

Panhandle Criminal Defense Lawyers Association

May 5, 2016

Texas Indigent Defense
Commission

Wesley Shackelford, Deputy Director

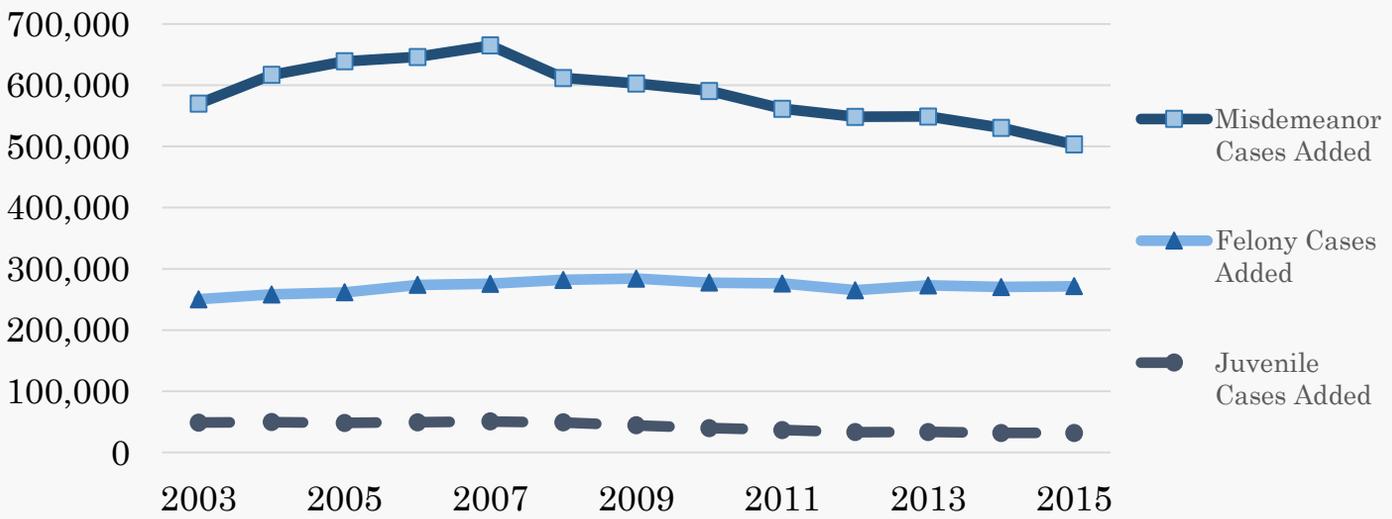


By the Numbers:

