



# PLANNING STUDY HILL COUNTRY PUBLIC DEFENDER

FEBRUARY 26, 2020  
REVISED FEBRUARY 28, 2020

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## SUMMARY

The County Judges from Kerr, Bandera, Gillespie, Medina, and Kendall Counties have asked the Texas Indigent Defense Commission (TIDC) to study the possibility of a Hill Country Public Defender Office. This report builds on a December 2018 planning study that modeled a public defender office covering Kerr, Bandera, and Gillespie Counties. TIDC has found that a public defender office would likely improve indigent defense quality, constitutional compliance, accountability, and budget predictability. With TIDC funding, a regional model would also provide cost savings for the counties.

This report explores current Hill Country indigent defense practices, outlines key decision points, and models a regional public defender office that covers these five counties. The model presented is for discussion purposes only. The model describes caseloads, staffing levels, costs, and estimated savings as follows:

- Scope: The office handles 85% of cases (misdemeanor, noncapital felony, and juvenile) and 100% of appeals.
- Staff: The five-county office would be staffed by 30 employees, including 20 attorneys (including a Chief Defender), 3 investigators, 2 caseworkers, and 5 support staff, including an office manager.
- Costs and Savings: With TIDC sustainability funding, the counties would save about \$750,000 in year one if the office is fully operational. In year two and beyond, the office should save the collective counties over \$300,000 a year. Kerr and Medina are projected to save the most—\$174,000 and \$72,000, respectively—because they have the highest per capita indigent defense spending under the current system. These estimated cost savings are based on a comparison of current system costs and a fully operational regional public defender alternative.<sup>1</sup>

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<sup>1</sup> Because some cases that are already appointed to private counsel will be disposed and billed after the public defender office is operational, the counties should plan for those transitional expenses.

- Grant funding is contingent on available funding, approval by a grant review committee, and a vote of the TIDC board.

### **Projected Total Indigent Defense Costs and Savings for a Hill Country Regional Public Defender Office System**

	Year 1	Year 2+
<b>Current 5-County Indigent Expenses (2017-2019 Average)</b>	\$1,665,524	\$1,665,524
<b>Projected 5-County Indigent Defense Net Expenses after TIDC Funding</b>	\$915,718	\$1,354,720
<b>Cost Savings</b>	<b>\$749,805</b>	<b>\$310,803</b>

### **Projected County Indigent Defense Costs and Savings for a Hill Country Regional Public Defender Office System**

Year	Counties	Total Est. Net Cost of New PD System	3 Yr. Avg. Cost of Current Indigent Defense System	Savings Compared to FY19 Spending
<b>Yr. 1</b>	<b>5 Counties</b>	<b>\$915,718</b>	<b>\$1,665,524</b>	<b>\$749,805</b>
	Bandera	\$82,260	\$121,250	\$38,990
	Gillespie	\$131,696	\$212,197	\$80,500
	Kerr	\$367,398	\$710,017	\$342,618
	Kendall	\$130,424	\$247,584	\$117,160
	Medina	\$203,940	\$374,477	\$170,536
<b>Yr. 2+</b>	<b>5 Counties</b>	<b>\$1,354,720</b>	<b>\$1,665,524</b>	<b>\$310,803</b>
	Bandera	\$120,292	\$121,250	\$957
	Gillespie	\$194,484	\$212,197	\$17,712
	Kerr	\$536,390	\$710,017	\$173,627
	Kendall	\$201,514	\$247,584	\$46,070
	Medina	\$302,040	\$374,477	\$72,437

TIDC looks forward to working with Bandera, Gillespie, Kendall, Kerr, and Medina Counties to determine what indigent defense model is right for the region.

## I. INTRODUCTION

The County Judges from Kerr, Bandera, Gillespie, Medina, and Kendall Counties have asked TIDC to assess the feasibility of establishing a regional public defender office (PDO) in the Hill Country.<sup>2</sup> The judges have expressed an interest in increasing the supply of attorneys who will represent indigent defendants, improving the quality of indigent defense, reducing jail costs, and saving taxpayer money. This report has 5 parts:

- Part I introduces the study.
- Part II explores current Hill Country indigent defense practices.
- Part III lays out key decision points for creating a public defender office.
- Part IV models a regional public defender office.
- Part V concludes that a public defender office is feasible and desirable.

This report concludes that a public defender office would likely improve indigent defense quality, constitutional compliance, accountability, and budget predictability.<sup>3</sup> With TIDC funding, a regional model would also provide cost savings for all counties in year one and beyond. TIDC stands ready to partner with Bandera, Gillespie, Kendall, Kerr, and Medina Counties to provide technical assistance and explore financial assistance to create a PDO suited to that region.

## II. BACKGROUND

Bandera, Gillespie, Kendall, Kerr, and Medina Counties have a combined population of approximately 202,109 residents. Kerr County is the largest, with 52,575 residents; Bandera County is the smallest, with 22,874 residents. The region has four district courts that hear adult felony cases: the 454<sup>th</sup> (Medina County), the 451<sup>st</sup> (Kendall County), the 198<sup>th</sup> (Bandera and Kerr Counties), and the 216<sup>th</sup>

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<sup>2</sup> Texas statutes grant Texas counties the power to form a public defender 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).

<sup>3</sup> See Appendix B for a summary of research on the benefits of a public defender system.

(Gillespie and Kerr Counties). Bandera has a Constitutional County Court that hears juvenile and adult misdemeanor cases. Until recently, Gillespie County's Constitutional County Court heard all juvenile and adult misdemeanor cases, but a new County Court-at-Law is hearing most of those cases today. Kerr County has a Constitutional County Court that hears juvenile cases and a County Court-at-Law that hears adult misdemeanor cases. Medina County has a County Court-at-Law that hears juvenile and adult misdemeanor cases.

