



Policy Monitoring Review of Waller County's Indigent Defense System

August 29, 2016



209 W. 14th Street, Room 202
Austin, Texas 78701
Phone: 512-936-6994; Fax: 512-463-5724
www.tidc.texas.gov

Chair:

Honorable Sharon Keller Chair – Presiding Judge, Court of Criminal Appeals

Vice Chair:

Honorable Olen Underwood Vice-Chair – Presiding Judge, 2nd Administrative Judicial Region of Texas

Ex Officio Members:

Honorable Sharon Keller	Austin, Presiding Judge, Court of Criminal Appeals
Honorable Nathan L. Hecht	Austin, Chief Justice, Supreme Court of Texas
Honorable Sherry Radack	Houston, Chief Justice, First Court of Appeals
Honorable Brandon Creighton	Conroe, State Senator
Honorable John Whitmire	Houston, State Senator
Honorable Andrew Murr	Kerrville, State Representative
Honorable Abel Herrero	Robstown, State Representative

Members Appointed by the Governor:

Honorable Olen Underwood	Conroe, Presiding Judge, 2 nd Administrative Judicial Region of Texas
Honorable Jon Burrows	Temple, Bell County Judge
Honorable Linda Rodriguez	Hays County
Mr. Anthony Odiorne	Burnet, Assistant Public Defender, Regional Public Defender Office for Capital Cases
Mr. Don Hase	Arlington, Attorney, Ball & Hase

Staff:

Jim Bethke	Executive Director	512-936-6994	Jbethke@tidc.texas.gov
Brandon Bellows	Policy Analyst	512-936-6996	Bbellows@tidc.texas.gov
Sharon Calcote	Project Manager	512-936-0990	Sharon.calcote@txcourts.gov
Edwin Colfax	Grant Program Manager	512-463-2573	Ecolfax@tidc.texas.gov
Traci Cruz	Grant Coordinator	512-936-7551	Tcruz@tidc.texas.gov
Jamie Dickson	Special Counsel/Policy Analyst	512-463-2573	Jdickson@tidc.texas.gov
Marissa Kubinski	Executive Assistant	512-936-6994	Mkubinski@tidc.texas.gov
Joel Lieurance	Senior Policy Monitor	512-936-7560	Jlieurance@tidc.texas.gov
Wesley Shackelford	Deputy Director/Special Counsel	512-936-6997	Wshackelford@tidc.texas.gov
Debra Stewart	Fiscal Monitor	512-936-7561	Dstewart@tidc.texas.gov
Joan Thomas	Publications Manager/Analyst	512-463-8015	Jthomas@tidc.texas.gov
Sharon Whitfield	Budget & Accounting Analyst	512-936-6998	Swhitfield@tidc.texas.gov

Contents

Purpose of Review	4
Timeline and Methodology	4
Program Assessment	6
REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS	6
REQUIREMENT 2: DETERMINE INDIGENCE ACCORDING TO STANDARDS DIRECTED BY THE INDIGENT DEFENSE PLAN.	9
REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.....	10
REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.	10
REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS.....	14
REQUIREMENT 6: PROMULGATE STANDARD ATTORNEY FEE SCHEDULE AND PAYMENT PROCESS.....	15
REQUIREMENT 7: STATUTORY DATA REPORTING.....	16
Additional Observations	17
Summary of Recommendations.....	21
APPENDIX A – Letter Dated September 29, 2015 to the Texas Indigent Defense Commission	23
APPENDIX B – Letter Dated December 17, 2015 to the Texas Indigent Defense Commission	26
APPENDIX C – Waller County Indigent Defense Statistics	29
APPENDIX D – Monitoring Review Checklist	30
APPENDIX E – Waller County Public Defender Feasibility Study	34
APPENDIX F – Waller County Sheriff’s Office Report	51

Purpose of Review

The passage of Texas Fair Defense Act (FDA) in 2001 created the Texas Indigent Defense Commission (“Commission”) and mandated that the Commission monitor local jurisdictions’ compliance with the FDA through on-site reviews.¹ These reviews seek to promote local compliance and accountability with the requirements of the FDA and to provide technical assistance to improve county indigent defense processes where needed. The Commission has established policy and fiscal monitoring rules to assist in the review process and set benchmarks for meeting these requirements.² The review process also aims to assist local jurisdictions in developing procedures to monitor their own compliance with their indigent defense plans and the FDA.

Timeline and Methodology

In September 2015, Senator Rodney Ellis, Representative Senfronia Thompson, and Representative Ron Reynolds directed a formal request to Commission Executive Director Jim Bethke to conduct an assessment of Waller County’s indigent defense system. In December 2015, Waller County Commissioner Jeron Barnett made a similar request to Executive Director Bethke. In February 2016, the Commission began a full monitoring assessment of Waller County’s indigent defense processes. Executive Director Bethke held a kick-off meeting for the assessment on February 10, 2016.

The review team made site visits from March 21 – 24, 2016 and May 3 – 6, 2016. The review team consisted of policy analysts Joel Lieurance and Brandon Bellows and fiscal monitor Debra Stewart. Throughout this report, references to Commission staff will use the term “monitor.” The monitor examined clerk and case management records, county auditor records, and appointment list records maintained by court administration.³ The monitor also observed Article 15.17 hearings and felony and misdemeanor dockets. The monitor interviewed the local district court judge, the statutory county court judge, the constitutional county judge, the county auditor, court coordinators, justices of the peace, local municipal court judges, defense attorneys, jail administrators, and personnel from court administration. The resulting report includes a program assessment, a summary of recommendations, and appendices providing details on matters raised in the report.

¹ TEX. GOV’T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE §§ 173.401, 174.26–.28.

³ The period of review for examining records was FY15 (October 2014-September 2015). The primary records examined by the monitor included district and county clerk case files and auditor’s office files. The monitor’s conclusions are based on these records, and the quality of those records may affect the monitor’s conclusions.

Overview

The FDA provides a statutory framework for the appointment of counsel and mandates specific timeframes for taking, transmitting, and ruling upon requests for counsel. Jurisdictions retain latitude to develop the standard by which they determine indigence and their procedures for appointing counsel. In odd-numbered years, counties are responsible for submitting to the Commission their local formal and informal rules related to the appointment of counsel.⁴ This review assesses whether Waller County's local practices and procedures meet the FDA requirements and the Commission's rules.

The monitor compared the FDA's core requirements to the County's practices in each of the following areas:⁵

- 1: Conduct prompt and accurate Article 15.17 proceedings
- 2: Determine indigence according to standards directed by the indigent defense plan
- 3: Establish minimum attorney qualifications
- 4: Appoint counsel promptly
- 5: Institute a fair, neutral, and nondiscriminatory attorney selection process
- 6: Promulgate standard attorney fee schedule and payment process
- 7: Statutory data reporting

⁴ TEX. GOV'T CODE § 79.036(a)(1).

⁵ This comparison is based upon the template used in the Commission's biennial examination of indigent defense plans. See TEX. INDIGENT DEF. COMM'N, 2015 BIENNIAL INDIGENT DEFENSE COUNTYWIDE PLAN INSTRUCTIONS, at 9 – 13 (Sept. 4, 2015, as amended Oct. 5, 2015), http://tidc.texas.gov/media/41822/2015-biennial-idp-submission-instructions_amended.pdf. Waller County's local plans are found in the Waller District Court and County Court Defense Plan, available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=341>, and the Waller County Juvenile Board Plan, available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=343>.

Program Assessment

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

Waller County's Article 15.17 Procedures

Once arrested, an accused must be brought before a magistrate within 48 hours to receive the warnings contained in Article 15.17 of the Code of Criminal Procedure. At the Article 15.17 hearing, the arrestee must be asked if he/she would like to request counsel, and the magistrate must ensure reasonable assistance in completing financial forms necessary to request counsel. If the magistrate is the appointing authority, the magistrate must appoint counsel within the time frames set in Article 1.051. If the magistrate is not the appointing authority, the magistrate must transmit the request to the appointing authority within 24 hours of the request.⁶

Following arrest, officers bring arrestees to the Waller County Jail for booking and processing. At least once a day, seven days a week, the magistrate arrives at the jail to determine probable cause, set bail, and admonish arrestees of their rights. Magistrate duties rotate among the County's four justices of the peace and the county judge. The monitor observed Article 15.17 hearings at the Waller County Jail on three occasions: March 24, 2016 with Judge Karisch; May 4, 2016 with County Judge Duhon; and May 6, 2016 with Judge Krenek. Each magistrate gave the required admonishments, including advising defendants of the right to counsel and the procedures for requesting counsel. Although the magistrates asked arrestees whether they wanted to request counsel and took requests from arrestees, practices in handling requests varied among the magistrates.

Waller County's adult indigent defense plan currently allows magistrates to appoint counsel, and the monitor observed two processes for addressing requests for counsel at the Article 15.17 hearing.⁷ One justice of the peace marks whether the arrestee has requested counsel, makes a determination of indigence, and appoints counsel at the conclusion of the Article 15.17 hearing. The other magistrates mark whether the arrestee has requested counsel, and rely on jail staff to assist with the completion and transmittal of all financial forms to the courts of dispositive jurisdiction.

Timeliness of Warnings

Article 15.17 requires the accused be brought before a magistrate within 48 hours of arrest to receive the warnings contained in Article 15.17 of the Code of Criminal Procedure. A county is presumed to be in substantial compliance with the prompt magistrature requirement if at least 98% of Article 15.17 hearings sampled are

⁶ TEX. CODE CRIM. PROC. art. 15.17(a).

⁷ The Waller County indigent defense plan reads:

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.

conducted within 48 hours of arrest.⁸ To determine the timeliness of Article 15.17 warnings in Waller County, the monitor calculated the number of days between arrest and the Article 15.17 hearing for 342 cases. All 342 sample cases had Article 15.17 hearings occurring within two days of arrest, indicating that Waller County has processes in place to promptly bring arrestees before a magistrate.

Table 1: Timeliness of Article 15.17 Hearings

	Sample Size	Percent
Article 15.17 hearing occurs x days after arrest:	—	—
0 days	144	42.1%
1 day	193	56.4%
2 days	5	1.5%
More than 2 days	0	0%
Timely Hearings	342	100%

Ability of Arrestees to Request Counsel

Articles 15.17 (a) and (e) of the Code of Criminal Procedure require the magistrate to ask the arrestee whether he/she would like to request counsel and to make a record of the request. To determine if arrestees in Waller County have the ability to request counsel at the Article 15.17 hearing, the monitor reviewed magistrate warning forms in 175 misdemeanor cases and 115 felony cases. The monitor found that 25% of sample misdemeanor arrestees and 43% of sample felony arrestees requested counsel at the Article 15.17 hearing in Waller County. Statewide, justices of the peace reported 27% of misdemeanor arrestees and 36% of felony arrestees requested counsel at the Article 15.17 hearing.⁹

Table 2: Percent of Arrestees Requesting Counsel at Article 15.17 Hearing

	Felony Sample	Misdemeanor Sample
Article 15.17 forms examined	115	175
Requested counsel	65	43
Did not request counsel	50	132
Percent Requesting Counsel	43.4%	24.6%

Texas Judicial Council Monthly Court Activity Reports

In FY12, the Office of Court Administration (OCA) began collecting additional data in its Texas Judicial Council Monthly Court Activity Reports.¹⁰ As part of these additional reporting requirements, justice courts must now report the number of requests for counsel at Article 15.17 hearings. Statistics provided to OCA for FY15

⁸ 1 TEX. ADMIN. CODE § 174.28(c)(1)(B).

⁹ Statewide percentages were obtained from FY15 Texas Judicial Council Monthly Activity Reports.

¹⁰ 1 TEX. ADMIN. CODE § 171.7–.8.

regarding Article 15.17 hearings conducted by Waller County justices of the peace are in Table 3 below. Some magistrates did not report taking any requests for counsel at Article 15.17 hearings. The monitor’s review found that all magistrates were taking requests for counsel, but these requests were not all reported to OCA. Justices of the peace must submit Article 15.17 requests for counsel in their monthly court activity reports.