Trends, Funding, Caseloads

Case Filings Declining in Recent Years

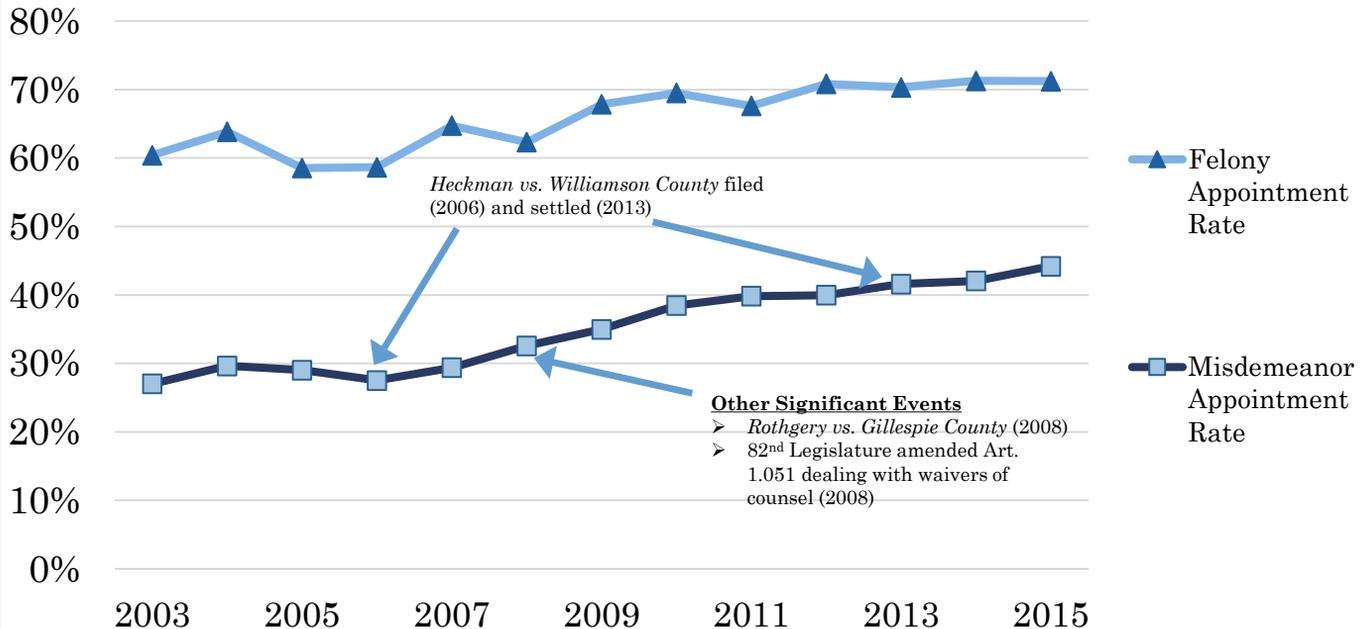
From 2003 to 2007 case filings increased, but since 2007, total new cases have fallen by 19% (especially noticeable in misdemeanor cases).



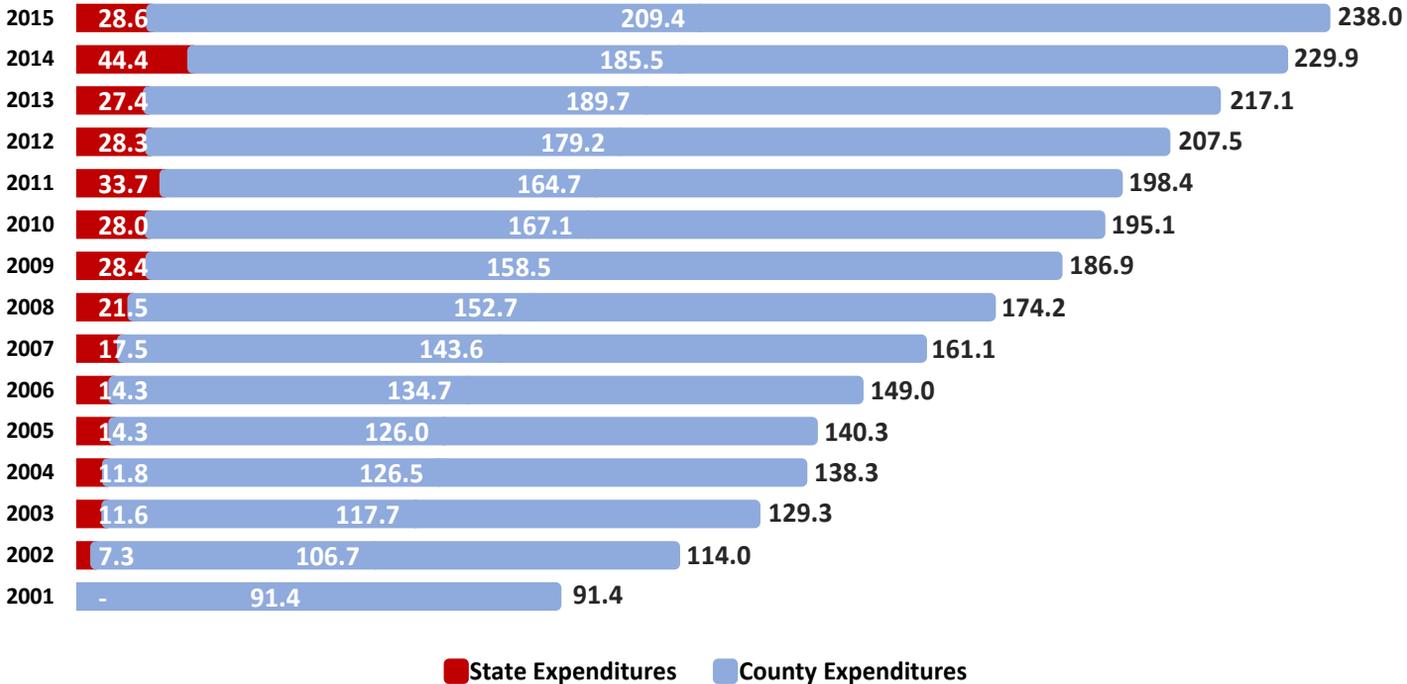
Office of Court Administration Statistics.

