

PUBLIC
DEFENDER
PRIMER

October 2020

*Explore Texas public defender
offices and build your own.*



TABLE OF CONTENTS

4	Foreword
5	TIDC Members and Staff
6	The Public Defender Model
8	Research on Public Defenders
10	Public Defenders Help Recruit New Lawyers
12	Texas Public Defenders
18	Spotlights
24	How to Build a Public Defender Office
30	Statistical Tables
34	References

FOREWORD

The year 1914 saw two of the world's first public defender offices built right here in Texas. A century in the rearview, we can confidently say that public defender offices produce better results:

- Higher quality
- Greater accountability
- Lower costs

Why do Texas public defender offices work? Our criminal justice counterparts—police, prosecutors, judges, and jailers—can tell you. They've long embraced systems that include supervision, management, training, and support. These systems produce higher quality, accountability, transparency, and budget predictability, all to the joy of taxpayers.

Public defender offices work for similar reasons: attorneys are supervised, cases managed, trainings attended, and support provided. As a result, as study after study (many discussed below) shows, public defender offices produce higher quality, accountability, transparency, and budget predictability.

This publication looks at why public defender offices work, profiles Texas public defender offices, and shows how to build a public defender office.

In our work, the stakes—liberty, taxpayer dollars, community safety—are high. The choice of defense system is important. TIDC has helped plan and fund public defender offices for dozens of counties. Let us know how we can help yours.

Sincerely,



Geoff Burkhart
Executive Director, Texas Indigent Defense Commission

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THE PUBLIC DEFENDER MODEL

Public defender office structure ensures quality representation.

TEXAS FAIR DEFENSE LAWS

The United States Constitution and Texas Constitution and statutes guarantee a lawyer for anyone accused of a crime that could result in incarceration.

In 2001, Texas passed the Fair Defense Act, which provided state funding and set minimum standards for the appointment, performance, and payment of lawyers. It required counties to use a default “wheel” system to randomly assign counsel, which most counties use today. The Fair Defense Act also created what is now known as Texas Indigent Defense Commission (TIDC) and charged it with funding, overseeing, and improving indigent defense throughout Texas.

INDIGENT DEFENSE SYSTEMS

There are four main ways to provide indigent defense. Texas Counties may have more than one system or may share systems across a region.



Public Defender:

Full-time, salaried attorneys are appointed, supervised, and paid by an office that includes investigators and support staff.



Managed Assigned Counsel:

Private attorneys are appointed, supported, and paid by a defense management organization on a rotating, case-by-case basis.



Contract:

Private attorneys contract with a county for a volume of cases.



Assigned Counsel:

Private attorneys are appointed and paid by the court on a rotating, case-by-case basis.



TEXAS PUBLIC DEFENDERS

In 2019, 36 of 254 counties had public defender offices. Those counties vary considerably by size and needs, but most report that public defender offices ensure better performance, accountability, budget predictability, and compliance with criminal laws and standards.

THE ADVANTAGE OF PUBLIC DEFENDERS

Many Texas indigent defense systems pay private attorneys on a case-by-case basis and offer little or no supervision. Defender offices create structures that can help attorneys meet ethical requirements and follow best practices:

- **Independence.** Defenders make decisions about representation independent of courts.
- **Oversight.** Staff are supervised for quality representation.
- **Workload.** Attorneys are not paid by the case, and so are not incentivized to take more than they can handle.
- **Teams.** Attorneys and support staff work together on cases.
- **Training.** Staff are trained and mentored in-house.
- **Institutionalization.** Defender offices are a single hub for the defense, like a prosecutor's office.
- **Administration.** Defender offices manage case assignment and are consistently available to courts.

★ *Research shows that, because of this structure, public defenders get better outcomes and reduce justice system costs.*

RESEARCH ON PUBLIC DEFENDERS

Studies repeatedly find that public defenders improve outcomes.

OUTCOME STUDIES

Dozens of studies have compared types of defense counsel. Recent, sophisticated statistical analysis has shown that **public defenders get better outcomes than private assigned counsel:**

- Reduced case time from fewer continuances in Kentucky, Rhode Island, and Minnesota counties (Ostrom and Bowman, 2019)
- Reduced likelihood of conviction by 3% across state cases (Roach, 2014)
- Reduced likelihood of prison by 22% in San Francisco (Shem-Tov, 2017)
- Reduced sentence lengths by 16% in federal cases (Iyengar, 2007) and by 26% across state cases (Cohen, 2011)
- Reduced potential prison costs by \$200 million in Philadelphia (Anderson and Heaton, 2012)

What accounts for these differences? Research points to structure and pay. Assigned counsel are:

- Less prepared, less communicative, and more isolated when paid low, flat fees (Anderson and Heaton, 2012)
- Less experienced and worse performing when paid below market rates (Roach, 2014)
- Less likely to go to trial when paid more for pleas (Agan et al., 2019)

See References for more on these studies.

Structure and pay lead to better outcomes.



3%

Lower Likelihood of
Conviction

22%

Lower Likelihood of
Prison

26%

Shorter
Sentence Lengths

\$200M

Potential
Prison Savings



PROGRAM EVALUATIONS

Public defender offices in Texas counties have been found to improve outcomes for defendants and indigent defense systems:

Reduced Jail Time & Costs

113

Fewer Jail Days Per Felony in Kaufman County

\$2,207

Jail Savings Per Case in Misdemeanors in Fort Bend County

Reduced Case Time & Costs

43

Fewer Days per Case in Misdemeanors in Bowie County

176

Fewer Days per Case in Felonies in Bowie County

Reduced Criminal Records

23%

Higher Likelihood of Dismissal in Wichita County

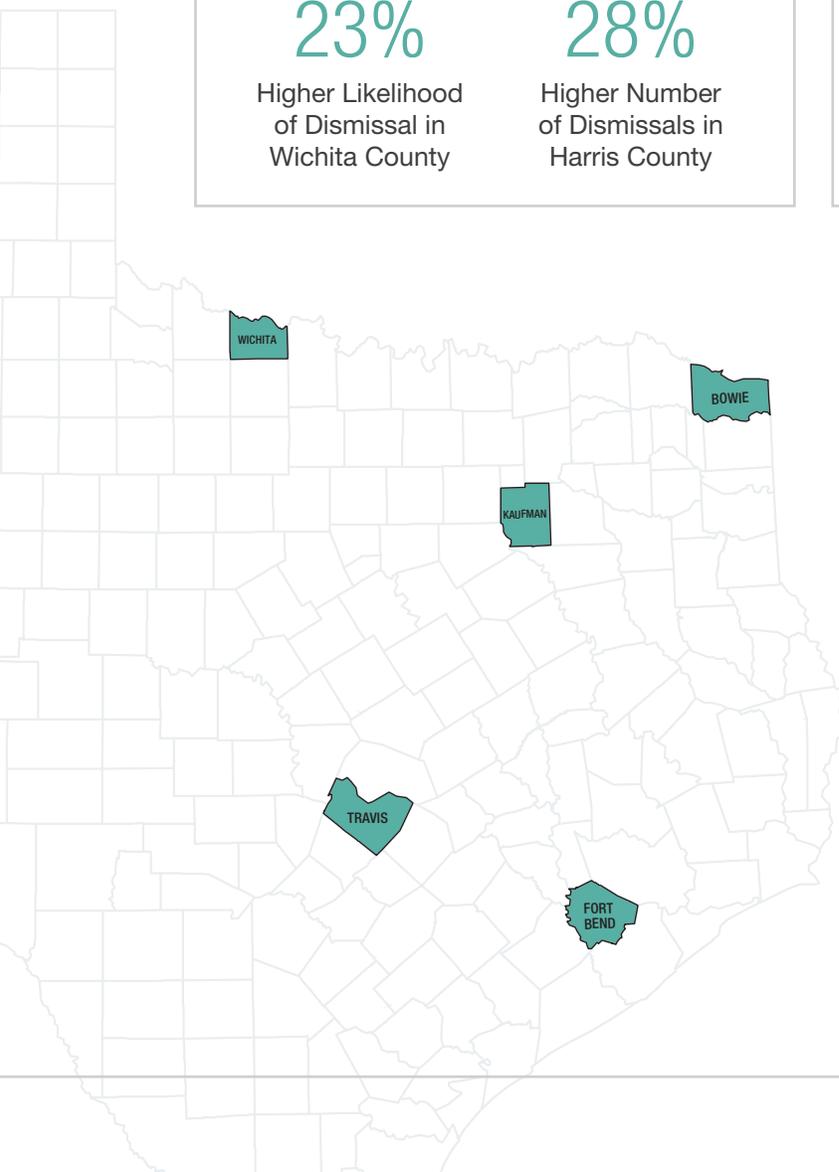
28%

Higher Number of Dismissals in Harris County

Reduced Recidivism

22%

Fewer Rearrests in Mental Health Cases in Travis County



Generally, evaluations have attributed better outcomes to:

- Lower caseloads
- More investigators
- More client contact
- More training
- Faster case assignment

They have also noted more qualitative improvements:

- Better justice system coordination
- Better supervision of attorneys
- More training for the private bar
- More client satisfaction

PUBLIC DEFENDERS HELP RECRUIT NEW LAWYERS

Attracting lawyers to rural Texas.

PUBLIC DEFENDER JOB BENEFITS FOR NEW LAWYERS:

- Trial experience, supervised by dedicated defense lawyers
- Training, mentoring, and peer learning
- Salary and benefits
- Loan repayment assistance and forgiveness
- Administrative support

Many rural Texas counties face an attorney shortage. Public defender offices can help recruit new attorneys. TIDC spoke with two young lawyers who explained how public defender offices help new graduates practice in rural Texas.



Class of 2020 Student Attorneys and Supervisors at Caprock Public Defender



J. BAILEY MCSHANE IV, *Attorney at Far West Texas Public Defender*

Bailey McShane is a Texan who almost became an Alaskan.

Born in Midland, he had lived in Austin, graduated from Texas A&M, served in the Marine Corps, and studied law and business at Texas Tech. At Tech, Bailey was a

student attorney at the Caprock Public Defender, a legal clinic that provides indigent defense representation in rural counties in the Panhandle.

“Criminal defense gives you trial experience,” Bailey says, which is hard to come by for new lawyers. “I’m passionate about making sure the system works right.”

Despite passion and experience, when Bailey graduated in 2018, he found his job options were limited: his Tech classmates went to Colorado and New Mexico to work for their state public defenders. Bailey applied to become a public defender in Alaska and pondered life north of the Arctic Circle.



Instead, Bailey went into private practice, where he grappled with billing, insurance, and overhead. Mentoring and training opportunities were hard to find.

Then Bailey found the Far West Texas Public Defender Office. The office is small: a few attorneys, an investigator, a social worker, and an office administrator. They serve five counties, home to 25,000 people spread over 20,000 square miles.

While the office might be small, he has found a lot of support. “I have great mentors here,” he says. “They’re knowledgeable and passionate about what they do. They’re an ‘in’ to the legal community. There’s always someone to ask a question.”

The staff and the office structure make it possible for him “to focus on the practice of law and what it means to be a lawyer; to fulfill constitutional requirements and provide better service to clients, because I’m not worried about getting paid.”

With that focus, he says, “I learned more in my first three months than I did in nine months of solo practice.”



JESSICA CANTER,
Chief Defender at
Texas Rio Grande
Legal Aid (TRLA)
Lavaca County
Public Defender

Like Bailey, Jessica Canter is a Texan who knew she had a passion for criminal defense by the time she graduated from law school in 2014.

But, she says, “I didn’t know where to start. The thought of managing my own office—from advertising, to financials, to administrative work, on top of all of the legal work—was daunting. The idea of being alone was overwhelming.”

Instead, she became a public defender with Texas Rio Grande Legal Aid.

She tested her skills right away. “I was thrown into contested felony hearings. I didn’t think I was ready, but I had a supervisor and mentor at my side. I was ready, and I wouldn’t have realized that for years if not for that support.”