Table 3: Judicial Council Monthly Activity Reports (Oct. 2014 – Sept. 2015)

Article 15.17 Warnings and Requests for Counsel Reported by Justices of the Peace	JP1	JP2	JP3	JP4
Misdemeanor Warnings (A & B)	606	86	95	109
Misdemeanor Requests for Counsel (A & B)	212	0	0	23
Felony Warnings	460	78	88	62
Felony Requests for Counsel	225	0	0	19

Reasonable Assistance in Completing Forms for Requesting Counsel

Article 15.17(a) requires the magistrate provide reasonable assistance to arrestees in completing the necessary forms for requesting appointment of counsel at the time of the Article 15.17 hearing. The monitor observed two practices for assisting arrestees in completing the financial affidavit for appointed counsel. One magistrate personally made appointments of counsel and assisted arrestees with the financial affidavit. All other magistrates directed jail staff to assist the arrestee with the necessary financial forms.

Relying on jail staff to assist the arrestee with the necessary paperwork for requesting counsel resulted in untimely completion of affidavits. Several requests for counsel made at the Article 15.17 hearing had associated affidavits of indigence dated later than the date of the hearing, an indication that assistance in completing financial affidavits is not always occurring at the time of magistrate warnings, as required by Article 15.17(a).¹¹

Transmitting Forms to the Appointing Authority

Article 15.17(a) requires the magistrate transmit requests for counsel made at the Article 15.17 hearing to the appointing authority within 24 hours of the request. As mentioned above, most magistrates direct jail staff to walk arrestees through financial affidavits after the Article 15.17 hearing and to transfer requests to the courts of dispositive jurisdiction. As a result, the courts do not regularly receive requests for counsel in a timely manner (and may never receive some requests). The monitor’s review of case files indicated that requests for counsel are often not promptly transmitted to the courts. Case files in 28% of the misdemeanor sample and 8% of the felony sample

¹¹ The monitor reviewed 14 felony case files in which the arrestee requested counsel at the Article 15.17 hearing and in which the affidavit was in the case file. Only 5 financial affidavits were dated within 1 day of the Article 15.17 hearing. The remaining 9 affidavits were dated anywhere between 2 days and 6 weeks after the initial request.

included requests for counsel that were not ruled upon. Interviews confirmed that the appointing authority is not receiving all requests.¹²

Suggested Practice

Article 26.04(a) of the Code of Criminal Procedure requires counties adopt countywide procedures for appointing counsel following a request at the Article 15.17 hearing. Waller County officials would benefit from arriving at a consensus as to whether the magistrate should have authority to appoint counsel or whether requests for counsel should be transmitted to the courts of dispositive jurisdiction for ruling on the request. The monitor suggests the County consider adopting one of the following:

- Ensure that all magistrates understand they have authority to appoint counsel, have a duty to assist with financial paperwork, and will promptly rule on all requests for counsel made at Article 15.17 hearings.
- Establish a uniform process to ensure all financial affidavits are promptly and accurately completed and transmitted to the courts of dispositive jurisdiction for ruling on requests.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings.

FINDING 1: Waller County magistrates do not follow uniform procedures for handling requests for counsel. Magistrates must follow the appointment procedures adopted in Waller County's Indigent Defense Plan. If the County wishes to alter its appointment authority procedures, the judges may adopt and submit a revised plan consistent with Article 26.04(b).

FINDING 2: All arrestees are not receiving reasonable assistance in completing financial affidavits at the time of the Article 15.17 hearing. As a result, requests for counsel are not promptly transmitted to the appointing authority. Article 15.17(a) requires Waller County magistrates ensure reasonable assistance in completing forms necessary to obtain appointed counsel so that all arrestees who request counsel can have the request ruled upon within statutorily required timeframes.

FINDING 3: Some justices of the peace are not submitting Article 15.17 requests for counsel in their Texas Judicial Council Monthly Court Activity Reports. The judges must report the number of persons requesting counsel to OCA to assure complete and accurate reports.

REQUIREMENT 2: DETERMINE INDIGENCE ACCORDING TO STANDARDS DIRECTED BY THE INDIGENT DEFENSE PLAN.

Under Article 26.04(l) of the Code of Criminal Procedure, counties must adopt procedures and financial standards for determining whether a defendant is indigent.

¹² The statutory county court judge stated that she does not receive requests for counsel made at the Article 15.17 hearing. The district court judge stated that he regularly receives requests for counsel made at the Article 15.17 hearing.

The standards adopted by Waller County for felony and misdemeanor cases presume a person accused of a crime is indigent if:

- (1) The accused is eligible for food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
- (2) The accused's net household income does not exceed 125% of the Federal Poverty Guidelines; or
- (3) The accused is currently serving a sentence in a correctional institution, is residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such mental health facility is sought.

Based on court observations and file review, the district and county courts follow the standard of indigence set in the indigent defense plan.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 2

Determination of Indigence.

Requirement satisfied. No findings.

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.

At the time of the review, Waller County had ten contract defender attorneys on its approved appointment lists. Among other requirements, attorneys on each list must be approved by a majority of judges trying felony or misdemeanor cases and must obtain at least six hours of continuing legal education (CLE) training in criminal law each year. Attorneys accepting juvenile appointments must complete six hours of CLE in juvenile law annually. These CLE standards meet the six hour minimum required by the Commission's administrative rules.¹³ The district and county courts have procedures for ensuring that all attorneys on the lists met the annual CLE requirements described in the indigent defense plan.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3

Establish Minimum Attorney Qualifications.

Requirement satisfied. No findings.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

Article 1.051(c) of the Code of Criminal Procedure requires the court or its designee to appoint counsel by the end of the third working day following receipt of the request made at the Article 15.17 hearing.¹⁴ To assess the timeliness of Waller County's appointment procedures in misdemeanor and felony cases, the monitor examined the time from request for counsel until appointment or denial of indigence. Under the

¹³ 1 TEX. ADMIN. CODE §§ 174.1–2.

¹⁴ Article 1.051(j) requires the appointment of counsel for bonded defendants when adversarial judicial proceedings are initiated. *Rothgery v. Gillespie County* defined the initiation of adversarial judicial proceedings as the Article 15.17 hearing. *Rothgery v. Gillespie Cnty.*, 554 U.S. 191, 212 – 13 (2008).

Commission’s monitoring rules, a county is presumed to be in compliance with the prompt appointment of counsel requirement if at least 90% of indigence determinations in the monitor’s sample are timely.¹⁵

Timeliness of Appointments in Felony Cases

The monitor examined 155 felony cases filed in FY15 to determine the timeliness of appointment procedures in felony cases. Of the felony case files examined, the monitor could determine times from a request until appointment of counsel in 86 cases.¹⁶ Counsel was appointed in a timely manner in approximately 52% of cases with a request for counsel. This falls below the monitor’s threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel. In order to meet the 90% timeliness threshold in felony cases, a system must be developed to promptly rule upon all counsel requests made at the Article 15.17 hearing.

Table 4: Times from Request to Appointment in Felony Cases

	Number from Sample	Percent of Sample
Felony requests for counsel	86	
Request for counsel ruled upon in ‘x’ workdays		
0 workdays	37	43.0%
1 workday + 24 hours allowed to transmit a request	5	5.8%
2 workdays + 24 hours allowed to transmit a request	3	2.3%
3 workdays + 24 hours allowed to transmit a request	11	1.1%
Timely Rulings on Requests	45	52.3%
More than 3 workdays + 24 hours allowed to transmit	34	
No ruling on request	7	8.1%
Untimely / No Rulings on Requests	41	47.7%

Timeliness of Appointments in Misdemeanor Cases

To assess the timeliness of Waller County’s current appointment procedures in misdemeanor cases, the monitor examined 232 misdemeanor cases filed in FY15. Of the misdemeanor case files examined, the monitor could determine times from a request until appointment of counsel or denial of indigence in 78 cases.¹⁷ Counsel was appointed in a timely manner in approximately 49% of cases with a request for counsel. This falls below the monitor’s threshold for presuming a jurisdiction’s practices ensure timely

¹⁵ 1 TEX. ADMIN. CODE § 174.28(c)(4)(B).

¹⁶ Most felony case files did not include the magistrate warning form, so the monitor made separate requests to the justices of the peace for these forms. The monitor did not consider the timeliness of cases where there was an Article 15.17 hearing but the monitor was unable to obtain the magistration form.

¹⁷ Many misdemeanor case files did not include the magistrate warning form, so the monitor made separate requests to the justices of the peace for these forms. The monitor did not consider the timeliness of cases where there was an Article 15.17 hearing but the monitor was unable to obtain the magistration form.

appointment of counsel. In order to meet the 90% timeliness threshold in misdemeanor cases, a system must be developed to promptly rule upon all counsel requests made at the Article 15.17 hearing.

Table 5: Times to Appointment in Misdemeanor Cases

	Number from Sample	Percent of Sample
Misdemeanor requests for counsel	78	
Request for counsel ruled upon in 'x' workdays		
0 workdays	38	48.7%
1 workday + 24 hours allowed to transmit a request	0	0%
2 workdays + 24 hours allowed to transmit a request	0	0%
3 workdays + 24 hours allowed to transmit a request	0	0%
Timely Rulings on Requests	38	48.7%
More than 3 workdays + 24 hours allowed to transmit	18	23.1%
No ruling on request	22	28.2%
Untimely / No Rulings on Requests	40	51.3%

Waivers of Counsel in Misdemeanor Cases

Article 1.051 of the Code of Criminal Procedure addresses waivers of counsel and allows waivers of counsel that are voluntarily and intelligently made.¹⁸ Article 1.051(f-1) and (f-2) require a waiver of counsel for the purpose of speaking with the prosecutor. Article 1.051(g) requires a waiver for the purpose of entering an uncounseled guilty plea.

Under Article 1.051(f-1), the prosecutor may not initiate a waiver and may not communicate with a defendant until any pending request for counsel is ruled upon, and the defendant waives the opportunity to retain private counsel. Under 1.051(f-2), the court must explain the procedures for requesting counsel and must give the defendant a reasonable opportunity to request counsel before encouraging the defendant to communicate with the prosecutor. A pending request for counsel must be ruled upon before a waiver of counsel is allowed. If a defendant wishes to enter an uncounseled plea, he or she must sign a written waiver, the language of which must substantially conform to the language of 1.051(g).¹⁹

¹⁸ Article 1.051(f) states:

A defendant may voluntarily and intelligently waive in writing the right to counsel. A waiver obtained in violation of Subsection (f-1) or (f-2) is presumed invalid.

¹⁹ The waiver language of Article 1.051(g) states:

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)

Twenty-two cases from the monitor’s misdemeanor sample included a request for counsel but contained no appointment or denial of the request. Four of these cases included a waiver of counsel and an uncounseled plea but no documentation that the request for counsel had been denied. Article 1.051(f-2) requires all requests for counsel be ruled upon prior to a waiver of counsel.

Timeliness of Appointments in Juvenile Cases

Counsel must be appointed for juveniles charged with delinquent conduct or conduct indicating a need for supervision when the juvenile is brought to a detention hearing and when the juvenile is served with a copy of the petition alleging misconduct. Under Section 54.01(b-1) of the Family Code, unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing. Under Subsections 51.101(c) and (d) of the Family Code, once a petition is served on the juvenile, the court has five working days to appoint counsel for the juvenile.

To assess the timeliness of Waller County’s current appointment procedures in juvenile cases, the monitor examined nine juvenile cases filed in FY15.²⁰ The County was 100% timely in appointing counsel for detention hearings, but appointments of counsel in cases where the juvenile was released from custody and served with a petition were 63% timely. This falls below the Commission’s 90% threshold for timeliness. The late appointments may be due to the court not making contact with parents in time to meet the five working day requirement of Section 51.101(d). To address the issue, the County should ensure that juvenile probation is promptly gathering financial information at intake and transmitting those affidavits to the appointing authority.

Table 6: Times to Appointment in Juvenile Cases

Waller Juvenile Appointment Sample Data	Sample Size	Number from Sample	Percent
Total juvenile cases examined	9		
TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS			
Case files with detention hearings	3		
Cases with attorney present at initial hearing		3	100%
TIMELINESS OF COUNSEL APPOINTMENTS WHERE JUVENILE SERVED WITH A PETITION			
Case files in which juvenile served with a petition	8		
Counsel appointed within 5 working days of service		5	62.5%
Counsel retained within 5 working days of service		0	0%
Indigence denied within 5 working days of service		0	0%
Cases where counsel present in a timely fashion		5	62.5%
Cases where counsel not present in a timely fashion		3	37.5%

²⁰ The small sample size reflects a very small number of juvenile cases filed each year.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly.

FINDING 4 (felony cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. The monitor's sample of attorney appointments in felony cases fell below the Commission's 90% timely threshold for presuming a jurisdiction's system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in felony cases.

FINDING 5 (misdemeanor cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. The monitor's sample of attorney appointments in misdemeanor cases fell below the Commission's 90% timely threshold for presuming a jurisdiction's system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in misdemeanor cases.