According to national statistics, violent crime has been decreasing since 2000.
(http://www2.fbi.gov/ucr/cius2009/offenses/violent_crime/index.html)

While Case Filings Have Decreased, Appointment Rates Have Increased



Indigent Defense Expenditures (in millions) by Fiscal Year



Randall County Data Sheet

Category	Texas 2015	2015	2014	2013	2012	2011	2001
Population (Non-Census years are estimates)			127,754	127,618	125,225	120,725	106,169
Felony Charges Added (from OCA report)	271,744	1,084	1,177	1,297	1,267	1,133	
Felony Cases Paid	193,560	902	913	1,206	969	802	
% Felony Charges Defended with Appointed Counsel	71%	83%	78%	93%	76%	71%	
Felony Trial Court-Attorney Fees	\$110,036,405	\$614,297	\$614,877	\$592,346	\$627,047	\$606,787	
Total Felony Court Expenditures	\$126,091,674	\$642,406	\$678,353	\$639,944	\$657,491	\$638,234	
Misdemeanor Charges Added (from OCA report)	503,299	1,543	1,786	1,966	1,928	1,980	
Misdemeanor Cases Paid	222,408	209	252	281	186	175	
% Misdemeanor Charges Defended with Appointed Counsel	44%	14%	14%	14%	10%	09%	
Misdemeanor Trial Court Attorney Fees	\$39,141,724	\$88,792	\$102,241	\$121,970	\$81,913	\$73,435	
Total Misdemeanor Court Expenditures	\$40,061,131	\$92,427	\$103,041	\$123,595	\$82,273	\$73,494	
Juvenile Charges Added (from OCA report)	31,813	132	137	164	180	190	
Juvenile Cases Paid	41,068	195	169	141	151	150	
Juvenile Attorney Fees	\$11,072,434	\$94,675	\$102,300	\$90,075	\$93,950	\$83,763	
Total Juvenile Expenditures	\$11,747,908	\$95,713	\$102,300	\$90,075	\$94,279	\$83,952	
Total Attorney Fees	\$165,942,108	\$802,957	\$851,643	\$875,455	\$908,221	\$799,820	\$383,237
Total ID Expenditures	\$238,029,838	\$908,052	\$1,003,259	\$1,016,650	\$1,011,748	\$878,287	\$399,145
Increase In Total Expenditures over 2001 Baseline	168%	127%	151%	155%	153%	120%	
Total ID Expenditures per Population			\$8	\$8	\$8	\$7	\$4
Commission Formula Grant Disbursement	\$23,931,689	\$112,345	\$180,046	\$99,529	\$80,157	\$66,270	
Costs Recouped from Defendants	\$11,530,419	\$265,736	\$267,206	\$250,626	\$281,203	\$253,177	