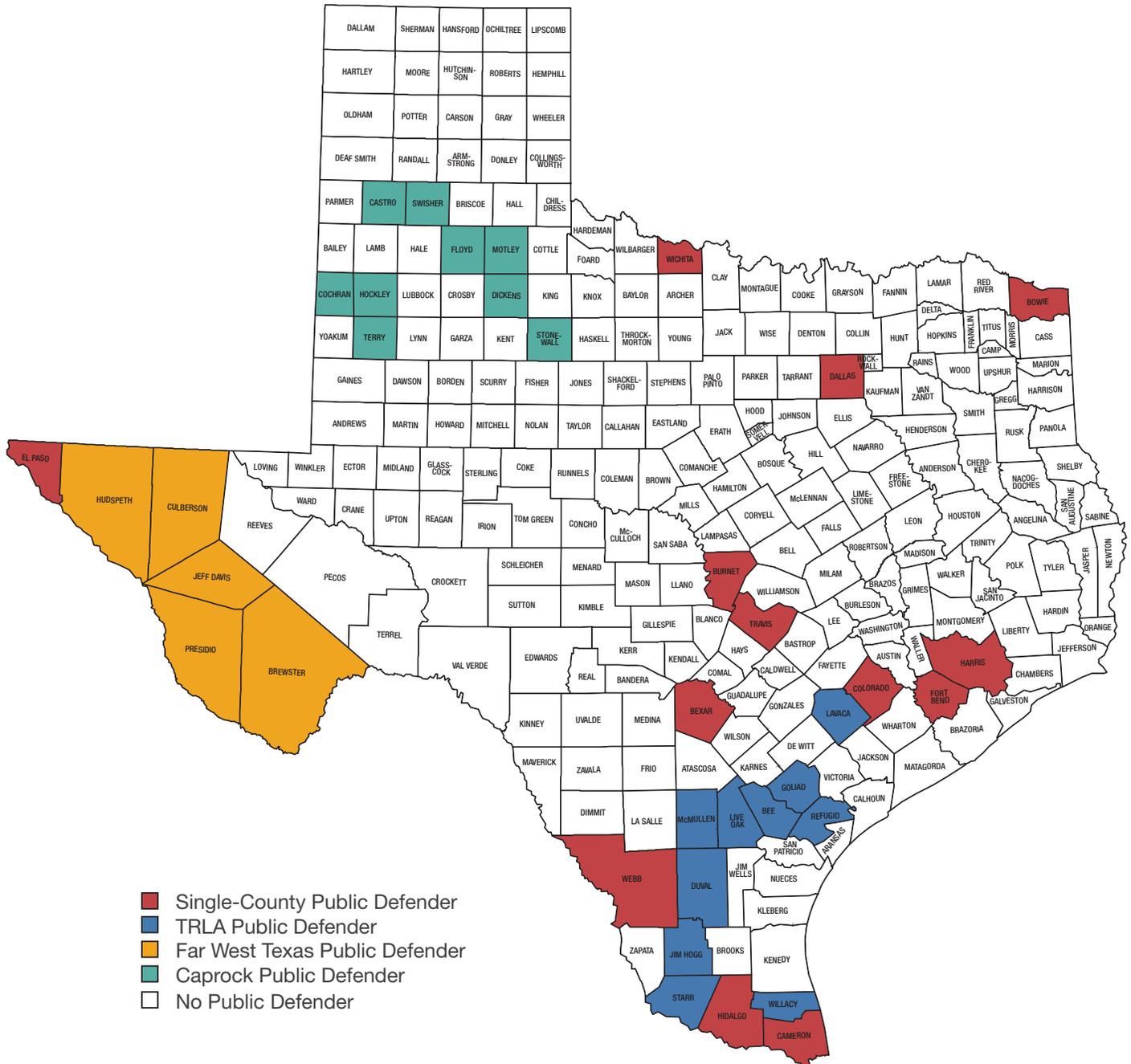
As a public defender, “you have your peers, investigators, administrative assistants, and sometimes even social workers, to rely on and learn from. Truly, it’s wonderful to be working on a case and preparing for trial knowing that you have an entire team of people standing behind you.” For new lawyers, “the training and mentoring are built in.”

So are the financial supports: a steady salary, benefits, and loan repayment assistance. New lawyers working for a government or nonprofit public defender office can qualify for public service loan forgiveness from the federal government. TRLA has its own loan repayment assistance program that has been key to attracting and retaining new lawyers.

In just five years, Jessica became the chief of her own TRLA office, in Lavaca County. Through its regional network of offices, she can continue to rely on TRLA’s public defenders to help her grow as a lawyer and a leader in her rural legal community.

TEXAS PUBLIC DEFENDERS

Snapshots of public defender offices in 2020.



SINGLE-COUNTY PROGRAMS

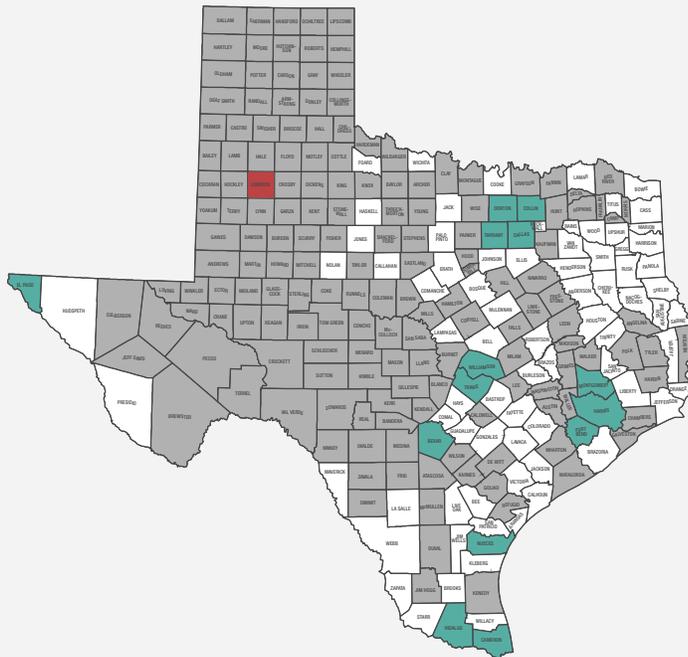
- Bexar County
- Bowie County
- Burnet County
- Cameron County
- Colorado County
- Dallas County
- El Paso County
- Fort Bend County
- Harris County
- Hidalgo County
- Kaufman County
- Travis County
- Webb County
- Wichita County

REGIONAL PROGRAMS

- **Caprock Program at Texas Tech**
 - Lubbock-area rural counties
- **Far West Texas**
 - Culberson, Hudspeth, Jeff Davis, Presidio, and Brewster Counties
- **Texas Rio Grande Legal Aid (4 offices)**
 - Bee, Goliad, Live Oak, McMullen, and Refugio Counties
 - Lavaca County
 - Starr, Duval, and Jim Hogg Counties
 - Willacy County

STATEWIDE PROGRAMS

- Regional Public Defender Office for Capital Cases
- Office of Capital and Forensic Writs
- State Counsel for Offenders



REGIONAL PUBLIC DEFENDER OFFICE FOR CAPITAL CASES: COUNTY MEMBERSHIP

- Participating
- Not Participating
- Ineligible County
- Headquarters

BEXAR COUNTY

Established: 2005

Case Types: Felony, misdemeanor, appellate, mental health, magistration

Staff: 31 total; 26 attorneys (1 chief, 5 for criminal trial, 7 for mental health, 2 for civil commitments, 2 for appeals, and 9 for magistration), 1 caseworker, 2 paralegals, 1 administrative assistant, and 1 office manager

Total TIDC Grants: \$1,687,160 since 2005

OUTCOMES:

Public defenders secured more mental health personal bonds than pretrial services recommendations alone did, avoiding 3,615 jail days per year.