FINDING 6 (misdemeanor cases): The County does not have processes in place to ensure misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel. As required by Article 1.051(f-2), the court must rule upon requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor.

FINDING 7 (juvenile cases): The monitor's sample of attorney appointments where a juvenile was released from custody and served with a petition fell below the Commission's threshold for presuming a jurisdiction's system ensures timely appointment of counsel. The County must implement practices that satisfy the time frames in Section 51.101 of the Family Code.

REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS.

Waller County's Contract Defender System

Article 26.04 of the Code of Criminal Procedure provides a framework for alternative counsel appointment programs, including the contract defender system utilized by Waller County.²¹ Under this system, the County signs eligible, approved attorneys to one-year contracts to provide representation for indigent defendants. The County uses one contract for felony cases and another for misdemeanor and juvenile cases.

The monitor analyzed whether the contracts between the County and defense attorneys met the requirements of the Commission's Contract Defender Rules, administrative rules adopted by the Commission to provide guidance on contract

²¹ See TEX. CODE CRIM. PROC. arts. 26.04(a), (g)–(h).

defender systems and ensure FDA requirements are met.²² Under these rules, Waller County's contract defender program must have an open application process, including notification of an opportunity to apply and an opportunity for attorneys to respond to the notice. The attorney selection process must be based on considerations such as an attorney's experience and qualifications, rather than solely on cost.

Awarded contracts must contain: (1) the term of the contract; (2) categories of cases covered; (3) minimum attorney qualifications; (4) duration of representation; substitution of counsel; (5) maximum caseloads; (6) standards of representation; (7) conflicts of interest; (8) provisions for investigators and expert witnesses; and (9) compensation. The monitor found that Waller County has an open application process, and contracts contained the terms specified by the Commission. Caseloads are discussed below in Additional Observations.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 5

Attorney Selection Process

Requirement satisfied. No findings.

REQUIREMENT 6: PROMULGATE STANDARD ATTORNEY FEE SCHEDULE AND PAYMENT PROCESS.

Payments for indigent defense services in a contract defender system are governed by the Contract Defender Rules, which require each contract to set the amount of compensation to be paid to the contractor and the method and timing of payment.²³ For FY15, indigent defense counsel received monthly payments of \$2,970.52 for each month of services rendered under the contract. This rate applied to both felony and misdemeanor/juvenile contract defenders. A few appointed counsel cases involved assigned counsel and were paid according to the fee schedule set in the County's indigent defense plan.²⁴

Before receiving payment, attorneys must submit itemized vouchers (detailing the services rendered) to the judge for approval.²⁵ If the judge determines the attorney is to be paid a different amount than requested, the judge must make written findings for variances from the requested amount. Defense attorneys must submit an itemized fee voucher to the Local Administrative Judge no later than the 5th of each month (for the previous month) to receive payment. The monitor reviewed FY15 fee vouchers and determined that payments met the requirements of the Contract Defender Rules.

²² 1 TEX. ADMIN. CODE §§ 174.10–.25.

²³ 1 TEX. ADMIN. CODE § 174.25.

²⁴ One defense attorney's contract ended, and those cases were disposed through the assigned counsel system after the expiration of the contract.

²⁵ 1 TEX. ADMIN. CODE § 174.25.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 6

Promulgate standard attorney fee schedule and payment process.

Requirement satisfied. No findings.

REQUIREMENT 7: STATUTORY DATA REPORTING.

Under Section 79.036(e) of the Texas Government Code, the county auditor (or other person designated by the commissioners' court) must annually prepare and send indigent defense data to the Commission. This data must include the total expenses for cases in which an attorney was appointed for an indigent defendant or juvenile in each district court, county court, statutory county court, and appellate court. Beginning in FY14, financial data reports must include attorney-level information.²⁶

Unallowable Expenses Reported on the Indigent Defense Expense Report

To better understand local reporting procedures, the monitor interviewed personnel in the Waller County auditor's office and reviewed supporting documents for fiscal data submitted to the Commission. The monitor found that the County included some general court expenditures with indigent defense expenses in the FY15 Indigent Defense Expense Report (IDER).

The Waller County Auditor's office provided invoices supporting the expenditure totals of the IDER, including nine invoices in which expert witness expenses were claimed for competency/psychological evaluations.²⁷ Of the nine invoices, eight had no motions attached. The one invoice with an attached motion stated: "[T]he Court, on its own and the motion of Defendant's Attorney, considered the suggestion of incompetency to stand trial. . . ." This language suggests that the evaluation may have been on the Court's motion and not for preparation of the defense case.

A request for a mental health evaluation to determine competency to stand trial is typically a general court expense. The only mental health examinations that are considered indigent defense expenses are those requested by the defense counsel where the results are shared exclusively with the defense team. No mental health evaluations requested by the judge or prosecuting attorney should be reported as indigent defense expenses. Support that the expense is requested by the defense attorney for exclusive use of the results by the defense team should be documented in order to include the expenses on the IDER.

Because it appears general court expenses were included in the IDER, the County may have overstated indigent defense expenditures for FY15. This could have resulted in a FY16 formula grant award greater than if the IDER were submitted without

²⁶ TEX. GOV'T CODE § 79.036(a-1).

²⁷ Each of the nine invoices were directly billed to the District Court Judge and each listed the defendant and the cause number, with one invoice indicating the defendant was not indicted.

ineligible expenses. The County should ensure supporting documents provide evidence that all expenses were requested by the defense attorney in preparation of the case.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 7

Statutory Data Reporting.

FINDING 8: The monitor found that the County included some general court expenditures with indigent defense expenses in the FY15 Indigent Defense Expense Report (IDER). The County should implement a procedure to attach approved defense motions for allowable expenditures to the related voucher so that only costs incurred for indigent defense are included on the IDER.

Additional Observations

In September 2015, Senator Rodney Ellis, Representative Senfronia Thompson, and Representative Ron Reynolds asked the Commission to assess Waller County’s indigent defense system and analyze the feasibility of a public defender office.²⁸ In December 2015, Waller County Commissioner Jeron Barnett made a similar request and asked for a review of Waller County’s pretrial release system.²⁹ While many of these questions were addressed in the main body of this report, additional analysis follows.

Pretrial Bail Bond System

The monitor examined initial bail amounts set by magistrates in Waller County for 289 cases. Of the 184 misdemeanor cases in which the monitor could determine the bail set at the Article 15.17 hearing, almost 80% received a personal recognizance bond or had bail set at \$500 or less. The median bail amount in misdemeanor cases was \$500. Magistrates set personal recognizance bonds in approximately 27% of misdemeanor cases sampled.

Table 7: Bail Amounts Set At Article 15.17 Hearing

Offense Level	Sample Size	Median Bail Amount	PR Bonds set at Article 15.17 Hearing
Class B MISD	122	\$500	38
Class A MISD	62	\$500	12
State Jail FEL	40	\$3,000	0
F3	40	\$5,000	3
F2	15	\$10,000	0
F1	10	\$17,500	0

In 2016, the Public Policy Research Institute at Texas A&M University (PPRI), in conjunction with the Commission and the Texas Judicial Council’s Criminal Justice Committee, began laying the groundwork for an in-depth study of pretrial bail practices

²⁸ APPENDIX A, *Letter Dated September 29, 2015 to Texas Indigent Defense Commission.*

²⁹ APPENDIX B, *Letter Dated December 17, 2015 to Texas Indigent Defense Commission.*

in Texas's 39 largest counties. The study will include statewide pretrial bail statistics and allow for comparison with local practices.

Quality of Representation

Variables such as an attorney's skill level, available time to spend on a case, and resources available to assist with a case can affect the quality of representation provided to a defendant. Incentivizing attorney-client contact and maintaining reasonable caseloads for attorneys are two ways counties can help assure defendants receive quality representation.

Attorney-Client Contact

In Waller County, attorneys report jail visits on monthly contract vouchers, which are reviewed by the court of dispositive jurisdiction. For those attorneys who reported jail visits on fee vouchers, most visited the Waller County Jail one or two times per month. At least one attorney consistently visited the jail five times per month. According to attorneys with misdemeanor contracts, very few jail visits are needed because almost all clients are released on bond.

Caseload Standards

To provide effective assistance of counsel, an attorney must ensure a meaningful adversarial testing of the prosecution's case, which often requires a significant time investment.³⁰ One method of ensuring attorneys have adequate time to devote to individual clients is by controlling caseloads. Following passage of HB 1318 in 2013, the Texas Legislature instructed the Commission to publish a study determining reasonable caseloads in Texas.³¹

The Texas study included an advisory panel of stakeholders who provided input into the study's methodology. The data used to determine reasonable caseloads included a timekeeping study, a time sufficiency survey, and feedback from experienced criminal defense attorneys. The resulting Weighted Caseload Guidelines determined that the maximum annual caseload under which an attorney could provide reasonably effective representation was **128 felony cases** of mixed offense levels or **226 misdemeanor cases** of mixed offense levels.³²

Waller County's contract defender provisions allow felony-level attorneys to handle approximately 75 mixed felony cases annually and misdemeanor-level attorneys

³⁰ See *United States v. Cronin*, 466 U.S. 648, 656–57 (1984).

³¹ The bill required the Commission to:

[C]onduct and publish a study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that ... allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation.

Act of May 17, 2013, Tex. H.B. 1318, 83rd Leg., R.S., ch. 912, § 8, 2013 TEX. GEN. LAWS 2268, available at <http://www.legis.state.tx.us/tlodocs/83R/billtext/html/HB01318F.HTM>.

³² PUB. POLICY RESEARCH INST. AT TEXAS A&M UNIV., GUIDELINES FOR INDIGENT DEFENSE CASELOADS: A REPORT TO THE TEXAS INDIGENT DEFENSE COMMISSION 30–34 (2015), available at http://www.tidc.texas.gov/media/31818/150122_weightedcl_final.pdf (last visited August 29, 2016).

to handle approximately 150 mixed misdemeanor and juvenile cases. For FY15, the highest number of cases paid to a felony list attorney totaled 67; for the misdemeanor/juvenile list, the highest number of cases paid was 63. Actual caseloads of Waller County contract attorneys fall within the standards set in the contract and Weighted Caseload Guidelines.

Investigators and Expert Witnesses

Two resources necessary for effective representation are investigative services and expert witnesses. For FY15, contract defense attorneys in felony cases periodically incurred investigative and expert witness expenses. Contract defense attorneys in misdemeanor cases did not utilize investigators or expert witnesses.

Table 8: Use and Spending on Licensed Investigators

FY15 Investigative and Expert Witness Usage	Non-Capital Felony Cases		Misdemeanor Cases	
	% Cases Used	% Expenses	% Cases Used	% Expenses
Investigators in Waller County Contract Defenders	3.1%	9.5%	0.0%	0.0%
Investigators statewide ³³	n/a	4.3%	n/a	1.5%
Expert Witnesses in Waller County Contract Defenders	5.2%	8.0%	0.0%	0.0%
Expert Witnesses statewide	n/a	4.2%	n/a	2.3%

Additional Resources

Public Defender Feasibility Study

At the request of Waller County Commissioner Jeron Barnett, the Commission submitted a study to Waller County Commissioner’s Court in February 2016 discussing the feasibility of a public defender’s office. The study analyzed the potential benefits and drawbacks of the creation of a public defender in Waller County and found that such an office could be cost effective for the County. The study can be found in Appendix E.

Waller County Sheriff’s Office Study

Following the death of Sandra Bland in July 2015, Waller County Sheriff R. Glenn Smith requested local attorney Paul C. Looney form a five-person committee to review the operations of his office and the county jail. In April 2016, the committee released its recommendations related to policing and jail practices within the Waller County Sheriff’s Office. The report’s recommendations regarding improved policing and jail practices would be expected to positively impact indigent defendants in Waller County. The study can be found in Appendix F.

³³ This includes both private counsel expenses and public defender expenses.

Conclusion

The monitor appreciated the professionalism and assistance provided by Waller County officials and staff. Waller County officials appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, we will monitor the County's transition and adjustments to the Commission's findings.

Summary of Recommendations

The County must respond in writing how it will address each of these recommendations.

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS.

FINDING 1: Waller County magistrates do not follow uniform procedures for handling requests for counsel. Magistrates must follow the appointment procedures adopted in Waller County's Indigent Defense Plan. If the County wishes to alter its appointment authority procedures, the judges may adopt and submit a revised plan consistent with Article 26.04(b).