Indigent defendants in all five counties are represented by private assigned counsel, except in capital cases, where defendants are represented by the Regional Public Defender Office for Capital Cases (RPDO).

Although a few attorneys exceeded TIDC caseload guidelines in FY2019, overall, caseloads in the region are not especially high.<sup>4</sup> Many attorneys who accept appointed cases in these three counties received court appointments in multiple counties. In FY2019, 20 attorneys received payment for court appointments in Bandera County, 23 attorneys in Gillespie County, 43 attorneys in Kendall County, 34 attorneys in Kerr County, and 31 attorneys in Medina County.

Some counties in the region may be having difficulties providing indigent defense. In Kerr and Medina Counties, the misdemeanor appointment rate was close to the 46% statewide average (43.9% in Kerr County and 42.3% in Medina County) in FY2019, but it was only 28.3% in Kendall, 15.9% in Gillespie, and 9.4% in Bandera County.

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<sup>4</sup> The attorney with the most paid appointed cases across counties (220 cases at 55% of time devoted to indigent cases) primarily practiced in Kerr County in FY2019. To more accurately address reasonable caseloads in Texas, the 83rd Texas Legislature passed House Bill 1318, which instructed 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.*

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 utilizing the Delphi method. The report recommended under the new Weighted Caseload Guidelines 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. TIDC has also developed guidelines for representation in juvenile delinquency cases and felony appeals.

## County Misdemeanor Appointment Rates, FY2017-19

County	FY2019	FY2018	FY2017	3 Year Average
<b>Bandera</b>	9%	11%	13%	11%
<b>Gillespie</b>	16%	13%	21%	16%
<b>Kerr</b>	44%	51%	44%	46%
<b>Kendall</b>	28%	12%	9%	17%
<b>Medina</b>	42%	55%	37%	44%
<b>Texas</b>	47%			

## Statewide Misdemeanor Appointment Rates, FY2017-19

	FY2019	FY2018	FY2017
<b>Misdemeanor Appt Rate for Counties w/ 2010 Pop Under 50,000</b>	29.2%	27.9%	28.8%
<b>Misdemeanor Appt Rate for Counties w/ 2010 Pop Between 50,000 and 249,999</b>	37.8%	36.4%	34.6%
<b>Misdemeanor Appt Rate for Counties w/ 2010 Pop Over 250,000</b>	52.7%	52.3%	52.4%
<b>Misdemeanor Appt Rate—Statewide</b>	46.6%	45.8%	45.8%

TIDC has not conducted full policy monitoring visits in Bandera, Gillespie, or Kerr Counties. In December 2009, TIDC<sup>5</sup> staff met with most of the stakeholders in Bandera County’s indigent defense system. The meeting was called after the Constitutional County Judge (and current TIDC board member) Richard Evans saw a TIDC presentation at the Texas Association of Counties’ annual Judicial Education

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<sup>5</sup> At the time, TIDC was called the Task Force on Indigent Defense.

Session. One issue that was noted in the meeting report was that “Bandera seems to have a significant shortage of practicing attorneys.”

TIDC conducted a fiscal monitoring visit in Bandera County in July 2005 and released its report in September 2005. TIDC has not conducted fiscal monitoring in Gillespie or Kerr County.

In 2007, TIDC conducted a policy and fiscal monitoring of Medina and Uvalde Counties. This was 13 years ago, before TIDC’s policy monitoring rules were formalized, but some record-keeping and quality of counsel issues were observed.

In 2018, TIDC conducted a policy and fiscal monitoring of Kendall County. The policy monitor found several issues, including untimely appointments in misdemeanor, felony, and juvenile cases. The county also did not track whether attorneys on the appointment lists completed their required continuing legal education hours.

### **III. DECISION POINTS**

Creating a public defender office requires several key decisions. This section explains (1) key decision points, and (2) the assumptions built into the model below. Much of the following discussion is the same as the December 2018 planning study, except for the sections on “Staffing and Salaries” and “Operations.” The assumptions built into the model below are generally recommendations, not requirements, unless otherwise noted. Wherever possible, TIDC cites applicable laws, standards, or studies.

#### **A. GOVERNANCE AND LEADERSHIP**

<b>Should the public defender have an oversight board?</b>
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Model Assumption: Yes. The public defender should have an oversight board charged with selecting a chief defender, setting policy, and developing a budget.
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TIDC requires an oversight board for any public defender office established with TIDC grant funds.<sup>6</sup> The counties that are part of the regional public defender office should determine the board's composition and responsibilities. An oversight board helps ensure a public defender office's independence from undue interference—a prerequisite for creating a public defender office according to national standards.<sup>7</sup> An oversight board also prevents the concentration of power in the hands of a single individual and may incorporate diverse perspectives that help guide the office. For these reasons, every public defender office created since passage of the Fair Defense Act has included an oversight board.

The board's composition should include an odd number of board members appointed from a variety of sources.<sup>8</sup> Members should be knowledgeable in criminal law, but free from interests that would pose a conflict with the public defender office.<sup>9</sup>

Board responsibilities vary, but most include (1) appointing the chief defender; (2) setting policy; and (3) developing a budget. Public defender offices should be overseen by an experienced chief public defender.<sup>10</sup> Boards are ideally suited to select that chief defender.<sup>11</sup> While a chief defender usually leads and manages the office's daily operations, boards are well-suited to providing policy guidance for the office, as well as making budget requests.