Potter County Data Sheet

Category	Texas 2015	2015	2014	2013	2012	2011	2001
Population (Non-Census years are estimates)			124,872	123,626	122,754	121,073	114,299
Felony Charges Added (from OCA report)	271,744	2,005	2,394	2,182	2,218	2,431	
Felony Cases Paid	193,560	1,994	2,135	1,865	2,027	1,561	
% Felony Charges Defended with Appointed Counsel	71%	99%	89%	85%	91%	64%	
Felony Trial Court-Attorney Fees	\$110,036,405	\$1,061,886	\$1,164,653	\$990,845	\$1,181,708	\$1,084,051	
Total Felony Court Expenditures	\$126,091,674	\$1,153,583	\$1,228,551	\$1,070,323	\$1,278,815	\$1,181,733	
Misdemeanor Charges Added (from OCA report)	503,299	3,045	2,418	3,023	3,180	3,519	
Misdemeanor Cases Paid	222,408	542	555	699	718	538	
% Misdemeanor Charges Defended with Appointed Counsel	44%	18%	23%	23%	23%	15%	
Misdemeanor Trial Court Attorney Fees	\$39,141,724	\$207,529	\$198,663	\$266,084	\$261,515	\$240,041	
Total Misdemeanor Court Expenditures	\$40,061,131	\$209,714	\$199,391	\$267,978	\$263,236	\$242,852	
Juvenile Charges Added (from OCA report)	31,813	108	90	99	148	140	
Juvenile Cases Paid	41,068	204	156	134	131	187	
Juvenile Attorney Fees	\$11,072,434	\$73,938	\$52,800	\$43,194	\$65,125	\$62,325	
Total Juvenile Expenditures	\$11,747,908	\$74,386	\$53,862	\$43,194	\$65,125	\$62,325	
Total Attorney Fees	\$165,942,108	\$1,406,531	\$1,470,478	\$1,374,814	\$1,566,835	\$1,431,001	\$1,002,113
Total ID Expenditures	\$238,029,838	\$1,622,979	\$1,707,625	\$1,567,671	\$1,776,124	\$1,630,195	\$1,196,246
Increase In Total Expenditures over 2001 Baseline	168%	36%	43%	31%	48%	36%	
Total ID Expenditures per Population			\$14	\$13	\$14	\$13	\$10
Commission Formula Grant Disbursement	\$23,931,689	\$144,442	\$220,705	\$134,657	\$58,423	\$99,788	
Costs Recouped from Defendants	\$11,530,419	\$314,881	\$292,634	\$300,293	\$300,920	\$267,008	

Pro Se Misdemeanor Cases

One can estimate the number of misdemeanor cases going pro se with the following formula:

Cases Disposed (reported by clerks to OCA) – Cases Retained (reported by clerks to OCA) – Cases Paid (reported by auditors to TIDC)

Total Cases Disposed (October – September)

	FY 11	FY 12	FY 13	FY14	FY15
Deaf Smith	825	697	812	808	816
Potter	4,033	3,376	3,049	3,122	2,808
Randall	2,246	1,948	1,985	1,880	1,514
Statewide	589,324	558,450	561,141	523,598	513,049

Less

Total Cases Retained (October – September)

	FY 11	FY 12	FY 13	FY14	FY15
Deaf Smith	0	0	0	0	0
Potter	467	448	443	454	381
Randall	0	0	444	446	294
Statewide	169,813	178,659	178,706	167,789	168,607

Less

Total Cases Paid (October – September)

	FY 11	FY 12	FY 13	FY14	FY15
Deaf Smith	3	1	2	6	27
Potter	538	718	699	555	542
Randall	175	186	281	252	209
Statewide	223,663	219,147	228,357	223,043	222,408

Equals

Estimated Pro Se Misdemeanor Cases

	FY 11	FY 12	FY 13	FY14	FY15
Deaf Smith	822	696	810	802	789
Potter	3,028	2,210	1,907	2,113	1,885
Randall	2,071	1,762	1,260	1,182	1,011
Statewide	195,848	160,644	154,078	132,766	122,034

Percent Pro Se Misdemeanor Cases

	FY 11	FY 12	FY 13	FY14	FY15
Deaf Smith	99.6%	99.9%	99.8%	99.3%	96.7%
Potter	75.1%	65.5%	62.5%	67.7%	67.1%
Randall	92.2%	90.5%	63.5%	62.9%	66.8%
Statewide	33.2%	28.8%	27.5%	25.4%	23.8%

What is a Public Defender System (PD)?