★ *Spotlighted on page 18*

BOWIE COUNTY

Established: 2007

Case Types: Felony, misdemeanor

Staff: 8 total; 5 attorneys (4 for felonies, 1 for misdemeanors), 1 investigator, and 2 administrative assistants

Total TIDC Grants: \$1,407,039 since 2008

OUTCOMES:

Public defenders disposed misdemeanors 43 days sooner and felonies 176 days sooner (almost six months) than private or retained counsel or unrepresented defendants.

BURNET COUNTY

Established: 2011

Case Types: Felony, misdemeanor, juvenile

Staff: 5 total; 3 attorneys (1 chief, 1 for felonies, and 1 for misdemeanors, all taking juvenile cases), 1 investigator and 1 legal assistant

Total TIDC Grants: \$936,570 since 2012

OUTCOMES:

Public defenders were assigned to and met with clients sooner than appointed or contract counsel, and lowered costs of representation.

CAMERON COUNTY

Established: 1999

Case Types: Juvenile

Staff: 2 attorneys

Total TIDC Grants: \$0

CAPROCK

Regional

Established: 2009

Counties: Varies by year. Seven Panhandle and South Plains counties in FY2019: Cochran, Dickens, Floyd, Hockley, Motley, Swisher, and Terry

Case Types: Felony, misdemeanor

Staff: 1 attorney director and 7 student attorneys at Texas Tech University

Total TIDC Grants: \$498,461 since 2017

OUTCOMES:

By charging less than regular flat fees, Caprock estimates it saved counties around \$28,000 in 2019.

COLORADO COUNTY

Established: 1987

Case Types: Felony, misdemeanor, juvenile

Staff: 2 part-time attorneys and 1 administrative assistant

Total TIDC Grants: \$0



DALLAS COUNTY

Established: 1983

Case Types: Capital, felony, misdemeanor, juvenile, appellate, mental health, child protective services (CPS), post-conviction

Staff: 123 total; 88 attorneys (81 for criminal and juvenile cases, 3 for civil commitment, 4 for CPS, 1 for *Padilla* consultations), 15 investigators, 5 caseworkers, 1 interpreter, 6 legal assistants, and 7 administrative assistants

Total TIDC Grants: \$799,883 since 2004

OUTCOMES:

People with mental illness had significantly more treatment contact and lower rates of recidivism when represented by the public defender.

EL PASO COUNTY

Established: 1987

Case Types: Capital, felony, misdemeanor, juvenile, appellate, mental health

Staff: 85 total; 50 attorneys, 8 investigators, 6 caseworkers, 17 legal assistants, and 4 administrative assistants

Total TIDC Grants: \$3,408,631 since 2004

OUTCOMES:

Across case types, the public defender got the same or better outcomes as assigned counsel, at an overall lower price to the county.

FAR WEST TEXAS

Regional

Established: 2018

Counties: Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio

Case Types: Felony, misdemeanor

Staff: 6 total; 3 attorneys, 1 investigator, 1 social worker, and 1 office administrator

Total TIDC Grants: \$529,890 since 2018

OUTCOMES:

The office serves two counties that previously had no local lawyers.

★ *Spotlighted on page 20*

FORT BEND COUNTY

Established: 2010

Case Types: Felony, misdemeanor, mental health, magistration

Staff: 21 total; 11 attorneys, 2 investigators, 5 caseworkers, 3 administrative assistants

Total TIDC Grants: \$2,791,156 since 2010

OUTCOMES:

85% of clients were satisfied with their representation. Misdemeanor clients with mental illness spent, on average, 37 fewer days in jail.

HARRIS COUNTY

Established: 2011

Case Types: Felony, misdemeanor, juvenile, appellate, mental health, magistration, post-conviction

Staff: 129 total; 87 attorneys (1 chief, 81 for criminal and juvenile cases, 1 for youth services, 2 for *Padilla* consultation, 1 holistic services director, and 1 policy director), 11 investigators, 10 caseworkers, 4 community advocates, 14 administrative assistants, 2 human resources positions, and 1 information technology coordinator

Total TIDC Grants: \$13,567,330 since 2011

OUTCOMES:

Misdemeanor clients with mental illness were five times as likely to have their cases dismissed, compared to those represented by assigned counsel.

HIDALGO COUNTY

Established: 2005

Case Types: Felony, misdemeanor, juvenile

Staff: 17 total; 11 attorneys, 1 investigator, 1 legal assistants, and 4 administrative assistants

Total TIDC Grants: \$1,413,217 since 2005

OUTCOMES:

The county achieved compliance with state rules by appointing the public defender in juvenile cases.

KAUFMAN COUNTY

Established: 2007

Case Types: Felony, misdemeanor, mental health

Staff: 8 total; 4 attorneys, 1 investigator, 1 caseworker, and 2 legal assistants

Total TIDC Grants: \$632,627 since 2007

OUTCOMES:

The office helped reduce the daily jail population by 200 inmates, saving \$2.8 million per year.

TEXAS RIO GRANDE LEGAL AID

Regional

Established: 2009

Counties: Coastal Plains (Bee, Goliad, Lavaca, Live Oak, McMullen, and Refugio) and Rio Grande Valley (Starr, Duval, Jim Hogg, and Willacy)

Case Types: Felony, misdemeanor, juvenile, appellate

Staff: 27 total: 1 director, 1 deputy director, and, in each office, 1 chief, 1-7 attorneys, 1-3 investigators, and 1 administrative assistant

Total TIDC Grants: \$5,906,910 since 2009

OUTCOMES:

TRLA is currently being evaluated by Texas A&M University through a grant from TIDC.

★ *Spotlighted on page 22*

TRAVIS COUNTY

Juvenile Public Defender

Established: 1971

Case Types: Juvenile

Staff: 14 total; 8 attorneys, 2 investigators, and 4 administrative assistants

Total TIDC Grants: \$0

Mental Health Public Defender

Established: 2007

Case Types: Felony, misdemeanor, mental health

Staff: 13 total; 4 attorneys, 6 caseworkers, 1 legal assistant, and 2 administrative assistants

Total TIDC Grants: \$1,378,365 since 2007

OUTCOMES:

The public defender had 47% of its cases dismissed, compared to 19% for assigned counsel.