The model below assumes that the office will be governed by an oversight board with the power to recommend the selection and removal of the chief public

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<sup>6</sup> TEX. CODE CRIM. PROC. ART. 26.045 states that the “commissioners court of a county . . . may establish an oversight board for a public defender’s office created or designated in accordance with this chapter.”

<sup>7</sup> See Principle 1, American Bar Association, *Ten Principles of a Public Defense Delivery System* (2002) (hereinafter “ABA Ten Principles”). The *Ten Principles* are the leading national standards for designing an indigent defense system that delivers competent, effective representation. The Texas Fair Defense Laws, which detail the basic requirements for every indigent defense system in Texas, track the *Ten Principles* in many respects. See TIDC, *Fair Defense Laws 2017-2019*, <http://www.tidc.texas.gov/media/57918/tidc-fairdefenselaws-fy17-19.pdf>.

<sup>8</sup> Article 26.045 states that members may include attorneys, judges, county commissioners, county judges, community representatives, or former clients or family members.

<sup>9</sup> Relatedly, about half of the states with indigent defense commissions prohibit prosecutors from serving on their commission’s board. Andrew Davies, Memorandum: How to Make a Politically Independent Public Defender Commission (2006), on file with TIDC.

<sup>10</sup> The public defender office must be directed by a chief defender who meets minimum qualifications set by statute. See TEX. CODE CRIM. PROC. art. 26.044(f).

<sup>11</sup> Boards are also well-suited to removing chief defenders, where necessary.



defender. The model does not include direct costs for a board, which are usually minimal.

## B. GOVERNMENT OR PRIVATE ENTITY

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

Model Assumption: The office will be a county department.

The counties should consider whether its public defender office will be a county department or a nonprofit organization that contracts with the participating counties.<sup>12</sup> A county department may better coordinate with other county departments and provide an institutional counterweight to the district and county attorney's office. A nonprofit may more readily embrace innovative practices and assist clients with civil matters as well. In most urban centers across the United States, including Texas, public defender offices are government agencies. Rural jurisdictions in Texas have a mix of nonprofit and government agency public defender offices.<sup>13</sup> The model outlined in this report assumes the public defender office will be a county department.

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<sup>12</sup> The *Ten Principles* note that either a governmental agency or a nonprofit corporation under contract with a jurisdiction can serve as a public defender office. ABA Principle 2, note 7. State law allows for either structure, but requires a county to follow certain procedures for soliciting and selecting proposals from nonprofits, to account for both quality and cost. TEX. CODE CRIM. PROC. art. 26.044(c-e).

<sup>13</sup> The Far West Texas Regional Public Defender is a government agency whose fiscal sponsor is Culberson County. It covers Brewster, Presidio, Jeff Davis, Hudspeth, and Culberson Counties, and its main office is in Alpine (Brewster County).

Texas RioGrande Legal Aid (TRLA) is a non-profit organization that operates two regional public defender offices in South Texas. The Bee County Regional Public Defender Office is fiscally sponsored by Bee County and also covers Live Oak, McMullen, Refugio, Willacy, Goliad, and Lavaca Counties. The Starr County Regional Public Defender Office covers Starr, Duval, and Jim Hogg Counties.

TRLA also serves Bandera, Gillespie, Medina, Kendall, and Kerr Counties for civil legal matters through its San Antonio office. County leaders should discuss the pros and cons of contracting with TRLA to run its public defender office versus the government entity model.

## C. CASELOADS

### What should the maximum attorney caseload be?

Model Assumption: Attorneys will handle no more than 138 felony or 239 misdemeanor cases per year.

When attorneys represent too many clients, they must often jettison core legal tasks, including research, investigation, client communication, and the filing of pertinent motions.<sup>14</sup> Given a salary and benefits, public defenders do not face the same economic incentives—assuming that caseloads are controlled. Newly established Texas public defender offices are required to identify maximum allowable caseload limits for each attorney in the office<sup>15</sup> and to refuse appointments that would violate these limits.<sup>16</sup>

TIDC has published evidence-based *Guidelines for Indigent Defense Caseloads*.<sup>17</sup> The model below adjusts the Guidelines for public defender offices to account for in-house investigators, whose support allows attorneys to focus on the legal aspects of the case and provide representation in more cases. Based on the adjusted Guidelines, the model below assumes that each attorney in a new public defender office will handle no more than 138 felony cases or 239 misdemeanor cases per year. The model also assumes that the chief defender will carry a 10% caseload, dedicating most of his or her time to supervision, administration, training, and leadership.

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<sup>14</sup> See ABA Principle 5.

<sup>15</sup> TEX. CODE CRIM. PROC. art. 26.044(c-1)(3). To receive grant funding from TIDC, a public defender office “must have defined caseload/workload standards.” Competitive Discretionary Grant Program Request for Applications at 15, <http://tidc.texas.gov/media/57909/fy19-discretionary-grant-rfa.pdf> (hereinafter “FY19 Discretionary Grant RFA”).

<sup>16</sup> Tex. Code Crim. Proc. art. 26.044(j).

<sup>17</sup> Carmichael et al., Public Policy Research Institute at Texas A&M University, *Guidelines for Indigent Defense Caseloads* (2015), [http://www.tidc.texas.gov/media/31818/150122\\_weightedcl\\_final.pdf](http://www.tidc.texas.gov/media/31818/150122_weightedcl_final.pdf).

## D. CASE COMPOSITION

### **What proportion and types of cases should the office handle?**

Model Assumption: The office will represent defendants in 85% of noncapital felony, misdemeanor, and juvenile cases.