FINDING 2: All arrestees are not receiving reasonable assistance in completing financial affidavits at the time of the Article 15.17 hearing. As a result, requests for counsel are not promptly transmitted to the appointing authority. Article 15.17(a) requires Waller County magistrates ensure reasonable assistance in completing forms necessary to obtain appointed counsel so that all arrestees who request counsel can have the request ruled upon within statutorily required timeframes.

FINDING 3: Some justices of the peace are not submitting Article 15.17 requests for counsel in their Texas Judicial Council Monthly Court Activity Reports. The judges must report the number of persons requesting counsel to OCA to assure complete and accurate reports.

REQUIREMENT 2: DETERMINE INDIGENCE ACCORDING TO STANDARDS DIRECTED BY THE INDIGENT DEFENSE PLAN.

No findings. County practices and procedures meet statutory requirements.

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.

No findings. County practices and procedures meet statutory requirements.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

FINDING 4 (felony cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. The monitor's sample of attorney appointments in felony cases fell below the Commission's 90% timely threshold for presuming a jurisdiction's system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in felony cases.

FINDING 5 (misdemeanor cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. The monitor's sample of attorney appointments in misdemeanor cases fell below the Commission's 90% timely threshold for presuming a jurisdiction's system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in misdemeanor cases.

FINDING 6 (misdemeanor cases): The County does not have processes in place to ensure misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel. As required by Article 1.051(f-2), the court must rule upon requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor.

FINDING 7 (juvenile cases): The monitor's sample of attorney appointments where a juvenile was released from custody and served with a petition fell below the Commission's threshold for presuming a jurisdiction's system ensures timely appointment of counsel. The County must implement practices that satisfy the time frames in Section 51.101 of the Family Code.

REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS.

No findings. County practices and procedures meet statutory requirements.

REQUIREMENT 6: PROMULGATE STANDARD ATTORNEY FEE SCHEDULE AND PAYMENT PROCESS.

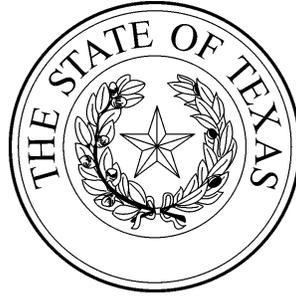
No findings. County practices and procedures meet statutory requirements.

REQUIREMENT 7: STATUTORY DATA REPORTING.

FINDING 8: The monitor found that the County included some general court expenditures with indigent defense expenses in the FY15 Indigent Defense Expense Report (IDER). The County should implement a procedure to attach approved defense motions for allowable expenditures to the related voucher so that only costs incurred for indigent defense are included on the IDER.

Appendix A

Letter from Senator Rodney Ellis, Representative Senfronia Thompson,
and Representative Ron Reynolds to the Texas Indigent Defense
Commission



September 29, 2015

Mr. James Bethke
Executive Director, Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, Texas 78701

Dear Mr. Bethke:

We understand that the Texas Indigent Defense Commission is able to provide technical assistance and system assessments in order to help counties improve the operation and effectiveness of their indigent defense systems. We are familiar with completed reviews in Fort Bend County, El Paso County, and Bexar County, for example, and we understand that Harris County is currently undergoing a review.

We are writing to request the assistance of the Commission to conduct a thorough indigent defense program assessment in Waller County. Waller County is home to one of the largest historically black universities in Texas, where many of our constituents attend yet still call our districts home. As elected officials in the Texas Senate and House of Representatives, we have a strong interest in ensuring that all jurisdictions have effective systems in place to ensure that our justice system protects the rights of all Texans. We also care deeply about adherence to the Texas Fair Defense Act of 2001 and feel it is our duty to ensure Texans across the state are benefitting from quality indigent defense programs.

Currently, Waller County contracts with private lawyers to handle the cases of indigent defendants. In addition to reviewing the current processes, we would like the Commission's help to assess whether alternative approaches, such as a public defender office, would be feasible and cost-effective for Waller County. Among the particular issues we hope you can address are:

- Is Waller County meeting the requirements of the Texas Fair Defense Act of 2001?
- Are persons charged with crimes adequately informed of their right to counsel and their ability to request court-appointed counsel if they cannot afford an attorney?
- Is Waller County's contract system of indigent defense in compliance with state statutes and rules, and is it operating as an effective means of providing indigent defense to qualified defendants?
- Are Waller County's procedures for determining eligibility for court-appointed counsel sufficient?

- Are attorneys contacting indigent defendants and initiating representation in a timely manner?
- Are indigent defense attorneys utilizing investigators and experts consistent with professional standards and best practices?
- Is the workload of attorneys providing indigent defense services managed or monitored to ensure adequate representation and are processes in place to ensure quality representation?
- How do Waller County's indigent defense practices impact the county's other costs, such as the jail, and what strategies may be available to minimize such expenses?

We are committed to improving indigent defense and will continue to work with our colleagues in the legislature to support new ways to better ensure that the constitutional rights of all Texans are protected through quality defense representation. Thank you for your consideration of this request.

Sincerely,


Sen. Rodney Ellis


Rep. Senfronia Thompson


Rep. Ron Reynolds

Appendix B

Letter from Waller County Commissioner Jeron Barnett to the Texas
Indigent Defense Commission



WALLER COUNTY, TEXAS
COMMISSIONER, JERON M. BARNETT

December 17, 2015

Mr. James Bethke
Executive Director
Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, Texas 78701

Dear Mr. Bethke:

My name is Commissioner Jeron Barnett, and I represent Precinct 3 on the Waller County Commissioner's Court. With recent events surrounding Sandra Bland's unfortunate death, the eyes of the nation have rested squarely on the Waller County criminal justice system like no other time before. With this attention comes the opportunity for positive change – change that can protect the Constitutional promise that all people are treated equally under the law.

I understand that the Texas Indigent Defense Commission (TIDC) regularly does an assessment of counties' indigent defense system. I respectfully request that TIDC come to Waller County to do just such an assessment. In addition to the areas normally evaluated by TIDC such as attorney caseloads and the quality of representation, I ask you to look into Waller County's pretrial system as it relates to indigent defense. I am concerned that more than two-thirds of detainees in the Waller County Jail are there pre-trial, many of whom are unable to afford the bond to get out. Any input TIDC would have on ways to improve our pretrial system would be appreciated.

Finally, I am interested in learning more about TIDC grant opportunities to improve the quality of our indigent defense system. Like most local governments, Waller County's budget is stretched thin, so resources from the state would be an essential part of any plan to reform our criminal justice system.

More than ever, Texans must stand up for the promise that every person, rich or poor, stands equal before the law. Too often, I fear that the quality of justice someone receives is overly dependent on the attorney they can afford. This places innocent Texans at risk of being found guilty simply because they don't have the means to defend themselves in court. Any assistance that TIDC can provide to rectify this wrong would be greatly appreciated.

Sincerely,

Jeron Barnett

APPENDIX C - Waller County Indigent Defense Statistics

Category	Texas 2015	2015	2014	2013	2012	2011	2001
Population (Non-Census years are	27,213,214	47,711	45,642	44,883	44,148	43,205	33,266
Felony Charges Added (from OCA report)	271,744	629	344	370	334	354	
Felony Cases Paid	193,560	296	244	207	232	196	
% Felony Charges Defended with Appointed Counsel	71%	47%	71%	56%	69%	55%	
Felony Trial Court-Attorney Fees	\$110,036,405	\$232,428	\$217,183	\$197,228	\$214,409	\$225,250	
Total Felony Court Expenditures	\$126,091,674	\$292,710	\$247,701	\$217,699	\$243,760	\$256,423	
Misdemeanor Charges Added (from OCA report)	503,299	5	293	0	316*	865	
Misdemeanor Cases Paid	222,408	189	181	251	274	317	
% Misdemeanor Charges Defended with Appointed Counsel	44%	3780%	62%	N/A	87%	37%	
Misdemeanor Trial Court Attorney Fees	\$39,141,724	\$139,139	\$139,497	\$142,139	\$130,000	\$90,100	
Total Misdemeanor Court Expenditures	\$40,061,131	\$139,139	\$139,497	\$142,139	\$131,211	\$90,100	
Juvenile Charges Added (from OCA report)	31,813	1	5	NR	7*	18	
Juvenile Cases Paid	41,068	5	6	4	12	17	
Juvenile Attorney Fees	\$11,072,434	\$3,128	\$4,619	\$2,183	\$4,300	\$0	
Total Juvenile Expenditures	\$11,747,908	\$3,128	\$6,104	\$2,183	\$4,300	\$0	
Total Attorney Fees	\$165,942,108	\$384,045	\$361,300	\$346,908	\$360,212	\$318,212	\$132,877
Total ID Expenditures	\$238,029,838	\$498,634	\$393,302	\$399,173	\$410,430	\$349,385	\$150,692
Increase In Total Expenditures over 2001	168%	231%	161%	165%	172%	132%	
Total ID Expenditures per Population	\$9	\$10	\$9	\$9	\$9	\$8	\$5
Commission Formula Grant Disbursement	\$23,931,689	\$44,854	\$70,174	\$41,199	\$35,025	\$52,659	
Costs Recouped from Defendants	\$11,530,419	\$6,989	\$11,457	\$5,197	\$9,630	\$19,316	

NR Not Reported. Cases added were not reported by county to OCA. This notation is only available starting in 2011

* The county did not report cases added for all twelve months to OCA. This is likely a partial value. This notation is only available starting in 2010

Appendix D - Monitoring Review Checklist

The monitoring review of the FDA's core requirements consisted of an examination of the items from the following checklist. If a box is marked, the specific requirement was met. If a box is not marked, the requirement either was not satisfied or is not applicable.

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

- The accused must be brought before a magistrate within 48 hours of arrest.¹
 - A person arrested for a misdemeanor without a warrant must be released on bond in an amount no more than \$5,000 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time.²
- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.³
- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.⁴

REQUIREMENT NOT SATISFIED: Not all financial affidavits are promptly completed at the time of magistrate warnings.
- A record must be made of the following:
 - the magistrate informing the accused of the accused's right to request appointment of counsel;
 - the magistrate asking whether accused wants to request appointment of counsel;
 - and whether the person requested court appointed counsel.⁵
- If authorized to appoint counsel, the magistrate must do so within one working day after receipt of request for counsel in counties with a population of 250,000 or more and within three working days in counties under 250,000.⁶

REQUIREMENT NOT SATISFIED: The indigent defense plan authorizes the magistrate to appoint counsel, but not all magistrates rule on requests for counsel. Not all requests for counsel are ruled upon within the mandatory timeframe.
- If not authorized to appoint counsel, the magistrate must transmit or cause to be transmitted to the appointing authority an accused's request for counsel within 24 hours of the request being made.⁷

NOT APPLICABLE: The indigent defense plan authorizes the magistrate to appoint counsel.

¹ TEX. CODE CRIM. PROC. art. 14.06(a).

² TEX. CODE CRIM. PROC. art. 17.033.

³ TEX. CODE CRIM. PROC. art. 15.17(a).

⁴ *Id.*

⁵ TEX. CODE CRIM. PROC. art. 15.17(e).

⁶ *See, e.g.,* TEX. CODE CRIM. PROC. art. 15.17(a) (requiring magistrate to appoint counsel according to the timeframes set in TEX. CODE CRIM. PROC. art. 1.051); TEX. CODE CRIM. PROC. art. 1.051(c) (spelling out timeframe for appointment of counsel by county population size).

⁷ TEX. CODE CRIM. PROC. art. 15.17(a).

**REQUIREMENT 2: DETERMINE INDIGENCE ACCORDING TO STANDARDS
DIRECTED BY THE INDIGENT DEFENSE PLAN.**

- Provide detailed procedures used to determine whether a defendant is indigent.⁸
- State the financial standard(s) to determine whether a defendant is indigent.⁹
- List factors the court will consider when determining whether a defendant is indigent.¹⁰

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.

- Establish objective qualification standards for attorneys to be on an appointment list.¹¹
 - Standards must require attorneys to complete at least six hours of continuing legal education pertaining to criminal / juvenile law during each 12-month reporting period or be currently certified in criminal law by the Texas Board of Legal Specialization.¹²
 - Standards must require attorneys to submit by October 15 each year the percentage of the attorney's practice time dedicated to indigent defense based on criminal and juvenile appointments accepted in this county. The report must be made on a form prescribed by the Texas Indigent Defense Commission for the prior 12 months that begins on October 1 and ends on September 30.¹³

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY (JUVENILES).

- Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.¹⁴
- If the child was not detained, an attorney must be appointed on or before the fifth working day after the date the petition for adjudication, motion to modify, or discretionary transfer hearing was served on the child.¹⁵

REQUIREMENT NOT SATISFIED: This box is not checked because the percent of timely appointments did not meet the Commission's 90% threshold for presuming a jurisdiction's appointment system to be timely.

⁸ TEX. CODE CRIM. PROC. art. 26.04(l)–(r).

⁹ TEX. CODE CRIM. PROC. art. 26.04(l).

¹⁰ TEX. CODE CRIM. PROC. art. 26.04(m).

¹¹ TEX. CODE CRIM. PROC. art. 26.04(d).

¹² 1 TEX. ADMIN. CODE § 174.1–4.

¹³ TEX. CODE CRIM. PROC. art. 26.04(j)(4).

¹⁴ Tex. Fam. Code § 54.01(b-1). Tex. Fam. Code § 51.10(c).

¹⁵ Tex. Fam. Code § 51.101(d).

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY (ADULTS).

- Incarcerated persons: After receipt of a request for counsel, counsel must be appointed within one working day in counties with a population of 250,000 or more and within three working days in counties under 250,000.¹⁶

REQUIREMENT NOT SATISFIED: The indigent defense plan authorizes the magistrate to appoint counsel, but not all magistrates rule on requests for counsel. Not all requests for counsel are later transmitted to the court.

- Persons out of custody: Counsel must be appointed at the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.¹⁷

REQUIREMENT NOT SATISFIED: This box is not checked because the percent of timely appointments did not meet the Commission's 90% threshold for presuming a jurisdiction's appointment system to be timely.

- All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.¹⁸

REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS.

- Rotational method: The court must appoint an attorney from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order.¹⁹

NOT APPLICABLE: Waller County uses an alternative appointment method.

- Public Defender: The system must meet the requirements set out in Article 26.044 of the Code of Criminal Procedure. The appointment process must be listed in the indigent defense plan.²⁰

NOT APPLICABLE: Waller County does not currently have a public defender.

- Alternative appointment method:²¹

- The local processes must be established by a vote of two-thirds of the judges.
- The plan must be approved by the presiding judge of the administrative judicial region.
- The courts must allocate appointments reasonably and impartially among qualified attorneys.

¹⁶ TEX. CODE CRIM. PROC. art. 1.051(c).

¹⁷ TEX. CODE CRIM. PROC. art. 1.051(j); *see also Rothgery v. Gillespie Cnty.*, 554 U.S. 191, 212 – 13 (2008) (holding that “a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.”).

¹⁸ TEX. CODE CRIM. PROC. art. 1.051(f-2).

¹⁹ TEX. CODE CRIM. PROC. art. 26.04(a).

²⁰ TEX. CODE CRIM. PROC. art. 26.044.

²¹ TEX. CODE CRIM. PROC. art. 26.04(g)–(h).

REQUIREMENT 6: PROMULGATE STANDARD ATTORNEY FEE SCHEDULE AND PAYMENT PROCESS.

- Payments shall be in accordance with a schedule of fees adopted by the judges.²²
- No payment shall be made until the judge approves payment after submission of the attorney fee voucher.²³
- If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount.²⁴
- Expenses incurred without prior court approval shall be reimbursed if the expenses are reasonably necessary and reasonably incurred.²⁵

REQUIREMENT 7: STATUTORY DATA REPORTING.

- The county auditor shall prepare and send to OCA an annual report of legal services provided in the county to indigent defendants during the fiscal year and an analysis of the amount expended:
 - In each district, statutory county, and appellate court;
 - In cases for which a private attorney is appointed for an indigent defendant;
 - In cases for which a public defender is appointed for an indigent defendant;
 - In cases for which counsel is appointed for an indigent juvenile; and
 - For investigation expenses, expert witness expenses, or other litigation expenses.

REQUIREMENT NOT SATISFIED: The County overstated its criminal indigent defense expenditures by including general court costs in its indigent defense expenditure report.

²² TEX. CODE CRIM. PROC. art. 26.05(b).

²³ TEX. CODE CRIM. PROC. art. 26.05(c).

²⁴ *Id.*

²⁵ TEX. CODE CRIM. PROC. arts. 26.05(d), 26.052(h).

Appendix E

Waller County Public Defender's Office Feasibility Report

APPENDIX E-1	39
APPENDIX E-2	42
APPENDIX E-3	45
APPENDIX E-4	49

WALLER COUNTY PUBLIC DEFENDER'S OFFICE FEASIBILITY REPORT

In late 2015, the Texas Indigent Defense Commission (TIDC) received a request from Waller County Commissioner Jeron Barnett to assess the feasibility of a public defender office (PDO) in Waller County.¹ Implementation of a public defender office would appear to be more cost effective for the county (at current appointment rates) or result in marginally higher costs (if appointment rates rose to the state average). While the cost of operating a public defender office would be comparable to the county's current indigent defense system, implementation of a PDO can improve the reliability of indigent defense services and create an institutional resource valuable to the bench, the bar, county officials, and the community.

BACKGROUND

Waller County's estimated population in 2014 grew to 45,642.² The county is served by one statutory County Court at Law and the 506th District Court. For FY15, Waller County spent \$498,634 on its indigent defense system. This figure represents attorney fees and investigation, expert witness, and other litigation expenditures. Currently, Waller County relies primarily on a contract defender system for indigent defense services, paying private attorneys \$2,867 monthly to represent indigent defendants in the county. For FY15, the county paid a total of \$384,045 in attorney fees, \$352,315 of which was paid to contract attorneys.³

POTENTIAL BENEFITS & DRAWBACKS OF A PUBLIC DEFENDER OFFICE

The potential cost benefits of a PDO are numerous but not easily quantifiable. Public defender offices provide economies of scale, decreased administrative costs, budget

¹ The Texas Code of Criminal Procedure grants Texas counties the power to form a PDO by creating a governmental entity or contracting with a nonprofit corporation "to provide legal representation and services to indigent defendants accused of a crime or juvenile offense." Tex. Code of Crim. Proc. Art. 26.044(a),(b).

² Estimates of the Total Population of Counties and Places in Texas for July 1, 2013 and January 1, 2014. Texas State Data Center, Population Estimates and Projections Program, available at: http://osd.texas.gov/Resources/TPEPP/Estimates/2013/2013_txpopest_county.pdf.

³ **Table 1.3** contains the combined FY15 caseload and pay data reported to TIDC by Waller County and the 14 attorneys who represented indigent defendants in the county. **Table 1.4** captures the same data for attorneys who accepted cases in Waller County and across other counties.

predictability, docket management, and reduced jail populations to counties. When adequately funded, a PDO also delivers quality representation and dependability. The performance of attorneys is more easily assessed and maintained, and public defenders provide judges with a single point of contact for issues that arise. A PDO contains important quality controls such as in house training and supervision and the ability to monitor and control attorney caseloads. The ability of the office to provide necessary support staff helps ensure the quality of an attorney's work, as well.

The operation of a public defender office also assists in meeting the requirements of the [ABA Ten Principles of a Public Defense Delivery System](#). Creation of a public defender office in Waller County would help assure adherence to these principles, considered the fundamental criteria necessary to design a system that provides effective, efficient, and ethical legal representation for indigent criminal defendants. A PDO would help insure independence from the judiciary, parity in resources between the prosecution and defense, controlled workload for defenders, and the systematic supervision of cases.

Potential disadvantages to implementing a PDO include natural resistance to change, start-up costs, and, in some cases, the absence of caseloads large enough to make a public defender cost effective. Satisfaction with the status quo can be a powerful motivator for declining to implement a public defender office. The impact a public defender would have on the work currently available to the private bar merits candid discussion in every county. An attempt should be made to gauge the realistic share of any type of case that would be assigned to the public defender and the extent to which members of the private bar would seek employment in the PDO.

Creating a public defender requires a significant one-time start-up investment to cover costs for planning the operation of the office, conducting a bidding and hiring process, purchasing furniture and electronic equipment, and preparing office space. TIDC's multi-year public defender grants have historically been designed to largely offset public defender start-up costs and ensure that counties do not incur financial risk by beginning a PDO. Texas has seventeen active county public defender offices, several of which are located in counties of similar size to Waller County and funded by TIDC.⁴ While

⁴ See Appendix D.

the absence of caseloads large enough to make a public defender cost effective may present a problem in some jurisdictions, caseloads in Waller County are large enough to justify the feasibility of a PDO.

WEIGHTED CASELOAD GUIDELINES AND STAFFING REQUIREMENTS

In determining staffing levels for a potential public defender office, TIDC utilized the Weighted Caseload Guidelines (Guidelines).⁵ The Guidelines, developed in conjunction with criminal defense experts in Texas and issued in 2015, are intended to determine the maximum number of criminal cases an attorney can reasonably handle in a year for both misdemeanors and felonies. Under the Guidelines, a solo practitioner can handle a maximum of 128 felony cases a year or 226 misdemeanor cases a year. Most local defense attorneys handling appointed cases carried caseloads at the threshold established by the Guidelines (when taking into account appointments in other counties and other practice areas).⁶ A few attorneys were above the Guidelines' threshold.⁷

When determining staffing levels at either a public defender office or a managed assigned counsel office, the presence of investigative staff enables slightly higher caseloads for attorneys (138 felony cases or 239 misdemeanor cases).⁸ To arrive at the number of attorneys needed for a potential PDO, TIDC staff divided the expected number of appointed cases with the caseload caps from the Guidelines. Two projections for the cost of a PDO were developed based on current and anticipated appointment rates. The first projection for the creation of a public defender office assumes that appointment rates remain the same as in FY15.⁹ This model requires three attorneys, one investigator, and one legal secretary. **Total indigent defense costs under this model come to \$434,860**, with the public defender office comprising \$390,850 and conflict counsel

⁵ *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission*, Public Policy Research Institute, Texas A&M University (2015), available at http://www.tidc.texas.gov/media/31818/150122_weightedcl_final.pdf.

⁶ See Appendix A, Table 1.4.

⁷ See Appendix A, Table 1.4. For example, one attorney disposed 63 felony cases across all counties, but reported that indigent defense cases only make up 20% of his practice time. His appointed caseload corresponds to a little less than 50% of a maximum caseload guidelines, but accounts for only 20% of his practice time.

⁸ TIDC attempts to fund new public defender offices with a support staffing ratio of one legal secretary and one investigator for every five attorneys.

⁹ See Appendix B for full details.

\$44,010. **This represents a cost savings of just under \$64,000 from FY15.**

The second projection for the creation of a public defender office assumes that appointment rates increase over FY15 levels (as typically occurs with the operation of a public defender office).¹⁰ This model assumes 44% of new misdemeanor cases receive appointed counsel, and 55% of new felony cases receive appointed counsel. This office would require four attorneys, one investigator, and one legal secretary. **Total indigent defense costs under this model come to \$533,623**, with the public defender office comprising \$470,300 and conflict counsel \$63,323. **This represents a cost increase of just under \$35,000 from FY15 spending, but includes a much higher number of appointments.**

Comparison of Indigent Defense Costs under Both Scenarios

	Scenario 1 – Appointment Rates Remain Constant	Scenario 2 – Appointment Rates Increase
Expected Indigent Defense Cases	490	747
Felony Indigent Cases	296	346
Misdemeanor Indigent Cases	189	396
Juvenile Indigent Cases	5	5
Conflict Counsel Cases	50	76
Cost of Conflict Counsel Cases	\$44,010	\$63,323
Public Defender Cases	440	671
Number of Attorneys	3	4
Number of Support Staff	2	2
Cost of Public Defender	\$390,850	\$470,300
Total Indigent Defense Costs	\$434,860	\$533,623

Under either scenario, a PDO appears to be a cost effective option for the county. While there are possible benefits and drawbacks to the creation of a public defender in Waller County, the office could promote efficiency in the provision of indigent defense services while providing important quality controls and ensuring that defendants are afforded their Sixth Amendment right to counsel.

¹⁰ See Appendix C for full details.

