

To get to the heart of the “equal footing” objective, the evaluation team attempted to measure case outcomes for defendants appointed to the public defender office, defendants appointed other private counsel, and defendants who retained counsel. This proved to be somewhat difficult because, as mentioned above, the County previously made use of a contract defender who was not required to indicate to the county which cases were disposed through the contract, and the County does not routinely use orders appointing counsel at the time of appointment. In addition, designations of appointed versus retained were not clearly indicated in court files. To do a true comparison between pre- and post-systems would require extensive research into arrest records, magistration forms, clerk’s files and auditor’s files that was not able to be carried out during this larger evaluation. Instead of comparisons between the public defender program and retained counsel, then, the report details contemporaneous comparisons of case outcomes between public defender attorneys and non-program attorneys.

In order to make comparisons regarding outcomes for defendants, the evaluation team examined 86 County Court files and 82 District Court. The cases were distributed between TRLA public defender attorneys, other appointed or retained attorneys (the case files did not always make clear who was retained/retained), and no attorney of record (*see Table 7 below*).

**Table 7: Cases by Attorney Type**

<b>Attorney Type</b>	<b>County Court Cases</b>	<b>District Court Cases</b>
TRLA Program	52	37
Other	13	33
None	22	12

An analysis of all cases is presented and analyzed below, beginning with bond information.

*Bond Information* Twenty-five of the program’s misdemeanor defendants made bond (48.1%), as did 20 of 37 felony defendants (54.1%). A higher percentage of retained and other attorneys’ clients made bond in both misdemeanor and felony cases, and they were more likely to be granted personal recognizance (PR) bonds. Misdemeanor defendants in the program group made bond between zero and 68 days from the date of arrest. Other appointed and retained attorneys had a maximum of 10 days to bond. The range of days to bond was much longer in

district court, with program clients remaining in jail zero to 591 days and other clients remaining in jail zero to 715 days.

This speaks to a larger processing issue in Willacy County because interviews with the District Judge and public defender attorneys indicated that although motions for bond reduction are made for indicted cases or cases filed by information at every court setting possible, both County and District Court dockets are only held during one week per month. Pre-indictment or information, defense attorneys would be expected to file motions for bond reduction with the magistrate (five Justices-of-the-Peace and one magistrate judge). These officials do not like to hear motions for bond reduction and instead have asked the defense attorney and the prosecutor to come to an “agreed upon” bond. Public defender attorneys stated that the magistrates have become more stringent with this procedure over the years, first requiring only verbal agreement from the District Attorney’s Office, followed by a written document that outlined the agreed upon bond, follow further by a requirement that the elected District Attorney be the one to sign the bond agreement. The chief public defender further reported that the magistrates now frequently do not accept the agreed upon bonds and continue to set bond at their discretion.

The lengthy time between felony dockets is especially problematic because of their effect on writs of habeas corpus. Interviews with the public defender attorneys revealed that although the District Judge will sometime shear writs of habeas corpus prior to the 90 days from arrest to case filing, she is not consistent in the practice. For example, a public defender client who has been in jail for 80 days without charges filed against them may or may not have a writ of habeas corpus set on the docket. If the writ is not heard, the opportunity to appear before the judge will not arise for an additional three weeks and may cause that person to remain in jail eleven or more days beyond the 90 day threshold. This can cause increased jail costs simply because a defendant is not eligible for a writ of habeas corpus during week when the district judge is available to hear motions.

The delays in appointment raised earlier in the report compound bond setting issues and may further inflate the pre-trial jail population. For example, one defendant appointed to other counsel was arrested on September 26, 2007, for burglary of a building, a state jail felony. A case was not filed against the defendant until November 14, 2008. The defendant should have been released on a writ of habeas corpus on December 25, 2007. However, an attorney was not appointed until September 3, 2009. One week later, September 10, 2009, the defendant was released on a \$5000 PR bond. Although the case took 810 days to resolve, 705 of those days were pre-trial and pre-appointment. If the average cost to house a jail inmate per day is \$42, the County could have saved over \$29,000 by immediately appointing an attorney to this defendant. Table 8 contains a full picture of bond statistics.

**Table 8: Bond Statistics by Attorney Type**<sup>16</sup>

	<b>Program Misd.</b>	<b>Other Misd.</b>	<b>Program Felony</b>	<b>Other Felony</b>
<b># Sample Files</b>	52	13	37	33
<b># Made Bond</b>	25 48.1%	11 84.7%	20 54.1%	19 57.6%
<b># PR Bond</b>	7 13.5%	5 38.7%	9 24.3%	9 27.3%

<sup>16</sup> Quartiles indicate the following: 25% of appointments occurred in fewer days than the 1<sup>st</sup> Quartile; 75% of appointments occurred in fewer days than the 3<sup>rd</sup> Quartile.

<b>Min Bond Amt</b>	\$500	\$500	\$3,000	\$5,000
<b>Max Bond Amt</b>	\$20,000	\$5,000	\$20,000	\$50,000
<b>Days to Bond</b>				
Minimum	0	0	0	0
1 <sup>st</sup> Quartile	1	1	2	0.75
Median	1.5	1	5	1.5
3 <sup>rd</sup> Quartile	5	3	74	16
Maximum	68	10	591	715

*Case Outcomes* Disposition information was identified for 80 of the 89 combined TRLA cases in the sample. Forty (40) percent of these cases ended with a disposition of a term of confinement; 37.5 percent with a disposition of deferred adjudication or probation, and 22.5 percent with a dismissal.

**Table 9: Program Counsel Outcomes**

Willacy County Public Defender Outcomes							
Disposition	MB	MA	SJF	F3	F2	F1	Total
<b>Dismissal/Not Guilty</b>	5 25.0%	10 35.7%	1 7.7%	0 0.0%	2 25.0%	0 0.0%	18 22.5%
<b>Deferred adjudication, probation, or community supervision</b>	7 35.0%	8 28.6%	6 46.2%	6 66.7%	2 25.0%	1 50.0%	30 37.5%
<b>Confinement</b>	8 40.0%	10 35.7%	6 46.2%	3 33.3%	4 50.0%	1 50.0%	32 40.0%
<b>Totals:</b>	20 100.0%	28 100.0%	13 100.0%	9 100.0%	8 100.0%	2 100.0%	80 100.0%

\*Percentages reported by column/level of offense

The outcomes achieved by the non-program attorney outcomes were very similar to the program attorney outcomes. However, a greater portion of defendants in non-public defender cases made bond than defendants in public defender cases.<sup>17</sup> The small sample size of the other attorneys and the inability to differentiate between retained and appointed cases make true statistical comparisons impossible, but the outcomes show that the disposition information for public defender attorneys was consistent with non-program attorneys.

**Table 10: Contemporary Non-Program Counsel Outcomes**

Contemporary Non-Program Counsel (Assigned and Retained) Outcomes							
Disposition	MB	MA	SJF	F3	F2	F1	Total
<b>Dismissal/Not Guilty</b>	1 16.7%	3 50.0%	0 0.0%	0 0.0%	3 33.3%	1 25.0%	8 25.0%
<b>Deferred adjudication, probation, or community supervision</b>	3 50.0%	2 33.3%	3 50.0%	2 40.0%	3 33.3%	2 0.0%	15 41.7%
<b>Confinement</b>	2	1	3	3	3	1	13

<sup>17</sup> In other Commission reviews, defendants who make bond tend to obtain much better case dispositions than defendants who remain incarcerated.

	33.3%	16.7%	50.0%	60.0%	33.3%	25.0%	36.1%
<b>Totals:</b>	6 100.0%	6 100.0%	6 100.0%	5 100.0%	9 100.0%	4 100.0%	36 100.0%

\*Percentages reported for column/level of offense

In addition to program and other attorneys, there were 23 cases for which there was no attorney of record. The majority of those cases had not been disposed, partly because the defendant failed to appear for a court setting. While eight of the cases did involve dismissals, without an attorney to represent these defendants, it is unlikely that the FTAs will be removed from the dockets in the near future.

**Table 11: Contemporary Non-Program Counsel Outcomes**

Contemporary Cases with No Attorney of Record Indicated Outcomes							
	MB	MA	SJF	F3	F2	F1	Total
<b>Dismissal/Not Guilty</b>	2 13.3%	0 0.0%	1 100.0%	0 0.0%	2 66.7%	1 100.0%	8 34.8%
<b>Deferred adjudication, probation, or community supervision</b>	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%
<b>Confinement</b>	2 13.3%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	0 0.0%	2 8.7%
<b>FTA</b>	11 73.3%	1 100.0%	0 0.0%	0 0.0%	1 33.3%	0 100.0%	13 56.5%
<b>Totals:</b>	15 100.0%	1 100.0%	1 100.0%	0 100.0%	3 100.0%	1 100.0%	23 100.0%

\*Percentages reported for column/level of offense

The analysis also looked at the time required to reach certain case milestones and found that the overall system appears to move quite slowly in the County. Excluding the time from arrest to appointment, which cannot be reported for reasons described above, it appears that there is room to process cases more efficiently. For example, the median days from arrest to case filing for all misdemeanor cases was 128 days, with a maximum of 601 days. The median time to filing in felony cases was actually faster than misdemeanor cases, at 90 days for all cases. Times from arrest to case filing and from filing until case disposition are reported below.

**Table 12: Time to Notable Case Events by Attorney Type**

	Program Misd.	Other Misd.	Program Felony	Other Felony
<b>Days from Arrest to Case Filed</b>				
<b>Minimum</b>	6	13	-42	21
<b>1<sup>st</sup> Quartile</b>	48.5	59	67	72.5
<b>Median</b>	107	128	98	90
<b>3<sup>rd</sup> Quartile</b>	184.25	179	209	94.5
<b>Maximum</b>	601	254	711	415
<b>Days from Case Filed to Disposition</b>				
<b>Minimum</b>	0	85	0	14
<b>1<sup>st</sup> Quartile</b>	84	128.5	42	88.5

<b>Median</b>	154	159	107	132.5
<b>3<sup>rd</sup> Quartile</b>	285	249.25	190.5	214
<b>Maximum</b>	731	454	606	732
<b>Days from Arrest to Case Disposition</b>				
<b>Minimum</b>	44	148	0	34
<b>1<sup>st</sup> Quartile</b>	148.75	245.75	129.5	154.5
<b>Median</b>	311.5	274.5	261.5	235
<b>3<sup>rd</sup> Quartile</b>	454.75	375.75	401.25	380.5
<b>Maximum</b>	987	650	1279	810

**Conclusion 18: Willacy County Public Defender Program attorney outcomes are in line with non-program attorney outcomes. Additional analysis with larger sample sizes could reveal specific areas of strength and weaknesses in the indigent defense system as a whole.**

### *Continuous Representation*

The sixth research question asked:

**RQ6:** Did the program provide a public defender to represent defendants until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the public defender is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record?

The review of court records indicate that few, if any, attorney substitutions occurred in the sample case files. The public defender office screens defendants for potential conflicts up front and notifies the court immediately.

**Conclusion 19: The Willacy County Public Defender Program should be commended for providing continuous representation to indigent defendants.**

## **Discussion and Conclusion**

The review of the Willacy County Public Defender program revealed that the County did contract with a nonprofit legal organization to provide eligible defendants with representation in misdemeanor and felony cases. Definitive claims about the quality of the program, however, are difficult to make because of incomplete record keeping. The program should be commended for its use of case investigators and detailed work and case tracking, but changes may be needed in the contract and the larger system of criminal justice in Willacy County. In addition, the County should examine the appointment process for all indigent defendants to ensure that all appointments occur within the statutory timeline and are appropriately documented.

This analysis revealed several other “needs” for a successful indigent defense public defender program. First, there is greater need for monitoring, both on the part of the County and the Commission. The report recommends that the County and TRLA monitor the contract terms closely to ensure reconciliation of all numbers and requirements, address staffing levels as caseload levels rise, and renegotiate the contract as needed. While the County should introduce a program to monitor the contract with TRLA, the Commission should develop a plan of action to immediately address caseload overages reported in the quarterly progress reports more closely.

The ultimate goal for Commission grant funds is to create programs that are built for success, and overwhelming caseloads are a known risk of public defender offices that can directly impact their success. These lessons will be especially important for other programs funded by the Commission through the Discretionary Grant program.

The second need revealed by this analysis is the need for cooperation and collaboration among all criminal justice stakeholders to ensure the best outcomes for indigent defendants. In other words, it may be unrealistic to ask defense attorneys alone to enact the kinds of changes envisioned by the original grant application. To ensure that the rights of the accused are at the forefront of the criminal justice system requires cooperation and collaboration from all key players in the system, including law enforcement, justices of the peace, prosecutors, judges, probation departments, community services, and the like. While the public defender attorneys in this program should be commended for taking on cases in a system that was described to the review team as one with a “talk to the prosecutor” mentality, they require the full support of the criminal justice system in order to maximize success.

The Commission thanks Willacy County officials for their openness during the evaluation and will work with the County to implement any future changes to the program that will help to meet these objectives and the statutory requirements.

## Appendix A: Willacy County Statement of Grant Award



### TEXAS TASK FORCE ON INDIGENT DEFENSE

205 West 14<sup>th</sup> Street, Suite 700 Tom C. Clark Building (512)936-6994

P.O. Box 12066, Austin, Texas 78711-2066

[www.courts.state.tx.us/tfid](http://www.courts.state.tx.us/tfid)

CHAIR:

THE HONORABLE SHARON KELLER  
Presiding Judge, Court of Criminal Appeals

DIRECTOR:

MR. JAMES D. BETHKE

VICE CHAIR:

THE HONORABLE OLEN UNDERWOOD

August 24, 2006

The Honorable Simon Salinas  
Willacy County Judge  
Co Courthouse Annex  
190 North 3rd Street  
Raymondville, TX 78580  
Via Fax: 956-689-4817

Dear Judge Salinas;

I am pleased to inform you that the Texas Task Force on Indigent Defense has awarded Willacy County a FY2007 Multi-year Discretionary Grant in the amount of **\$179,664** in response to your application titled Willacy County Public Defender Program. Your Statement of Grant Award for fiscal year 2007 is attached. Please sign and return via fax the first two pages of the Statement of Grant Award to fax number 512-475-3450 on or before October 1, 2006. You do not need to mail a copy.

Congratulations to Willacy County on taking the lead in Texas by developing and operating this indigent defense program. If you have any questions or need clarification on the information contained in this letter or attached Statement of Grant Award, please contact Bryan Wilson, the Task Force Grants Administrator at (512) 936-6996.

Sincerely,

Sharon Keller  
Chair, Task Force on Indigent Defense  
Presiding Judge, Court of Criminal Appeals



Task Force on Indigent Defense  
Statement of Grant Award  
FY2007 Discretionary Grant

**Grant Number:** 212-07-D09  
**Grantee Name:** Willacy County  
**Program Title:** Willacy County Public Defender Program  
**Grant Period:** 10/01/2006-9/30/2007  
**Grant Type:** New Multi-year Discretionary Grant  
**Grant Award Amount:** \$179,664

The Task Force on Indigent Defense (Task Force) has awarded the above-referenced grant for indigent defense services. The authorized official named on the grant application must sign this Statement of Grant Award and return it to the Task Force by October 1, 2006. The grantee will not receive any grant funds until this notice is executed and returned to the Task Force. Funding is provided as listed in the categories in the table below:

<b>Direct Costs</b>	
<b>1) Personnel (Total Number of FTEs: 4 )</b>	<b>\$153,000</b>
<b>2) Fringe Benefits</b>	<b>\$42,840</b>
<b>3) Travel and Training</b>	<b>\$4,000</b>
<b>4) Equipment</b>	<b>\$10,340</b>
<b>5) Supplies</b>	<b>\$3,400</b>
<b>6) Contract Services and Experts</b>	<b>\$11,000</b>
<b>Total Direct Costs</b>	<b>\$224,580</b>
<b>Indirect Costs:</b>	
<b>7) Indirect Costs</b>	<b>0</b>
<b>Total Indirect Costs</b>	
<b>Total Proposed Costs</b>	<b>\$224,580</b>
Less Cash from Other Sources – County Match	<b>\$44,916</b>
<b>Total Amount Funded by Task Force</b>	<b>\$179,664</b>

Standard Grant Conditions:

- The authorized official for the grantee accepts the grant award.
- The authorized official, financial officer, and program director, referred to below as grant officials, agree to the terms of the grant as written in the Request for Applications issued on February 14, 2006, including the rules and documents adopted by reference in the Task Force on Indigent Defense's Grant Rules in Title 1, Part 8, Chapter 173, Texas Administrative Code.
- The grant officials understand that a violation of any term of the grant may result in the Task Force placing a temporary hold on grant funds, permanently deobligating all or part of the

grant funds, requiring reimbursement for funds already spent, or barring the organization from receiving future grants.

- Disbursement of funds is always subject to the availability of funds.
- The grant officials agree to follow the grant terms contained in the “Required Conditions and Report” contained in Attachment A.
- Any plan documents submitted to the Task Force must continue to meet all grant eligibility requirements.

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

---

Signature of Authorized Official

---

Name & Title (must print or type)

---

Date

**Attachment A**  
**Required Conditions and Reports**  
**Method of Calculation**

The budget on the Statement of Grant Award was developed under the assumptions that the grant be based on a twelve month period. The schedule is intended to provide the county twelve months of funds at each of the original agreed upon funding levels. If the county has a delayed start in the beginning year (FY2007), it may necessitate an adjustment in future years to allow the county to fully expend grant funds. The intention is to still follow the four year declining schedule of 80% in the first year, 60 % in the second year, 40% in the third year, and 20% in the fourth year. The grants will remain on a fiscal year (Oct to Sept), but future awards will reflect any needed modifications to implement this policy.

**Program Requirements**

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

- The county will submit reports to obtain reimbursement of expended funds based on actual expenditures. The reimbursements will be based proportional to the county's required match;
- The County must maintain a Public Defender board to supervise the operation of this department. The Public Defender Committee would consist of the constitutional county judge, the district judge and one local defense attorney selected by vote of the two judges. The defense attorney will serve a term of two years. This Public Defender board must be responsible for recommending the selection and removal of the Chief Public Defender. The administrative role of this Public Defender board in supervising the Chief Public Defender including any fiscal authority must be decided by the Commissioners Court. The county will submit a written policy on how the members are to be selected.
- The County must maintain a written policy that includes caseload standards for each attorney and for the operation of this program. In developing caseload standards, nationally recognized standards and standards used by other states shall be taken into consideration. The policy on the caseload standard must require the Chief Public Defender to review the caseload status at least quarterly. The Chief Public Defender may make overrides or under-rides based on overall complexity of cases, overall type of cases, attorney experience, support staff experience, court needs, available technology augmenting services, or other factors affecting the delivery of services. The Chief Public Defender must notify the public defender board in writing if an exception to the caseload standards is authorized.
- The County must provide to the Task Force staff the minimum job requirements and a full job description of the positions specified under this project before a person is selected.

## Activity

### Revised - Willacy County Public Defender Plan

#### a. Application Form

Counties Represented:	Willacy
Fiscal Year:	2007
State Payee Identification Number:	746001952
Division To Administer Grant:	COUNTY JUDGE
Program Title:	Willacy County Public Defender Program
Requested Grant Amount:	\$189,664.00
Financial Officer:	Ida C. Martinez
Program Director:	Simon Salinas
Mailing Address:	190 North Third Courthouse Annex; Raymondville, Tx 78580

#### b. Introduction (Executive Summary)

Willacy County will establish a single county rural Public Defender Program. The program is designed to improve effective assistance of counsel for indigent defendants in all courts and all levels of crime except in cases where the death penalty is sought or the public defender department has a conflict in representation. The program will be implemented either as a county department or non-profit corporation.

#### c. Problem Statement

Revenue sources for rural counties are extremely limited and counties on the Texas-Mexico border are historically home to a large economically distressed population. As a result of this composition and the actions of the Texas Legislature, the cost for providing legal representation to the indigent offenders in Willacy County has escalated to eight times what the cost was three years ago. A public defender office is the best alternative to provide quality representation to indigent offenders in the Willacy County.