The counties should determine the office's scope, including the types of cases that will be covered, as well as the percentage of cases covered. The model below assumes that the office will handle 85% of noncapital felonies, misdemeanors, and juvenile cases, and 100% of appeals.<sup>18</sup> The model also assumes that private assigned counsel will continue to provide representation in the remaining cases, particularly in co-defendant cases in which the public defender would have a conflict of interest.

## E. STAFFING AND SALARIES

### **1. What should staff be paid?**

Model Assumption: Public defender employees will have pay parity with their prosecutorial counterparts.

### **2. What should the staffing levels for investigators, caseworkers, support staff, and managers be?**

Model Assumption: Staffing ratios will follow national and state norms whenever possible.

The counties should decide (a) what it should pay staff at a new public defender office, and (b) what kind of staff the office will employ. National standards require pay and resource parity between the prosecution and defense functions.<sup>19</sup> The model below assumes that public defender staff pay will be comparable to that of their counterparts in the 198<sup>th</sup> and 216<sup>th</sup> District Attorney Offices and the Kerr County Attorney's Office:<sup>20</sup>

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<sup>18</sup> These percentages are based on the percentage of cases handled by the Burnet Co. Public Defender.

<sup>19</sup> See ABA Principle 8.

<sup>20</sup> Salaries for District Attorney positions are rounded averages of the 198<sup>th</sup> and 216<sup>th</sup> offices.

- Chief Defender: \$130,000<sup>21</sup>
- Felony Defender: \$100,000<sup>22</sup>
- Juvenile Defender: \$57,000<sup>23</sup>
- Misdemeanor Defender: \$66,000<sup>24</sup>
- Appellate Defender: \$83,000<sup>25</sup>
- Investigator: \$57,000<sup>26</sup>
- Office Manager: \$57,000<sup>27</sup>
- Caseworker: \$45,000<sup>28</sup>
- Support Staff: \$43,000<sup>29</sup>

Based on TIDC caseload guidelines, a regional office would need to hire a chief defender carrying a 10% caseload, 12 full-time felony attorneys, 6 full-time misdemeanor attorneys, a juvenile defender with half a caseload and an appellate/research defender with 0.4 caseload.<sup>30</sup>

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<sup>21</sup> The District Attorney is paid \$140,000 by the State (*see* H.B. 1 (86<sup>th</sup> Legislature), p. IV-33-34, and TEX. GOV'T CODE § 46.002). The 216<sup>th</sup> District Attorney has an \$18,000 supplement and the 198<sup>th</sup> District Attorney has a \$9,000 supplement. The Assistant District Attorney in the 198<sup>th</sup> has a salary of just over \$111,000. The Chief Defender's salary (\$130,000) is based on the average of the 198<sup>th</sup> District Attorney (\$149,000) and the Assistant District Attorney (\$111,000).

<sup>22</sup> The lowest paid Assistant District Attorney in the 216<sup>th</sup> and 198<sup>th</sup> District Attorney's Offices was just over \$100,000 as a base salary. It is possible the average felony public defender salary could be lower since they would be a new county employee.

<sup>23</sup> Based on the salary of a first-year Assistant County Attorney in Kerr.

<sup>24</sup> Based on the average of a first-year Assistant County Attorney and an Assistant County Attorney with 7 years of experience in Kerr County.

<sup>25</sup> Based on the average salary of the misdemeanor and felony defender positions.

<sup>26</sup> Based on the investigator salary for the 216<sup>th</sup> District Attorney.

<sup>27</sup> Based on the office manager salary for the 216<sup>th</sup> District Attorney.

<sup>28</sup> Based on the median salary of a mental health and substance abuse social worker according to the Bureau of Labor Statistics, <https://www.bls.gov/oes/2018/may/oes211023.htm>.

<sup>29</sup> Salaries range from \$40,936 for Legal Assistant II in the 216<sup>th</sup> District Attorney's Office to \$43,347 for an Administrative Assistant with 7 years of experience in the Kerr County Attorney's Office.

<sup>30</sup> The chief will need to determine how to best split the time of personnel to cover appeals and juvenile cases. For example, the appellate attorney might also cover half a caseload of felonies, another attorney might cover half felonies and half misdemeanors, and a third attorney might cover half misdemeanors and half juvenile cases.

The model assumes that, in practice, the offices would hire some attorneys with mixed caseloads, and those attorneys' salaries would be based on the salary reference points above.

Resource parity should extend to support staff, including investigators, caseworkers, and administrative assistants.<sup>31</sup> Investigators are essential to examining the prosecution's case and establishing defenses. Support staff dedicated to tasks like filing, scheduling, finance, and information technology are necessities for any office.

Defense team caseworkers provide specialized services critical to effective representation and beyond, such as creating plans for mental health and substance abuse treatment, housing and other services in the community.<sup>32</sup> By better coordinating mental health, substance abuse, and social services for defendants with mental illness, then jail days, competency restorations, and recidivism can be reduced, and county savings realized.<sup>33</sup>

Finally, employee supervision is a key value of a public defender office. This model initially includes a chief defender as the only supervisor. As the office expands, it may be necessary to promote an attorney or two to serve in a supervisory capacity.

The Counties should identify an appropriate ratio of support staff, investigators, caseworkers, and managers to trial attorneys.<sup>34</sup> The model below assumes the following ratios:

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<sup>31</sup> ABA Principle 8.