- Defense services and representation by:
 - A county or state agency
 - Non-profit org'n under contract with the county
- Analogous to prosecutor's office on the defense side
- Attorneys are salaried employees
- Attorneys are full-time defense specialists

Average Attorney Fees Per Case

FY15	Assigned Counsel	Public Defender
Non-Capital Felony	\$651	\$515
Misdemeanor	\$208	\$209
Juvenile	\$394	\$301
Appeal	\$2,733	\$5,580

Potential Advantages of Public Defender Systems

- Predictable costs / easier to budget
- Systematic attorney training
- Systematic attorney supervision
- Systematic monitoring of attorney performance
- Systematic monitoring of attorney caseloads
- Ability to retain experienced attorneys
- Ability to fire less competent attorneys
- Reduced administrative burden on judiciary
- Resource for private bar and a structured voice for system improvement

Potential Risks with Public Defender Systems

- Substantial start-up costs
- Difficult to implement/justify in small counties
- A “Bad” Chief Public Defender can cause big problems
- Caseloads can become overwhelming
 - Creating disincentive to thorough representation
 - Leading to high staff turnover
- Could become politicized

What is a Contract Defender System?

- Many different variations
 - One private attorney or law firm contracts to handle all cases or a small number of attorneys or firms contract to handle a large block of cases
- May need a separate system for conflicts

Potential Advantages of Contract Defender System

- **Low administrative costs**
- **Costs are predictable / easy to budget**
- **Uses existing pool of attorneys**
- **Low startup costs**
- **Attorneys likely to be defense specialists**
- **Attorneys may be full-time indigent defense**

Potential Risks of Contract Defender System

- Can create economic incentive to dispose of cases too quickly
- Economic disincentive to
 - Investigate cases
 - Try cases
 - Utilize experts
- Can encourage a low-bid approach
 - Caseloads may then exceed original projections
- Usually no systematic training
- No systematic supervision
- No systematic monitoring of performance
- No systematic monitoring of caseloads
- Can become subject to favoritism or patronage

STATEWIDE OFFICE

Location	Program Name	Services	Year Est.	Address	Phone	AJR Regions	Participating Counties
Travis County	Office of Capital and Forensic Writs (effective 9/1/2015)	Capital Writs	2010	1700 N. Congress AVE STE 460 Austin 78701	512.463.8502		Statewide

REGIONAL PUBLIC DEFENDER OFFICES

Location	Program Name	Services	Year Est.	Address	Phone	AJR Regions	Participating Counties
Bee County	Bee County Regional PDO	Felony, Misdemeanor, Juvenile, Appellate	2009	331A N. Washington ST Beeville 78102 308 E. Harrison AVE Harlingen 78550	361.358.1925	4	(4) Bee, Live Oak, McMullen, Willacy
Bowie County	Bowie County Regional PDO	Felony, Misdemeanor	2008	424 W. Broad ST Texarkana 75501	903.792.2012	1	(2) Bowie, Red River
Lubbock County	Regional Public Defender for Capital Cases	Capital	2008	PO Box 2097 Lubbock 79408	806.775.5650	ALL	(162) RPDO Map (Nov. 2014)
Texas Tech University	Caprock Regional PDO	Felony, Misdemeanor, Juvenile, Appellate	2011	1802 Hartford Lubbock 79409	806.742.4312	7, 9	(11) Armstrong, Briscoe, Cochran, Dickens, Floyd, Hockley, Kent, King, Motley, Stonewall, Swisher