#### d. Objectives

In order to further these goals, the following specific objectives have been formulated:

1. Provide qualified public defenders that are currently licensed and in good standing with the State Bar of Texas, and that exhibit proficiency and commitment to providing quality representation to criminal defendants and juvenile respondents.
2. Provide qualified public defenders that meet the required 6 hours a year of continuing legal education courses relating to criminal law and juvenile law as recognized by the State Bar of Texas.
3. Provide a public defender to contact defendants no later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed.

4. Provide the indigent defendants representation by a law office which is well-equipped with access to legal research materials and with an investigator in order to give said defendant equal footing as if he or she had retained a law firm.
5. Provide a public defender to represent defendants until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the public defender is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record.

**e. Methodology or Project Design (Activities)**

Willacy County will establish and operate (or contract with Non-profit ) a public defender system in accordance with Code of Criminal Procedure Article 26.044. The system may include video-conferencing Willacy County Jail, The public defender's office and the courts.

Upon notice that the county has been awarded the grant, a Public Defender board will be formed to oversee the public defender's office. The board must consist of the Constitutional County Judge, the local administrative district court judge, and one practicing criminal defense attorney selected by the judges. This board must be responsible for recommending selection and removal of the Chief Public Defender or non-profit agency. The administrative role of this board in supervising the Chief Public Defender including any fiscal authority must be decided by the Commissioners Court. It should include:

- Approve the public defender board's authority to recommend selection of public defender to the commissioners court.
- Approve the public defender board to monitor the operations of the public defender office including the size of the caseload and performance measures.
- Approve the public defender board to recommend a budget each year to the commissioner court.
- Approve the authority of the public defender board to recommend to the commissioners court the removal of the public defender or modification of any contract associated with the public defender office.

The Public Defender board's first task will be to assist the county in issuing a Request for Proposal (RFP). The Public Defender board will review responses to the RFQ and make a recommendation to the Commissioners' Court on the method to best serve the County and defendants.

If the Commissioners' Court selects a governmental entity then the Public Defender board will conduct a search for a chief public defender. The search should begin immediately after the Commissioners' Court selection of the governmental entity. The Public Defender board will make a recommendation to the Commissioners' Court. The Chief Public Defender will be appointed in the manner consistent with Willacy County personnel and appointment processes. Method of removal of Chief Public Defender will be determined by the Commissioners' Court.

If the county chooses to create a County Public Defender Office: the Public Defender board along with conducting a search for a chief public defender will assist the county in any other tasks to establish the public defender office.

The Chief Public Defender will hire the staff in a manner consistent with Willacy County personnel policy and procedures. The staff positions, salaries and job descriptions will be consistent with other existing county positions performing similar duties and as allotted in the grant funding.

If the Commissioners court selects a non-profit corporation then the corporation principle will report to the Public Defender board to establish the methods of transition in representation from assigned counsel to the public defender system. The principle will report as directed by the Public Defender board.

### **Staff**

A staff of three (3) full time and one (1) part-time will be maintained sufficient to operate a public defender. The non-profit corporation or County must develop a written policies for the operation of this program that includes caseload standards for each attorney. In developing caseload standards nationally recognized standards, and standards used by other states shall be taken into consideration. The policy on the caseload standard must require the Chief Public Defender to review the caseload status at least quarterly. The Chief Public Defender may make overrides or under-rides based on overall complexity of cases, overall type of cases, attorney experience, support staff experience, court needs, available technology augmenting services, or other factors affecting the delivery of services. The Chief Public Defender must notify the Public Defender board in writing if an exception to the caseload standard is authorized.

### **Information Systems**

There will be a need to ensure that all computer hardware, software, and other electronic communications be in place in order for the project to operate effectively and efficiently. Software purchased under this program must be secure and protect attorney/client privileged information. The chief public defender will operate a public defender software product to manage the data, provide standard reports, and standard forms for the department.

### **Attorney Appointment Rotation**

The Willacy County Public Defender Program will primarily replace the current attorney appointment contract system. The courts must maintain an assigned counsel system in accordance with Texas CCP 26.04. The court will need an assigned counsel list for conflict cases occurring in the PD office. The Courts will also maintain a clear fee schedule that requires an attorney fee voucher.

The attorneys on that assigned counsel system will accept only the cases that are appointed as a result of conflicts with the public defender office. The attorneys must be selected by vote of the judges of the district and the county courts.

### **Prompt Attorney/Client Visitation**

The Willacy County Public Defender will contact appointed defendants no later than the end of the first working day after the date on which the attorney is appointed. Public Defender will

interview the defendant as soon as practicable after the public defender is appointed. Public Defender may utilize video teleconferencing to conduct attorney client visits to help meet their interview requirements in a timely manner, if necessary.

**Public Defender Monthly Report**

The Willacy County Public Defender Program will compile a report that counts the number of cases handled by the public defenders office and from those cases, the number of misdemeanor and felony jail cases, pleas, trials and dismissals. This report will include data to assist the County the ability to compare operations to the present system and how productive and cost effective the program is.

**f. Evaluation**

The PD will cooperate with the Task Force staff to develop reasonable on-line reports that best reflect the work of the PD and demonstrate that the program is operating as intended. The county will track all of the data elements presented in the proposal. The on-line reports may include some of the following data elements:

Task	Definition	Report
Establish Public Defender board	The courts, commissioners’ court, and local bar select members to serve on Public Defender board.	Date of first meetings. E-mail to Task Force any resolutions or documents that establish the Public Defender board or define its role. E-mail names and contact information of committee members.
Requests for Qualifications (RFQ)	Commissioners’ court issues Requests for Qualifications to determine if there are non-profits able to serve the County.	Date of Issue of RFQ. E-mail to Task Force copy of RFQ.
Select PD Proposal	The Public Defender board makes recommendation of preferred proposal to commissioners’ court and commissioners’ court makes selection.	Report date proposal selection is made and the contact information of selected proposal.
If governmental entity selected, Appoint Chief Public Defender (CPD)	The Public Defender board makes recommendation of CPD to commissioners’ court and commissioners’ court makes selection.	Report date Chief PD selection is made and the contact information.

Task	Definition	Report
Job Descriptions completed	The job descriptions for each type of position are completed using Willacy County's existing HR processes.	Date completed and e-mail copies to Task Force
Staff will be hired	Document the date that each employee is hired.	Report via E-mail a list of classifications and date positions were filled.
Set up remote locations	Set up logistics for PD to serve at least part time at the jail.	Report date when jail PD is ready to begin serving jailed clients.
Office Setup	The Public Defender board and CPD will make assessments of office needs and select site for office through normal county processes. County will purchase with grant funds equipment, software and supplies to operate office.	Provide any documentation available on assessment of office needs. Report date office set-up is complete. Report via E-mail location of office.
Software setup	Setup this attorney and caseworkers with the Willacy County PD Office Case Management system Set up Monitoring Report System	Report the date the software setup is completed
Performance measure method	Establish method to collect data for referrals and performance measures. Identify whether all data will be maintained by tracking system or if some data elements must be tracked independently. Identify or develop standard reports to facilitate reporting.	Report the date the performance measure tracking method is completed
Staff will be trained	Each staff will go through orientation and training sessions.	Report date initial orientation and training is complete for each staff member.

Task	Definition	Report
Policies and Procedures completed and provided to staff	A policy and procedure manual is written to identify basic office procedures, how system is going to work and the various roles. This must include caseload limits and over-ride/under-ride procedure.	Report date that the manual is distributed. E-mail copy to Task Force.
Commence Public Defender Representation	Develop the process with courts to commence the referral procedure. Submit indigent defense plan amendments if needed.	Report date that process is completed and e-mail copy to Task Force.
Change indigent defense plan	Make any indigent defense plan changes that may need to be made to include the new PD processes.	Report plan changes and implementation date are submitted to the TFID.
Report Quarterly Summary of work or issues during the quarter		
Report Quarterly Problem areas and resolution		
Report Quarterly Activities scheduled during next reporting period:		
Report Quarterly Staff changes		

### **Outputs**

The County will develop measures to track the following information:

- Total number of people receiving services of program by case type
- Total number screened and assessed by an investigator by case type
- Department Cases Active by case type
- Department Cases Closed by case type
- Attorneys Caseload Summary by case type
- Total Man-hours by case type
- Days to first contact

### **Outcomes**

- Average length of time between arrest and case resolved by case type.
- Average number of days from the notice of court appointment received to the day the assessment or interview is complete by case type.

Average pretrial confinement for clients by case type  
Average Cost per Case PD office by case type  
Average Cost per Case assigned counsel system by case type

**g. Future Funding**

Willacy County is committed to long term implementation of a quality Public Defense program for the indigent population of the area. After the start up expenses funded by the grant to set the office in Willacy County, and after the third year of the multi-year funding, Willacy County will be responsible for securing full funding for the program. Additionally, surrounding counties will be able to avail themselves of the services and contribute to the upkeep of the program.

**h. Budget**

Three full time and one part-time positions will fill the responsibilities of the public defender's office as follows:

PERSONNEL \$161,000.00

1 Chief Public Defender responsible for developing, implementing, and monitoring the indigent defense operation to ensure that all program requirements are met in order to provide quality representation for indigent defendants. \$65,000.00

1 One part-time Defense Attorney to assist the Chief Public Defender in his responsibilities in the defense of the indigent defendants. \$30,000.00

1 Legal Secretary/Legal Assistant to coordinate with the Public Defenders and to prepare motions, orders and all relevant documents to be submitted to the courts by the public defenders. \$26,000.00

1 Investigator to conduct determination of indigency interviews and all investigations required by the public defenders and to assist in the preparation of motions, orders and any other documents required by the courts. \$32,000.00

FRINGE BENEFITS \$42,840.00

Fringe benefits are calculated at 28% of salaries.

TRAVEL AND TRAINING \$4,000.00

In-county and out-of-county travel is necessary to receive training, attend conferences relative to the post, and to meet with local and other participating county officials.

EQUIPMENT \$10,340.00

2 - computers with printers, desks and connecting equipment and software to equip the local Indigent Public Defenders Office. Video-teleconference equipment will also be purchased to connect the jail and PD office.

SUPPLIES \$3,400.00

CONTRACT SERVICES \$11,000.00

The PD is budgeted for expert witness and other direct litigation costs.

	Adopted
Personnel Costs	\$153,000.00
Salaries FTEs 3.5	
Chief Public Defender	1 \$ 65,000.00
Part-time Attorney	1 \$ 30,000.00
Investigator	1 \$ 32,000.00
Legal Secretary/ Legal Assistant	0.5 \$ 26,000.00
	\$153,000.00
Fringe Benefits	
28% of Salaries	\$ 42,840.00
Total Personnel	\$195,840.00
Travel and Training	\$ 4,000.00
Equipment	\$ 10,340.00
Supplies	\$ 3,400.00
Contract Services	
Expert witness	\$ 11,000.00
Total	\$224,580.00
Required County Match	\$ 44,916.00
Total Less County Match	\$179,664.00
Amount Funded by the Task Force	\$179,664.00

## **Timeline for Reporting and Fund Distribution**

Reports will be submitted on-line over the Internet.

Reporting Period	Type Report Due	Date Report Due	Fund Distribution Date
October through December	Budget Status Report Progress report	January 15, 2007	January 2007
January through March	Budget Status Report Progress report	April 15, 2007	April 2007
April through June	Budget Status Report Progress report	July 15, 2007	July 2007
July through September	Final Budget Status Report Final Progress report	November 15, 2007	November 2007

## Appendix B: TRLA Invoice to Willacy County

LAW OFFICES OF  
Texas RioGrande Legal Aid, Inc.  
300 South Texas Boulevard  
Westaco, Texas 78596  
Telephone: (956) 447-4800  
FAX: (956) 968-8823  
[www.trla.org](http://www.trla.org)

David G. Hall  
Executive Director

### INVOICE

#### Willacy County Public Defender Contract

In accordance with the provisions of the Willacy County Public Defender Contract between Willacy County, Texas and Texas RioGrande Legal Aid, Inc., TRLA submits this invoice for the payment of the amount due for the services provided during the period indicated below:

**July 1 – July 31, 2010**

**\$18,715.00**

A TRLA Progress report for the month ending July 31, 2010 is being submitted. Please pay by check made to "Texas RioGrande Legal Aid, Inc." at the address indicated above and please include the notation "Accounting Department."

**Discretionary Indigent Defense Grant Program Progress Report**

Grant Number: 07-02, Willacy County

Fiscal Year of Grant: 2010; Reporting Period July 1, 2010-September 30, 2010

**Willacy County Public Defender Program**

**Under Contract With Texas RioGrande Legal Aid**

Submitted by TRLA to Willacy County, August 5, 2009  
for the Month Ending July 31, 2010

Issue or Task	Definition	Detail	Total	Report Fields		
				Felony	Misdemeanor	Juvenile
Total number of people receiving services of program	New assignments in July 2010	(Persons whose cases were assigned to the RPD for representation )	43	16	27	0
Total number screened and assessed by RPD staff	New intakes in July 2010	(Persons who were interviewed for eligibility screening and conflict of interest analysis)	45	18	27	0
RPD active cases this month			868	514	467	7
Cases closed			43	35	8	0
Average caseload per attorney		(end of month)	494			
Average length of time between arrest and case resolved.		The average number of days between arrest and disposition is distorted by the large number of cases that were filed prior to the start of operations of the RPD.	515			
Average days from court notice to assessment		Average number of days from the notice of court appointment received to the day the assessment or interview is complete	0			

SUPPLIES \$3,400.00

CONTRACT SERVICES \$11,000.00

The PD is budgeted for expert witness and other direct litigation costs.

		Adopted
Personnel Costs		\$153,000.00
Salaries FTEs 3.5		
Chief Public Defender	1	\$ 65,000.00
Part-time Attorney	1	\$ 30,000.00
Investigator	1	\$ 32,000.00
Legal Secretary/ Legal Assistant	0.5	\$ 26,000.00
		<b>\$153,000.00</b>
Fringe Benefits		
28% of Salaries		\$ 42,840.00
Total Personnel		\$195,840.00
Travel and Training		\$ 4,000.00
Equipment		\$ 10,340.00
Supplies		\$ 3,400.00
Contract Services		
Expert witness		\$ 11,000.00
Total		\$224,580.00
Required County Match		\$ 44,916.00
Total Less County Match		\$179,664.00
Amount Funded by the Task Force		\$179,664.00

**Appendix C: Contract between Willacy County and TRLA**

06/28/07 TUE 11:38 [TX/RX NO 58051]

**PUBLIC DEFENDER CONTRACT**

**Between**

**WILLACY COUNTY, TEXAS**

**And**

**TEXAS RIOGRANDE LEGAL AID, INC.**

**Effective August 1, 2007**

1

PAGE 2

FAX:95668994817

Aug-28-2007 TUE 12:32 PM FROM:COUNTY JUDGE

### PUBLIC DEFENDER CONTRACT

Willacy County, Texas ("the County") and Texas RioGrande Legal Aid, Inc. ("TRLA") hereby enter into this agreement under which TRLA agrees to perform legal services for persons accused of crimes in Willacy County.

**1. Parties.**

- 1.1. Willacy County, Texas is a political subdivision of the State of Texas and is authorized by the laws of the State to execute this agreement.
- 1.2. Texas RioGrande Legal Aid, Inc. is a non-profit corporation organized and operating under the laws of the State of Texas for the purpose of providing legal services to persons who are financially unable to pay for the services of attorneys engaged in the private practice of law. TRLA has full authority to provide the services required under the terms of this agreement.

**2. Solicitation of Proposals and Award.** Having previously been awarded a grant by the Texas Task Force on Indigent Defense ("TFID") to operate a public defender system, the County published on March 21, 2007 a Solicitation of Proposals for the operation of a defender office for Willacy County, a copy of which is attached hereto and incorporated herein by reference for all purposes as Exhibit A. On May 14, 2007, TRLA submitted a proposal for the operation of a Public Defender Program for Willacy County. A copy of that proposal, as revised by agreement of the parties on June 11, 2007, is attached hereto and incorporated herein by reference for all purposes as Exhibit B.

**3. Services Provided.** TRLA agrees to provide legal services to indigent residents of Willacy County as follows:

- 3.1. TRLA shall promptly interview all persons accused of crimes within the County, and make recommendations to the appropriate judicial officials regarding eligibility for, and assignment of, counsel for the defense;
- 3.2. When assigned under the terms of this agreement, TRLA shall provide representation in a maximum of 500 cases during the first twelve months after August 1, 2007, including felonies, misdemeanors, juvenile delinquency cases, and appeals, but exclusive of capital cases where the prosecution is seeking the death penalty;
  - 3.2.1. A "case" shall be considered as a single prosecution initiated by a charging instrument in a court of competent jurisdiction within any county covered by this agreement and having a discrete cause number;
    - 3.2.1.1. A revocation of probation or parole shall be considered as a separate "case" for purposes of this agreement.
    - 3.2.1.2. A juvenile delinquency "case" may include an assignment to represent a juvenile who is in detention but against whom no petition has been filed, provided that if a petition is subsequently filed no additional case credit shall be charged to this contract.

- 3.2.2. An "appeal" shall be considered to be any action in an appellate court, including interlocutory or direct appeals, habeas corpus actions, mandamus or other extraordinary writs;
- 3.2.2.1. each appeal shall be considered a separate "case" for purposes of this agreement.
- 3.2.2.2. any action involving the same defendant under a different cause number shall be considered a separate appeal for purposes of this agreement.
- 3.2.3. A "misdemeanor" under the terms of this agreement shall not include Class C misdemeanors as defined by the Texas Code of Criminal Procedure, or any case that does not provide for the loss of liberty as a potential sanction.
- 3.3. After assignment, TRLA shall provide representation and other legal services to its clients in all pre-trial, trial, and post-trial matters until such time as a final disposition in the case is entered, TRLA withdraws from representation in accordance with the provisions of Tex. R. Prof. Conduct § 1.15, the client retains private counsel, or the client becomes ineligible for representation under this contract.
- 3.4. TRLA will hire or employ all personnel necessary to perform the services that this contract requires, and shall maintain an appropriate and reasonable number of attorneys and support staff to perform its contract obligations. TRLA will use due diligence to hire, assign, associate and train attorneys who are qualified to provide competent and effective services to the clients served hereunder, and who provide a quality of representation that is acceptable to the judges of Willacy County who try criminal cases.
- 3.5. TRLA will initially establish its Public Defender staff in its existing office in Harlingen, Texas. However, TRLA will strive to obtain office space in Raymondville for the use of its staff and as a place for convenient meetings between its staff and clients, and will have its Investigator make regular visits to the Willacy County Jail. In addition, TRLA will publish its toll-free telephone number in suitable locations in Willacy County for convenient access by its clients.
- 3.6. TRLA will ensure that each attorney who represents a client pursuant to this contract agrees to provide competent, zealous legal services to each client in accordance with the attorney's responsibilities under the Texas Disciplinary Rules of Professional Conduct, the Texas Code of Criminal Procedure, and the federal and Texas constitutions. Every attorney must agree to provide constitutionally effective assistance of counsel to the client regardless of any business relationships or funding considerations that might otherwise adversely affect their work for indigent criminal defendants who are clients of TRLA. TRLA will ensure that each attorney understands that failure to zealously represent each client's interests and each client's interests alone may carry legal and license consequences.
- 3.7. TRLA shall provide adequate supervision of less experienced attorneys by more experienced attorneys, and shall conduct periodic performance reviews and evaluations of staff.