Appendix E-1

TABLE 1.1 — FY15 FINANCIAL DATA FOR WALLER COUNTY INDIGENT DEFENSE

Total Indigent Defense Expenditures	\$498,633.56
Contract Defender Rate	\$35,646.30
Total Paid to Contract Defenders	\$384,044.89
Total Felony Court Indigent Defense Expenditures	\$292,710.13
Total Misdemeanor Court Indigent Defense Expenditures	\$139,138.92

TABLE 1.2 — INDIGENT DEFENSE APPOINTMENT RATE IN WALLER COUNTY AND TEXAS

Texas 2015		Waller County FY2015
26,642,614	Population Estimate	45,642
503,299	MISD. Cases Added	903
222,408	MISD. Cases Paid	189
44%	MISD. Appointment Rate	21%
271,744	FEL. Cases Added	629
193,560	FEL. Cases Paid	296
71%	FEL. Appointment Rate	47%

TABLE 1.3 — CASELOAD DATA FOR INDIGENT DEFENSE ATTORNEYS IN WALLER COUNTY IN FY2015

Attorney Name	Capital Murder Cases Paid	Adult Felony Cases Paid	Adult Misdemeanor Cases Paid	Juvenile Cases Paid	Appeals Cases Paid	Total Cases Paid	Total Paid	Attorney Practice Time: Adult Cases	Attorney Practice Time: Juvenile Cases
BLAZEK, FRANKLIN	1	2	0	0	0	3	\$10,510	5%	0%
CANTU, PATRICIA	0	32	0	0	0	32	\$23,764	35%	0%
CARRINGTON, PATRICE	0	54	1	0	0	55	\$35,231	95%	0%
CHANEY, CAROL ADARE	0	0	62	1	0	63	\$35,231	50%	10%
FLEETWOOD, TRAVIS WILLIAM	0	52	0	0	0	52	\$35,231	15%	0%
FROMAN, REBECCA	0	67	4	0	0	71	\$35,231	60%	0%
GARVIE, CALVIN	0	21	0	0	1	22	\$27,687	20%	0%
GONZALEZ, STEFANIE MICHELE	0	2	31	4	0	37	\$23,764	50%	5%
GOODE, ROLFE	0	0	31	0	0	31	\$35,231	33%	5%
HARLE, JOHN	0	0	12	0	0	12	\$11,467	15%	2%
RICHARDSON, LEE VAN	0	36	0	0	0	36	\$35,231	35%	0%
RIVERA, JAMES	0	29	0	0	0	29	\$35,231	40%	0%
SENASAC, RICHARD LEE	0	0	48	0	0	48	\$35,231	25%	5%
SHEARER, R. SCOTT	0	0	0	0	2	2	\$5,000	No Report	No Report

TABLE 1.4 — CASELOAD DATA FOR WALLER COUNTY INDIGENT DEFENSE ATTORNEYS ACROSS COUNTIES IN FY2015

Attorney Name	Counties of Indigent Defense Practice	Capital Murder Cases Paid	Adult Felony Cases Paid	Adult Misdemeanor Cases Paid	Juvenile Cases Paid	Appeals Cases Paid	Total Cases Paid	Total Paid	Practice Time: Adult Cases	Practice Time: Juvenile Cases
BLAZEK, FRANKLIN	Waller, Brazos, Grimes, Madison, Walker	1	101	53	6	1	162	\$145,464	66%	1%
CANTU, PATRICIA	Waller, Grimes	0	53	0	0	0	53	\$33,839	45%	0%
CARRINGTON, PATRICE	Waller	0	54	1	0	0	55	\$35,231	95%	0%
CHANNEY, CAROL ADARE	Waller	0	0	62	1	0	63	\$35,231	50%	10%
FLEETWOOD, TRAVIS WILLIAM	Waller, Washington	0	63	0	0	0	63	\$43,471	20%	0%
FROMAN, REBECCA	Waller, Grimes	0	68	4	0	0	72	\$35,781	60%	0%
GARVIE, CALVIN	Waller, Austin	0	66	67	0	1	134	\$61,287	90%	2%
GONZALEZ, STEFANIE MICHELE	Waller, Floyd	0	3	31	4	0	38	\$24,244	55%	10%
GOODE, ROLFE	Waller	0	0	31	0	0	31	\$35,231	33%	5%
HARLE, JOHN	Waller, Austin	0	22	68	2	0	92	\$37,342	40%	5%
RICHARDSON, LEE VAN	Waller, Washington	0	67	0	0	0	67	\$73,456	70%	0%
RIVERA, JAMES	Waller	0	29	0	0	0	29	\$35,231	58%	0%
SENASAC, RICHARD LEE	Waller	0	0	48	0	0	48	\$35,231	25%	5%
SHEARER, R. SCOTT	Waller	0	0	0	0	2	2	\$5,000.00	No Report	No Report

Appendix E-2

Feasibility Model 1 — FY15 Track

The following feasibility model is built on Waller County's FY15 indigent defense rates. The costs projected by this model rest on several assumptions:

- The model assumes that the public defender will handle all non-conflict cases, and that private counsel will handle all conflict cases.
 - TIDC staff estimated that non-conflict cases would account for 90% of all appointments, and that conflict cases would account for 10% of appointments.
 - Because Waller County data was not available through the Office of Court Administration, TIDC staff built the *misdemeanor cases added* figure by adding new non-traffic misdemeanor cases to an estimate for motions to revoke probation.
- The model assumes that a public defender can reasonably handle 138 felony cases or 239 misdemeanor cases per year.
 - By using an in-house investigator, public defenders can carry a caseload slightly above the typical rate.
- The model assumes the chief public defender will carry a 2/3 caseload.
 - By combining the FY15 rates and the weighted caseload recommendations, the chief public defender would split caseload and administrative workload at a 2/3 to 1/3 rate.
- The model assumes the cost of conflict counsel based on a three-year average cost-per-case rate.
 - A three-year cost-per-case average equaled \$1015 per felony and \$678 per misdemeanor.

Waller County Feasibility Model 1

1. Caseload	Total	Msd Added	Fel Added	Juv Paid
<i>A. Total New Cases Added</i>	1,535	903	629	5
<i>B. Total Indigent Cases Added</i>				
% of Total Cases Added that are Indigent	—	21%	47%	100%
Estimated Total Indigent Defense Cases	490	189	296	5
<i>C. Caseload Split</i>				
Public Defender Caseload (90% of total indigent defense cases)	441	170	266	5
Conflict Cases to Private Counsel (10% of total indigent defense cases)	50	19	30	1
2. Staff				
<i>A. Public Defender Caseload</i>	441	170	266	5
<i>B. Attorney Caseloads based on the Weighted Caseload Study</i>	—	239	138	200
<i>C. Number of Attorneys Needed</i>	3.00	0.71	1.93	0.02
<i>D. Number of Support Staff (1 investigator and 1 staff per 5 attorneys)</i>	1.00	0.29	0.77	0.01
3. Rough Draft Budget				
<i>A. Total Staff Salaries</i>	\$295,000	\$102,500	\$192,500	\$-
Chief Defender (1)	\$90,000	\$27,000	\$63,000	\$-
Felony Defender (1)	\$70,000	\$-	\$70,000	\$-
Misdemeanor Defender (1)	\$50,000	\$50,000	\$-	\$-
Juvenile Defender (0)	\$-	\$-	\$-	\$-
Investigator (1)	\$50,000	\$15,000	\$35,000	\$-
Support Staff (1)	\$35,000	\$10,500	\$24,500	\$-
<i>B. Fringe (28%)</i>	\$82,600	\$24,780	\$57,820	\$-
<i>C. Operating Costs (\$500/yr Tech, \$350/supply)</i>	\$4,250	\$1,275	\$2,975	\$-
<i>D. Rental (150 ft²/person* \$12/ft²/yr *)</i>	\$9,000	\$2,700	\$6,300	\$-
<i>Estimated Total PD</i>	\$390,850	\$131,255	\$259,595	\$-
<i>Cost per case with PD</i>	\$886.71	\$770.78	\$975.92	\$-

4. Additional Year 1 Expenditures				
<i>A. Equipment</i>		—	—	—
Computers (5)	\$7,500.00	—	—	—
Printer (1)	\$300.00	—	—	—
Desks/Chairs (5)	\$2,000.00	—	—	—
<i>B. Start-Up Supplies</i>	\$650	—	—	—
Total Equipment and Supplies	\$10,450	—	—	—
5. Conflict Counsel Costs (10% of total indigent cases, based on 3YR Avg Cost/Case)				
<i>A. Felony (\$1015/felony)</i>	\$30,450	—	—	—
<i>B. Misdemeanor (\$678/misdemeanor)</i>	\$12,882	—	—	—
<i>C. Juvenile</i>	\$678	—	—	—
Total Cost of Conflict Counsel	\$44,010	—	—	—
6. Total Operating Costs (LESS Equipment and Start-Up Supplies)				
	\$434,860	—	—	—

Appendix E-3

Feasibility Model 2 — Increased Caseload Track

The following feasibility model simulates the typical increase in indigent appointments that accompanies the opening of a public defender office. The costs projected by this model rest on several assumptions:

- The model assumes that the public defender will handle all non-conflict cases, and that private counsel will handle all conflict cases.
 - TIDC staff estimated that non-conflict cases would account for 90% of all appointments, and that conflict cases would account for 10% of appointments.
- The model assumes that *felony cases added* will continue at the high rate as seen in 2015.
 - New *felony cases added* almost doubled between 2014 and 2015, and the model presumes this high level will continue.
- The model assumes the number of *felony cases paid* will increase by approximately 15% from FY2015.
 - *Felony cases paid* have steadily increased over a three-year period. This increase may indicate many indigent defense cases are sitting in the trial pipeline.
- The model assumes a *misdemeanor cases added* number that mirrors the Texas 2015 misdemeanor appointment rate.
 - In 2015, the Texas misdemeanor appointment rate sat at 44%.
- The model assumes that a public defender can reasonably handle 138 felony cases or 239 misdemeanor cases per year.
 - By using an in-house investigator, public defenders can carry a caseload slightly above the typical rate.
- The model assumes the chief public defender will carry a 1/2 caseload.

- By combining the FY15 rates and the weighted caseload recommendations, the chief public defender would split caseload and administrative workload on a 50/50 basis.
- The model assumes the cost of conflict counsel based on a three-year average cost-per-case rate.
 - A three-year cost-per-case average equaled \$1015 per felony and \$678 per misdemeanor.

Waller County Feasibility Model 2

1. Caseload	Total	Msd Added	Fel Added	Juv Paid
<i>A. Total New Cases Added</i>	1,535	903	629	5
B. Total Indigent Cases Added				
% of Total Cases Added that are Indigent		44%	55%	100%
Estimated Total Indigent Defense Cases	747	396	346	5
C. Caseload Split				
Public Defender Caseload (90% of total indigent defense cases)	672	357	311	5
Conflict Cases to Private Counsel (10% of total indigent defense cases)	76	40	35	1
2. Staff				
<i>A. Public Defender Caseload</i>	672	357	311	5
<i>B. Attorney Caseloads based on the Weighted Caseload Study</i>	—	239	138	200
<i>C. Number of Attorneys Needed</i>	4.00	1.49	2.25	0.02
<i>D. Number of Support Staff (1 investigator and 1 staff per 5 attorneys)</i>	2.00	0.60	0.90	0.01
3. Rough Draft Budget				
<i>A. Total Staff Salaries</i>	\$355,000	\$127,500	\$227,500	\$-
Chief Defender (1)	\$90,000	\$27,000	\$63,000	\$-
Felony Defender (1.5)	\$105,000	\$-	\$105,000	\$-
Misdemeanor Defender (1.5)	\$75,000	\$75,000	\$-	\$-
Juvenile Defender (0)	\$-	\$-	\$-	\$-
Investigator (1)	\$50,000	\$15,000	\$35,000	\$-
Support Staff (1)	\$35,000	\$10,500	\$24,500	\$-
<i>B. Fringe (28%)</i>	\$99,400	\$29,820	\$69,580	\$-
<i>C. Operating Costs (\$500/yr Tech, \$350/supply)</i>	\$5,100	\$1,530	\$3,570	\$-
<i>D. Rental (150 ft²/person* \$12/ft²/yr *)</i>	\$10,800	\$3,240	\$7,560	\$-
<i>Estimated Total PD</i>	\$470,300	\$162,090	\$308,210	\$-
<i>Cost per case with PD</i>	\$699.54	\$454.29	\$991.03	\$-

4. Additional Year 1 Expenditures				
<i>A. Equipment</i>		—	—	—
Computers (6)	\$9,000	—	—	—
Printer (1)	\$300	—	—	—
Desks/Chairs (6)	\$2,400	—	—	—
<i>B. Start-Up Supplies</i>	\$750	—	—	—
Total Equipment and Supplies	\$12,450	—	—	—
5. Conflict Counsel Costs (10% of total indigent cases, based on 3YR Avg Cost/Case)				
<i>A. Felony (\$1015/felony)</i>	\$35,525	—	—	—
<i>B. Misdemeanor (\$678/misdemeanor)</i>	\$27,120	—	—	—
<i>C. Juvenile</i>	\$678	—	—	—
Total Cost of Conflict Counsel	\$63,323	—	—	—
6. Total Operating Costs (LESS Equipment and Start-Up Supplies)				
	\$533,623	—	—	—