MANAGED ASSIGNED COUNSEL PROGRAMS

Location	Program Name	Services	Year Est.	Address	Phone	AJR Regions	Participating Counties
Collin County	Collin County Mental Health Managed Counsel Program	Felony Mental Health, Misdemeanor Mental Health	2013	2100 Bloomdale RD STE 10146 McKinney 75071	214.491.4805	1	Collin
Lubbock County	Lubbock Private Defender Office	Felony, Misdemeanor, Felony Mental Health, Misdemeanor Mental Health	2009	1504 Main ST Lubbock 79401	806.749.0007	9	Lubbock
Travis County	Capital Area Private Defender Service	Felony, Misdemeanor, Felony Mental Health, Misdemeanor Mental Health	2014	816 Congress AVE STE 700 Austin 78701	512.774.4208	3	Travis

COUNTY PUBLIC DEFENDER OFFICES

Location	Program Name	Services	Year Est.	Address	Phone	AJR Regions	Participating Counties
Bexar County	Bexar County Public Defender	Felony Appellate, Misdemeanor Appellate, Juvenile Appellate, Misdemeanor Mental Health	2005	101 W. Nueva ST STE 310 San Antonio 78205	210.335.0701	4	Bexar
Burnet County	Burnet County PDO	Felony, Misdemeanor, Juvenile	2012	1008 N. Water ST Burnet 78611	512.234.3061	3	Burnet
Cameron County	Cameron County Juvenile PDO	Juvenile	1999	2310 West HWY 77 San Benito 78586	956.399.3075	5	Cameron
Colorado County	Colorado County Public Defender	Felony, Misdemeanor, Juvenile	1987	316 Spring ST Room 104 Columbus 75207	979.732.9425	3	Colorado
Dallas County	Dallas County PDO	Capital, DNA Exoneration, Felony, Misdemeanor, Juvenile, <i>Padilla</i> Consultation & referrals, CPS & Family Law	1983	133 N. Riverfront BLVD 9th FL Dallas 75207	214.653.3550	1	Dallas
El Paso County	El Paso County PDO	Capital, Felony, Misdemeanor, Juvenile	1987	500 E. San Antonio STE 501 El Paso 79901	915.546.8131	6	El Paso
Fort Bend County	Fort Bend County PDO	Felony, Misdemeanor, Felony Mental Health, Misdemeanor Mental Health	2010	1517 Eugene Heimann CIR Richmond 77469	281.238.3050	2	Fort Bend
Harris County	Harris County PDO	Felony, Juvenile, Felony Appellate, Misdemeanor Appellate, Misdemeanor Mental Health	2011	1201 Franklin 13th FL Houston 77002	713.368.0016	2	Harris

COUNTY PUBLIC DEFENDER OFFICES

Location	Program Name	Services	Year Est.	Address	Phone	AJR Regions	Participating Counties
Hidalgo County	Hidalgo County PDO	Felony, Misdemeanor, Juvenile	2005	100 N. Closner 5th FL Edinburg 78539	956.292.7040	5	Hidalgo
Kaufman County	Kaufman County PDO	Felony, Misdemeanor	2007	205 South Jackson Kaufman 75142	972.932.0248	1	Kaufman
Travis County	Travis County Juvenile PDO	Juvenile	1971	2201 Post RD STE 103 Austin 78704	512.854.4128	3	Travis
Travis County	Travis County Mental Health PDO	Misdemeanor Mental Health	2007	2201 Post RD STE 200 Austin 78704	512.854.3030	3	Travis
Webb County	Webb County PDO	Felony, Misdemeanor, Juvenile	1988	1110 Washington ST STE 102 Laredo 78040	956.523.4101	4	Webb
Wichita County	Wichita County PDO	Felony, Misdemeanor	1989	600 Scott ST STE 102 Wichita Falls 76301	940.766.8199	8	Wichita

Contract Defender Programs

In FY15, there were 24 contract defender programs to provide indigent defense services covering 30 counties based on county reports. Two of these programs cover multiple counties including:

- Dallam, Hartley, Moore, and Sherman Counties in the Panhandle; and
- Dawson, Gaines, Garza, and Lynn Counties in the South Plains.