- 3.8. Attorneys employed full time by the PD Program shall not accept employment on a retained basis in either criminal or civil cases.
- 3.9. TRLA shall engage expert witnesses, stenographers and technical consultants to perform reasonable and necessary services under this contract, including but not limited to, medical and psychiatric evaluations, DNA analysis, and polygraph and other forensic testing.
4. **Assignment of Cases.** TRLA shall begin accepting case assignments on August 1, 2007. It is understood, however, that it is unlikely that TRLA will be able to fully staff its Willacy County Public Defender office immediately and that, as a consequence, it may be necessary to limit the numbers of cases accepted in the first three months of operation, or until all staff is employed.
  - 4.1. During the period of this agreement TRLA shall notify the County immediately upon determining that:
    - 4.1.1. one or more courts are not assigning cases to the PD when the PD has capacity for accepting additional assignments; or,
    - 4.1.2. that TRLA will reach its total contract quota of cases before the expiration of the contract.In either circumstance described in this subsection, the County shall convene a meeting of representatives of TRLA, the County and applicable courts to develop a plan for effective utilization of resources or adjustment of the contract.
5. **Term of Agreement.** This agreement will be effective until September 30, 2007. If it is not modified in writing by the parties before September 30, 2007, it will automatically renew without further action, and be effective until September 30, 2008. If it is not modified in writing by the parties before September 30, 2008, it will automatically renew without further action, and be effective until September 30, 2009. If it is not modified in writing by the parties before September 30, 2009, it will automatically renew without further action, and be effective until September 30, 2010. TRLA may incur costs and expenses under this agreement upon its execution and will begin providing legal services to eligible clients on and after August 1, 2007.
  - 5.1. The parties may agree in writing to modify or terminate this contract by mutual agreement at any time.
    - 5.1.1. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party.
    - 5.1.2. Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.
  - 5.2. At the time this contract is executed, sufficient funds either are available within the County's current grants and/or appropriations, or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of grant funds from the Texas Task Force on Indigent Defense ("TFID") in the grant years subsequent to the current year. The County may propose to modify, suspend, or terminate this contract if TFID and County funds will not be sufficient to pay anticipated costs of public defense services.

6. **Voucher Submissions.** No later than ten days after the end of each month, TRLA shall submit to the County an itemized statement of the cases that have been closed during the previous month, including the name of the accused, the cause number, court, the nature of the offenses charged, and a brief statement of the disposition of each such charge. No later than fifteen days after the submission of the itemized statement, the County shall pay TRLA one-twelfth of the total amount due under this contract.
7. **Contract Amount and Payments.** For services rendered during the first twelve months that this agreement is in effect, the County agrees to pay TRLA the total sum of Two Hundred Twenty-four Thousand, Five Hundred Eighty (\$224,580.00) Dollars. The County agrees to pay this sum to TRLA in twelve equal monthly installments of Eighteen Thousand Seven Hundred Fifteen (\$18,715.00), with the first installment being paid on September 1, 2007. On September 1, 2008, the monthly amount payable may change depending on Paragraphs 7.1 or 7.2 below, or application of a carry-over as discussed in Paragraph 8 below.
  - 7.1. For the second and third years that this contract is in effect, the parties may modify the amounts to be paid TRLA based upon caseloads or expenditure history in prior years.
  - 7.2. Any party seeking to modify the contract amount shall provide written notice to the other party no later than sixty days prior to the end of the contract year, as defined by the dates in Paragraph 5 above.
8. **Carry-over.** If on September 30, 2008, or at the conclusion of any twelve-month period thereafter, there is a surplus of funds received by TRLA in an amount less than ten percent of the total annual contract amount, such sums shall be retained by TRLA and used for related PD program expenses at its sole discretion. If the surplus amount is greater than ten percent, but less than twenty-five percent, of the annual contract amount, the parties shall divide the surplus in excess of ten percent equally by having TRLA deduct from its invoice for September, and from invoices for subsequent months if necessary, an amount equal to one-half of the surplus. TRLA shall also deduct any and all surplus amounts in excess of twenty-five percent during a contract year from its invoice for September, and from invoices for subsequent months if necessary.
9. **Accounting and record keeping.** TRLA shall maintain financial records on an accrual basis and shall make such records pertaining to this agreement available to the County's representatives upon reasonable request. TRLA shall engage an independent auditor to conduct an annual audit of all TRLA funds, including funds received under this contract, and a copy of the annual audit shall be furnished to the County within thirty days of its approval by the TRLA Board of Directors.
  - 9.1. TRLA staff shall maintain current information, including activity logs, pleadings and other case-related documents, on each PD case. That information shall be made available to the County under circumstances that do not require a client to waive the attorney-client privilege, or the attorney to violate the

confidentiality standards of the profession, Tex. R. Prof. Conduct §1.05, or any other provision of law.

9.2. TRLA shall preserve all assignment, financial and case service records for a period of seven years from the date the case is closed.

10. **Independent Contractor.** TRLA is an independent contractor who shall complete the requirements of this contract according to TRLA's own means and methods of work, which shall be in the exclusive charge and control of TRLA and which shall not be subject to control or supervision by the County or any judge, except as specified in this contract. A Public Defender Oversight Board created by county officials and judges may recommend to the commissioners court what modifications should be sought as to this contract, they may monitor the caseload of TRLA, they can even determine possible contract violations and recommend removal to the commissioner court. However neither the oversight board, the commissioners court, the judges, nor the local defense bar may impose on the operations of TRLA. They may not require TRLA to hire and fire, dictate office operation policies, or manage the operations of TRLA. The judges may have limited removal authority if they find that an attorney hired by TRLA is not providing adequate representation to defendants. Even in that case the judge can request removal of the attorney but cannot dictate to TRLA which attorney should replace the removed attorney.
11. **Non-discrimination.** TRLA will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, race, color, national origin, sex, sexual preference, disability, or religion and will submit reports as the County may require to demonstrate compliance with this assurance.
12. **Impossibility of Performance.** Neither party shall be responsible for delay or default caused by theft, fire, flood, riot, war or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.
13. **Wind-Down Procedures.** If either party suspends or terminates the contract, no further cases shall be assigned or accepted effective the date such notice is received or as agreed between the parties, and TRLA shall complete timely and adequate legal services on all existing cases assigned before the effective date of suspension or termination. The County shall continue to make timely monthly payments of the contract amount until all such cases are concluded; provided, however, that when the number of pending cases are twenty or fewer, the monthly payment obligations under this contract shall terminate, and the County shall pay TRLA for the remaining twenty cases at the rate being paid to private assigned counsel at the time the contract terminates.
14. **Contract Notices.** All notices required by this contract shall be delivered in writing to the following representatives of the parties:

**Willacy County:**

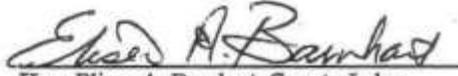
Hon. Eliseo A. Barnhart  
Willacy County Judge  
190 N. Third Street  
Raymondville, Texas 78580  
Email: [county.judge@willacycounty.org](mailto:county.judge@willacycounty.org)

**Texas RioGrande Legal Aid**

David G. Hall  
Executive Director  
300 South Texas Boulevard  
Weslaco, Texas 78596  
Email: [dhall@trla.org](mailto:dhall@trla.org)

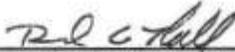
15. **Entire Agreement.** This writing constitutes the entire agreement between the parties. There are no oral or written understandings, agreements, or representations regarding this agreement. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. If made, such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given. The parties, by the signatures of the authorized representatives of each, hereby acknowledge that each has read this agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNED AND EXECUTED by the parties on the date(s) indicated by the signatures of the authorized representatives.



Hon. Eliseo A. Barnhart, County Judge  
Willacy County, Texas  
190 North Third Street  
Raymondville, Texas 78580

7/27/2007  
Date



David G. Hall, Executive Director  
Texas RioGrande Legal Aid, Inc.  
300 South Texas Boulevard  
Weslaco, Texas 78596

7/27/07  
Date

FILED 27 DAY OF July  
20 07  
TERRY FLORES, CLERK COUNTY  
COURT, WILLACY CO., TEXAS  
BY S. Gary  
Deputy



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Proposal to Willacy County, Texas

In Response to its March 2007 Solicitation Entitled

“RFP No. 07-02: Willacy County Public Defender’s Office”

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Submitted: May 14, 2007

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### Supporting Documents

- A. TRLA Non-Profit Corporation Certificate from the Internal Revenue Service
- B. TRLA Board of Directors
- C. TRLA Articles of Incorporation
- D. TRLA Bylaws
- E. Résumés of David Hall, Jose Garza, Joseph Cordova, and Jerome Wesevich
- F. TRLA Insurance Certificates
- G. Willacy County Caseload Data, 2003-2006
- H. Val Verde Public Defender Press

## I. Introduction

Texas RioGrande Legal Aid, Inc. ("TRLA") is a non-profit corporation that has built a 35-year record of providing quality legal services to indigent people throughout the Texas-Mexico border region. TRLA provides a broad range of civil legal services through 119 lawyers working in fourteen offices and some three dozen specialized "practice areas," including housing, Social Security and other public benefits, mental health and retardation, family law, wills, employment, and immigration. In 2005, TRLA secured state and county funding to begin operating Texas's only non-profit public defender office, and Texas's only regional public defender office, serving indigent people who are charged with misdemeanor and felony offenses in Val Verde, Edwards, Kinney and Terrell counties. *See* Val Verde Press, attached Exhibit H.

Below, TRLA proposes to create and operate a Willacy County Public Defender Office ("PD"). The PD will include the following major features:

- TRLA intends this proposal to conform in every respect to Willacy County's Request for Proposals entitled "RFP No. 07-02: Willacy County Public Defender's Office;"
- TRLA intends to structure the PD so that it may be expanded if Willacy County later chooses to do so; the PD will represent indigent criminal defendants in Willacy County initially, and then in bordering counties only after Willacy County and others execute an agreement governing PD representation;
- TRLA will ensure that the PD provides adequate representation at all stages in criminal procedure from a prompt initial interview and case analysis after arrest through trial and direct appeal for all felony, misdemeanor, and juvenile cases brought against indigent defendants in the PD service area, subject to exceptions stated next;
- The only cases excluded from PD services are those in which (a) a defendant is determined not to be indigent, (b) charges are filed in a court that is outside the PD service area, (c) the death penalty is sought, (d) a conflict of interest exists; (e) the defendant is charged with specific domestic violence offenses that present a high likelihood of conflict considering TRLA's longstanding relationship with local women's shelters as described below, or (f) PD caseload limits would be exceeded in violation of state bar rules of attorney conduct; and
- TRLA will provide legal services that comply with all federal and state laws governing representation of the poor in criminal cases (including Texas Code of Criminal Procedure Ch. 26), and will do so at reasonable cost.<sup>1</sup>

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<sup>1</sup> Unlike most other public functions performed by the County, the provision of counsel for the poor in criminal proceedings is required by the Texas and United States constitutions. No county resident has a constitutional right to a paved road or even to medical care, but every person facing criminal charges has a constitutionally protected right to counsel. This not only protects the innocent, but it also promotes respect for the law by building public confidence in the results reached by our criminal justice system.

TRLA proposes to staff the Public Defender Office with an experienced Chief Defender, an Assistant Public Defender, one Investigator, and one Office Manager on an initial annual operating budget of \$227,950. The PD would be operated from TRLA's existing office space in Harlingen. It could be ready to begin accepting a limited number of appointments on June 2, 2007, one month ahead of schedule if Willacy County so chooses. The PD will reach full operational capacity by September 1, 2007, accepting all qualified felony, misdemeanor, and juvenile cases brought against indigent defendants. TRLA will work with Willacy County's PD oversight committee to develop appropriate procedures for transitioning from the current "wheel" appointment system to the PD. TRLA will apply its experience in drafting county plans to provide for Willacy County's consideration draft language for Willacy County's Indigent Defense Plan that is filed with the Task Force on Indigent Defense. Case trends in Willacy County over the past three fiscal years indicate that defendants in 168 felony, 278 misdemeanor, 22 juvenile, and 5 appellate cases may be expected to qualify for PD services during the PD's first twelve months of operation. The PD will have the capacity to provide quality representation in every one of these cases for an average of about \$750 per felony case, \$250 per misdemeanor case, \$500 per juvenile case, and \$1,000 per appeal.

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Since the nation's founding, the Constitution has affirmed that a person charged with crime has a right to a lawyer. "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. CONST., Amend. VI. To implement this provision when defendants are unable to afford counsel, the Supreme Court required publicly-funded counsel, first in death penalty cases, *Powell v. Alabama*, 287 U.S. 45 (1932), next in all other felony cases, *Gideon v. Wainwright*, 372 U.S. 335 (1963), and finally in all misdemeanor cases that carry a potential jail sentence, *Argersinger v. Hamlin*, 407 U.S. 24 (1972). The Supreme Court explains why:

The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. A defendant's need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in *Powell v. Alabama*: "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

*Gideon*, 372 U.S. at 344-345. Similarly, Texas has long recognized the need for "the guiding hand of counsel." Every Texas Constitution since 1836 guarantees the right to counsel. TEX. CONST. Art. 1, Sec. 10. At least 106 years before *Gideon*, Texas law required that "When the defendant is brought into Court, for the purpose of being arraigned, if it appears that he has no counsel, and is too poor to employ counsel, the Court shall appoint one or more practicing attorneys to defend him." TEX. CODE CRIM. PROC. (1857). Today, the law remains that every person charged with a criminal offense must be afforded representation through direct appeal if the offense carries incarceration or death as a potential penalty. TEX. CODE CRIM. PROC. Art. 1.051(c).

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## II. Budget

TRLA proposes the following budget for operating the PD for the 12-month period beginning June 2, 2007:

Personnel	Annualized Salary	Fringe Benefits at 21.5%	% Time Applied to PD	PD Salary
Attorney (10 yrs experience)	67,500	14,513	100%	82,013
Attorney (1 yr experience)	38,000	8,170	80%	36,936
Investigator (5 yrs experience)	32,000	6,880	100%	38,880
Secretary (20 yrs experience)	37,000	7,955	50%	22,478
<b>Personnel Total</b>				<b>180,306</b>

Non-Personnel	Months or Quantity	Cost	Total
<b>Operating Expenses</b>			
Travel Local	5 trips/wk	48c/mile	5,000
Printing/Copies	50/case	4c/copy	1,000
Supplies			1,000
Space + Furniture Cost	12	685	8,220
Litigation Expense	12	750	9,000
Telephone	12	400	4,800
Training (CLE)	2	1000	2,000
Admin Costs (IT, Accounting, Audit, etc.)	12	425	5,100
Legal Research	2	750	1,500
<b>Capital Expenditures</b>			
Software	3	700	2,100
Computers	3	1500	4,500
Videoconferencing equipment	1	3000	3,000
<b>Non-personnel Total</b>			<b>47,220</b>

<b>2007 Annualized Budget</b>				<b>227,526</b>
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The budgeted operating costs for the first year assumes that the full complement of staff is needed to carry the anticipated caseload. If the caseload does not materialize or the number of defendants who are eligible is not as great as projected, a savings will result that can be applied to reduce costs to Willacy County during subsequent years of operation.

After the first year of operation, the capital expenditure costs will be minimal, if any. There will be a need to adjust the salaries to reflect cost-of-living increases, which have ranged in the 2-3% level for the last several years. Furthermore, in subsequent project years there should be more accurate budget predictability available based upon actual experience in the first year of PD operation.

TRLA has an accounting system in place that has been widely acknowledged by a variety of reviewers and auditors to be an exemplary system. TRLA is required to furnish an independent audit each year to its principal funding sources, and copies of that annual audit will be furnished to Willacy County to verify the proper expenditure of all funds received for the PD. TRLA also has in place strong administrative and other managerial support systems that result from decades of experience in furnishing legal services to poor people.

### **III. Personnel Descriptions**

TRLA will meet all statutory and Willacy County grant requirements as to each staff position funded through the PD grant. The PD staff will operate under the same employment and personnel policies as other TRLA staff. Those policies provide for a complete fringe benefit package, including health and professional liability insurance, pensions, leave, continuing legal education, and bar membership dues, including membership in the criminal justice section. All PD attorneys will comply with all attorney qualification provisions of the Willacy County Indigent Defense Plan on file with the Texas Task Force on Indigent Defense. Each staff member must agree in writing to not engage in any private practice of law for compensation; and not accept anything of value not authorized by law for services rendered as a public defender. Descriptions of every PD personnel position will be as follows.

#### **A. Chief Public Defender**

The Chief Defender will be recruited by TRLA and hired only after Willacy County's oversight committee (as described on Page 1 of the Solicitation) has determined that the candidate's qualifications are adequate. Qualifications include education, experience, publications, and references. The Chief Public Defender will be supervised by the Executive Director and the Director of the Defender Division of TRLA.

Minimum qualifications of the Chief Public Defender:

- is a member of the State Bar of Texas;
- has at least three years of criminal litigation experience; and
- has completed ten hours of Continuing Legal Education within the past year.

The ideal Chief Public Defender candidate would be someone who:

- has a strong academic background with demonstrated legal skills;
- who is committed to ethically serving the clients being represented;
- who knows and has personal ties to the community being served,
- who is bi-lingual,
- has worked in a public defender office;
- has tried to verdict as lead or co-counsel three or more felony cases, two or more of which have been jury trials;
- has briefed or argued two or more cases before a Texas or federal appellate court; and,

- has completed ten or more hours of continuing legal education in criminal law within the past year, including carryover from one previous year only.

The Chief Public Defender's responsibilities will include:

- supervising and directing the work of all PD staff;
- ensuring that the quality and quantity of each attorney's work are adequate under the workload management plan stated below;
- serving as lead counsel of record in up to 100 felony cases, 50 misdemeanor cases, 10 juvenile cases, and 5 appellate cases;
- approving training and travel reimbursement requests;
- attending a legislative update seminar during every calendar year that the Texas Legislature meets;
- training staff in office procedures as described on p. 10 below;
- providing information concerning PD operations to Willacy County; and,
- responding to attorney, bar, and public inquiries concerning the PD's work.

#### **B. Assistant Public Defender**

The Assistant Public Defender will be recruited, hired and assigned by TRLA's Executive Director, and be subject to discipline or removal according to the standard employment policies applicable to all TRLA attorneys. One or more of TRLA's existing staff attorneys may qualify to serve as a staff public defender on Willacy County cases from time to time, and may do so by logging the amount of time chargeable to these cases.

Minimum qualifications for each staff public defender include:

- licensed to practice law in Texas or willing to take the next available Texas bar exam;
- one year of criminal litigation experience or comparable academic or clinical experience in criminal law;
- proficiency in the Windows operating system, Microsoft Word, Excel and PowerPoint, and legal research software; and
- completion of ten hours of continuing legal education in criminal law within the twelve months preceding service as a PD staff attorney.

During each year, staff public defenders will:

- serve as lead counsel of record in up to 50 felony cases, 200 misdemeanor cases, and 10 juvenile cases;
- respond to requests for information from the local bar and community; and
- refine PD eligibility and pretrial procedures.

#### **C. Investigator**

The Investigator will be recruited and hired by the Chief Public Defender, and be subject to discipline or removal according to the standard employment policies applicable to all TRLA paralegals.

Minimum qualifications for an Investigator include:

- licensed as a peace officer or a private investigator for two or more years by the Texas Department of Public Safety;
- access to a reliable personal vehicle;
- strong writing skills and experience in writing investigation reports;
- proficiency in Microsoft Word, Excel and computer data entry, and proficiency in the use of the Internet;
- proficiency in the use of audio and video recording equipment;
- bilingual in English and Spanish; and
- suitable recommendations.

Responsibilities include:

- interviewing witnesses and writing comprehensive investigation reports;
- obtaining and analyzing documents, reports, photographs, recordings and other forensic materials, and recording such information in the case management system;
- surveying crime scenes and recording information, including detailed drawings and photographs;
- locating witnesses and other case-relevant information using the Internet and other forensic investigative methods; and
- interviewing persons admitted to the jails within 24 hours of confinement to determine their eligibility for representation by the PD, and to produce a written report regarding pending charges, information relevant to bail or personal recognizance release, and potential defenses to the matters charged.

#### **D. Legal Secretary**

The Legal Secretary will be recruited, hired and assigned by the Chief Public Defender, and be subject to discipline or removal according to the standard employment policies applicable to all TRLA secretaries.

Minimum qualifications of a Legal Secretary include:

- proficiency in the Windows operating system, Microsoft Word and Excel applications, and computer data entry;
- bilingual in English and Spanish;
- at least six months' experience as a legal secretary; and
- capable of passing of TRLA's Legal Secretary examination.