Travis County Public Defender (opening 2020)

WEBB COUNTY

Established: 1988

Case Types: Felony, misdemeanor juvenile

Staff: 36 total: 20 attorneys (1 chief, 18 for criminal and juvenile, and 1 for immigration), 3 investigators, 1 social worker, 10 legal assistants, and 2 administrators

Total TIDC Grants: \$931,137 since 2009

WICHITA COUNTY

Established: 1989

Case Types: Felony, misdemeanor, appellate, mental health

Staff: 14 total; 7 attorneys, 2 investigators, 1 caseworker, 2 legal assistants, and 2 administrative assistants

Total TIDC Grants: \$244,958 since 2010

OUTCOMES:

By reducing charges and getting dismissals, the office has made a net benefit of \$210 per case.





EXAMPLE TIDC GRANTS

Total grants disbursed are listed for each office. These are examples of how they were allocated.

RURAL REGIONAL *(under 100,000 population):*

Far West Texas, \$529,890 to date

Ongoing sustainability:

- FY2018-19 grants
- Annual average: \$264,945

SMALL COUNTY *(under 100,000 population):*

Burnet County, \$936,570 to date

Office start-up: \$936,570

- FY2012-15 grants
- Annual average: \$234,143

MEDIUM COUNTY *(100-250,000 population):*

Wichita County, \$233,958 to date

Videoconferencing: \$19,505

- FY2010 grant

Mental Health Social Worker: \$147,924

- FY2013-17 grants
- Annual average: \$24,654

Appellate and bond attorney: \$66,528

- FY2019 grant (in progress)

LARGE COUNTY *(over 250,000 population):*

Bexar County, \$1,687,160 to date

Office start-up: \$903,748

- FY2005-09 grants
- Annual average: \$180,750

Appellate attorneys and office equipment: \$270,260

- FY2007 grant

Magistration attorneys and office equipment: \$513,151

- FY2016-19 grants
- Annual average: \$128,288

SPOTLIGHT

on Bexar County

“The first line of defense”

The public defender office in Bexar County, home to San Antonio, specializes in some of the county’s toughest cases. To get results, it has to act quickly.

By 2005, Bexar County had met many of the requirements of the Fair Defense Act: local attorneys had to meet new qualifications to be paid under a new fee schedule. For appeals, however, too few attorneys qualified to take cases, so those who did qualify had high caseloads. Attorneys struggled to make deadlines, cases lagged, and defendants waited in jail. Some defendants missed their chance to appeal.

To better manage attorneys’ workload and appointment process, TIDC awarded \$1,174,009 in grants to Bexar County to start a public defender office. If a defendant was wrongfully convicted, he or she had a number to call to make things right. Judges, too, could rely on one office to answer the phone.

In 2015, the County again turned to the public defender for help with its jails. It had built a new central magistration facility, where specialists on-site could identify people with

mental illness and divert them to treatment shortly after arrest. The problem was that only about 2% who might have been eligible were diverted. Most did not want to discuss their mental illness with jail staff.

With help from \$513,151 in grants from TIDC, the public defender office started meeting with people within hours of their arrest and representing those with serious mental illness. At magistration, they advocated for release on mental health bonds.

They found that people who were represented by the public defender were 20% more likely to be released than those who had been recommended for a bond by pretrial services. Within a few years, the office more than doubled the number of people who were diverted from jail to treatment.

Recognizing this success, Bexar County judges and commissioners expanded counsel at magistration, so that the public defender now represents everyone who is arrested.

Only a few other counties in Texas—including Cameron, Fort Bend, and Harris—currently provide counsel at magistration. Defendants in most counties stand alone the first time they see a judge.

Bexar County Chief Public Defender Michael Young says that early representation can change your whole experience of the criminal justice system: “You’re scared, you’re trying to contact friends and family, you don’t know what’s going on—sometimes for days and months. With an attorney, you have a voice from the beginning. I think that has a profound effect on how you navigate your whole case.”

First Assistant Public Defender Stephanie Brown agrees: “During magistration, the public defender’s office is the first line of defense. Although we are only representing the clients for magistration purposes on that day, we can provide hope and guidance as to what they should expect going forward. Even though people may have been through the system many times before, they now admit



to feeling better going forward, after being represented by the public defender.”

The public defender continues to represent some clients with mental illness after magistration, both in specialty courts and traditional courts.

They have seen that early representation leads to better results throughout a case. Clients have a reliable advocate they can call, are connected to help for issues like mental health, substance, abuse, and homelessness, and have better outcomes: higher rates of compliance with court orders and treatment plans, and higher dismissal rates when they get to trial.

To Michael, this is just good lawyering. “When I was in private practice, the first thing I’d do is get my client in drug treatment or behavioral therapy. Before you ever get to court, you take remedial action.”

At the same time, Stephanie says that being a public defender “takes a special kind of person. We’re here because we love what we do.” She joined the office in 2015, and now leads the Magistration unit, in addition to being the First Assistant Public Defender. She was a prosecutor for the first 7 years of her career. She has also practiced family and insurance law. Public defense has been different.

“I can ensure justice just as well from this side as from the prosecutor’s,” she says. “And I have more leeway to help people.”

Next for the office is starting a domestic violence unit that will specialize in finding alternatives to jail, so that clients can get treatment and continue supporting their families.

Those clients are often denied mental health bonds because of concerns about recidivism. By taking the tough cases head-on, as soon as they reach the criminal justice system, the public defender office hopes it can help break the cycle.



Bexar County Public Defender's Office

SPOTLIGHT

on Far West Texas

“These folks are our neighbors.”

The 394th Judicial District, east of El Paso, covers 20,000 square miles. Its five counties occupy 8% of Texas’s land area, yet are home to only 25,000 people.

In 2017, there were only a few attorneys in the area, and almost none were qualified to handle criminal cases or willing to take what the counties could pay. At the same time, a Border Patrol checkpoint meant these sparsely populated counties had high case volumes.

TIDC worked with District Judge Roy Ferguson to craft a solution: The Far West Texas Regional Public Defender Office. With the help of TIDC grants covering two-thirds of expenses, or about \$265,000 a year, it has quickly become a model for providing effective representation in rural counties.

“Culberson County is thrilled to sponsor the grant,” said Culberson County Judge Carlos Urias, in a press release. As the grant sponsor, Culberson receives reimbursement from TIDC and coordinates with the other counties through interlocal agreements. “This program will provide a huge leap forward in the administration of justice across the entire region.”

Chief Defender James McDermott says distance is his biggest challenge; it takes over six hours to drive across his service area. Each of the office’s three attorneys works across all five counties, handling most misdemeanors and felonies. An investigator provides a full range of services, from intake to mitigation to innocence investigation. A social worker assists with clients with mental illness. And an office administrator coordinates everyone’s coverage of the courts. “It’s a small but dedicated and intense staff,” says James.