Appendix E-4

Public Defender Offices in Texas

REGIONAL PUBLIC DEFENDER OFFICES					
Program Name	Location	Services	Year Est.	Estimated Population	Participating Communities
Bee County Regional PDO	Bee County	Regional, Felony, Misdemeanor, Juvenile, Appellate	2009	66,832	Bee, Live Oak, McMullen, Willacy
Caprock Regional PDO (Texas Tech University)	Lubbock County	Regional, Felony, Misdemeanor, Juvenile, Appellate	2011	49,802	Armstrong, Briscoe, Cochran, Dickens, Floyd, Hockley, Kent, King, Motley, Stonewall, Swisher
COUNTY PUBLIC DEFENDER OFFICES					
Program Name	Location	Services	Year Est.	Estimated Population	Participating Communities
Bexar County Public Defender	Bexar County	Felony Appellate, Misdemeanor Appellate, Juvenile Appellate, Misdemeanor Mental Health	2005	1,827,782	Bexar
Bowie County PDO	Bowie County	Felony, Misdemeanor	2008	106,925	Bowie
Burnet County PDO	Burnet County	Felony, Misdemeanor, Juvenile	2012	44,618	Burnet
Cameron County Juvenile PDO	Cameron County	Juvenile	1999	423,131	Cameron
Colorado County Public Defender	Colorado County	Felony, Misdemeanor, Juvenile	1987	21,758	Colorado

Dallas County PDO	Dallas County	Capital, DNA Exoneration, Felony, Misdemeanor, Juvenile, <i>Padilla</i> Consultation & referrals, CPS & Family Law	1983	2,474,550	Dallas
El Paso County PDO	El Paso County	Capital, Felony, Misdemeanor, Juvenile	1987	827,086	El Paso
Fort Bend County Mental Health Defender Program	Fort Bend County	Felony Mental Health, Misdemeanor Mental Health	2010	663,675	Fort Bend
Harris County PDO	Harris County	Felony, Juvenile, Felony Appellate, Misdemeanor Appellate, Misdemeanor Mental Health	2011	4,365,601	Harris
Hidalgo County PDO	Hidalgo County	Felony, Misdemeanor, Juvenile	2005	821,758	Hidalgo
Kaufman County PDO	Kaufman County	Felony, Misdemeanor	2007	108,997	Kaufman
Travis County Juvenile PDO	Travis County	Juvenile	1971	1,126,684	Travis
Travis County Mental Health PDO		Misdemeanor Mental Health	2007		
Webb County PDO	Webb County	Felony, Misdemeanor, Juvenile	1988	268,653	Webb
Wichita County PDO	Wichita County	Felony, Misdemeanor	1989	133,464	Wichita
Willacy County PDO	Willacy County	Felony, Misdemeanor, Juvenile	2007	21,929	Willacy

Appendix F

Committee Recommendations to the Waller County Sheriff's Office

Waller County Sheriff's Office

Recommended Police and Jail Practices

Hon. Craig Washington

Paul Looney, *ex-officio*

Hon. Morris Overstreet

Juan L. Guerra

Randall Kallinen

JoAnne Musick

ABSTRACT

A committee was formed to observe the inner workings of the Sheriff's Office and report on and recommend practices and policies to benefit the Office and the citizens of Waller County. The committee was driven by Sandra Bland's words: "I am going to Texas to make it better."

Executive Summary	1
Introduction	1
Inmate Screening for Mental Health and Medical Problems	2
<i>Recommendation: Employ EMTs to triage and assess medical and mental health issues while also creating the ability for physician review and videoconferencing.</i>	2
Body Cameras	4
<i>Recommendation: Develop a written policy for the use of video recordings, and purchase body cameras to document interactions to protect both the officer and the citizen accused.</i>	4
Language and Demeanor	6
<i>Recommendation: Create a zero tolerance policy against the use of demeaning or derogatory language.</i>	6
Counseling and Fitness to Serve	7
<i>Recommendation: Anger management courses and psychological evaluations should be implemented as a matter of routine to maintain acute mental fitness within the Office.</i>	7
New Jail	8
<i>Recommendation: New jail facilities are necessary as the current facility does not address the safety and security required.</i>	8
Booking Process	8
<i>Recommendation: Invest in technology for an electronic booking process to facilitate access to information on inmates.</i>	8
Digital Reporting from the Field	9
<i>Recommendation: Invest in technology to allow deputies to access records electronically and enter offense reports without the necessity of returning to the Office.</i>	9
Public Information Officer	10
<i>Recommendation: A single point of contact for public information allows the Office to present information more clearly and accurately.</i>	10
Separate Jail Administration and Policing Duties	10
<i>Recommendation: To the extent possible, jail administration and policing should be separated.</i>	10

Executive Summary

On request of the Waller County Sheriff, this committee gathered to investigate, review, and recommend policing and jail practices within the Waller County Sheriff's Office. The committee members were granted full and unencumbered access to all areas of the Waller County Sheriff's Office. A number of recommendations are made that are believed will improve operations both from public safety and efficiency perspectives. The recommendations are intended to be practical and capable of implementation without extensive expenditures, and in some cases may save taxpayer money.

In making our recommendations, we are hopeful that the Sheriff and his Office will work toward a safer, more efficient, and more professional department that ensures public trust and cooperation. The request for this review is a great step toward improving police and jail functions within the county and serves as an example for all law enforcement agencies.

Introduction

On July 31, 2015, this Committee formed at the request of Waller County Sheriff R. Glenn Smith for the purpose of investigating, from the perspective of the committee members, the operations of the Waller County Sheriff's Office and where possible to make suggestions for improving practices to better ensure public safety and the protection of the rights and safety of suspects. Local attorney Paul C. Looney, who served as a non-voting *ex-officio* member, formed the committee. The five-person committee is composed of civil rights attorneys Craig Washington and Randall Kallinen, former Texas Court of Criminal Appeals Judge Morris L. Overstreet, criminal defense attorney Juan L. Guerra, and criminal defense attorney and President of the Harris County Criminal Lawyers Association JoAnne Musick.

Committee members were given full, unencumbered access to the operations of the Waller County Sheriff's Office, including administrative, investigative, jailing, and patrol divisions. The overall impression is that some areas within the agency are being run well; however, the committee members believe that some specific improvements could result in improved operations and heightened public support. Most specifically, our recommendations with regard to medical assessments and jail facilities would be the most significant in terms of suicide prevention. And, while the committee studied all areas, we are reminded of Sandra Bland's untimely death as perhaps the impetus for this review.

Suggestions are made with full consideration of the budget realities of a small county. While we have included in footnotes some “perfect world” suggestions, we have endeavored to make suggestions that are workable with moderate to no cost and that we believe can be justified while respecting necessary budgetary constraints.

The Committee Members remain committed to assisting the Waller County Sheriff's Office in the implementation of these suggestions wherever possible, whether meeting periodically or by invitation.

Inmate Screening for Mental Health and Medical Problems

Recommendation: Employ EMTs to triage and assess medical and mental health issues while also creating the ability for physician review and videoconferencing.

Presently, deputies screen arrestees for mental and medical problems, but this is not an accurate or efficient process. Deputies do not possess the training or expertise to evaluate the medical and mental health needs of inmates. More than one-half of the county's arrestees are on some sort of medication, and deputies have reported to committee members that the average age of inmates has risen notably. Along with older inmates, the jail has seen an increase in the percentage of inmates that use one or more regular medications; however, it can take more than a week for the jail to obtain a prescription and the necessary medication. Depending upon the inmate's medical needs and the adverse consequences of failing to take necessary medications, this delay can be grossly detrimental to the well-being of the inmate.

Often, deputies taking mental health history do not know what to do with this information once it is made part of the file. Deputies are unsure which inmates may require hospitalization or emergency treatment and may not transport inmates who should be transported, alternatively, they may unnecessarily transport other inmates. Suicide prevention measures are applied in a less than optimal manner. This is not efficient and does not serve the inmates or the Office well.

It is recommended that emergency medical technicians (EMTs) be utilized to interview inmates concerning medical and mental health issues.¹ EMTs generally have training in not only assessing medical needs but also in assessing mental health and suicide risks. EMTs already come to the jail when necessary to perform blood draws in DWI cases; they are trained in triage and patient evaluation and can quickly determine which inmates will require transport to a hospital for medical or psychiatric intervention. With electronic patient assessment, their

¹ Ideally, EMT personnel would be fully staffed 24/7 within the jail to address incoming inmates as well as housed inmates; however, understanding budgetary constraints, EMT personnel can be contracted for in periodic short shifts throughout the day or as needed, much like with a blood-draw.

collected data would be immediately available to a contracted physician for review without the added necessity of having a physician present. The EMTs should be given access to inmate electronic medical records for medical care only, without making those records part of any law enforcement file. Additionally, arrestees may be more inclined to be forthcoming with an EMT, rather than a police officer whom they may see as adversarial.

Should the EMT identify an issue that requires medication or treatment of a less than urgent nature, a videoconference (Skype or similar Internet consultation program) with a doctor can be conducted.² Through these sorts of virtual health services, prescriptions can be obtained on the day of arrest, inmates requiring suicide prevention can be more readily identified and isolated, and inmates with mental health issues can be appropriately medicated, aiding with jail management. Inmates with medical or mental health conditions requiring hospitalization or emergency treatment can be more readily identified, preventing unnecessary emergency room trips and ensuring that necessary treatments take place.

As an aside, the same video conferencing system can also be used to conduct “live” hearings with magistrates in order to set bonds at the earliest possible time.³ There are a limited number of magistrates in Waller County, and they are not present at the county jail on a regular basis. Providing a mechanism for magistrates to set bail via videoconferencing would be more convenient for the magistrates and the deputies and would allow bonds to be set earlier in the process, reducing the jail population and the associated expenses of housing pre-trial detainees. Utilizing a video system would meet the necessary requisites of the magistrate being able to speak directly to the inmate and provide statutory warnings as well as determine appropriate and individualized bonds.

² Emergency rooms across the country already utilize video conferences (Skype or other software) to put triage staff in touch with doctors immediately without the necessity of staffing a full-time physician. This model works well in hospitals, clinics, and urgent care centers and can easily be added to the jail process for more efficient and more cost productive medical review and care. Again, without the expense of staffing a full-time physician.

³ Again, courtrooms around the State are already using video conferencing between inmates and magistrates to expedite this process and decrease the need to physically transport inmates to a magistrate or require a magistrate to travel to the jail.

Body Cameras

Recommendation: Develop a written policy for the use of video recordings, and purchase body cameras to document interactions to protect both the officer and the citizen accused.

The Office has not yet developed a written policy or plan for the use and purchase of body cameras to record law enforcement interactions. This is perhaps the most complex issue faced by the Committee – but fortunately, the Committee has had the guidance of numerous studies from around the country and from a number of perspectives. Body cameras have the potential to resolve substantive complaints and prevent spurious complaints, enhance transparency, increase officer accountability, identify internal departmental problems, and provide evidence for prosecution and internal investigations. Issues to be considered include what discretion officers should have concerning when to record; the storage and retention of body camera files; and the availability of body camera files under Public Information Act requests.

In studies, body cameras have been shown to reduce complaints against police officers dramatically, while also reducing use of force incidents by 50% or more. It is unknown whether these changes are because officers who know they are being recorded behave more responsibly, because citizens that are on camera tend to behave more responsibly, or both. Body cameras not only protect good officers from unfounded complaints but also help to identify and correct problems within policing. The demonstrated advantages of body cameras for both deputies and citizens are substantial.

Deputies, ideally, should be given little discretion as to when to record. It is not unknown that a routine traffic stop may result in an arrest, an escape, and/or a violent situation; a discretionary decision that a routine traffic stop should not be recorded could result in the loss of valuable evidence. Consistent and routine recording of all police interactions can protect good officers against false accusations, protect citizens against potential bad officers or false accusations, ensure that guilty people are convicted, and resolve training or disciplinary issues.⁴ It is recommended that as a basic policy all deputy interactions should be recorded. Interaction would include from the moment the deputy exits his patrol vehicle until the end of the encounter or arrest. Creating a policy with definitive start and stop intervals eliminates the deputy's discretion and the possibility of failing to record a particular encounter.