Responsibilities include:

- drafting, editing, formatting and printing legal documents, correspondence and reports in Microsoft Word;
- scanning, faxing and filing documents;
- managing incoming and outgoing mail, faxes and telephone calls;
- managing case file records on the TRLA Client Tracking System, the custom-written case management system, as well as the hard copy files;
- managing and purchasing supplies, office equipment and furnishings; and,
- miscellaneous administrative duties, including time sheets for payroll, travel reimbursement requests, and docket maintenance.

#### **E. Administration**

TRLA's management, accounting, and information technology personnel will provide the following services to the PD:

- recruiting lawyers and support staff;
- assistance in developing a PD policies and procedures manual, using as a model TRLA's existing manual for the Val Verde County Regional Public Defender office;
- computer applications and development of criminal case modules for TRLA's proprietary case management system, the Client Tracking System ("CTS"), including legal work templates, forms, and content;
- audit, accounting and biweekly payroll management;
- employee benefits management, including health care, leave and professional development;
- grant and contract funds management, including reports to Willacy County on PD expenditures, operations, and results;
- resource development and fund-raising;
- purchase and maintain office equipment and bulk purchase of office supplies;
- maintain and manage workers' compensation, premises liability, and professional liability insurance;
- establish and maintain suitable office space and physical infrastructure;
- purchase and maintain telephone systems using Voice-over-IP technology;
- Information Technology support, including computer purchase, setup and maintenance, Internet and data transmission services, local area and wide area network systems, email, legal research services, and case management services using the CTS.

#### **F. Law Student Interns**

TRLA historically attracts unpaid law students to serve as interns or law clerks in each of its offices during the summer break months, or part-time during law school. TRLA anticipates recruiting unpaid law clerks to perform legal and factual research and to proofread court documents for the PD, providing valuable experience for the students while leveraging attorney time for the PD. With TRLA's wide-area network and case management system, law clerks can perform valuable services for PD clients from remote locations at their law schools, and need not

be physically present in the PD offices. All work by interns or law clerks will be directly supervised by a PD attorney.

TRLA will explore other options for establishing working relationships with law schools, providing both faculty and student support for the staff of the PD office. Numerous opportunities exist for TRLA to bring no-cost services to support the efforts of the TRLA/Willacy County PD project.

#### **G. Other TRLA Staff**

TRLA anticipates using some of its existing civil legal services staff to augment the services of the PD. A number of TRLA lawyers have criminal trial experience, and still other TRLA lawyers would like to acquire litigation experience. Some of the more experienced TRLA lawyers would be helpful as mentors to the less experienced Defender staff in litigation and case management. These are just a few of the circumstances where it would be advantageous to pursue collaboration with the entire TRLA staff. When representing defender program clients, the civil attorneys employed by TRLA would be paid from PD funds or would work on a voluntary basis.

In addition, TRLA intends to explore fully the opportunities for cooperation and synergy between the defender and civil components of TRLA's legal services delivery system. Often when persons are accused of crimes, there is a major negative impact on the family of the accused. Issues involving drug and alcohol abuse, mental illness, public benefits, housing, immigration and family law are common in these cases, and TRLA is uniquely capable of bringing its civil representation resources to bear in addressing these kinds of matters.

#### **IV. Workload Management Plan**

TRLA's Workload Management Plan is designed to ensure that PD representation is available to all qualified clients who need representation, and to minimize the expenditures that are necessary for assigned counsel outside the PD.

The first step in creating a Workload Management Plan is to estimate the number of cases that the Public Defender office may be assigned. The best projections of future caseloads are based on past caseloads. The Task Force on Indigent Defense compiles the data from reports that the counties have filed with the Office of Court Administration, and attached Exhibit G shows the total number of new cases added in Willacy County over each of the past three years, not just the number of cases in which the counties paid for the representation of someone unable to hire private counsel. Examining this data shows that an average of 240 felony cases were filed each year, 397 misdemeanor cases were filed, 31 juvenile cases were filed, and no appeals were filed during these three years.

<b>Fiscal Year</b>	<b>Felonies Added</b>	<b>Misd Added</b>	<b>Juvenile Added</b>	<b>Total</b>
2006 Cases Added	196	325	22	543

2005 Cases Added	268	457	46	769
2004 Cases Added	257	408	25	690
3-Year Average Of Cases Added	240	397	31	667
70% Of Cases Assigned to PD	168	278	22	467

The next step in the workload determination is to project the annual number of cases in which the defendant may be expected to be indigent, and therefore eligible for representation by the PD. TRLA conservatively estimates that 70% of the new cases added will involve a defendant who is indigent, based on Texas and national data, and upon TRLA's experience. Actual appointment rates in Willacy County have been reported at less than 40%, which appears extremely low for a rural South Texas county with a poverty rate in excess of 30%. Moreover, Texas data indicates that at least 0.5% of convictions are directly appealed, and Willacy County shows no appeals in the last three years. TRLA thus bases its Workload Management Plan on the higher caseload percentages as a means of protecting the county from unforeseen expenditures for outside counsel. Some defendants must be referred to private counsel because of conflict of interest rules. Also, because TRLA has a supervisory role over the legal advocates at regional womens' shelters, those cases in which the applicant is charged with certain kinds of domestic-violence-related crimes will have to be excluded as well.<sup>2</sup> TRLA's proposed budget is based on these estimated caseload figures. This budget will enable the PD to represent indigent clients in 168 felony cases, 278 misdemeanor cases, 22 juvenile cases, and 5 appeals. If the average number of cases over the past three years accurately indicates caseloads to be expected over the next 12 months, and the 70% assignment rate is appropriately conservative, the PD should be able to accept all eligible felony, misdemeanor, and juvenile cases that are assigned to the PD over the next 12 months, and do so within the budget stated above.

These caseload projections are necessarily imprecise. The actual number of cases assigned vary due to unforeseeable circumstances ranging from law enforcement focus, the performance of the economies in Texas and Mexico, and the exercise of prosecutorial discretion. The complexity of the cases themselves may also vary depending on the severity of injury to victims, search and seizure practices of law enforcement agencies, the mental health of defendants, and the plea practices of the prosecutors. For all of these reasons, it is impossible to precisely predict what number of cases will be completed by any attorney or the PD itself, particularly in its first year of operation. Workload projections will become more definite as PD data is generated over time.

Accordingly, TRLA's proposed Workload Management Plan responds to caseload uncertainty with flexible and efficient distribution of legal resources, as follows:

- (1) Within 24 hours of booking into jail, or by appointment for defendants who are not pre-trial detainees, a PD staff member will interview each detainee and investigate (a) eligibility for representation, (b) whether a conflict of interest prevents PD representation,

<sup>2</sup> The most common types of crimes that TRLA proposes to exclude from representation are: (1) family violence assault under Tex. Penal Code sec. 22.01, (2) aggravated sexual assault under sec. 22.021 if the offense is alleged against a spouse or domestic partner, (3) interference with child custody under sec. 25.03 if the complaining witness is a spouse or domestic partner, and (4) violation of a protective order under sec. 25.07.

(c) if apparently eligible for PD representation, a case analysis, and (d) assessment of suitability for personal recognizance bond.

- (2) Upon conclusion of each interview, PD staff will immediately transmit a report to the appointing judge designated under the Willacy County indigent defense plan, and to the defendant. The report will state: (a) whether PD's investigation indicates that the defendant is indigent and qualifies for appointed counsel under the appropriate indigent defense plan; and (b) whether a conflict of interest or other professional responsibility prevents PD from serving the defendant. The report will also recommend one of the following proposed orders for the judge's consideration: (a) that the PD be appointed to represent the defendant; (b) that private counsel be appointed to represent the defendant; (c) that appointed counsel be denied due to insufficient evidence of indigence; or (d) that the court hold a hearing to determine indigence. Based upon his score on an objective survey of factors relating to the defendant's ties to the community, the PD will also submit a report of its findings on whether the defendant is a suitable candidate for release on his own personal recognizance.
- (3) The PD may decline to represent a defendant if: (a) the PD learns that the defendant is not indigent, (b) the charges for which representation is sought are prosecuted in a court that is outside the PD service area; (c) a conflict of interest becomes apparent among indigent defendants, or between a defendant and the PD; (d) the defendant is charged with a family violence offense as specified herein; or (e) the PD lacks the personnel to adequately represent the client under Texas Rule of Professional Responsibility 1.01. Under any of these circumstances, the PD may decline appointment or withdraw from appointment, as appropriate.
- (4) While the PD is appointed, it will provide all criminal defense services necessary to each defendant through judgment and direct appeal, and do so in accord with all federal, state, and local laws governing indigent defense services.
- (5) The Chief Public Defender will periodically monitor and adjust caseload distribution among PD attorneys, and adjust staffing levels within the budget described in this proposal, to ensure that the most efficient and effective representation is available to as many eligible clients as possible at all times. The Chief Public Defender will provide periodic reports to Willacy County on how well the PD has succeeded in completing the work assigned to it, on its capacity to accept additional cases, and on its adherence to the caseload policies stated above.

The bottom line is that even with the unavoidable uncertainty in caseloads, TRLA's Workload Management Plan protects Willacy County from spending indigent defense money for outside representation unless the number of cases in which counsel is appointed for indigent defendants greatly exceeds its historical average, an entirely unlikely event in this year alone.

The employee position descriptions stated above allow for flexibility in accepting the entire anticipated caseload, based on existing national caseload standards for public defenders.<sup>3</sup>

It is TRLA's intention to hire staff and increase project capacity only as the caseload and circumstances indicate the need to do so. TRLA has many years of experience in expanding and contracting operations as budget constraints and caseload demands require. That experience will be brought to bear on the unique circumstances surrounding this effort to create the PD serving defendants in Willacy County.

## V. Training

The Chief Public Defender's first responsibility will be to write and then train each staff member on PD procedures concerning client correspondence, docketing, pre-trial practice, motion practice, trial practice, and appeals. Peer review of each major court presentation within the PD office will afford each attorney important additional training opportunities.

Each attorney will also have a training budget of \$1,000 per year to cover travel and tuition expenses necessary to attend continuing legal education (CLE) courses in substantive and procedural criminal law. The Chief Public Defender must approve each training expenditure in advance. TRLA has successfully used this policy to ensure that all CLE requirements are met for its staff, and that each staff member remains abreast of current developments in his or her areas of practice.

TRLA Information Technology staff will provide each PD staff member in-house training on TRLA's Client Tracking System software, on its Voice-over-Internet-Protocol telephone system, and on standard software packages as needed.

The person likely to serve as the PD part-time secretary has twenty years' experience in TRLA's existing Harlingen office.

As time and circumstances permit, the PD office will make training on its criminal defense practices available to the local bar, and will also respond to specific questions presented by bar members. The PD will share its brief bank, research, and forms with the local bar as requested.

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<sup>3</sup> The most comprehensive study of public defender caseloads was done by the National Advisory Commission on Criminal Justice Standards and Goals in 1973. The Commission recommended that public defender caseloads be limited to the equivalent of: 150 felony cases, 400 misdemeanor cases, or 25 direct appeals per attorney per year. These figures have withstood the test of time, and are currently used in Arizona, Georgia, Indiana, Missouri, New York, Vermont, and Washington. See Texas Task Force on Indigent Defense, *Blueprint for Creating a Public Defender Office in Texas*, Appendix I p. 42 (2004) (available at <http://www.courts.state.tx.us/oca/tfid/Blueprint.pdf>).

## VI. Overhead Cost Descriptions

With 79% of the proposed PD budget directed to staff salaries and benefits, overhead costs that are necessary to operate the PD are limited to 21% of the budget. Each specific overhead cost figure stated in the budget above is based on TRLA's extensive experience in meeting these overhead costs in its existing operations. The budget's overhead costs cover all of the following items:

- office space in Harlingen that includes space for two attorneys, one investigator and a secretary, conference rooms, a reception area, and restrooms, in addition to space for the civil legal services staff that will be paid from TRLA's funds for civil legal services;
- litigation costs including experts, consultants, investigators, and court reporter fees for trial transcripts;
- utilities including electric, gas, water, phone, and internet service;
- library and electronic legal research materials;
- postage and consumable office supplies;
- workers' compensation and premises liability insurance coverage for each employee and client;
- personal use of automobile at \$0.48 per mile;
- training costs at \$1,000 per lawyer per year; and
- administration costs (accounting, payroll, audit, management support, information technology support, software customization, etc.) at about 2% of total budget costs, which is less than half of the 5% administrative expense rate that applies to most government contracts.

Capital and other start-up costs will include the following:

- office furnishings for each staff member that include desk, chairs, filing cabinets, shelving
- VoIP telephone
- Videoconferencing equipment for Willacy County Adult Detention Center
- 2 desktop and 1 laptop computers
- software for computers, including Microsoft Office Suite
- use of TRLA's Xerox 55 Workcentre high-speed printer/scanner/copier/fax machine, networked to TRLA wide-area network

## VII. Investigator and Expert Policy

The budget above includes \$9,000 for litigation expenses that may include trial transcripts for appeals, fees charged by expert witnesses, and consultant and technical assistance costs. The PD will spend this money in accord with the following rules:

- (1) the Chief Public Defender will approve each expenditure as necessary before it is incurred, and information concerning each approval will be provided to Willacy County;

- (2) evaluation of the need for and amount of any expert or investigator expenditure will be made as of the time that the expenditure is requested, based on the information that is reasonably available at that point in time;
- (3) TRLA anticipates that absent unforeseen and unusual circumstances, the PD's staff investigator will perform all investigative work for all PD clients, and that litigation expenses will not need to be used to hire outside investigators; and
- (4) each time the PD contract is renewed, TRLA will discuss with Willacy County the previous year's actual need for litigation expenses to predict future need for these resources.

### **VIII. Ability to Provide Adequate Quality Representation**

TRLA's capacity to provide adequate quality representation in its proposed PD office is proved by the track record of accomplishments that it has established in its existing Regional Public Defender project, its thorough understanding of Texas's indigent defense laws and practices, and the experience of the team that it has assembled to manage the start-up of the PD office.

TRLA's website, [www.trla.org](http://www.trla.org), provides ample detail on the broad range of quality legal services that its 120 attorneys and active board of directors have provided to indigent clients throughout Central, South, and West Texas for some 35 years. Scores of court decisions, press reports, and public awards document the concrete results that TRLA has achieved on behalf of clients in virtually every substantive area of law, from housing to farm worker employment to children's health to public benefits to *colonias* to domestic violence.

Equal access to justice for the poor through quality legal representation has always been TRLA's core mission. By the early 1990's, TRLA recognized indigent criminal defense as a critical issue affecting the families of indigent defendants as well as the defendants themselves.<sup>4</sup> TRLA conducted litigation in Hidalgo and Cameron counties to address prolonged pre-trial incarceration without access to counsel. Since passage of the Fair Defense Act in 2001, TRLA's Criminal Justice Team has assisted the Task Force on Indigent Defense, the El Paso and Webb County public defender offices, numerous judges, and numerous counties in implementing the law. TRLA provided the Task Force with substantial assistance in writing its June 2004 *Blueprint for Creating a Public Defender Office in Texas*.

<sup>4</sup> Over the years TRLA has developed a range of strategies to respond to client concerns about indigent defense adequacy. It has developed a detailed telephone intake to gauge client concerns, offer standard advice on indigent defense matters, and identify where systemic deficiencies merit closer attention. Before the Fair Defense Act, it used litigation to correct systemic deficiencies in indigent defense systems. Since the FDA, it has worked with judges to identify procedures needed to ensure that competent counsel were appointed to represent criminal defendants who suffer from major mental illness. It has accepted appointments from judges to replace grossly deficient counsel in criminal cases, and won both acquittals and convictions on lesser included offenses. It has also worked with Texas's Task Force on Indigent Defense on a wide range of FDA education and implementation efforts.

The TRLA employees who would manage recruitment and start-up of the PD office are TRLA Executive Director David Hall, TRLA Litigation Director Jose Garza, Public Defender Division Director Joseph Cordova, and Criminal Justice Team Manager Jerome Wesevich. With some 100 years of combined legal experience including a vast array of representation before all Texas and federal courts, and consistent application of skills on behalf of indigent clients, these individuals are well suited to establish the PD and ensure that it provides quality and committed representation in accord with the highest ethical standards.<sup>5</sup>

#### **IX. Case Management Technology**

TRLA has written and refined its own Microsoft FoxPro-based case management application called the "Client Tracking System" (CTS) to make all information pertaining to each case readily accessible to management and staff. This includes docketing, contact and witness information, potential conflicts, documents, time logs, correspondence, and ticklers. The CTS is remotely available on a Citrix-enabled wide area network, and is maintained and fully supported by TRLA's Information Technology staff. Case reviews, acquisition of management information, and reporting can readily be accomplished from any location with Internet access. The CTS is among the finest examples of client service software available anywhere, and has been successfully integrated into TRLA's daily operations by hundreds of staff members working in dozens of teams across Texas. Thoroughly tried and tested, CTS will readily meet all case management needs of the PD.

One of the major advantages of the CTS is that it can be customized for various types of cases encountered by staff. Case-specific modules will be written to address the specific types of issues in various kinds of criminal prosecutions. The modules will allow staff to assemble documents useful in all kinds of cases, as well as to track unique data and procedural needs.

#### **X. Conclusion**

TRLA's Public Defender proposal offers Willacy County the benefit of an existing infrastructure with a proven track record of success, which TRLA respectfully submits would provide a smoother start-up and better quality representation for less money than anyone else could approach.

---

<sup>5</sup> For example, Mr. Hall had extensive trial and appellate experience in criminal matters, including a successful appeal of a burglary conviction to the United States Supreme Court. The Court held that the method of selecting grand juries in Hidalgo County in the early 1970's discriminated against Mexican-Americans. *Castañeda, Sheriff v. Partida*, 430 U.S. 482 (1977). For many years Mr. Hall has been a member of the State Bar of Texas Committee for the Provision of Legal Services to the Indigent in Criminal Matters. Mr. Garza has litigated several dozen appeals in federal and state courts, including presentation of oral argument to the U.S. Supreme Court. Mr. Cordova has over fourteen years' of criminal litigation experience as a Federal Public Defender in Laredo and Del Rio, Texas, and for the past year has served as Chief Public Defender for TRLA's Regional Public Defender serving Val Verde, Kinney, Terrell and Edwards Counties. Mr. Wesevich helped craft the Texas Fair Defense Act of 2001, and then helped counties implement the law. He also has extensive complex litigation and appellate experience.

Internal Revenue Service  
Director, Exempt Organizations

Department of the Treasury  
P.O. Box 2508  
Cincinnati, Ohio 45201

Date:

JUN 08 2004

Texas RioGrande Legal Aid, Inc.  
300 S Texas  
Weslaco, TX 78596-6108

Person to Contact - ID#:  
Roger Vance - 31-03113  
Contact Telephone Numbers:  
877-829-5500 Phone  
513-263-3756 FAX  
Federal Identification Number:  
74-1675230

Dear Sir or Madam:

By our determination dated November 22, 1971, you were held to be exempt from Federal Income Tax under the provisions of section 501(c)(3) of the Internal Revenue Code.

You recently furnished us information that Costal Bend Legal Services merged with Texas Rural Legal Aid Inc. on June 25, 2002. You also informed us that your name has been changed to Texas RioGrande Legal Aid, Inc. Based on the information submitted, we have determined that the merger does not affect your exempt status and we have updated our records to reflect your current name as shown above. The organization will continue using Employer Identification Number 74-1675230.

Please let us know about any further changes in the character, purposes, method of operation, name or address of your organization.

If you have any questions regarding this matter, please contact the person whose name and telephone number appear in the heading of this letter.