Their team approach has won the trust of clients. One had 5 previous DWI convictions. Roland Valles, the Far West Texas investigator, was the first to ask about his history and develop a case for mitigation. After a hard-fought jury trial, he was ultimately convicted but sentenced to rehab instead of the long prison term requested by the prosecutor. James recalls, “He kept thanking us, and I asked him why. We had lost! He responded that no one had ever listened to him and now he could see a future for himself.”

Though there are significant challenges, “practicing in small communities can be a real joy,” James says. “We know all the courthouse and jail staff. These folks are often our neighbors and friends.” When their family members have been arrested, they have asked the public defender for help.



James would like to see other counties start rural programs like his. “The people of your counties deserve a well-run public defender. Your juries and your court staff will appreciate the professionalism and the work product. But more importantly, the community will build a greater trust and respect for the courts and the justice system when they see what it means when rights are protected, and justice is done.”

“It’s not that we win every case, but that no matter the outcome, the community can see what it means to fight for someone and hold the system accountable. And they will then want more to participate in this great democracy. Who can lose if that is the result?”



Far West Texas Public Defender's Office

SPOTLIGHT

on Texas Rio Grande Legal Aid

“You’re part of a law firm.”

For clients of the Starr County Public Defender’s Office, their defense begins before they even have an attorney.

That is because an investigator from the office screens people who request an attorney and may be the first person they speak to in jail. They might show signs of serious mental illness or share that their children are in trouble. If they qualify for the public defender, an attorney follows up right away.

This is characteristic of the Texas Rio Grande Legal Aid (TRLA) Public Defender program’s team approach. TRLA is primarily a civil legal services provider that has four public defender offices in South Texas.

Each office serves rural counties, taking most of their appointed cases. The Starr County office, for example, also serves Duval and Jim Hogg Counties, each of which have populations of less than 15,000 people. Because TRLA is a rural, regional program, TIDC reimburses two-thirds of its counties’ expenses, over \$400,000 per year.

Within each office, there are attorneys, investigators, and assistants. Some have social workers or peer specialists. That means that clients always have someone they can talk to, which is especially important for those who have difficulty communicating due to a mental illness or developmental disability.

It also means that clients have a full legal team working on their case. Linda Gonzalez, Chief Defender for Starr County, says, “We often meet as a team to come up with appropriate trial strategies, prepare for hearings, and review each other’s motions. At TRLA, you always feel like you’re part of a law firm, a bigger team. In our group, it happens organically.”

She contrasts that feeling with her time as a private criminal defense attorney. As a solo practitioner, she says, “even if you have the desire to help clients, you don’t have the resources of a law firm. Two brains are better than one. And being part of an organization gives you the courage to ask for what your client needs.”

Linda can reach out to other TRLA chiefs in Bee, Lavaca, and Willacy Counties, or the Director of the TRLA Public Defender program, Abner Burnett. “Abner is always available,” Linda says. “He knows more of our clients by name than any director out there. He knows our legal issues.”

“Having someone with so much experience like Abner, and things like motions templates, means you’re not reinventing the wheel. Those are stark differences from solo practice and all of them have helped me become a better lawyer,” she says.

Another benefit of belonging to a larger organization is that TRLA’s public defense clients may qualify for its civil legal services. The same, low-income people often have many legal issues arising from the same events. TRLA public defenders can refer clients to their housing, public benefits, immigration, or school suspension legal divisions. Resolving those collateral issues can change the outcome of their criminal cases.



Identifying all the issues is part of developing a defense strategy. An advantage of rural practice, Linda says, is that “we get to know our clients, where they come from, and their circumstances. It allows us to be very thorough in our preparation of a defense.”

Being prepared is important to judges, says Abner. “When we first open, judges and prosecutors fear that we’ll clog dockets. But, over time, they see we’re prepared at trial.

We’re always in the courtroom. At every office, the staff is enthusiastic about helping the courts, clerks, and jails and making their work easier. Most private attorneys don’t have the time.”

Linda adds, “Commissioners and county judges are often wary that public defenders will cost more. It quickly becomes clear that public defenders empty out the jail [so] there are beds available for federal inmates and inmates from other counties.”

Abner observes that some of the greatest successes of public defenders are the stories that are never told. “The stories you hear about the criminal justice system are of people who were poorly represented, wrongfully convicted, then exonerated. Linda and people in our other offices establish innocence at trial. They handle it before it hits the news.”



TRLA Starr County Assistant Public Defender Jessica Anderson in a video featuring clients’ experiences.

HOW TO BUILD A PUBLIC DEFENDER OFFICE

TIDC provides support at each stage of building an office.

OVERVIEW

The best way to build an office is through a careful process of planning, funding, launching, and improving a program to achieve desired outcomes. TIDC has worked with dozens of counties, large and small, to create and expand offices, and can help at every stage.

PLANNING

Not sure where to start? Contact TIDC's Improvement Team to begin the conversation. TIDC may ask about:

- Challenges with the current system
- Case volume and spending
- Interest from local and regional officials and stakeholders

The first stage in building an office is assessing local needs. TIDC provides data about indigent defense cases and spending on its website. Local court and auditor data can provide additional information, especially about attorney performance.

The Improvement Team can help analyze the data and assess your county's indigent defense needs.

CONTACT TIDC

info@tidc.texas.gov | 512-936-6994

Grant Checklist



Planning

- **Contact TIDC.** Learn about funding and planning options.
- **Request a planning study.** TIDC provides free cost estimates based on key decision points.
- **Talk to local stakeholders.** Identify who should be consulted and plan an office with them.



Funding

- **Learn about TIDC's grant process.** TIDC can explain requirements and deadlines.
- **Apply for a grant.** The priority deadline is in May.
- **Work with TIDC to modify a proposal.** Staff present proposals for board review in June and August.
- **Accept a grant award.** Awards can begin in October.



Launching

- **Report progress to TIDC.** TIDC assists with first steps for opening an office.



Improving

- **Apply for an expansion grant.** Ask TIDC about improving an office.



DECISION POINTS

Where it would be helpful, TIDC will prepare a public defender planning study free of charge. In a planning study, or more informally, TIDC can advise on how decision points affect costs, quality, and operations. A planning study models options for an office based on the following key decision points and requirements of the Texas Code of Criminal Procedure (CCP):

1. Should the office serve one or more counties?

An office can provide representation in one or more counties (CCP Art. 26.044(b)). Counties with small caseloads may find joining a regional program more cost-effective. Counties are eligible to apply for TIDC grants that fund half of single-county offices' start-up expenses over four years. Rural regional public defender offices serving multiple counties under 100,000 population may be eligible for sustainability grants covering two-thirds of ongoing expenses.