<sup>32</sup> TIDC's 2018 report, *Mental Health Defender Programs in Texas*, details the benefits of a team-based approach, including reducing jail populations, avoiding competency evaluations, improving case outcomes, expediting case processing, and reducing recidivism. Online at [http://tidc.texas.gov/media/58014/tidc\\_mhdefenders\\_2018.pdf](http://tidc.texas.gov/media/58014/tidc_mhdefenders_2018.pdf). This model is nationally recognized as a cost-effective strategy for pretrial diversion. Kentucky, for example, uses defense-team alternative sentencing workers to create diversion plans; for every \$1.00 spent on this program, Kentucky has received a \$3.76 return on investment from avoided incarceration costs. Cape & Walker, *SFY 2015 Evaluation Report: Department of Public Advocacy Alternative Sentencing Worker Program* (2017).

<sup>33</sup> Under *Padilla v. Kentucky*, defense attorneys have a constitutional obligation to inform their clients of the immigration consequences of criminal convictions. Although no immigration attorney has been assigned to the office at this time, the model includes a budget to contract with the organization, MyPadilla, to provide immigration advisals to public defenders so they can properly advise their clients on the immigration consequences of the criminal case.

<sup>34</sup> TIDC's 2008 *Blueprint for Creating a Public Defender Office in Texas* offers a ratio of 1:5 investigators to attorneys and 1:5 staff assistants to attorneys. The *Ten Principles* cite the 1976

- 1 investigator per 7 trial attorneys (3 total)
- 1 caseworker per 10 trial attorneys (2 total)
- 1 support staff per 5 trial attorneys (4 total)

## F. OPERATIONS

### **1. What should the budget for operating expenses, including employee benefits, office space, equipment, training, travel, technology, and expert witnesses be?**

Model Assumption: The model assumes annual fringe benefits of 32% per employee; ongoing rental costs of \$15/ft<sup>2</sup> and 150 ft<sup>2</sup>/employee; one-time expenses for office equipment and furniture of about \$85,000; a \$22,500 training budget; ongoing technology and supplies costs of \$850 per employee; and an expert witness budget equivalent to the counties' FY19 expert expenditures.

### **2. How many offices will there be and how will they be staffed?**

Model Assumption: The model assumes there will be a main office in Kerrville with regular business hours, and a second smaller office in Hondo. We recommend establishing small satellite offices using existing county office space in Fredericksburg, Boerne, and Bandera, with reduced business hours.

There should also be parity between the defense and prosecution in facilities, technology, and other resources.<sup>35</sup> Overhead expenses are another area where a public defender office creates economies of scale. The following estimates assume a staff of 30.

*Fringe benefits:* The annual fringe benefits are estimated to be 32% per employee, the standard for Kerr County employees.

*Office Space and Utilities:* Office rentals for Kerrville and Hondo are estimated to be \$15/ft<sup>2</sup>. At 150 ft<sup>2</sup>/employee, office space would be about \$67,275 per year.

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National Study Commission on Defense Services' recommended minimum ratio of 1:3 investigators to attorneys.

<sup>35</sup> ABA Principle 8.

*Operating Costs:* Establishing a new office will require one-time expenditures for computers, printers, desks, chairs, and miscellaneous office supplies. The model assumes these startup costs would total just over \$84,835. Ongoing annual operating expenses are estimated to cost about \$850/employee for technology and supplies. Ongoing expenses for a regional office with 30 employees will therefore be about \$25,500 per year.

*Training:* Public defender offices can use their staff and facilities to provide in-house continuing legal education to their attorneys and to the wider legal community. A public defender can be an institutional resource and hub for learning that improves the quality of representation for all appointed counsel.<sup>36</sup> Defenders working together in an office benefit from informal mentoring, case consultation, and day-to-day observation. A close professional network especially helps newer attorneys improve their skills and avoid costly mistakes. The model below assumes the chief will carry only a minimum caseload so that some of their time can be dedicated to training.

While in-house training is important, attorneys, investigators, and caseworkers should also attend trainings outside the office to stay abreast of current developments in law and practice. The Texas Criminal Defense Lawyers Association (TCDLA) receives funding from the Court of Criminal Appeals to provide scholarships and travel stipends to trainings for public defenders. Lawyers at the office can tap into those funds, but specialized training for investigators and caseworkers are not available through TCDLA. We have built in a training budget of \$22,500 but recommend that the training budget for the County and District Attorney's Offices be examined to ensure that there is parity between those offices and the Public Defender's Office.

*Travel:* Expenses for travel can be significant for rural regional public defenders, especially if staff are going to be traveling from a central office to satellite offices with any regularity. In this case, Kerrville is about 25 miles from either Fredericksburg or Bandera, and 35 miles from Boerne, so the distances are not

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<sup>36</sup> ABA Principle 9.

extreme but should be considered when developing the budget. Hondo is about 55 miles from Kerrville, which is why we have suggested establishing a separate office there. Investigators must travel extensively as part of their duties as well. We have included an annual travel budget of just over \$38,520.

*Technology:* The structure of a public defender office lends itself to ongoing, standardized performance reviews of all staff. An office that uses an up-to-date case management system can make more rigorous, data-driven assessments of quality and costs,<sup>37</sup> which allow the oversight board and the county to scrutinize performance and funding requests thoroughly.<sup>38</sup> Investment in technology can also create savings by automating tasks and saving valuable staff time. There is no specific budget for technology beyond the \$850 per employee operating budget. Additional ongoing funds may be needed for a case management system.

*Expert Witnesses:* Stakeholders developing a public defender plan need to determine what the office budget will be for expert witnesses, or if all expert funding will come from the courts on an as-needed basis. The counties spent an average of \$37,630 (combined) per year over the past three years for expert witnesses in non-capital cases.