Sincerely,



Director, Exempt Organizations

Enclosure

**Texas RioGrande Legal Aid, Inc.  
Board of Directors**

San Antonio Bar Association	Judge Karen Pozza 407 <sup>th</sup> District Court 100 Dolorosa San Antonio, Texas 78205 210-335-2462 <a href="mailto:kpozza@bexar.org">kpozza@bexar.org</a>	Term Expires 12/06
San Antonio Bar Association	Lamont A. Jefferson 112 E. Pecan #1600 San Antonio, Texas 78205 210-978-7459/554-0458 <a href="mailto:lamont.jefferson@haynesboone.com">lamont.jefferson@haynesboone.com</a>	Term Expires 12/07
El Centro Del Barrio	Sarah Davidson 13842 O'Connor Rd., Apt. 1110 San Antonio, Texas 78233 210-637-1510 <a href="mailto:sbeloved@sbcglobal.net">sbeloved@sbcglobal.net</a>	Term Expires 12/08
Rio Grande Valley Edinburg Clients' Council	Ramona Casas 3510 Rancho Del Rey Edinburg, Texas 78539 956-380-3384	Term Expires 12/07
Cameron County Bar Association	Lisa Taylor 806 Morgan, Suite J Harlingen, Texas 78550 956-412-4900 <a href="mailto:lialtaylor@cngmail.com">lialtaylor@cngmail.com</a>	Term Expires 12/08
Cameron County Bar Association	Joseph Krippel 1385 Crestview Brownsville, Texas 78520 956-550-1433 <a href="mailto:jkrippel@hotmail.com">jkrippel@hotmail.com</a>	Term Expires 12/06
El Paso Bar Association	Gregory B. Pine 303 Texas Ave., Suite 1000 El Paso, Texas 79901 (915)532-5757/577-0787 <a href="mailto:gbo251@aol.com">gbo251@aol.com</a>	Term Expires 12/07
El Paso Bar Association	M. Daisy Everhart 711 Myrtle El Paso, Texas 79901 915-533-7216/533-7218 <a href="mailto:mdaisy@flash.net">mdaisy@flash.net</a>	Term Expires 12/08

*Project BRAVO, Inc. El Paso County	Jose Duran 10132 Bermuda Ave. El Paso, TX 79925	Term Expires 12/06
Weslaco Clients' Council Hidalgo County	Frances Medrano 1704 Anacua Circle Weslaco, Texas 78596 956-447-9491	Term Expires 12/07
Hidalgo County Bar Association	Victoria Guerra 605 E. Violet, Suite #3 McAllen, Texas 78504 956-618-2609/618-2553 <a href="mailto:vguerra276@aol.com">vguerra276@aol.com</a>	Term Expires 12/08
Hidalgo County Bar Association	Roger Reed P.O. Box 9702 McAllen, Texas 78502-9702 956-631-5444/631-9187 <a href="mailto:rreed@rcmlaw.com">rreed@rcmlaw.com</a>	Term Expires 12/08
Robstown Clients' Council Nueces County	María Pacheco 477 Cenizo Dr. Robstown, Texas 78380 361-387-8133	Term Expires 12/07
Corpus Christi Bar Association	Jeanne Chastain 921 N. Chaparral, Suite 212 Corpus Christi, Texas 78402 361-881-9800 <a href="mailto:jchastainpc@yahoo.com">jchastainpc@yahoo.com</a>	Term Expires 12/06
Laredo Clients' Council Webb County	Carlos Blanco 3205 Market St. Laredo, Texas 78043 956-725-2777 <a href="mailto:cblancojr@stx.rr.com">cblancojr@stx.rr.com</a>	Term Expires 12/08
Laredo/Webb County Bar Association	Alfonso H. Ornelas, Jr. 401 E. Hillside-Capitol Centre 2 <sup>nd</sup> Floor Laredo, Texas 78041 956-712-4445/725-4594 <a href="mailto:boverthelawyer@stx.rr.com">boverthelawyer@stx.rr.com</a> <a href="mailto:iecbrewster@gmail.com">iecbrewster@gmail.com</a>	Term Expires 12/07
Austin Interfaith	Ofelia Zapata 5506 Mesquite Grove Road Austin, Texas 78744 512-912-0285 <a href="mailto:ofeliazapata@yahoo.com">ofeliazapata@yahoo.com</a>	Term Expires 12/07
Travis County Bar Association	David Hilgers 111 Congress Avenue, Suite 1400 Austin, Texas 78701 512-703-5747/476-5139 <a href="mailto:dhilgers@mailbmc.com">dhilgers@mailbmc.com</a>	Term Expires 12/07

Del Rio/Eagle Pass Clients' Council	Diana Abrego 310 E. Bowie St. Del Rio, Texas 78840 830-768-3178 <a href="mailto:egonzalez@tria.org">egonzalez@tria.org</a> <a href="mailto:cclacasa@delrio.com">cclacasa@delrio.com</a>	Term Expires 12/08
Mexican-American Legal Defense & Education Fund	Joseph Connors, III P.O. Box 5838 McAllen, Texas 78502 956-687-8217/687-8230 <a href="mailto:connors@innocent.com">connors@innocent.com</a>	Term Expires 12/07
State Bar of Texas	Ronald B. Walker P.O. Box 108 210 E. Constitution Victoria, Texas 77901 361-576-6800/576-6196 <a href="mailto:rwalker@wkcfirm.com">rwalker@wkcfirm.com</a>	Term Expires 12/07
State Bar of Texas	Cindy Pollnard 100 E. Cano, 5th Floor Edinburg, TX 78539 956-318-2405/318-2403 <a href="mailto:cindy.pollnard@courts.state.tx.us">cindy.pollnard@courts.state.tx.us</a>	Term Expires 12/07
State Bar of Texas	Richard E. Lara 600 E. Harrison St. Room 201 Brownsville, Texas 78520 956-548-2554/548-2711 <a href="mailto:rick.lara@usdoj.gov">rick.lara@usdoj.gov</a>	Term Expires 12/07
Family Crisis Center of the Big Bend	Lovika De Koninck P.O. Box 179 Terlingua, TX 79852 432-371-2523/371-2523 <a href="mailto:lovika@msn.com">lovika@msn.com</a>	Term Expires 12/08
Guadalupe Economic Services Corp.	Dolores Flores P.O. Box 329 Earth, Texas 79031 806-257-2022	Term Expires 12/07

Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



Geoffrey S. Connor  
Secretary of State

**Office of the Secretary of State**

**CERTIFICATE OF AMENDMENT  
OF**

**Texas RioGrande Legal Aid, Inc.  
27885601**

[formerly: TEXAS RURAL LEGAL AID, INC.]

The undersigned, as Secretary of State of Texas, hereby certifies that the attached Articles of amendment for the above named entity have been received in this office and have been found to conform to law.

ACCORDINGLY the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law hereby issues this Certificate of Amendment.

Dated: 01/13/2004  
Effective: 01/13/2004



  
Geoffrey S. Connor  
Secretary of State

ARTICLES OF AMENDMENT OF  
RESTATED ARTICLES OF INCORPORATION  
TEXAS RURAL LEGAL AID, INC.

FILED  
In the Office of the  
Secretary of State of Texas  
JAN 13 2004  
Corporations Section

I, the undersigned natural person, of the age of eighteen (18) years or more, acting as an officer of a corporation under the Texas Non-Profit Corporation Act, Tex. Rev. Civ. Stat. Ann. Art. 1396 (Vernon 1997) (the "Act"), do hereby acknowledge that the following Articles of Amendment for such corporation were duly adopted at a regular meeting of the Board of Directors of Texas Rural Legal Aid, Inc. held on December 6, 2003 and received the unanimous vote of the directors present, there being no members. This amendment alters only Article One of the Restated Articles of Incorporation of Texas Rural Legal Aid, Inc., filed by the Office of the Secretary of State of Texas on July 5, 2002.

ARTICLE ONE

The name of the Corporation is Texas RioGrande Legal Aid, Inc.

IN WITNESS THEREOF, I have hereunto set out my hand this 12th day of January, 2004.

Texas Rural Legal Aid, Inc.

By: Cindy Polinard

Name: Cindy Polinard  
Title: Chair, Board of Directors

07/08/2002 12:40 FAX 5123222699

Corporations Section  
P.O. Box 13697  
Austin, Texas 78711-3697

BAKER BOTTS



003

Gwyn Shea  
Secretary of State

Office of the Secretary of State

CERTIFICATE OF RESTATED ARTICLES  
OF

TEXAS RURAL LEGAL AID, INC.  
27885601

The undersigned, as Secretary of State of Texas, hereby certifies that the Restated Articles for the above named entity have been received in this office and have been found to conform to law.

ACCORDINGLY the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law hereby issues this Certificate of Restated Articles.

Dated: 07/05/2002

Effective: 07/05/2002



Handwritten signature of Gwyn Shea in cursive script.

Gwyn Shea  
Secretary of State

PHONE(512) 463-5555  
Prepared by: Lisa Sartin

Come visit us on the internet at <http://www.sos.state.tx.us/>  
FAX(512) 463-5709

TTY7-1-1

FILED  
in the Office of the  
Secretary of State of Texas  
JUL 05 2002

RESTATED

ARTICLES OF INCORPORATION OR Corporations Section

TEXAS RURAL LEGAL AID, INC.

I, the undersigned natural person, of the age of eighteen (18) years or more, acting as an officer of a corporation under the Texas Non-Profit Corporation Act, Tex. Rev. Civ. Stat. Ann. art. 1396 (Vernon 1997) (the "Act"), do hereby acknowledge that the following Restated Articles of Incorporation for such corporation were duly adopted at a meeting of the Board of Directors held on June 8, 2002 and received the vote of a majority of the directors in office, there being no members. The Articles of Incorporation have been amended and restated in their entirety. All amendments have been effected in conformity with the Act. These Restated Articles accurately copy the Articles of Incorporation that are in effect to date and as further amended by this restatement and contain no other change in any provision thereof:

ARTICLE ONE

The name of the Corporation is Texas Rural Legal Aid, Inc.

ARTICLE TWO

The Corporation is a non-profit corporation.

ARTICLE THREE

The purposes for which the Corporation is organized and to be operated are exclusively charitable within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). In accomplishment of such purposes, the Corporation will:

- Provide legal services to those who are unable to pay the ordinary and customary fees of attorneys engaged in the private practice of law.
- Provide other and similar charitable and educational services for persons of limited financial means.
- Support and encourage improvements in the Administration of Justice.

The broadest discretion is vested in and conferred upon the Board of Directors for the accomplishment of these purposes, provided, however, that no contributions shall be made or distributed to or for any person, firm, corporation, or other entity that shall apply, directly or indirectly, such contributed funds for any purpose or purposes in violation of the Constitution and statutes of the United States of America or the state of Texas.

**RESTATED**  
**ARTICLES OF INCORPORATION OF**  
**TEXAS RURAL LEGAL AID, INC.**

I, the undersigned natural person, of the age of eighteen (18) years or more, acting as an officer of a corporation under the Texas Non-Profit Corporation Act, Tex. Rev. Civ. Stat. Ann. art. 1396 (Vernon 1997) (the "Act"), do hereby acknowledge that the following Restated Articles of Incorporation for such corporation were duly adopted at a meeting of the Board of Directors held on June 8, 2002 and received the vote of a majority of the directors in office, there being no members. The Articles of Incorporation have been amended and restated in their entirety. All amendments have been effected in conformity with the Act. These Restated Articles accurately copy the Articles of Incorporation that are in effect to date and as further amended by this restatement and contain no other change in any provision thereof:

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**ARTICLE THREE**

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- Provide other and similar charitable and educational services for persons of limited financial means.
- Support and encourage improvements in the Administration of Justice.

The broadest discretion is vested in and conferred upon the Board of Directors for the accomplishment of these purposes, provided, however, that no contributions shall be made or distributed to or for any person, firm, corporation, or other entity that shall apply, directly or indirectly, such contributed funds for any purpose or purposes in violation of the Constitution and statutes of the United States of America or the state of Texas.

**ARTICLE FOUR**

The Corporation will not have any Members.

**ARTICLE FIVE**

The street address of the Corporation's initial registered office is Weslaco, Texas, and the name of its initial registered agent at such address is David G. Hall.

**ARTICLE SIX**

The number of directors of the Corporation shall be fixed in accordance with the Corporation's Bylaws (the "Bylaws"), but shall never be less than seven (7). The number of directors currently constituting the Board of Directors is twenty-one (21) and the names and addresses of the directors are:

<b>Name</b>	<b>Address</b>
Diana Abrego	310 E. Bowie St. Del Rio, Texas 78840
Jeanne Chastain	719 Upper N. Broadway, Suite 201 Corpus Christi, Texas 78401
Joseph Connors, III	P. O. Box 5838 McAllen, Texas 78502
Lovika DeKoninck	P. O. Box 179 Terlingua, Texas 79852
M. Daisy Everhart	718 Myrtle El Paso, Texas 79901
Dolores Flores	P. O. Box 329 Earth, Texas 79031
Ramona Gonzalez	119 N. Stanton El Paso, Texas 79901
Victoria Guerra	605 E. Violet, Suite #2 McAllen, Texas 78504
John Alex Huddleston	112 E. Pecan #2700 San Antonio, Texas 78205
Lamont A. Jefferson	112 E. Pecan #1600 San Antonio, Texas 78205

Name	Address
Edna McDonald	717 E. Avenue G. Robstown, Texas 78380
Frances Medrano	Rt. 2 Box 1084 Weslaco, Texas 78596
Ben Neece	950 East Van Buren Brownsville, Texas 78520
Alfonso Ornelas	1303 Calle Del Norte, Suite 800 Laredo, Texas 78041
Viviana Patiño	701 N. St. Vrain Paso, Texas 79902
Cindy Polinard	100 E. Cano, 5th Floor Edingburg, Texas 78539
Victor Quintanilla	777 E. Harrison Brownsville, Texas 78520
Roger Reed	P. O. Box 9702 McAllen, Texas 78502-9702
Maria Luisa Romo	120 S. Urbahn Avenue Laredo, Texas 78043
Maria Salas	718 Myrtle El Paso, Texas 79901
Yolanda Shoffeitt	Box 3302 La Feria, Texas 78559

#### ARTICLE SEVEN

Notwithstanding any other provision of these Articles of Incorporation or the laws of the State of Texas, the Corporation shall not:

- (1) permit any part of the net earnings of the Corporation to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Corporation affecting one or more of its purposes);
- (2) devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or

(3) participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

#### ARTICLE EIGHT

Upon the dissolution of the Corporation, after payment or provision for payment of the Corporation's liabilities has been made, the Corporation's remaining assets shall be distributed to a legal services organization chosen by the Board of Directors, provided that such organization is at the time of such distribution an organization described in Section 501(c)(3) of the Code, or any successor provision as determined by the Board of Directors. The amount of any distribution made under this Article Eight shall be determined by the Board of Directors.

#### ARTICLE NINE

A director of the Corporation shall not be liable to the Corporation for monetary damages for any act or omission in the director's capacity as a director to the fullest extent permitted by law, except that this Article Nine does not eliminate or limit the liability of a director for:

- (a) a breach of a director's duty of loyalty to the Corporation;
- (b) an act or omission not in good faith or that constitutes a breach of duty of the director to the Corporation or an act or omission that involves intentional misconduct or a knowing violation of the law;
- (c) a transaction from which a director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or;
- (d) an act or omission for which the liability of a director is expressly provided by an applicable statute.

If the Texas Miscellaneous Corporation Laws Act or the Act is amended to authorize action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by such statutes, as so amended. Any repeal or amendment of such statutes or of the foregoing paragraph shall not, to the extent allowable by law, adversely affect any right of protection of a director of the Corporation existing at the time of such repeal or modification.

#### ARTICLE TEN

The Corporation shall indemnify (which indemnification shall include, without limitation, advancing reasonable expenses) any person who is or was a Director or officer of the Corporation and may indemnify (which indemnification may include without limitation, advancing reasonable expenses) any person who is or was an employee, or agent of the Corporation (or any person who is or was serving at the request of the Corporation as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise) to the fullest extent required or permitted by applicable law. In addition, the Corporation shall have the power to indemnify (which indemnification shall include, without

hereunder with respect to any act or failure to act occurring on or prior to the date of any such amendment.

#### ARTICLE ELEVEN

With respect to any action (i) which is required by the Act to be taken at a meeting of the Board of Directors or (ii) which may be taken at a meeting of the board of directors or any committee established by the board of directors, such action may be taken without any such meeting if a written consent setting forth the action to be taken, is signed by a sufficient number of members of the board of directors or committee thereof as would be necessary to take the action at a meeting at which all, and not just a quorum, of the members of the board of directors or members of the committee were present and voted.

#### ARTICLE TWELVE

These Articles of Incorporation may be amended by a majority vote of the Board of Directors in office or solicitation of written consent, provided that the notice for any special meeting of the board of directors at/by which amendments to these Articles of Incorporation will be considered includes a description of the amendments to be considered.

IN WITNESS THEREOF, I have hereunto set out my hand this 8 day of June, 2002.

Texas Rural Legal Aid, Inc.

By: 

Name: Viviana Patino  
Title: Chair, Board of Directors

EXHIBIT A

Table 1: Board of Directors				
Appointing Organization	Lawyers	Clients	Others	Total
Bexar County client organization 1.		1		1
San Antonio Bar Association  1. John Alex Huddleston 112 E. Pecan #2700 San Antonio, Texas 78205 210-229-3013  2. Lamont A. Jefferson 112 E. Pecan #1600 San Antonio, Texas 78205 210-978-7459	2			2
Cameron County client organization  1. Yolanda Shoffeitt Box 3302 La Feria, Texas 78559		1		1
Cameron County Bar Association  1. Ben Neece 950 East Van Buren Brownsville, Texas 78520 956-544-4321  2. Victor Quintanilla 777 E. Harrison Brownsville, Texas 78520 956-541-3820	2			2
El Paso County client organization 1. Ramona Gonzalez 119 N. Stanton El Paso, Texas 79901		1		1
El Paso County Bar Association 1. M. Daisy Everhart 718 Myrtle El Paso, Texas 79901  2. Maria Salas	2			2
Hidalgo County client organization 1. Frances Medrano Rt. 2 Box 1084 Weslaco, Texas 78596 956-447-9491		1		1



Hidalgo County Bar Association  1. Victoria Guerra 605 E. Violet, Suite #2 McAllen, Texas 78504 956-618-2609  2. Roger Reed P.O. Box 9702 McAllen, Texas 78502-9702 956-631-5444	2			2
Nueces County client organization, or client organization from Coastal Bend region  1. Edna McDonald Edna McDonald 717 E. Avenue G. Robstown, Texas 78380 361-387-6396		1		1
Corpus Christi Bar Association 1. Jeanne Chastain 719 Upper N. Broadway, Suite 201 Corpus Christi, Texas 78401 361-881-9800	1			1
Webb County client organization  1. Maria Luisa Romo 120 S. Urbahn Avenue Laredo, Texas 78043 956-726-2424		1		1
Laredo/Webb County Bar Association  1. Alfonso Ornelas 1303 Calle Del Norte, Suite 800 Laredo, Texas 78041 956-712-4445	1			1
Travis County client organization, or client organization from Central Texas region  [Vacant]		1		1
Travis County Bar Association  [Vacant]	1			1
Del Rio/Eagle Pass Region Client Organization  1. Diana Abrego 310 E. Bowie St. Del Rio, Texas 78840 830-768-3178		1		1

State Bar of Texas, Mexican-American Legal Defense & Educational Fund, or other state-wide special purpose bar associations (at large appointments)  <b>1. Joseph Connors, III</b> P.O. Box 5838 McAllen, Texas 78502 956-687-8217  <b>2. Viviana Patiño [President]</b> 701 N. St. Vrain Paso, Texas 79902 915-532-7295  <b>3. Cindy Polinard [Vice-President]</b> 100 E. Cano, 5th Floor Edinburg, TX 78539 95956-318-2405  <b>4. [Vacant: Central Texas Attorney, SBOT]</b>	4			4
Women Shelters, by Texas Council on Family Violence or other state-wide organization serving victims of domestic violence  <b>1. Lovika DeKoninck</b> P.O. Box 179 Terlingua, TX 79852 915-371-2523	EI		1	1
United Farm Workers of America, or other farm worker organization  <b>1. Dolores Flores</b> P.O. Box 329 Earth, Texas 79031 806-257-2022		1		1
<b>Total</b>	<b>15</b>	<b>9</b>	<b>1</b>	<b>25</b>

**Officers:**

President: Viviana Patino

Vice-President: Cindy Polinard

Treasurer: Ben Neece

Secretary: Emma Villarreal (ex officio: 300 S. Texas Blvd., Weslaco, TX 78596 956-968-6574)

State Bar of Texas, Mexican-American Legal Defense & Educational Fund, or other state-wide special purpose bar associations (at large appointments)	4			4
<b>1. Joseph Connors, III</b> P.O. Box 5838 McAllen, Texas 78502 956-687-8217				
<b>2. Viviana Patiño [President]</b> 701 N. St. Vrain Paso, Texas 79902 915-532-7295	EI			
<b>3. Cindy Polinard [Vice-President]</b> 100 E. Cano, 5th Floor Edinburg, TX 78539 95956-318-2405				
<b>4. [Vacant: Central Texas Attorney, SBOT]</b>				
Women Shelters, by Texas Council on Family Violence or other state-wide organization serving victims of domestic violence			1	1
<b>1. Lovika DeKoninck</b> P.O. Box 179 Terlingua, TX 79852 915-371-2523				
United Farm Workers of America, or other farm worker organization		1		1
<b>1. Dolores Flores</b> P.O. Box 329 Earth, Texas 79031 806-257-2022				
<b>Total</b>	<b>15</b>	<b>9</b>	<b>1</b>	<b>25</b>

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Current income guidelines are as follows:

Household Size	Income <sup>1</sup>	200% of Federal Poverty Guidelines
1	\$11,963	\$19,140
2	16,038	25,660
3	20,113	32,180
4	24,188	38,700
5	28,263	45,220
6	32,338	51,740

For households with more than six members, \$4,075 for each additional household member is added to the income guidelines. Add \$6,520 for those falling under the 200% of guidelines category.