2. Should the public defender office be a county department or nonprofit corporation?

An office can be a governmental entity or a nonprofit contracting with the government (Art. 26.044(a)(1), (4)). To contract with a nonprofit, the commissioners court must solicit proposals that include certain elements specified in statute and that reasonably demonstrate the ability to provide quality representation, not just low cost (Art. 26.044(c)-(e)). A government agency may have a stronger institutional presence (balancing the prosecutor), while a nonprofit may have more independence (allowing for innovation).

3. Should the public defender have an oversight board?

An office must have a qualified chief defender (Art. 26.044(f)). It may also have an oversight board that assists in selecting and removing the chief, setting policy, and developing budgets (Art. 26.045). If the office is grant-funded, TIDC requires a board to ensure independence and accountability. For good governance, counties should consider the board's:

- **Size.** Boards should have an odd number of members, usually totaling 7-13 members (small enough to be nimble and large enough to reach quorum).
- **Diversity.** Board members should have diverse backgrounds and appointment sources so that no single group controls it.
- **Longevity.** Boards should be built to last for decades. Membership should be selected by role, not for individuals.

Board members should include stakeholders with expertise in criminal justice, such as:

- Defenders from other jurisdictions
- Academics specializing in public defense or criminal justice
- Community members
- Justice advocates
- Persons formerly incarcerated or their family members
- Legislators focused on criminal justice
- Civil lawyers, especially with extensive criminal justice pro bono experience
- Retired judges or civil judges with knowledge of criminal law.

To avoid conflicts of interest, boards should not include:

- Active criminal court judges
- Active or recent prosecutors (such as those who have served as a prosecutor in the last 3 years)
- Defense attorneys taking court appointments in that jurisdiction

4. What should the maximum attorney caseload be?

An office must have maximum caseload limits for attorneys (Art. 26.044(c-1)) and refuse cases that would violate these limits (Art. 26.044(j) (4)). TIDC recommends setting caseload limits that are consistent with its published guidelines, which recommend no more than **239 misdemeanors, 138 felonies, or 31 appeals per year**, per public defender. TIDC's guidelines are based on a study it commissioned from the Public Policy Research Institute at Texas A&M University that found that attorneys may not meet ethical duties to clients if they exceed these limits. TIDC's funding models in planning studies are based on these guidelines.

5. What proportion and types of cases should the office handle?

The commissioners court must specify what types of cases an office may take (Art. 26.044(b) (2)). An office can handle nearly all cases in a county, specialize in certain case types (for example, felonies or mental health cases), or handle some percentage of the overall caseload. Assigned counsel will almost always be needed to handle at least some cases, especially those that would create conflicts of interest for the public defender (Art. 26.044(c-1) (7), (j)(1)).

6. What should staff be paid?

A public defender's proposal or plan of operations must include job descriptions and salaries (Art. 26.044(c-1)(1), (2)). TIDC will work with counties to estimate defender salaries based on pay at county and district attorneys' offices.

7. What should the staffing levels be?

Resource parity should extend to support staff (like legal assistants) and other specialists who are essential to the public defender team model.

Legal Requirements

Articles 26.04(f) and 26.044-5 of the Texas Code of Criminal Procedure (CCP) set requirements for public defender offices. In brief, an office must:

- Have priority in receiving appointments.
- Have duties, cases, and courts in which it may appear, specified by commissioners court.
- Have a written proposal or plan of operation, including:
 - Budget and overhead
 - Position descriptions
 - Maximum caseloads
 - Training plan
 - Policy for using experts and investigators
 - Policy for avoiding conflicts of interest
 - Quality controls (for nonprofits)
- Be directed by an experienced chief public defender.
- **NOT** allow attorneys to engage in private practice of law.
- **NOT** allow attorneys to accept outside payment for representation.
- **NOT** accept an appointment if doing so would be unethical.
- **NOT** give its oversight board privileged information.



A public defender proposal or plan must have policies for using licensed investigators and expert witnesses (Art. 26.044(c-1)(6)) and ideally should include other specialists like mental health caseworkers and immigration attorneys (for advisals required of criminal defense attorneys by the 2010 U.S. Supreme Court case *Padilla v. Kentucky*). TIDC planning studies recommend staffing levels based on national standards and needs of local jurisdictions.

8. What should the budget for operating expenses be?

A public defender’s proposal or plan of operations must describe anticipated overhead (Art. 26.044(c-1)(5)). An advantage of the public defender model over private assigned counsel is that attorneys pool overhead costs. TIDC’s planning studies estimate what items like office space, technology, and supplies will cost. A planning study for a rural regional program may also estimate travel costs.

*TIDC recommends forming a **workgroup** of local and regional stakeholders to discuss these decision points and plan the office. The workgroup can include members of a potential oversight board (see page 25) or officials who must approve the grant (see page 28).*

FUNDING

TIDC’s Improvement and Grants Teams can help turn a public defender office plan into a grant proposal for state funding.

TIDC awards competitive, multi-year Improvement Grants to help fund public defender offices. TIDC typically funds half of start-up costs over four years. Rural regional offices—those serving multiple counties under 100,000 population—may be eligible for 80% of first-year start-up costs and two-thirds of ongoing costs.

Year	Standard	Rural Regional Sustainability
1	80% Grant	80% Grant
2	60% Grant	66% Grant
3	40% Grant	66% Grant
4	20% Grant	66% Grant
5+	No Grant	66% Grant

Funds are awarded annually and disbursed quarterly, as reimbursement for eligible expenses. The award timeline is:

- **January:** Request for Applications (RFA) published online.
- **March:** Deadline for optional Intent to Submit Application (ISA), submitted online.
- **May:** Priority deadline for required full grant application, submitted online. TIDC’s Grant Review committee meets.
- **June and August:** Grants considered at the board meetings.
- **October:** Grant programs can begin.

All Improvement Grants are competitive, and subject to TIDC Board approval and availability of funding. Grant applications may be submitted and considered after May, but applications submitted in May receive **priority consideration**.