Many defender offices have an expert witness budget. By giving the public defender office an expert budget, the defense function is provided additional independence and judges do not have to be put in the position of determining if an expert is appropriate; that decision is left to the defense team. We included an expert budget just under \$32,000 for the regional office (85% of the three-year average).

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<sup>37</sup> Mark Erwin and Meg Ledyard for the National Legal Aid & Defender Association, *Increasing Analytics Capacity A Toolkit for Public Defender Organizations* (2016), [http://www.nlada.org/sites/default/files/NLADA%20Increasing%20Analytics%20Capacity%20Toolkit%202016\\_0.pdf](http://www.nlada.org/sites/default/files/NLADA%20Increasing%20Analytics%20Capacity%20Toolkit%202016_0.pdf).

<sup>38</sup> To receive grant funding from TIDC, a public defender office “must have internal case management/tracking controls sufficient to monitor attorney caseload/workload and “must have ability to produce other reports that enable the office to evaluate its own performance and demonstrate its cost-effectiveness to other local defense systems.” TIDC, FY19 Discretionary Grant RFA, <http://tidc.texas.gov/media/57909/fy19-discretionary-grant-rfa.pdf>.



#### IV. MODEL

Based on the assumptions above, TIDC has developed one PDO model that would serve Bandera, Gillespie, Kendall, Kerr, and Medina Counties. The five counties would operate the office according to an interlocal agreement, with Kerr County serving as the fiscal agent for TIDC grants.

This model is not intended as a final proposal. Rather, it is a springboard for further discussion. Many of the factors explored in the previous section and the estimates incorporated into the draft budget are variable and can be adjusted.

All counties save significant funds with TIDC providing 80% funding in year one. In year two and beyond, when TIDC provides two-thirds funding, all counties continue to save money compared to average indigent defense spending over the past three years. More importantly, the services provided should be better, with attorneys available to reliably attend all dockets in all counties; caseworkers who can improve access to social services; improved attorney oversight; accountability and quality controls; better data collection; and higher misdemeanor appointment rates.

The model includes the following staffing levels and salaries:

#### **Proposed Staffing Levels and Salaries of the Hill Country Public Defender’s Office**

<b>Staff Position</b>	<b># Staff</b>	<b>Salary</b>	<b>Total</b>
Chief Defender	1	\$130,000	\$130,000
Felony Defender	12	\$100,000	\$1,200,000
Misdemeanor Defender	6	\$66,000	\$396,000
Juvenile Defender	0.4	\$57,000	\$22,800
Appellate/Research Attorney	0.5	\$83,000	\$41,500
Investigator	3	\$57,000	\$171,000
Caseworker	2	\$45,000	\$90,000
Office Manager	1	\$57,000	\$57,000
Support Staff	4	\$43,000	\$172,000
Total Staff Salaries	30		\$2,280,300
Fringe Benefits (32%)			\$729,696
<b>Total Salaries and Benefits</b>			<b>\$3,009,996</b>

The model assumes that misdemeanor appointment rates will remain the same for Kerr (46%) and Medina (44%) Counties, which are similar to the statewide average (47%). We anticipate that misdemeanor appointment rates will rise in the other three counties that have lower appointment rates, but it is difficult to predict how much appointment rates will rise. For the purposes of this model, we estimate that appointment rates will rise to 30% for Bandera, Gillespie, and Kerr Counties. We estimated that felony appointment rates would remain the same for all counties, based on each county's three-year average felony appointment rate.

The model assumes the office will represent indigent defendants in 85% of misdemeanor, noncapital felony, and juvenile cases; 100% of appeals; and the remaining 15% of cases—the estimated conflict rate<sup>39</sup>—will be represented by assigned counsel. Cost estimates for assigned counsel under the new public defender system were based on the average cost per case for the last three years.

Projected total annual indigent defense costs under this five-county model—before TIDC grants are included—are \$3.5 million, with the PDO comprising \$3.2 million, assigned counsel approximately \$245,000, and approximately \$60,000 for all five counties' payments to participate in the Regional Public Defender for Capital Cases (RPDO). Below is a table that outlines the projected changes in cases and costs for all five counties combined:

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<sup>39</sup> The conflict rate is based on the percentage of cases not represented by the Burnet County Public Defender's Office, which handles all cases except conflicts, similar to this office.

**Analysis of Annual Indigent Defense Costs:  
Regional Public Defender (Bandera, Gillespie, Kendall, Kerr, and Medina  
Counties) Compared to Current Practices**

	New Regional Public Defender Office	3 Year Avg. (2017-19)
<b>Regional Public Defender Office Estimates</b>		
<b>Estimated Public Defender Cases</b>		
Felony PDO Cases	1,631	n/a
Misdemeanor PDO Cases	1,405	n/a
Juvenile PDO Cases	86	n/a
Appeals PDO Cases	16	n/a
<b>Total Public Defender Cases</b>	<b>3,138</b>	n/a
<b>3-County Assigned Counsel Estimates and Current Practice</b>		
<b>Estimated Assigned Counsel Cases</b>		<b>3 Year Avg. (2017-19)</b>
Felony Cases	288	1,919
Misdemeanor Cases	248	1,305
Juvenile Cases	15	101
Appeals Cases	0	16
<b>Total Assigned Counsel Cases</b>	<b>616</b>	<b>3,341</b>
<b>Total Public Defender Cases</b>	<b>3,138</b>	<b>n/a</b>
<b>Total Indigent Defense Cases</b>	<b>3,754</b>	<b>3,341</b>
<b>Public Defender Office (without TIDC Grants) vs. Existing System Cost Comparison</b>		
Est. Total Public Defender Expenses	\$3,230,777	n/a
Total Assigned Counsel Expenses	\$244,758	\$1,605,148
FY 2019/20 Expense for Regional Public Defender Office for Capital Cases	\$60,376	\$60,376
<b>Total Indigent Defense Costs (not including TIDC grants or recoupment from defendants)</b>	<b>\$3,535,911</b>	<b>\$1,665,524</b>