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<sup>1</sup> As republished in the August 8, 2005 *Federal Register*, these figures represent 125% of federal poverty guidelines

**ARTICLES OF AMENDMENT OF  
THE BY-LAWS OF  
TEXAS RIOGRANDE LEGAL AID, INC.**

I, the undersigned natural person, of the age of eighteen (18) years or more, acting as an officer of a corporation under the Texas Non-Profit Corporation Act, Tex. Rev. Civ. Stat. Ann. Art. 1396 (Vernon 1997) (the "Act"), do hereby acknowledge that the following Articles of Amendment for the By-Laws of such corporation were duly adopted at a meeting of the Board of Directors held on February 12, 2007 and received the vote of a two-thirds majority of the directors in office, there being no members.

**ARTICLE III**

**Government**

**Section 2. Composition.** The Board of Directors shall consist of between twenty-one and twenty-five members who shall be selected in accordance with the Legal Services Corporation Act, the regulations promulgated thereunder, and the rules and regulations established by the Board. Board composition shall reflect the constituencies served by Texas RioGrande Legal Aid, Inc., including appropriate representation by geographical area and significant specially-funded target populations.

(i) **Removal of Directors.** A Board member may be removed for the following reasons:

- (i) unexcused failure to attend two successive meetings of the Board, provided that voting by mail ballot shall not be considered as attendance at a meeting;
- (ii) failure to discharge or comply with the member's fiduciary responsibilities to the Corporation; or
- (iii) violating any of TRLA's Policy Guidelines for Appropriate Conduct of Board Members.

will include the question of whether such *Director* should be removed. The Secretary shall also notify any Director in writing, at least seven (7) days in advance of the meeting, that the agenda for the next meeting of the board will include the question of whether such Director should be removed for alleged violations of such Director's fiduciary responsibilities to the Corporation or TRLA's policy guidelines for appropriate conduct of board members.

#### **ADDENDUM TO BYLAWS**

##### ***TRLA'S POLICY GUIDELINES FOR APPROPRIATE CONDUCT OF BOARD MEMBERS***

Board members of TRLA are expected to accept certain responsibilities, to adhere to acceptable standards of personal conduct while engaged in TRLA Board business, and to exhibit a high degree of professionalism and ethics at all times.

Types of behavior and conduct that TRLA considers inappropriate for its board members include, but are not limited to, the following:

1. Falsifying TRLA records.
2. Violating TRLA's nondiscrimination and/or sexual harassment policy while engaged in TRLA business.
3. Soliciting or accepting gifts or gratuities from TRLA clients in excess of minimal value.
4. Establishing a pattern of excessive absenteeism or tardiness to TRLA board meetings or other required functions.
5. Engaging in excessive, unnecessary, or unauthorized use of TRLA's supplies, particularly for personal purposes.
6. Reporting to any TRLA board meeting intoxicated or under the influence of illegal drugs.
7. Illegally manufacturing, possessing, using, selling, distributing, or transporting illegal drugs.
8. Using alcoholic beverages while engaged in TRLA business except where authorized.

**BYLAWS OF  
TEXAS RIOGRANDE LEGAL AID, INC.**

**ARTICLE I**

**Name and Purpose**

The name of this non-profit Corporation shall be Texas RioGrande Legal Aid, Inc. (the "Corporation"), the principal office shall be located at a place designated by the Board of Directors, and the purposes shall be those as set forth in its charter.

**ARTICLE II**

**Members**

Texas RioGrande Legal Aid, Inc., will have no members.

**ARTICLE III**

**Government**

Section 1. **Board of Directors.** The affairs of the corporation shall be managed and governed by a Board of Directors, constituted as hereinafter provided, which shall have the power to adopt such rules and regulations, and to establish such policies as they may deem necessary for the operation of the corporation.

Section 2. **Composition.** The Board of Directors shall consist of between twenty-one and twenty-five members who shall be selected in accordance with the Legal Services Corporation Act, the regulations promulgated thereunder, and the rules and regulations established by the Board. Board composition shall reflect the constituencies served by Texas RioGrande Legal Aid, Inc., including appropriate representation by geographical area and significant specially-funded target populations.

(a) **Designation.** Board composition ordinarily shall be determined at the annual meeting of the Board of Directors held during the fourth quarter of each calendar year. At such annual meeting the Board of Directors shall designate the organizations from which Board members are to be selected. The Executive Committee, or upon its failure to act, the President, shall provide written notice to all Board members at least ten (10) days prior to such annual meeting of a proposed plan for Board composition for the following year. Each designated organization shall notify the Board of its nominee within one-hundred and eighty (180) days of such designation and such nominee's appointment shall be confirmed by the Board promptly thereafter. Board composition shall not be altered or amended in such a manner as to limit the term of office of any Board member whose two-year term has not or will not expire as of the date of the annual meeting.

(b) **Representatives of the Poor.** Nine representatives of the poor shall be elected in a democratic fashion by organizations composed of eligible clients or organizations representing the interest of eligible clients. The initial allocation of representatives of the poor among the regions served by the Corporation shall be in accordance with the plan indicated by the table attached to these by-laws as Exhibit A. Each representative of the poor must be eligible for legal services from Texas RioGrande Legal Aid, Inc., under existing policies as of the date of his or her election.

(c) **Representatives of the Bar.** Fifteen representatives of the bar associations shall be selected according to procedures adopted by each such bar association. The initial allocation of representatives of bar associations among the regions served by the Corporation shall be in accordance with the plan indicated by the table attached to these by-laws as Exhibit A.

(d) **At-Large Representative.** One at-large representative may be elected to the Board in a democratic fashion by an organization designated for such purpose by the Board of Directors at its annual meeting. The organization electing such an at-large representative shall be one that provides services to, or is composed primarily of, eligible clients. It shall not be a requirement that the at-large representative be an eligible client or an attorney.

(e) **Vacancy In Office.** In case a vacancy in office occurs as to any member of the Board, the vacancy shall be filled by selection of a new member from the organization or group selecting the original member, and such new member shall be selected in accordance with the policies and procedures then in effect in such organization or group for the selection of Board members.

(f) **Certification.** An organization, group, or constituency authorized to elect or nominate representatives to the Board of Directors shall be notified of their right to elect or nominate representatives to the Board of Directors within ten (10) days after the annual meeting by the Board Secretary. Such organization, group, or constituency shall select a Board member before the next regularly scheduled Board of Directors meeting. If an organization, group or constituency has not selected a member by the next regularly scheduled meeting, then the Board of Directors may select another organization, group or constituency to select a new Board member.

(g) **Confirmation of Designees.** A duly authorized officer or agent of the designating organization shall submit to the President of the corporation a written notice of the designation of that organization's representative on the Board of Directors, which notice shall contain a brief biographical description of each designee touching upon his or her eligibility for Board membership under the Legal Services Corporation Act and regulations. At its next regular

or special meeting after receipt of such written designation, the Board of Directors shall determine whether the proposed representative meets the statutory and regulatory criteria or standards for membership and shall confirm or deny such representative for Board membership. If the designated representative is denied confirmation, the President shall state in writing the reasons for such denial to the officer or agent of the designating organization and shall request the organization to select another representative.

(h) **Term of Office.** All members of the Board of Directors shall serve two (2) year terms with twelve (12) members being selected in even-numbered years and thirteen (13) members being selected in odd-numbered years. The term of office for each director shall begin on the date of confirmation by the Board (as set forth in Subsection 2(a) hereof) and shall expire at the annual meeting held two (2) years after the annual meeting at which the director was nominated by his or her respective organization, except that any member whose successor in office has not been certified prior to the expiration of that member's term shall continue in office until a successor is certified.

(i) **Removal of Directors.** A Board member may be removed for the following reasons:

- (i) unexcused failure to attend two successive meetings of the Board, provided that voting by mail ballot shall not be considered as attendance at a meeting;
- (ii) failure to discharge or comply with the member's fiduciary responsibilities to the Corporation; or
- (iii) violating any of TRLA's Policy Guidelines for Appropriate Conduct of Board Members.

When a Director shall fail to appear at two (2) consecutive regular meetings of the board, the Secretary shall notify him in writing that the agenda for the next meeting of the board will include the question of whether such Director should be removed. The Secretary shall also

notify any Director in writing, at least seven (7) days in advance of the meeting, that the agenda for the next meeting of the board will include the question of whether such Director should be removed for alleged violations of such Director's fiduciary responsibilities to the Corporation or TRLA's policy guidelines for appropriate conduct of board members.

**Section 3. Meetings.** The Board of Directors shall meet at such times and places as it may direct, but regular meetings shall be held at least quarterly. The Board shall hold regular quarterly meetings on a date set by the Executive Committee, with a minimum of ten (10) days' written notice to each member. The regular meeting held in the fourth quarter of each year shall be designated the annual meeting of the Board of Directors. Special meetings may be called by the President of the Board of Directors, or by any five (5) members of the Board of Directors, by giving ten (10) days' notice in writing, by certified mail with return receipt requested, or by any verifiable electronic means, to each member of the Board. The purpose or purposes of any special meeting will be stated in the notice of such meeting.

The minutes which report the election of Directors shall give the address, telephone number, email address and fax number of each Director, and written notice of meeting as required above shall be given by mailing or emailing such notice to the address thus reflected in the minutes, unless the Board member concerned has substituted a later address.

**Section 4. Quorum.** A quorum at any regular meeting of the Board of Directors shall be one-third (1/3) of the members seated (but in no case less than seven (7) directors). A quorum at a special meeting of the Board of Directors shall be fifteen (15) members of the Board of Directors. Directors present by proxy or voting by mail-in ballot shall not count towards the presence of a quorum. In the absence of a quorum at any regular or special meeting, the matters submitted for consideration to the Board shall be delivered to all members, whether present or

absent, for determination by mail ballot in accordance with the procedures set forth in Subsection 8(c) below. Any Board member who fails to return a ballot within the time specified shall be deemed to have abstained from voting. A quorum shall not be necessary to pass a resolution authorizing this procedure except with respect to amendments to the Articles of Incorporation or By-Laws.

**Section 5. Meetings Conducted by Telephone Conference.** The Board of Directors or any committee thereof may conduct meetings by telephone, video, internet or similar communications equipment by which all persons participating in the meeting can hear each other. Participation in a meeting by means of conference telephone or similar equipment shall constitute presence in person at such a meeting for all purposes, including being counted toward the presence of a quorum.

**Section 6. Action Without a Meeting by Written Consent.** Any action required by law to be taken at a meeting of the Board of Directors or any committee thereof, or any action which may be taken at a meeting of the Board of Directors or any committee thereof, may be taken without a meeting, if a consent in writing, setting forth the action to be so taken, shall be signed, prior to the taking of such action, by the number of Directors necessary to take such action at a meeting at which all the Directors were present. A written consent signed by less than the requisite number of Directors is not effective to take the action that is the subject of the consent unless, within sixty (60) days after the date of the earliest dated consent, a consent or consents signed by the required number of Directors is delivered to the corporation. For purposes of this article, transmission by a Director of a facsimile, photocopy or similar reproduction of a writing signed by a Director, or transmission of e-mail, if allowed by law, shall be regarded as the Director having signed the original document.

Section 7. **Waiver of Notice of Meetings.** Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such a meeting, except where a Director attends a meeting for the express purpose of objecting, at the outset of the meeting, to the transaction of business because the meeting is not lawfully called or convened.

**Section 8. Voting.**

(a) All matters coming before the Board of Directors shall be decided by a majority vote of those members of the Board voting, except where the vote of a greater number is required by law or by these By-Laws. A vote of a majority of the members of the Board of Directors shall be required to amend the Articles of Incorporation of the corporation. A vote of two-thirds (2/3rds) of the members of the Board of Directors shall be required to amend these By-Laws.

(b) The Articles of Incorporation and the By-Laws shall not be amended except upon ten (10) days' written notice of the proposed amendments to all Directors, which notice shall include the existing provision, if any, and the proposed amendment.

(c) The Board of Directors, by special resolution, may authorize the Secretary to mail ballots describing amendments to these By-Laws or the Articles of Incorporation, including any report submitted by any Board member, by United States mail, certified mail, return receipt requested. Each member of the Board of Directors shall then cast his ballot within fifteen (15) days of the terminal date authorized for such mailing by the special resolution of the Board of Directors. After fifteen (15) days, the Executive Committee shall count and certify the results of said election to the President, who shall accordingly enter said results of record.

Section 9. **Committees and Delegation of Authority.** The President, with the approval of the Board of Directors, shall appoint such committees from its membership, including an executive committee, and the Board may delegate such authority as it shall deem proper to such committees. The Executive Committee shall be composed of the Corporation's elected officers and two (2) regular Board members, with the exception of the Secretary who will not serve on such committee. The Board of Directors may authorize any officer or officers, agent or agents of Texas RioGrande Legal Aid, Inc., in addition to those so authorized by these By-Laws, to enter into any contract or execute or deliver any instrument in the name of or on behalf of Texas RioGrande Legal Aid, Inc.

#### **ARTICLE IV**

##### **Officers**

Section 1. **Titles.** Texas RioGrande Legal Aid, Inc., shall have the following officers, who shall be elected by the Board of Directors: a President, a Vice-President, a Secretary, and a Treasurer, all of whom, except the Secretary, shall be selected from the representatives of the Board of Directors. The Executive Director shall also be an officer of the corporation, but not a member of the Board or the Executive Committee.

Section 3. **President.** The President shall be a member of the Board of Directors, and shall call, and preside at, meetings of the Board. The President, or any other officer or agent of the corporation authorized by the Board, may sign with the Secretary, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors may have authorized to be executed.

Section 4. **Vice-President.** The Vice-President shall be a member of the Board of Directors, and shall act in the absence or disability of the President, and, when so acting, shall have the power of and be subject to all restrictions imposed upon the President.

Section 5. **Secretary.** The Secretary, individually or through the agency of the Executive Director, shall issue the necessary notices of elections, shall keep minutes of all meetings, and shall have such other duties as these By-Laws direct.

Section 6. **Treasurer.** The Treasurer shall be selected from the Board of Directors. The Treasurer shall be the chairperson of the audit and finance committee and shall oversee the financial affairs of the corporation.

Section 7. **Executive Director.** The Executive Director is the chief executive officer of the Corporation and may also execute any deeds, mortgages, bonds, contracts or other documents or instruments on behalf of the Corporation. The Executive Director shall be an attorney licensed to practice before the Supreme Court of the State of Texas. The Executive Director shall be charged with implementing the policies and procedures established by the Board, shall be the full-time executive officer responsible for the operation of the corporation, and shall serve at the discretion of the Board of Directors.

Section 8. **Removal of Executive Director.** The Executive Director may only be removed at a regular or special meeting of the board of directors by a majority vote of the board of directors. The Executive Director may be removed with or without cause. The notice of the meeting must set forth that removal of the Executive Director will be considered and voted on at the meeting, and the cause, if any, for which the Executive Director is to be removed, or that (s)he is to be removed without cause. Any such meeting must be held in the city in which the Corporation maintains its principal office. Removal of the Executive Director shall be without prejudice to the contract rights, if any, of the Executive Director.

Section 9. **Removal of other Officers.** Any officer (other than the Executive Director) elected or appointed by the Board of Directors may be removed with or without cause by a

majority vote of the board of directors, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

~~Section 10. Term of Office. All officers of the corporation, except the Executive~~  
Director, shall have a term of one year, expiring March 31 annually or until such time as successors are appointed. Any vacancy which may occur for any reason may be filled by the Board of Directors for the unexpired portion of the term.

Section 11. **Bonds.** The Board of Directors may require bonds as it shall deem necessary for employees and officers of the corporation.

#### ARTICLE V

##### Indemnification of Directors and Officers

Section 1. The Corporation shall indemnify (which indemnification shall include, without limitation, advancing reasonable expenses) any person who is or was a Director or officer of the Corporation and may indemnify (which indemnification may include without limitation, advancing reasonable expenses) any person who is or was an employee, or agent of the Corporation (or any person who is or was serving at the request of the Corporation as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise) to the fullest extent required or permitted by applicable law. In addition, the Corporation shall have the power to indemnify (which indemnification shall include, without limitation, advancing reasonable expenses) to the fullest extent permitted by law such other persons as the Board of Directors may determine from time to time. The Corporation shall have the power to purchase and maintain at its expense insurance on behalf of such persons to the fullest extent permitted by applicable law, whether or not the Corporation would have the power to indemnify such person under the foregoing provisions. Any amendment to this Article VI shall be prospective and shall not reduce or eliminate the right of any person to indemnification

hereunder with respect to any act or failure to act occurring on or prior to the date of any such amendment.

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## ARTICLE VI

### Conduct of Texas RioGrande Legal Aid, Inc.

Section 1. **Audit.** A complete annual audit of the books and accounting records of the corporation shall be made by an independent certified public accounting firm recommended by the audit and finance committee of the Board of Directors.

Section 2. **Attorney-Client Relationship.** Nothing herein shall interfere with the attorney-client relationship existing between Texas RioGrande Legal Aid, Inc. attorneys and their clients. The Board shall establish broad policies governing the operation of the program, but shall not interfere with the delivery of legal services to any client of the corporation.

Section 3. **Practice of Law.** No attorney employed by Texas RioGrande Legal Aid, Inc. shall engage in any private practice of law during his or her employment by Texas RioGrande Legal Aid, Inc. except as provided for by the Legal Services Corporation Act.

Section 4. **Records.** The Executive Director shall maintain complete case and administrative records including financial records as required by the Board and the Treasurer, at the main office of the Corporation. Records of cases handled shall conform to forms and requirements established by the Legal Services Corporation and the Board of Directors.

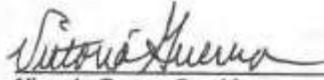
Section 5. **Clients.** Staff members shall take reasonable steps as required by the Board to determine whether applicants are qualified to receive legal assistance from Texas RioGrande Legal Aid, Inc., Guidelines for eligibility for this program shall be established, supplemented or modified from time to time by the Board of Directors. Standards will be administered flexibly, taking into account the debts and assets of the individual or family, and Texas RioGrande Legal

Aid, Inc. shall strive in all cases to insure that needy persons receive the help that they may be unable to find elsewhere.