It's important to also note that in some counties, the contract program covers the great majority of cases, while in others the contract only covers a handful of cases. The latter are typically specialty programs such as providing representation in mental health cases or for juvenile detention hearings.

Other counties with Contract Defender Programs and the number of FY15 cases disposed:

County Name	Number of Cases Disposed
Austin	361
Brazos	288
Burleson	256
Cameron	26
Camp	346
Coryell	67
Dallam	94
Dawson	141
Fayette	310
Floyd	38
Gaines	53
Garza	42
Gregg	1,344
Harris	15,120
Hartley	51
Hidalgo	386
Jefferson	1,571
Lee	263
Llano	320
Lynn	14
Marion	237
Midland	310
Montgomery	241
Moore	341
Morris	261
Sherman	103
Smith	1,628
Tom Green	48
Waller	481
Washington	437

Texas Indigent Defense Commission: Contract Defender Program Rules

Part I. DEFINITIONS

§174.10. Subchapter Definitions.

The following words and terms when used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise.

- (a) **Appointing Authority.** The appointing authority is the:
 - (1) Judge or judges who have authority to establish an indigent defense plan and approve attorneys to represent indigent defendants in criminal cases under Article 26.04, Code of Criminal Procedure; and/or
 - (2) Juvenile board that has authority to establish an indigent defense plan and approve attorneys to represent indigent respondents in juvenile cases under Section 51.102, Family Code.
- (b) **Contract Defender Program.** Contract defender program means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.
- (c) **Contracting Authority.** The contracting authority is the county or counties that have the authority to conclude a contract and to obligate funds for the provision of indigent defense services.
- (d) **Contractor.** The contractor is an attorney, law firm, professional association, lawyer's association, law school, bar association, non-profit organization or other entity that can be bound by contract.
- (e) **Itemized Fee Voucher.** An itemized fee voucher is any instrument, such as an invoice, that details services provided by a contractor providing indigent defense services. The itemized fee voucher may be in paper or electronic form. It shall include at a minimum all the information necessary for the county auditor or other designated official to complete the expenditure report required to be submitted to the Office of Court Administration by Section 71.0351, Government Code.

PART II: APPLICATION OF STANDARDS AND CONTRACTING PROCEDURES

§174.11. Application of Subchapter. This Subchapter applies to all contract defender programs. This Subchapter does not apply to public defender programs established and governed by Chapter 26, Code of Criminal Procedure.

§174.12. Application Process. The appointing authority shall solicit and select contractors in accordance with the procedure governing alternative appointment programs contained in Article 26.04, Code of Criminal Procedure.

- (a) Notification. The notification of the opportunity to apply (NOA) to be a contractor shall be distributed in a manner that reasonably covers all practicing members of the bar within the county or other region designated by the appointing authority. The notification shall inform attorneys of all requirements for submitting applications.
- (b) Opportunity to Respond. All potential contractors shall have the same opportunity to respond to the NOA and be considered for the award of a contract.
- (c) Application. All applications must be submitted in writing and shall be maintained by the appointing authority or contracting authority in accordance with the Texas State Library and Archives Commission Retention Schedule for Local Records- Local Schedule GR.