## POTENTIAL TIDC GRANT FUNDING FOR REGIONAL PUBLIC DEFENDER OFFICE

TIDC’s Improvement Grant Program helps counties establish public defender offices. Improvement grants normally pay for 50% of the public defender office costs over four years, but TIDC’s Board recently approved two-thirds sustainability (ongoing) funding for counties seeking to establish a rural regional public defender office. These grants are available for counties with populations under 100,000, like Bandera, Gillespie, Kendall, Kerr, and Medina Counties. The following estimates are based on a two-thirds sustainability funding model, with 80% funding in year one<sup>40</sup> and two-thirds in year two and beyond.

The following is an estimate of the costs that TIDC could reimburse based on a public defender office with a \$3.2 million annual budget.<sup>41</sup>

### Estimated Improvement Grant Awards for a Hill Country Regional Public Defender Office

Grant Year	State Improvement Grants
Year 1 (80%)	\$2,652,489
Year 2 (66.66%)	\$2,153,636
<b>Total over 2 Years</b>	<b>\$4,806,125</b>

Grant funding is contingent on available funding, approval by a grant review committee, and a vote of the full TIDC Board. In addition to Improvement Grant funding from TIDC, the five counties in the Hill Country Public Defender will continue to receive Formula Grant funding to reimburse the counties for their other indigent defense expenditures, which typically amount to 12-to-15% of expenses.

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<sup>40</sup> The higher reimbursement percentage in the first year will help to offset transition costs, including cases appointed to private counsel before the creation of the public defender office, but which are disposed and billed after the public defender office is operational.

<sup>41</sup> This assumes no “ramp up” phase, *i.e.* the office would accept 85% of the cases every year, including the first year. A “ramp up” phase may be necessary in year one.

Below is a table comparing the funding of the current and proposed system. In year one the added costs of the office, including start-up costs would be more than offset by a TIDC grant (collective savings of almost \$750,000). The counties would save significantly in year two and beyond as well (almost \$311,000 in collective savings). Some counties save more than others, based on factors such as current misdemeanor appointment rates and current cost-per-case under today’s system. Those counties with lower per capita spending today would see less savings compared to counties with higher per capita spending.<sup>42</sup>

**Cost Comparison Between Current Assigned Counsel System and Proposed System with a Hill Country Regional Public Defender Office<sup>43</sup>**

Year	Counties	PD Office Costs	TIDC Grants for PD Office	County Portion of PD Office	Assigned Counsel + RPDO Costs	Net Change in TIDC Formula Grants	Total Est. Net Cost of New PD System	3 Yr. Avg. Cost of Current Indigent Defense System	County Savings from PDO System
<b>Yr. 1</b>	<b>5 Counties</b>	<b>\$3,315,612</b>	<b>\$2,652,489</b>	<b>\$663,122</b>	<b>\$305,134</b>	<b>\$52,538</b>	<b>\$915,718</b>	<b>\$1,665,524</b>	<b>\$749,805</b>
	Bandera			\$64,064	\$28,005	\$9,809	\$82,260	\$121,250	\$38,990
	Gillespie			\$101,455	\$36,856	\$6,615	\$131,696	\$212,197	\$80,500
	Kerr			\$257,395	\$117,561	\$7,558	\$367,398	\$710,017	\$342,618
	Kendall			\$97,431	\$49,774	\$16,781	\$130,424	\$247,584	\$117,160
	Medina			\$142,777	\$72,938	\$11,775	\$203,940	\$374,477	\$170,536
<b>Yr. 2+</b>	<b>5 Counties</b>	<b>\$3,230,777</b>	<b>\$2,153,636</b>	<b>\$1,077,141</b>	<b>\$305,134</b>	<b>\$27,555</b>	<b>\$1,354,720</b>	<b>\$1,665,524</b>	<b>\$310,803</b>
	Bandera			\$104,062	\$28,005	\$11,775	\$120,292	\$121,250	\$957
	Gillespie			\$164,798	\$36,856	\$7,170	\$194,484	\$212,197	\$17,712
	Kerr			\$418,099	\$117,561	-\$730	\$536,390	\$710,017	\$173,627
	Kendall			\$158,262	\$49,774	\$6,522	\$201,514	\$247,584	\$46,070
	Medina			\$231,919	\$72,938	\$2,817	\$302,040	\$374,477	\$72,437

Appendix A includes a detailed budget for the office.

<sup>42</sup> Annual per capita indigent defense spending in FY2019 for the counties in this study is as follows: Bandera-\$5; Gillespie-\$7; Kendall-\$8; Kerr-\$14; and Medina-\$9. Statewide per capita indigent defense spending was \$10 in FY2019.

<sup>43</sup> If the office accepted a lower caseload in year 1 during the “ramp up” phase, costs (and grants) would be reduced in year 1, but remain the same for years 2 and beyond. TIDC staff did not do budget projections for a “ramp up” phase, but could do so with additional information.

## V. CONCLUSION

A public defender office would improve indigent defense quality, reliability, constitutional compliance, accountability, and budget predictability. With TIDC funding, a regional model would also provide substantial cost savings to the counties.

TIDC stands ready to partner with Bandera, Gillespie, Kendall, Kerr, and Medina Counties to provide technical assistance and explore financial assistance to create a PDO suited to that region.