⁴ In October, 1976, Dallas Police Department Officer Robert Wood was shot and killed by David Ray Harris during a traffic stop. Randall Dale Adams, a hitch-hiker picked up by Harris, was also in the vehicle stopped. Harris blamed Adams for the shooting, and Adams was charged with Capital Murder and sentenced to death. Harris went on to murder Mark Mays in Beaumont, Texas in 1985. In 1989, the Texas Court of Criminal Appeals overturned Adams' conviction. Harris was executed for the Mays killing in 2004. While the details of those cases are beyond the scope of these recommendations, it should be noted that if body cameras had been available to Officer Wood in 1976, the recordings could have prevented the wrong person being charged with his death, and prevented Harris from killing again.

In addition, taking the decision of when to record out of the hands of deputies as a matter of policy gives deputies confidence that they are making the correct decision. Deputies have enough on their minds without having to weigh the pros and cons of each recording. Having these decisions made as a matter of policy provides confidence in the process and ensures that deputies who follow policy cannot be questioned, in court or by their superiors, for their decisions.

Having every response to a call for service, use of force, arrest, search, interrogation, pursuit, or witness interview recorded and available would, however, be cost-effective and appropriate, except where a witness specifically declines to be recorded. As a general rule, when in doubt, deputies should record. When deputies choose not to record because doing so would be unsafe, deputies should be required to state either in writing or on camera their reasons for turning the camera off. Additionally, any problems with the recording equipment should be promptly noted and investigated for repairs.

The costs and technical challenges of storing, retaining, cataloguing and disclosing the unedited recordings body cameras generate presents a major challenge. The cost of storing all recordings indefinitely is prohibitive. All unedited files must not only be downloaded onto a computer system but catalogued in such a manner that every recording can be located and retrieved. Video files consume large amounts of computer storage space, and the time and expense of storing and cataloguing these files (while decreasing) is not inconsequential.

Video files encompass two broad categories: non-evidentiary and evidentiary. Non-evidentiary video files include citizen interactions involving requests for directions, assisting a motorist, social greetings, and other innocuous police interactions. Non-evidentiary recordings may be deleted after a limited amount of time.⁵ Other recordings will be evidentiary and should be copied for provision to prosecutors and defense attorneys, and retained for a defined period of time that would exceed the conclusion of any legal matter arising from the circumstances of the recording. Obviously, evidentiary video files include traffic stops resulting in an arrest or citation, interactions related to calls for service where charges are filed or anticipated to be filed, interactions involving the use of force, and investigative actions by officers.

The system must be audited to prevent erasures, tampering and alterations. An audit trail should be established to determine who accesses the files, when, and for what purpose. If not cost prohibitive, a dual-key system should be established for any deletions. A dual-key system would require two separate and distinct individuals to concur in the deletion before any deletion could occur.

Because of the complexity in creating, monitoring, and auditing a video system, larger departments often require dedicated staff simply to maintain their body camera file archives.

⁵ Committee members differed as to how long non-evidentiary recordings should be kept, but reached a consensus that a minimum of thirty days was appropriate while a period of sixty to ninety days would be optimal.

Given the nature of Waller County's budgetary constraints as well as smaller police force, it would not be realistic or necessary to have staff dedicated to running a video archive system. Existing staff could be trained to upload and tag video into a centralized location. For example, the officer assigned a body camera could be responsible for uploading all video at the conclusion of his incident or shift. Administrative staff could then be responsible for any subsequent retrieval of that video. It is noted that some recordings will be sensitive and should not be released to the public, such as interviews with rape victims or interviews with confidential informants; and existing Open Records exemptions for criminal investigations will protect the release of these video files. While existing Open Records exemptions will prevent sensitive disclosures, the Sheriff should note that public trust is increased with transparency; therefore, whenever possible and within the scope of Open Records, video should be released. In general, any case-related files should only be accessible on a need-to-know basis while the investigation or subsequent court case is pending.

A study of the issues and experiences of police departments in the deployment of body cameras was done in 2012 by the Community Oriented Policing Services office within the Department of Justice, in cooperation with the Police Executive Research Forum. The recommendations stemming from that study are reported in "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned."⁶ While this report is comprehensive and of assistance to the issues, it should, be noted that costs for both cameras and storage have decreased over the past four years.

Language and Demeanor

Recommendation: Create a zero tolerance policy against the use of demeaning or derogatory language.

While the Committee was pleased with the attitudes most Waller County deputies displayed towards suspects and arrestees, some members of the department persisted in name-calling and dehumanization towards some suspects. Epithets such as "turd," "thug," "gangbanger," and "piece of shit" were sometimes used to describe suspects. Such 'us v. them' language is not only dehumanizing in itself, but tends to become a cultural value passed down to other, more junior deputies and engenders an atmosphere that denigrates the rights of suspects and invites misconduct. The risk is that dehumanizing language will be translated into inhumane actions. It is unprofessional and, especially when used by senior employees, encourages an unprofessional attitude in more junior officers.

⁶ <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>

To maintain the principle that all individuals will be treated with respect, whatever crime they have been accused of or have committed, there should be zero tolerance, as a matter of policy, towards such language being used to describe members of the public. This costs nothing, improves the appearance and professionalism of the Office, encourages public trust, and makes it easier for members of the public (especially minority members) to feel confident speaking to officers. Nothing of any potential value is lost by banning such attitudes and terminology; and the members of the committee believe that this policy change can and should be adopted immediately. Further, this recommendation would require no cost to the Office or county.

Counseling and Fitness to Serve

Recommendation: Anger management courses and psychological evaluations should be implemented as a matter of routine to maintain acute mental fitness within the Office.

Going hand-in-hand with language, demeanor, and attitude, one's mental fitness to serve is of vital importance to maintaining the highest police integrity. Mental fitness should be viewed as an asset to deputies.

It is well known that policing can be extremely stressful, even for deputies who do not encounter violent situations. Deputies deal with the public every day, and their encounters are not always amicable. Quite often, deputies encounter hostile citizens in their worst possible moments as either victims or accused. Many officers "bottle up" this stress, and when coupled with personal stressors this presents the risk that the stress will explode to the surface at the worst possible times and in the worst possible ways.

Many departments utilize psychological services on an as-needed basis for routine matters, and on a mandatory basis after a shooting incident. It is recommended that Waller County implement a policy requiring all deputies to undergo anger management sessions every eighteen months. This minimal step of anger management sessions will help deputies manage their emotions, learn how to release the everyday stressors of the job in appropriate manners, and with some regularity remind deputies to implore those skills while dealing with citizens in their worst situations. Again, as a minimal step, this saves the expense of continuous psychological overview.

Additionally, it is recommended that deputies be re-evaluated for duty with a complete psychological evaluation every three years. The shooting proficiency of deputies is tested every year. Yet, beyond their initial assessment at hiring, deputies are not tested psychologically unless they seek it. The psychological fitness to serve of deputies is no more static than their shooting proficiency, and deputies cannot be expected to recognize and respond to warning signs within

themselves or their brethren. Ensuring that all deputies serving the Office are in peak psychological condition helps ensure the efficiency, reputation, and safety of the Office. It will also contribute to an overall well being in the individual deputies, which will translate to better relations with the community.

New Jail

Recommendation: New jail facilities are necessary, as the current facility does not address the safety and security required.

The present jail is obsolete and was not built in anticipation of the present quantity of inmates. There are no adequate suicide-prevention cells or other special needs housing available. Video and audio monitoring systems have been added in an ad-hoc manner. Many of the walls are rusting and damp. Sanitary conditions are difficult, if not impossible, to maintain. It is inefficient, outdated, and neither safe nor healthy for guards, staff, and inmates.

A new jail is presently planned for several years out, and that schedule should be accelerated to the extent possible. While building a new jail presents a major investment, it is an investment that is better made sooner rather than later. The costs of building a new facility are not going to decrease. Financing costs are only going to increase in the coming years.

The members of the Committee are willing to review plans for any proposed jail facilities and provide input for consideration before plans are finalized. The Committee believes that good design from the start can prevent problems from developing once the facility is on-line. Ensuring a safe, healthy, efficient, low-maintenance, technologically advanced facility is created is in the interests of the County, the Sheriff's Office, pre-trial detainees, convicted citizens, and the public.

Booking Process

Recommendation: Invest in technology for an electronic booking process to facilitate access to information on inmates.

The Office very much needs a digital booking process. The current process is difficult to access, inconsistent, and inefficient. The current process is essentially a manual process with no checks and balances.

An electronic process can allow officers to document initial booking information (name, date of birth, social security number, place of residence, next of kin, employer information, etc.), attach a “mug shot” via a computer camera, print identification and cell tags, catalogue property for safekeeping, record fingerprints, record health screening information, and record information obtained or developed during the inmate’s stay. Information as to what other inmates a defendant should not be in contact with can be made part of the system. Presently, this information exists in a number of different places, and they are not electronically “linked” together. The lack of electronic information creates manual deficiencies and allows for greater mistakes.

In short, the jail runs on information. When information is not available to those who need it, they cannot be expected to make the right decisions or take the right actions. Having all the necessary information on any inmate available at the touch of a button will ensure that jailers have clear information, reducing mistakes, stress, and wasted effort.

The committee has learned that the District Attorney’s Office is utilizing an electronic document management system, Document Logistix. It appears that the jail may be able to utilize this same software which would then more easily integrate with the District Attorney’s Office during the charge process. Additionally, it may ease the sharing of information between the two office’s. This avenue should be explored as it would solve the problems associated with a manual booking process, and it may provide cost savings over purchasing or developing a stand-alone system.

Though we encourage the consideration of integration with the District Attorney’s Office, caution should be taken to ensure information is secure and not all accessible across departments. For example, some medical information on inmates may be sensitive, protected, or otherwise not available except upon specific request. Additionally, if medical information is known to be instantly accessible by prosecutors, inmates may be reluctant to be candid in their disclosures.

Digital Reporting from the Field

Recommendation: Invest in technology to allow deputies to access records electronically and enter offense reports without the necessity of returning to the Office.

With the technological advances available to law enforcement, deputies can be made significantly more efficient. Currently, deputies are required to return to the station to enter offense reports. With drive time to and from the station, this takes the deputy out of service for other calls for an extended period of time. Waller County vehicles should be equipped with laptops and appropriate wireless or cellular technology to allow officers to file reports digitally

from the field. This technology is relatively inexpensive and is being widely used nationwide by large and small departments alike.

The flow of information works both ways. Having computers in their cars also allow deputies to see search and arrest warrants, photos of suspects, their vehicles, their homes, etc., and allows them to consult with other officers and supervisors more readily.

Public Information Officer

Recommendation: A single point of contact for public information allows the Office to present information more clearly and accurately.

The Office should speak to the public and the media through a Public Information Officer, to ensure that all communications are carefully crafted and presented. The job of Sheriff does not require or imply the skills necessary to carefully communicate to the media. A professional spokesperson should be tasked with providing information to the media and public, handling Open Records requests, and improving communications between the public and the Sheriff's Office. While this need not be a full-time position, an individual with a background in journalism, marketing or communications should be appropriate. A public information officer should be tasked with maintaining the public's confidence by serving the public interest and putting the public trust before all else while adhering to the highest standards of honesty and accountability and striving to present information in a clear, concise and credible manner.

Separate Jail Administration and Policing Duties

Recommendation: To the extent possible, jail administration and policing should be separated.

Policing, and Jail Administration, are distinct functions with very little skill set carryover. There should be a designated deputy in charge of all jail operations, and that individual should receive extensive training in jail operations. Jailers (who need not be deputies) should be focused on providing a clean, safe, humane and secure facility. Deputies should focus their efforts on law enforcement. These functions are not so intertwined as to be performed by the same staff.

Presently, many deputies serve in both positions, alternately. It is the sense of the committee that most deputies became law enforcement officers to serve in the policing function, not the jailing function. As the County (and accordingly, the jail) continue to grow, a greater division of labor

would appear both more efficient, and more effective, and increase the quality of work of both jailers and law enforcement personnel.

Inmates should have an Ombudsmen to turn to when problems arise. At present, there is no one source inmates can go to when they believe they have been treated in a manner other than that prescribed by policy and the rules.

The committee recognizes, however, that separation of jail and policing may be logistically and financially impossible in many counties, especially smaller counties. To that extent, the Office should consider whether to separate staff rather than having deputies serve both areas. In the event that deputies must continue to serve both jail administration and policing, the Office should ensure that all deputies are adequately trained in both areas.