§174.13. Application Review Process. Following the review of all applications the appointing authority shall by a majority vote select contractor(s), specify the types of cases each contractor is qualified to handle, and authorize the contracting authority to enter into a contract. The attorneys associated with the selected contractor(s) must meet the attorney qualification requirements contained in the indigent defense

procedures adopted pursuant to Article 26.04, Code of Criminal Procedure. If the contract does not exclude capital cases in which the death penalty is sought, the attorneys associated with the selected contractor(s) must also meet the attorney qualifications set by the regional selection committee and be approved by the regional selection committee to represent clients in capital cases. The appointing authority shall consider at least the following factors when evaluating applications:

- (a) Experience and qualifications of the applicant;
- (b) Applicant's past performance in representing defendants in criminal cases;
- (c) Applicant's disciplinary history with the state bar;
- (d) Applicant's ability to comply with the terms of the contract; and
- (e) Cost of the services under the contract.

§174.14. Awarding the Contract. In accordance with Article 26.04(h), Code of Criminal Procedure, the contracting authority may approve the recommended contractor(s) and enter into a contract for services. The contracting authority shall enter into a contract only if it complies with these standards and all applicable law governing professional services contracts entered into by counties. A contract shall not be awarded solely on the basis of cost.

PART III: REQUIRED ELEMENTS OF A CONTRACT FOR INDIGENT DEFENSE SERVICES

Each component below shall be included in a contract for indigent defense services and shall serve as the basis for the NOA.

§174.15. Parties. Identify the appointing authority, contracting authority, and contractor.

§174.16. Term of Contract. The contract shall specify the term of the contract, including any provision for extensions, and a provision for terminating the contract by either party.

§174.17. Scope of Contract. The contract shall specify the categories of cases in which the contractor is to provide services.

§174.18. Minimum Attorney Qualifications. The contract shall specify minimum qualifications for attorneys covered by the contract and require such attorneys to maintain the qualifications during the term of the contract. The qualifications shall equal or exceed the qualifications provided in the indigent defense procedures adopted pursuant to Article 26.04, Code of Criminal Procedure. If the contract does not exclude capital cases in which the death penalty is sought, the qualifications shall equal or exceed the minimum attorney qualifications set by the regional selection committee and the attorneys covered by the contract shall be required to be on the list of attorneys approved by the regional selection committee to represent clients in capital cases. If a contract covers services provided by more than one attorney, qualifications may be graduated according to the seriousness of offense and each attorney shall be required to meet and maintain only those qualifications established for the offense level(s) for which the attorney is approved to provide defense services.

§174.19. Duration of Representation. The contract shall specify that the contractor has the responsibility to complete all cases once representation is commenced during the term of the contract, unless an attorney covered by the contract is relieved or replaced in accordance with Article 26.04(j)(2), Code of Criminal Procedure.

§174.20. Substitution of Attorneys. The contract shall identify the attorney(s) who will perform legal representation in each category of case covered by the contract and prohibit the substitution of other attorneys without prior approval by a majority of the appointing authority. Nothing in the contract shall prohibit an attorney covered by the contract from being relieved or replaced in accordance with Article 26.04(j)(2) of the Code of Criminal Procedure.

§174.21. Caseload Limitations. The contract shall set the maximum number of cases or workload each attorney may be required to handle pursuant to the contract.

§174.22. Standards of Representation. The contract shall require that the contractor provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable laws and the Texas Disciplinary Rules of Professional Conduct.

§174.23. Conflicts of Interest. The contract shall state a policy to assure that the contractor and its attorneys do not provide representation to defendants when doing so would involve a conflict of interest.

§174.24. Investigators and Experts. The contract shall specify how investigation services and experts that are necessary to provide competent representation will be made available in a manner consistent with Article 26.05(d), Code of Criminal Procedure.

§174.25. Compensation and Payment Processes. The contract shall set the amount of compensation to be paid to the contractor and the designated method and timing of payment. The contract shall state that the contractor shall be required to submit an itemized fee voucher. The voucher must be approved by a member of the appointing authority prior to being forwarded to the county financial officer for approval and payment. The contract shall also specify how a contractor is to be compensated for cases assigned but not disposed within the term of the contract as provided in Section 174.19.