~~Section 6. Withdrawal. Texas RioGrande Legal Aid, Inc. may withdraw from~~  
representation of a client under circumstances which, in the ordinary practice of law and under the Code of Professional Responsibility, would permit withdrawal.

APPROVED by a vote of the Board of Directors of Texas RioGrande Legal Aid, Inc. on the 26th day of September, 1970; amended on November 19, 1973; June 24, 1975; January 23, 1978; December 16, 1980; April 29, 1983, June 28, 1985; June 28, 1991; November 23, 2001; June 8, 2002, December 6, 2003, and on the 12th day of February, 2007.

ATTEST:

  
Victoria Guerra, President

TEXAS RIOGRANDE LEGAL AID, INC.  
Board of Directors

**ADDENDUM TO BYLAWS**  
***TRLA'S POLICY GUIDELINES FOR APPROPRIATE CONDUCT OF BOARD MEMBERS***

Board members of TRLA are expected to accept certain responsibilities, to adhere to acceptable standards of personal conduct while engaged in TRLA Board business, and to exhibit a high degree of professionalism and ethics at all times.

Types of behavior and conduct that TRLA considers inappropriate for its board members include, but are not limited to, the following:

1. Falsifying TRLA records.
2. Violating TRLA's nondiscrimination and/or sexual harassment policy while engaged in TRLA business.
3. Soliciting or accepting gifts or gratuities from TRLA clients in excess of minimal value.
4. Establishing a pattern of excessive absenteeism or tardiness to TRLA board meetings or other required functions.
5. Engaging in excessive, unnecessary, or unauthorized use of TRLA's supplies, particularly for personal purposes.
6. Reporting to any TRLA board meeting intoxicated or under the influence of illegal drugs.
7. Illegally manufacturing, possessing, using, selling, distributing, or transporting illegal drugs.
8. Using alcoholic beverages while engaged in TRLA business except where authorized.
9. Fighting or using obscene, abusive, or threatening language or gestures while engaged in TRLA business.
10. Stealing property from TRLA, TRLA employees, TRLA board members or clients of TRLA.
11. Having unauthorized firearms on TRLA premises or while on TRLA business.
12. Disregarding safety or security regulations while engaged in TRLA business.
13. Engaging in disrespectful or disruptive behavior while engaged in TRLA business.
14. Failing to maintain confidentiality of TRLA or TRLA's clients' information.
15. Violating any rules regarding conflicts of interest as set out in Article X, Section 9, Subsection I of the State Bar Rules.

**RESUME OF**

**DAVID G. HALL**  
**Executive Director**  
**Texas RioGrande Legal Aid, Inc.**  
300 South Texas Boulevard  
Weslaco, Texas 78596  
Telephone (956) 968-6574  
email: [dhall@trla.org](mailto:dhall@trla.org)

**Education**

University of Texas School of Law  
J.D. - 1969

University of Texas at Austin  
B.A., Government - 1964

**Employment**

Texas RioGrande Legal Aid, Inc.  
Executive Director  
April 1975 - present

American Civil Liberties Union Foundation  
Director, South Texas Project  
December 1972 - April 1975

United Farm Workers Organizing Committee, AFL-CIO  
National Farm Workers Service Center, Inc.  
Staff Attorney  
November 1968 - December 1972

Peace Corps Volunteer  
Community Development - Venezuela  
February 1966 - June 1968

**Bar Admissions**

Supreme Court of Texas  
September 1969

United States Supreme Court  
January 1975

United States Court of Appeals  
Fifth Circuit  
October 1981

United States District Court  
Southern District of Texas  
November 1970

United States District Court  
Western District of Texas  
September 1979

**Professional Associations & Organization Affiliations:**

Hidalgo County Bar Association  
Edinburg, Texas

State Bar of Texas  
Committee on Legal Services to the Poor in Criminal Matters  
1994 - present  
Committee on the Delivery of Legal Services to the Poor in Civil Matters  
1983 - 1987

Migrant Legal Action Program  
Washington, D.C.  
Board of Directors, 1973 - 1988  
President, 1975 - 1988

American Bar Association  
Chicago, Illinois

Texas Trial Lawyers Association  
Austin, Texas

American Civil Liberties Union  
New York City, New York

**Special Recognition and Awards**

Legal Legend: A Century of Texas Law and Lawyering. *Texas Lawyer* magazine's recognition as one of 100 Texas lawyers who shaped the state's legal history in the 20<sup>th</sup> century, June 2000

United Farm Workers of America, AFL-CIO, 1996. Recognition award presented by President Cesar Chavez for outstanding service to farm workers

Mexican American Legal Defense and Educational Fund, 1994. Award to an individual who has made a significant contribution to the Mexican-American community in Texas

John Minor Wisdom Public Service and Professionalism Award, American Bar Association, Section on Litigation, 1993

State Bar of Texas Legal Services Award, 1978

**JOSE GARZA**  
**Texas RioGrande Legal Aid, Inc.**  
**316 S. Closner**  
**Edinburg, Texas 78539**  
**956/383-5673**  
**FAX: 956/383-4688**

#### **EDUCATION**

St. Mary's University, School of Law, 1975-1978  
J.D., 1978

University of Texas at San Antonio, 1973-1975  
M.A. Education, 1975

Texas A & I University, 1971-1973  
B.S. Education, 1973

Del Mar College, 1969-1971

#### **WORK EXPERIENCE**

Texas RioGrande Legal Aid, Inc.  
Litigation Director  
April 1, 1998 - Present

Law Office of Jose Garza  
April 4, 1997 - April 1, 1998

Texas Rural Legal Aid, Inc.  
Litigation Coordinator  
November 1990 - July 1992  
July 1992 - January 1996 (part-time)  
April 1, 1997 - April 1, 1998 (part-time)  
Branch Manager, Laredo, Texas, Farmworker Division  
June 1978 - September 1979

Mexican American Legal Defense & Educational Fund, Inc.  
Acting Vice-President for Legal Programs  
January 1989 - May 1989  
Director, Political Access Project  
July 1986 - November 1990  
Regional Counsel and Director, Political Access Project  
September 1982 - December 1985  
Staff Attorney September 1979 - September 1982

September 1979 - September 1982

University of Texas, School of Law

Adjunct Professor, Voting Rights Seminar

Fall 1988, Fall 1989, Fall 1990, Fall 1992, Fall 1993, Fall 1994

St Mary's University, School of Law

Adjunct Professor, Voting Rights Seminar

Spring 1990, Fall 1992, Spring 1995

Texas Attorney General

Special Assistant

January 1986 - July 1996

**LITIGATION EXPERIENCE**

Practice primarily before the United States District Courts and United States Courts of Appeal. Experience includes trial preparation, (pleadings, discovery, witness and exhibit development), trial presentation and appellate advocacy. Supervise and monitor on-going litigation in various TRLA general program offices.

**ADMINISTRATIVE EXPERIENCE**

Review and approve litigation requests. Develop and participate with in-house training for TRLA staff. Evaluate and assist with development of TRLA staff. Assist with the recruitment of staff.

**OTHER WORK EXPERIENCE**

San Antonio Independent School District

Math Teacher,

Whittier Junior High School

1974 - 1975

Southside Independent School District

Bilingual Kindergarten Teacher,

Buena Vista Elementary School

1973-1974

**PROFESSIONAL ASSOCIATIONS**

Admitted, State Bar of Texas (November 1978)

Member, State Bar of Texas, Section on Hispanic Issues.

**Willacy County Indigent Defense Caseload & Expenditures, 10/1/05 - 9/30/06**

Felony	Misd	Juvenile	Caseload	Felony Added	Misd Added	Juvenile Added	Total Added	Felony Appointed	Misd Appointed	Juvenile Appointed	Total Appointed	
27	28	44	99	196	325	22	543	70	26	20	116	
Actual % appointed								35.7%	8.0%	90.9%	21.4%	
Expected at 90% rate								176	293	20	489	
Expenditures 2006												
								Assigned	\$ 20,650	\$ 1,100	\$ 6,575	Total \$ 28,325
								Contract	\$ 57,000	\$ 9,750		\$ 66,750
								Total	\$ 77,650	\$10,850	\$ 6,575	\$ 95,075

**Willacy County Indigent Defense Caseload & Expenditures, 10/1/04 - 9/30/05**

164	24	39	227	266	457	46	769	148	21	27	196	
Actual % appointed								55.6%	4.6%	58.7%	25.5%	
Expected at 90% rate								239	411	41	692	
Expenditures 2005												
								Assigned	\$ 11,800		\$10,325	Total \$ 22,125
								Contract	\$ 57,000	\$ 9,000		\$ 66,000
								Total	\$ 68,800	\$ 9,000	\$10,325	\$ 88,125

**Willacy County Indigent Defense Caseload & Expenditures, 10/1/03 - 9/30/04**

177	27	27	231	257	408	25	690					
Actual % appointed								0.0%	0.0%	0.0%	0.0%	
Expected at 90% rate								231	367	23	621	
Expenditures 2005												
								Assigned	\$ 52,223		\$16,320	Total \$ 68,543
								Contract	\$ 57,000	\$ 9,000		\$ 66,000
								Total	\$109,223	\$ 9,000	\$16,320	\$ 134,543

## Del Rio News-Herald

### Regional rural legal aid opens new office

By Jennifer Killin  
Del Rio News-Herald

Published August 5, 2006

A new office in Del Rio brings a new breed of legal aid to indigent defendants.

Opened May 1, 2006, the Texas RioGrande Legal Aid, Inc. (TRLA) Regional Public Defender Office, the first in the state, held a grand opening ceremony Friday afternoon to announce its establishment in Val Verde County.

TRLA has been in the Del Rio community since 1977 and in 29 years of service has created resources for families of low income, according to TRLA board member Diana Abrego.

Abrego, one of several to speak at Friday's event, became involved with TRLA as a client about 22 years ago when her mother was stricken with cancer and Abrego required assistance through the legal process of becoming her younger sister's guardian.

The regional public defender's office was born out of necessity after unfunded mandates from the state required counties to pick up the tab for legal defense in criminal cases for indigent defendants.

Val Verde County Commissioner Precinct 1 Ramiro V. Ramón led the movement to get the regional office in the county.

Ramón told the crowd of about 100 attorneys, judges and community leaders that costs incurred by the county for legal defense jumped from \$140,000 to nearly \$450,000 in a span of approximately four years.

County officials quickly realized they would need outside monetary assistance and Ramón led the way into acquiring a \$1.1 million grant for legal defense.

Leading the office in Del Rio, located on East 11th Street, is Joseph A. Cordova, who once served as in the federal public defender's arena in Laredo.

Cordova said he took the position with the regional office because he feels it is one of great importance to the community.

Rep. Pete P. Gallego, who serves on the Texas Equal Access to Justice board, also attended Friday's opening.

Gallego said that the great thing about being an American is the right to freedoms not known in other countries.

"It's also a fundamental right as an American that when you're accused of something, you have the ability to defend yourself," said Gallego.

Gallego also cautioned the public defender's leadership warning them not to let their guard down.

"You have a good thing here and you need to nurture and build it," said Gallego. "The legislation is a crisis management team and we lunge from one thing to another, don't let of lose sight (of your project)."

Gallego pledged his full support and presented the office with a Texas flag flown at the capital building in Austin in recognition of the Regional Public Defender's Office service to the community of Val Verde County.

Once the office reaches full capacity it will house five attorneys, two investigators and assist at least four surrounding counties.

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Admitted, United States District Courts for the Western, Southern, and Northern Districts of Texas, for the District of Colorado and the Northern District of California.

Admitted, United States Court of Appeals for the Fifth Circuit, D.C. Circuit and Tenth Circuit.

Admitted, United States Supreme Court.

Member, Hidalgo County Bar Association (1998)

## JOSEPH A. CORDOVA

1766 Champion Circle · Eagle Pass, Texas 78852 · (830)757-8307 (home); (830) 513-0605 (cell)  
902 E. 11<sup>TH</sup> Street · Del Rio, Texas 78840 · (830) 774-9601

### EMPLOYMENT

CHIEF PUBLIC DEFENDER <i>Texas RioGrande Legal Aid</i> Regional Public Defender Office	YEARS EMPLOYED (MAY 2006 - PRESENT) <i>Del Rio, Texas</i>
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I am currently responsible for supervising a staff of two attorneys, two investigators and a secretary as well as maintaining a full caseload of varying degrees of felony and misdemeanor cases. (When the office is fully staffed I will be responsible for supervising four attorneys, two investigators and a secretary.) Additionally, I consult with panel attorneys concerning criminal defense and mental health issues in criminal defense practice. I also bring together speakers for CLE in the areas of Mental Health, Appeals and general criminal defense issues. I am responsible for mentoring and assigning cases to the assistant public defenders. I am also responsible for maintaining a strong working relationship between clients, court staff, County and District Attorneys, and personnel at jails and detention centers in Val Verde, Edwards, Terrell and Kinney Counties.

ASSISTANT FEDERAL PUBLIC DEFENDER <i>Federal Public Defender's Office</i> <i>Western District of Texas</i>	YEARS EMPLOYED (2000 – MAY 2006) <i>Del Rio, Texas</i>
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ASSISTANT FEDERAL PUBLIC DEFENDER <i>Federal Public Defender's Office</i> <i>Southern District of Texas</i>	YEARS EMPLOYED (1998 - 2000) <i>Laredo, Texas</i>
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My practice involved court appointed representation of indigent defendants charged with federal criminal offenses in the Southern and Western Districts of Texas. I was lead counsel in several thousand cases between 1998 and 2006, and co-counsel in many others as well. My work required that I be skilled in handling federal, state, immigration and international law issues, and that I be fluent in English and Spanish. I handled all aspects of trial litigation, but did not handle appeals.

ATTORNEY AT LAW <i>Law Office of Joseph A. Cordova</i>	YEARS EMPLOYED (1992 - 1998) <i>Oklahoma City, OK &amp; San Antonio, Texas</i>
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My practice involved representing retained and indigent clients by appointment of the courts, in the areas of Criminal Defense (Federal and State). My practice also involved Personal Injury and Family Law cases.

### EDUCATION

JURIS DOCTOR <i>Oklahoma City University School of Law</i>	YEARS ATTENDED (1989 - 1992) <i>Oklahoma City, Oklahoma</i>
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B.A., PUBLIC JUSTICE <i>St. Mary's University</i>	YEARS ATTENDED (1987 - 1989) <i>San Antonio, Texas</i>
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## ACTIVITIES & LICENSES

- Admitted in the following Bar Associations:
  - State of Texas, November 1993
  - State of Oklahoma, September 1992 - December 1994
  - Western District of Oklahoma, September 1992
  - Western District of Texas, March 1993
  - Southern District of Texas, July 1998
  - 5<sup>th</sup> Circuit Court of Appeals, April 1999
  - Federal Bar Association, Del Rio, Texas 2005 - Present
  - Texas Criminal Defense Lawyers Association - Member since 2006.
- Trial Practice Institute - National Criminal Defense College at Macon, Georgia - 1999.
- Lecturer on Immigration Consequences of Criminal Convictions - 2004.

## SKILLS

- Fluent in the Spanish language
- Computer Literate.

## JEROME WESEVICH

1131 Texas Avenue • El Paso, Texas 79901 • [jwesevich@zrla.org](mailto:jwesevich@zrla.org) • (915) 585-5100

### EXPERIENCE

LITIGATION COORDINATOR  
*Texas RioGrande Legal Aid* 1993–1997 AND 2001–PRESENT  
*El Paso, Austin, and Weslaco, Texas*  
Manage federal and state litigation for people who meet federal poverty guidelines. Cases focus on employment issues faced by migrant farm workers and other low-wage workers, and civil rights of persons accused of crime. Recently concluded major litigation against FEMA resulting in improved procedures for determining long-term housing eligibility, and against the U.S. Department of Labor resulting in improved training options for NAFTA-dislocated workers who are limited in English proficiency. Helped craft Texas's Fair Defense Act of 2001; now assist in implementation and enforcement of this key civil rights law. Current efforts include improving farmworker housing and preventing improper uses of criminal records.

STAFF COUNSEL 1999–2001  
*United States Senate Health, Education, Labor and Pensions Committee* Washington, D.C.  
While Senator Kennedy chaired the committee, covered tax, budget, energy, legal liability, early childhood development, hunger, welfare reform, HIV, and juvenile justice issues. Major efforts on the 2001 Tax Reform Reconciliation Act, the Patients' Bill of Rights (passed the Senate in July 2001), responses to February 2000 price spikes in the heating oil market, food stamp improvement, early childhood development legislation, and three Labor-HHS appropriations bills.

STAFF COUNSEL 1998–1999  
*National Prison Project of the American Civil Liberties Union* Washington, D.C.  
Conducted § 1983 litigation to improve medical care for HIV-positive prisoners in Alabama and Mississippi, and preventing unnecessary segregation. Helped draft a *certiorari* petition on whether a theoretical possibility of HIV-transmission may pose a "significant risk" of harm under the Rehabilitation Act. Published a case-law newsletter on the Prison Litigation Reform Act.

ASSOCIATE GENERAL COUNSEL 1997  
*International Brotherhood of Teamsters* Washington, D.C.  
Settled an unfair labor practice charge for 75 minimum-wage couriers. Collaborated with several unions in drafting a complaint under NAFTA's labor side agreement calling attention to health and safety issues in Mexican auto-parts plants—the first such complaint to result in ministerial consultations. Wrote administrative opinions on internal union discipline matters.

LAW CLERK TO THE HONORABLE THOMAS M. REAVLEY 1990–1993  
*United States Court of Appeals for the Fifth Circuit* Austin, Texas  
Wrote memoranda synthesizing briefs and recommending dispositions in hundreds of cases. Researched and drafted 50 published decisions including: whether a law reinstating time-barred claims usurps judicial authority to enter final judgments; how abrogation of treaty responsibilities figures in judicial interpretation of statutory language; and whether federal law exempts Native Americans from state restrictions on peyote use. Drafted orders for annual district-court docket. Analyzed legislation affecting courts when Judge Reavley chaired the Judicial Conference Committee on Federal-State Jurisdiction. Coauthored publications: *Place-of-Injury as a Federal Solution to Choice of Law in Single-Accident Mass-Tort Cases*, 71 TEX. L. REV. 1 (1992); *"Daubert" and Evaluating Reliability in Scientific Testimony*, 33 PROD. SAFETY & LIAB. REP. 19 (BNA 1993).

### EDUCATION

JURIS DOCTOR, *Cum Laude*, University of Texas School of Law Austin, Texas, 1990  
Texas Law Review, Outstanding Assoc. Editor, Order of the Coif, Am. Jur. Award for Constitutional Law, Criminal Defense Clinic, Teaching Assistant for Constitutional Law (P. Bobbit) and Professional Responsibility (A. Burton), Law Review Note on Extraterritorial Searches & Seizures by U.S. Officials, Seminar Paper for Admiral Bobby Ray Inman on Congressional Oversight of Intelligence Operations. Admitted to practice law in New Mexico, Texas, D.C., and a half-dozen federal courts.

BACHELOR OF SCIENCE IN ELECTRICAL AND COMPUTER ENGINEERING, *Cum Laude*, University of Texas Austin, Texas, 1987  
ECE Honor Society, IBM Scholarship, *Daily Texan* Columnist, U.S.-Latin Am. Relations Paper on the Boland Amendment.

### PERSONAL

Wife Emilie is a New Mexico pediatrician, and our main joy is parenting our daughter and two sons.  
Board Service: Equal Justice Center, Texas Criminal Justice Reform Coalition, and Annunciation House.  
Moderately fluent in Spanish and computer languages; other interests include music, reading, running, skiing, and hiking.