Grant Requirements

To receive a TIDC grant, a county must have submitted these required reports:

- Indigent Defense Expenditure Reports (IDER), annually to TIDC
- Indigent Defense Plans, biennially to TIDC
- Responses to monitoring reports, as requested by TIDC
- Court reports, monthly to OCA

A multi-year Improvement Grant must:

- Request at least \$50,000 in state funding over four years
- Provide for a county match
- Fund a new program or position
- Fund direct client services

A public defender grant must also:

- Focus on serving people
- Demonstrate broad judicial support
- Have quality controls for the office:
 - Appointment process
 - Support services for attorneys
 - Caseload standards
 - System for managing caseloads
 - System for performance and cost reporting
 - Emphasis on training, supervision, and evaluation

Finally, TIDC prefers programs that:

- Model practices for other counties
- Involve multi-county coordination
- Make long-term commitments
- Match funds with other sources
- Have minimal indirect costs
- Serve small counties

In addition, to apply for and receive a grant, it is necessary to have sign-off from:

- **The Program Director**, who is designated to oversee day-to-day grant operations
- **The County Judge**, or other designated authorized official for accepting and modifying the grant
- **The County Auditor or Treasurer**, the financial official for receiving grant payments
- **Commissioners Court**, which adopts a resolution to authorize the grant application to approve the grant application and award
- **Local Administrative County and District Judges and Chair of the Juvenile Board**, who approve Indigent Defense Plans and sign a Cooperation Agreement
- **County and District Court Judges**, who hear criminal matters and sign a Cooperation Agreement

★ *TIDC staff can assist with planning the program and budget, writing the grant, providing information to local officials, and presenting the application to its Board.*



LAUNCHING

During the grant, the county will submit quarterly progress reports and annual renewal applications. TIDC can advise on first steps and initial grant conditions, like submitting proposed plans to TIDC.

IMPROVING

Established public defender offices can apply for grants and technical assistance to develop new programs.

GRANT FAQs

Does TIDC guarantee four or more years of grant funding?

No, but it is likely. TIDC awards grants by fiscal year. A county must submit a short renewal application each year. TIDC may award funds subject to its budget and the program's success.

Can a county apply for another grant to expand an office after the first four years?

Yes. The grant must be for a new program.

Can a county apply after May?

Yes. TIDC accepts applications after the priority deadline, but funds may be limited.

Can a county submit more than one grant application?

Yes. Each year, a county can submit one multi-year application and one single-year application (for smaller-scale projects).

Does every judge need to sign off on the public defender office to receive a grant?

No. But TIDC is unlikely to fund an office where local opposition would prevent the office from receiving appointments or functioning as intended.

Can an improvement grant affect my formula grant?

It depends. Speak to TIDC if you have questions.



STATISTICAL TABLES

Table 1. Texas Public Defender Cases (FY2019)

Source: County auditor reports at <http://tidc.tamu.edu/public.net/>

SINGLE-COUNTY OFFICES	County Served	Juvenile	Capital	Felony	Misdemeanor	Appeal	Total Public Defender Cases	Total Indigent Defense Cases	% Public Defender Cases
	Bexar				234	1,428	57	1,719	42,376
Bowie	41			1,270	1,743		3,054	3,226	95%
Burnet	56			406	409		871	1,028	85%
Cameron	587						587	5,811	10%
Colorado	13			121	126		260	279	93%
Dallas	7,137	31	10,366	15,366	87		32,987	54,467	61%
El Paso	2,260	3	3,815	3,757	27		9,862	18,351	54%
Fort Bend			444	582			1,026	5,892	17%
Harris	683		2,162	2,124	114		5,083	111,173	5%
Hidalgo	165		225	2,594			2,984	15,557	19%
Kaufman			414	338			752	2,154	35%
Travis	2,560		39	353			2,952	29,474	10%
Webb	451		1,245	1,116			2,812	4,059	69%
Wichita			902	976	9		1,887	3,773	50%



	County Served	Juvenile	Capital	Felony	Misdemeanor	Appeal	Total Public Defender Cases	Total Indigent Defense Cases	% Public Defender Cases
TEXAS RIO GRANDE LEGAL AID	Bee	7		224	247	1	479	527	91%
	Duval			44	98		142	184	77%
	Goliad	1		32	41		74	93	80%
	Jim Hogg	1		13	36		50	88	57%
	Lavaca			48	107		155	280	55%
	Live Oak	1		137	147		285	302	94%
	McMullen		2	32	17		51	54	94%
	Refugio			129	87		216	262	82%
	Starr	8		163	278		449	465	97%
	Willacy	22		167	327		516	598	86%
FAR WEST TEXAS	Brewster			56	27		83	101	82%
	Culberson			28	2		30	38	79%
	Hudspeth			113	27		140	158	89%
	Jeff Davis			10	3		13	17	76%
	Presidio			26	5		31	42	74%
CAPROCK	Cochran			14			14	78	18%
	Dickens	1			15		16	34	47%
	Floyd				6		6	44	14%
	Hockley			56	50		106	550	19%
	Motley				5		5	10	50%
	Swisher	2			7		9	82	11%
	Terry			2	37		39	393	10%
Other Counties						0	221,799	0%	
Texas Total	13,996	53	22,937	32,481	295	69,745	523,819	13%	

STATISTICAL TABLES

Table 2. Texas Public Defender Staffing (FY2019)

Source: Public defender office reports

SINGLE-COUNTY OFFICES	County HQ	Chief	Managing Attorneys	Defense Attorneys	Investigators	Case Workers	Legal Assistants	Administrative Assistants	Other	Total
	Bexar	1	3	20		1	2	2	2	
Bowie	1		4	1			2			8
Burnet	1		2	1		1				5
Cameron			2							2
Colorado			1				1			2
Dallas	1	13	67	15	5	6	7	9		123
El Paso	1	4	45	8	6	17	4			85
Fort Bend	1	1	9	2	5		3			21
Harris	1	7	74	11	10		14	12		129
Hidalgo	1	2	8	1		1	4			17
Kaufman	1		3	1	1	2				8
Travis (Juv.)	1		7	2			4			14
Travis (MH)	1		3		6	1	2			13
Webb	1	8	10	3	1	10	2	1		36
Wichita	1	1	5	2	1	2	2			14



	County HQ	Chief	Managing Attorneys	Defense Attorneys	Investigators	Case Workers	Legal Assistants	Administrative Assistants	Other	Total
TRLA	Bee	1	2	5	3			1		12
	Lavaca	1		1	1					3
	Starr	1	1	3	2			1		8
	Willacy	1		1	1			1		4
FAR WEST	Culberson	1		2	1	1		1		6
CAPROCK	Lubbock	1		3						4
	Total	19	42	275	55	37	42	51	24	545

NOTES:

- All counts and categorizations are approximations by TIDC, based on informal reports from public defender offices.
- “Other” includes operational support, civil attorneys, and non-lawyer specialists (like interpreters).
- Counts are for full-time equivalent (FTE) staff, contractors, or students. Part-time staff are counted toward 1 FTE.
- Counties are where offices are based, not necessarily which counties are served.

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