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 02/16/2006
PRODUCER (214)269-1560 Allied Insurance Agency 8214 Westchester Drive Suite 420 Dallas, TX 75225	FAX (214)691-1622	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Texas RioGrande Legal Aid, Inc. 300 S. Texas Blvd. Weslaco, TX 78596		
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: Valley Forge Insurance Company		
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

**COVERAGES**  
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L TR (INSR)	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	2084629120	02/17/2006	02/17/2007	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC.				
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	2084629120	02/17/2006	02/17/2007	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	DAMAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE	2048181139	02/17/2006	02/17/2007	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	DEDUCTIBLE RETENTION \$				
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	2090753027	08/01/2006	08/01/2007	WE STATU-TORY LIMITS <input type="checkbox"/> CH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
The City of Austin, Travis County, and Front Steps are listed as additional insureds and a waiver of subrogation is provided in favor of the City of Austin and Travis County in regards to General and Auto Liability and Workers Compensation. Location: 500 E. 7th Street, Austin, TX

<b>CERTIFICATE HOLDER</b>  City of Austin HHSD Valerie Simms P.O. Box 1088 Austin, TX 78767	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 09/14/2006
PRODUCER (214)269-1560 Allied Insurance Agency 8214 Westchester Drive Suite 420 Dallas, TX 75225	FAX (214)691-1622	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Texas RioGrande Legal Aid, Inc. 300 S. Texas Blvd. Weslaco, TX 78596		
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: Valley Forge Insurance Company		
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

**COVERAGES**  
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADDP	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROD. SECT. <input type="checkbox"/> LOC.	2084629120	02/17/2006	02/17/2007	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA. ACCIDENT) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	2084629120	02/17/2006	02/17/2007	COMBINED SINGLE LIMIT (EA accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE \$ RETENTION \$	2048181139	02/17/2006	02/17/2007	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	2090753027	08/01/2006	08/01/2007	W/C STATUTORY LIMITS   OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Certificate Holder is named as additional insured and a waiver of subrogation is provided in favor of certificate holder for general liability and workers compensation.

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
Travis County Health & Human Services & Veterans Service 314 W. 11th Street Room 400 Austin, TX 78701	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE

## Appendix D: Willacy County Attorney Fee Schedule

### WILLACY COUNTY FEE SCHEDULE

**\*Vouchers should be itemized on an .1 hour basis**

	Miscd.	SJF, 3 <sup>RD</sup>	2 <sup>ND</sup>	1 <sup>ST</sup>
Initial Jail Visit	\$70	\$70	\$70	\$70
Trial/Court Hearing (Hourly Rate)	\$70	\$70	\$70	\$70
Out-of-Court Time (Hourly Rate)	\$40	\$40	\$40	\$40
*Need prior approval to exceed 30 hours on regular felonies				
Flat Fee for Pleas	\$150	\$200	\$250	\$350
Flat Fee for MTR's	\$150	\$200	\$250	\$350

For rules regarding multiple cases and multiple counts, see the attached Guideline #s 15, 16, and 17.

### CAPITAL DEATH PENALTY CASES

Hourly Rate	1 <sup>st</sup> Chair	\$200
	2 <sup>nd</sup> Chair	\$150
Flat Fee for Pleas	1 <sup>st</sup> Chair	\$3,000
	2 <sup>nd</sup> Chair	\$2,500

<u>Appeals and P.D.R.s:</u>	<u>Investigator</u>	<u>Fees</u>	<u>With</u>	<u>Prior</u>
<u>Approval</u>				
Regular Felonies:	out of court:	SJF, 3 <sup>rd</sup>	\$40/hour	SJF, 3 <sup>rd</sup> Up to \$300
		2 <sup>nd</sup>	\$40/hour	2 <sup>nd</sup> Up to \$500
		1 <sup>st</sup>	\$40/hour	1 <sup>st</sup> Up to \$750

in-court:	\$70/hour	Capital Up to \$1500
*cap of:	\$3,500	

See the attached Guidelines for the Fee Schedule for more information, including Guideline #12 regarding expert and investigative expenses.

## **Appendix E: Willacy County Attorney Fee Schedule Guidelines**

### **GUIDELINES FOR THE FEE SCHEDULE**

1. No claim will be paid unless properly submitted within one year of the final disposition.
2. All dismissals will be paid on an hourly basis only, unless there are multiple cases. See Guideline #16.
3. When it becomes necessary for the Court to appoint an attorney to advise and counsel a witness whose own testimony might subject that witness to potential criminal liability, counsel will be entitled to compensation at the hourly rate which would be payable if counsel had been appointed to represent the defendant in the case on trial.
4. Attorneys handling waiver pleas will be paid as if the case had been indicted.
5. According to Article 26.05(c) of the Code of Criminal Procedure, this fee schedule takes into consideration reasonable and necessary overhead costs.
6. Request for prior approval to exceed the maximum stated out-of-court hours and/or the maximum stated investigator fees must be filed in the appropriate court and set out the need to exceed the maximum and a justification of the cost. Extraordinary circumstances must be presented in order to obtain Court approval.
7. If an attorney chooses to be paid a flat fee for a plea, an additional \$70.00 may be paid for the initial jail visit, if in person.
8. An itemization sheet must be attached showing detailed hours worked if the attorney is being paid on an hourly basis.
9. If the County Auditor's Office detects simple mathematical errors in a pay voucher, it will compute the voucher and pay it out based on the auditor's office calculations.
10. A copy of your brief must be attached to your voucher for payment on an appeal.
11. A voucher must be submitted for payment on any case.
12. Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court may order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable expenses will not be approved. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.

13. On a capital murder case, if an attorney anticipates exceeding 100 hours of out-of-court time, he/she must notify the court when they have reached 100 hours and provide the court with an up-to-date itemization form for the time already spent. On presentation of a claim for payment, the court shall order payment of counsel for all out-of-court time, if the time spent was reasonably necessary and reasonably incurred. Unreasonable claims will not be approved.
14. When an appointment is made on an appeal, it is expected that the attorney receiving the appointment and signing the voucher actually did the research and wrote the brief. If another person assisted the attorney of record, the voucher must reflect that person's name, the work performed by that person, and the amount, if any, that person was paid or promised for their services.
15. A voucher combining hourly itemizations and flat fees on multiple cases/multiple counts will not be approved. An attorney must submit a voucher based on flat fees alone, or hourly itemizations alone, and no combination of the two is acceptable.
16. For multiple cases, including indictments, MTRs, information on waiver pleas, and/or any combination of these, you may either choose to submit an itemized voucher or be paid a flat fee for the highest degree case, whatever the disposition of that case.
17. For one indictment with multiple counts, you may either itemize or choose to be paid one flat fee.

## **Appendix F: Willacy County Indigent Defense Plan**

### **Willacy District and County Courts Plan Prompt Magistration**

*1/21/2011*

Conduct Prompt and Accurate Magistration Proceedings

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#### **A. Arresting Officer Responsibilities**

i. The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested.

ii. Unless arrested pursuant to an arrest warrant, bench warrant, *capias*, or other order of a magistrate or judge, necessary forms establishing probable cause must be completed and filed at the time an arrestee is booked into jail for any felony or misdemeanor punishable by incarceration.

#### **iii. Release of defendants arrested without warrant**

1. A person arrested for a misdemeanor without a warrant and who is detained in jail must be released not later than the 24th hour after arrest, on a bond in an amount not to exceed \$5,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense.
2. A person arrested for a felony without a warrant and who is detained in jail must be released not later than the 48th hour after arrest, on a bond in an amount not to exceed \$10,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense.
3. If requested by the state, a magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest if a

probable cause determination has not been made, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

#### B. Magistrate Duties

- i. At the Magistrate's hearing, the magistrate should determine if accused can speak and understand English, or if the defendant is deaf.
- ii. After making such determination, the magistrate shall, in an appropriate manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, do the following:
  1. Advise the accused of the accusation against him/her and any affidavit filed therewith;
  2. Admonish the accused of:
    - a. The right to retain counsel;
    - b. The right to remain silent;
    - c. The right to have an attorney present during any interview with peace officers or attorneys representing the state;
    - d. The right to terminate an interview at any time;
    - e. The right not to make a statement and that any statement made by the accused may be used against him/her; and
    - f. The right to an examining trial.
  3. Inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel.
  4. Inquire as to whether accused is requesting that counsel be appointed.

5. Provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the accused at the time of the magistrate's hearing.
6. If the magistrate has reason to believe the accused is not mentally competent, the magistrate shall enter a request for counsel on behalf of the accused. Such a request will alert the appointing authority that counsel competent to represent mentally ill persons should be appointed.

iii. In cases where the individual was arrested without an arrest warrant, bench warrant, *capias*, or other order of magistrate or judge, the magistrate shall determine if there is probable cause to believe the person committed the offense.

1. If probable cause has not been determined by a magistrate:
  - a. A person arrested for a misdemeanor must be released on bond, in an amount not to exceed \$5,000, not later than 24 hours after the person's arrest.
  - b. A person arrested for a felony must be released on bond, in an amount not to exceed \$10,000, not later than 48 hours after the person's arrest.
  - c. If requested by the state, the magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

iv. The magistrate shall set the amount of bail and any conditions of bond for the accused, if bail is allowed by law and has not been set by the court or magistrate issuing a warrant.

v. The magistrate shall record the following:

1. The date and time the accused was arrested and the date and time when he/she was brought before the magistrate.
2. Whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel.
3. Whether the accused requested appointment of counsel

vi. If the magistrate is not authorized to appoint counsel and if the accused requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the magistrate form and any other forms requesting appointment of counsel to Judge Migdalia Lopez. The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel.

vii. If the magistrate is authorized to appoint counsel, the magistrate shall make a determination of indigence and appoint counsel if the defendant is indigent within three working days unless the County has a U.S. Census population over 250,000, in which case counsel shall be appointed within one working day.

viii. If a request for counsel was made at magistration, the appointing authority shall forward the magistrate form and any other forms requesting appointment of counsel to the appropriate clerk to be put into the case file.

ix. If a request for counsel was not made at magistration, the magistrate will forward the magistrate form to the clerk to be put into the case file.

### **Indigence Determination Standards**

*2/11/2011*

#### Determination of Indigence for Adults-Primary+Net Income Test

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##### A. Definitions, as used in this rule:

i. “Indigent” means a person who is not financially able to employ counsel.

ii. “Net household income” means all income of the accused and spousal income actually available to the accused. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the accused has no income or lesser income.

iii. “Household” means all individuals who are actually dependent on the accused for financial support.

iv. “The cost of obtaining competent private legal representation” includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

## B. Eligibility for Appointment

i. An accused is presumed indigent if any of the following conditions or factors are present:

1. At the time of requesting appointed counsel, the accused or accused’s dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
2. The accused’s net household income does not exceed 100% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register;
3. The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought; or

ii. An accused who does not meet any of the standards above shall nevertheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused’s dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:

1. the nature of the criminal charge(s),

2. anticipated complexity of the defense,
3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
4. the amount needed for the support of the accused and the accused's dependents;
5. accused's income,
6. source of income,
7. assets and property owned,
8. outstanding obligations,
9. necessary expenses,
10. the number and ages of dependents, and
11. spousal income that is available to the accused.

iii. Factors NOT to be considered in determining indigence:

1. The accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent.
2. The resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent.

iv. Only the accused's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. Indigence Proceedings:

- i. The appointing authority can require the accused to respond to questions about the accused's financial status, produce documentation supporting

financial information provided, and/or order a court official to verify financial information provided.

ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:

1. Determining if accused is (or is not) indigent; or
2. Impeaching direct testimony of accused regarding the accused's indigence.

iii. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in Parts I and IV of these rules and contained in Code of Criminal Procedure article 1.051.

iv. An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused's financial circumstances occurs.

1. An accused's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the accused, the accused's attorney, or the attorney representing the state. The accused's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:

- a. Evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or

- b. Additional information regarding the accused's financial circumstances that shows that the accused does not meet any of the standards for indigence contained in these rules.
2. If an accused previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.
- v. If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

### **Minimum Attorney Qualifications**

*2/11/2011*

#### Adult Minimum Attorney Qualifications for Adults (Small Sized Counties)

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- A. The Judges hearing criminal cases shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists. To be eligible for an appointment list, an attorney must meet the following minimum requirements:
- i. Misdemeanor Qualification Requirements:
    - 1. All attorneys on the appointment list must ensure all information on their application is correct;
    - 2. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;

3. An attorney shall complete a minimum of 6 hours of CLE in the area of criminal law and procedure each year. All attorneys on the appointment list must file a certificate with the court administration office each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in criminal law. Continuing legal education activity completed with-in a one year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum of 6 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;
4. An attorney must maintain an office capable of receiving email, fax, and telephone calls;
5. An attorney must have the ability to produce typed motions and orders;
6. An attorney shall notify the court administration office promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.
  - ii. State Jail and Third Degree Felony Case Qualification Requirements
1. An attorney must meet general requirements for misdemeanor appointments
  - iii. First and Second Degree Felony Case Qualification Requirements

1. An attorney must meet the general requirements for State Jail and Third Degree Felony appointments.

iv. Capital Case Qualification Requirements:

1. Lead trial counsel must be on the list of attorneys approved by the local selection committee of this Administrative Judicial Region for appointment as lead counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
2. Second chair counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as lead trial counsel or second chair counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
3. Appellate counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as appellate counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.

v. Appeal Qualification Requirements - An attorney must meet at least one of the following criteria:

1. Be currently board certified in criminal law by the Texas Board of Legal Specialization; or
2. Have personally authored and filed at least three criminal appellate briefs or post-conviction writs of habeas corpus; or

3. Have submitted an appellate writing sample approved by a majority of the judges; or
4. Have worked as a briefing clerk of an appellate court for a period of at least one year.

B. Approval for Appointment Lists

- i. Misdemeanor List – An attorney must be approved by a majority of the Statutory County Court Judges hearing criminal cases.
- ii. State Jail and Third Degree Felony, First and Second Degree Felony List, Capital Case List, and Appeal List - An attorney must be approved for each list by a majority of the District Court Judges hearing criminal cases.

C. Removal from Appointment List - The judges will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges.

D. Reinstatement to Appointment Lists

- i. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan.
- ii. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

E. Duties of Appointed Counsel - Appointed Counsel shall:

- i. Notify the court within 72 hours of the receipt of appointment;
- ii. Make every reasonable effort to:
  1. Contact the defendant by the end of the first working day after the date on which the attorney is appointed; and
  2. Interview the defendant as soon as practicable after the attorney is appointed;
- iii. Represent the defendant until:
  1. Charges are dismissed;
  2. The defendant is acquitted;
  3. Appeals are exhausted; or
  4. The attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.
- iv. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
- v. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
- vi. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
- vii. Be prepared to try the case to conclusion either with or without a jury;

viii. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;

ix. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case; and

x. Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case; and

xi. Perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics.

xii. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

### **Prompt Appointment of Counsel**

*1/21/2011*

Appoint Counsel Promptly for Adults (Population Less than 250,000)

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#### A. Prompt Appointment of Counsel

i. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the third working day after the date on which the appointing authority receives the defendant's request for court appointed counsel. Working day means Monday through Friday, excluding official state holidays. Counsel must be appointed whether or not a case has been filed in the trial court.

ii. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

iii. Appointment Authority

1. If no case has been filed in the trial court, the appointing authority for misdemeanors is: County Judge John Gonzales
2. If no case has been filed in the trial court, the appointing authority for felonies is: Judge Migdalia Lopez
3. If the case has been filed in the trial court, the appointing authority is: the trial Judge.

B. Defendants Appearing Without Counsel - If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement:

i. The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.

ii. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant:

1. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
2. Waived or has waived the opportunity to retain private counsel.
  - iii. The attorney representing the state may not:
    1. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or
    2. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:
      - a. Has been given a reasonable opportunity to retain counsel; or
      - b. Waives or has waived the opportunity to retain private counsel.

#### C. Waiver of the Right to Counsel

- i. A defendant may voluntarily and intelligently waive the right to counsel.
- ii. A waiver obtained in violation of section IV.B above is presumed invalid.
- iii. If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which,

if signed by the defendant, shall be filed with and become part of the record of the proceedings.

“I have been advised this \_\_\_ day of \_\_\_\_, 2\_\_\_, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”

iv. A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

### **Attorney Selection Process**

*2/16/2011*

#### Attorney Selection Process for Adults (Rotation)

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The public defender will be appointed to all indigent cases in which there is no conflict requiring withdrawal. Conflict cases will be appointed on a rotating basis to attorneys on the appointment list.

- A. The appointing authority will identify which of the appointment lists, discussed in the Section III (attorney qualifications), is most appropriate based on the accusations against the defendant and will appoint the attorney whose name is first on the list, unless the court

makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:

- i. The defendant requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients' language, if one is available;
- ii. The defendant has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case; or
- iii. Other good cause exists for varying from the list.

B. Once appointed, an attorney's name will be moved to the bottom of the appointment list. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

C. Judicial Removal from Case:

- i. The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:
  1. Counsel's failure to appear at a court hearing;
  2. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
  3. Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;

4. Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;
5. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
6. The defendant requests an attorney, other than trial counsel, for appeal; or
7. The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.
  - ii. Appointment of Replacement Counsel - Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

### **Fee and Expense Payment Process**

*1/4/2010*

#### Fee and Expense Payment Process for Adults

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- A. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the judges hearing criminal cases in the county.
- B. Payment Process: No payment of attorney's fees will be made other than in accordance with the rules set forth below.
  - i. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered.
  - ii. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.

1. If a judge disapproves a request for compensation, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.
2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60<sup>th</sup> day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.

C. Payment of Expenses:

i. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth below. Whenever possible prior court approval should be obtained before expenses are incurred.

ii. Procedure With Prior Court Approval:

1. Appointed Counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state the below, as applicable:
  - a. The type of investigation to be conducted or the type of expert to be retained;
  - b. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and

- c. An itemized list of anticipated expenses for each investigation and/or each expert.
2. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:
  - a. State the reasons for the denial in writing;
  - b. Attach the denial to the confidential request; and
  - c. Submit the request and denial as a sealed exhibit to the record.
- iii. Procedure Without Prior Court Approval: Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

### **Plan Documents**

Willacy District and County Court Attorney Fee Schedule.docx (2/7/2011 11:12:22 AM) [view](#)  
Willacy District and County Court Attorney Fee Voucher.pdf (2/7/2011 11:11:24 AM) [view](#)  
Willacy District and County Court Guidelines for the Fee Schedule.docx (2/7/2011 11:11:58 AM) [view](#)



**JOHN F. GONZALES JR.**  
**WILLACY COUNTY JUDGE**

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Responses to conclusions to Texas Indigent Defense Commission's Evaluation of the Willacy County Public Defender Program.

County Judge John F. Gonzales Jr. met with TRLA to discuss the conclusions of the above referenced audit.

Conclusion 2: TRLA will be coordinating with County Auditor to reconcile the budget categories to ensure fair and accurate carryover accounting.

Conclusion 3: TRLA will submit an amended budget to the county under this contract that contains the same categories as the accounting system.

Conclusion 4: County and TRLA will reconcile the program budget in the contract.

Conclusion 5: County and TRLA will reconcile wage and FTE attribution with the contract.

Conclusion 6: TRLA will ensure that overtime paid is attributable to the operation of the Willacy County PDO.

Conclusion 7: TRLA will ensure that they comply with the nature of "non-case related" work.

Conclusion 8: Willacy will begin regular meetings of the oversight board.

Conclusion 9: County and TRLA will work on reconciling maximum allowable caseloads under the agreement and monitor compliance.

Conclusion 10: County is currently considering alternative methods to manage the large caseload, including appointing local attorneys to a percentage of the case load.

Conclusion 14: County is cognizant of the magistrate warning procedure. We are currently meeting with all involved in the process to ensure strict compliance.

Conclusion 15: County is working with district judge office to comply with documentation of appointed attorneys.

Conclusion 16: County will hold regular meetings with all involved to ensure continued compliance and timeliness of Article 15.17 hearings.

In finality, the County has put in place a more systematic record keeping and contract monitoring system to ensure continued compliance. Prior to January 2011, the County did not have a county court department, but has created one. This department has been given the responsibility to ensure compliance of the program.

John F. Gonzales Jr.  
Willacy County Judge