# APPENDIX A

Hill Country Regional Public Defender Model: 85% of Cases are Assigned to the Office						
1. Caseload		Total	Misdemeanors	Felonies	Juvenile	Appeals
<b>A. Total New Cases Added</b>						
5-Counties		7,390	4,441	2,833	101	16
Bandera			599	280	6	0
Gillespie			800	458	2	5
Kerr			1,405	1,101	61	10
Kendall			948	462	22	0
Medina			688	533	11	0
<b>B. Percent of Total Cases Added that are Indigent</b>			Bandera-30%; Gillespie-30%; Kerr-46%; Kendall-30%; Medina-44%	Bandera-66%; Gillespie-64%; Kerr-65%; Kendall-58%; Medina-86%	100%	100%
Estimated Total Indigent Defense Cases		3,689	1,654	1,919	101	16
Bandera			180	184	6	0
Gillespie			240	295	2	5
Kerr			646	715	61	10
Kendall			285	268	22	0
Medina			303	457	11	0
% going to public defender			85%	85%	85%	100%
<b>C. Public Defender Caseload</b>		3,138	1,405	1,631	86	16
Cases to Assigned Counsel		551	248	288	15	0
Bandera			27	28	1	0
Gillespie			36	44	0	0
Kerr			97	107	9	0
Kendall			43	40	3	0
Medina			45	69	2	0
<b>2. Staff</b>						
Public Defender Cases		3,138	1,405	1,631	86	16
Attorney Caseloads based on the Weighted Caseload Study			239	138	200	31
Number of Attorneys Needed		18.6	5.9	11.8	0.4	0.5
Bandera		2.1	0.8	1.3	0.0	0.0
Gillespie		3.3	1.0	2.1	0.0	0.2
Kerr		8.5	2.7	5.2	0.3	0.3
Kendall		3.2	1.2	1.9	0.1	0.0
Medina		4.7	1.3	3.3	0.1	0.0
Number of Investigators (1 per 7 attorneys)		3	0.8	1.7	0	0
Number of Caseworkers (1 per 10 attorneys)		2	0.6	1.2	0	0
Number of Office Support Staff (1 per 5 attorneys)		4	1	2	0	0
<b>3. Rough Draft Budget</b>						
	Staff	Total	Misdemeanor	Felony	Juvenile	Appeals
Total Staff Salaries	30	\$2,280,300	\$595,077	\$1,598,154	\$36,072	\$50,997
Chief Defender (\$130,000 salary)	1	\$130,000	\$41,270	\$82,540	\$2,751	\$3,439
Felony Defender (\$100,000 salary)	12	\$1,200,000	\$0	\$1,200,000	\$0	\$0
Misdemeanor Defender (\$66,000 salary)	6	\$396,000	\$396,000	\$0	\$0	\$0
Juvenile Defender (\$57,000 salary)	0.4	\$22,800	\$0	\$0	\$22,800	\$0
Appellate/Research Attorney (\$83,000 salary)	0.5	\$41,500	\$0	\$0	\$0	\$41,500
Investigator (\$57,000 salary)	3	\$171,000	\$55,761	\$111,522	\$3,717	\$0
Caseworker (\$45,000 salary)	2	\$90,000	\$29,348	\$58,696	\$1,957	\$0
Office Manager (\$57,000 salary)	1	\$57,000	\$18,095	\$36,190	\$1,206	\$1,508
Support Staff (\$43,000 salary)	4	\$172,000	\$54,603	\$109,206	\$3,640	\$4,550
Fringe (32%)		\$729,696	\$231,650	\$463,299	\$15,443	\$19,304
Experts Budget (85% of 3 yr avg. county expenses)		\$31,986	\$765	\$29,351	\$1,870	\$0
Immigration Consultations-MyPadilla		\$35,000	\$11,413	\$22,826	\$761	\$0
Operating Costs (\$500/yr Tech, \$350/supply per employee)		\$25,500	\$8,095	\$16,190	\$540	\$675
Travel (\$150/mo. per trial attny and investigator)		\$38,520	\$12,561	\$25,122	\$837	\$0
Training (\$1,000 per attny; \$500 per investigator and caseworker)		\$22,500	\$7,337	\$14,674	\$489	\$0
Rent and Utilities (150 ft2/person* \$15/ft2/yr *)		\$67,275	\$21,357	\$42,714	\$1,424	\$1,780
<b>Estimated Total PD</b>		<b>\$3,230,777</b>	<b>\$888,255</b>	<b>\$2,212,330</b>	<b>\$57,436</b>	<b>\$72,756</b>

# Research on Public Defenders

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Recent studies have found that public defenders improve outcomes.

### Economic Studies

There have been dozens of studies in the past hundred years comparing types of defense counsel (Feeney and Jackson; Hartley et al.). More recent, sophisticated statistical analysis (Bellin) has shown that public defenders get better outcomes than private assigned counsel:

- Reduced likelihood of conviction
  - ↓ 3% across state cases (Roach)
- Reduced likelihood of prison
  - ↓ 22% in San Francisco (Shem-Tov)
- Reduced sentence lengths
  - ↓ 16% in federal cases (Iyengar)
  - ↓ 26% across state cases (Cohen)
- Reduced costs
  - ↓ \$200 million in potential prison savings in Philadelphia (Anderson and Heaton)

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)
- Less experienced and worse performing when paid below
- Less likely to go to trial when paid more for pleas (Agan et al.)

### Program Evaluations

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

- Reduced jail time and costs
  - ↓ 113 jail days saved in felonies in Kaufman
  - ↓ \$2,207 jail savings per case in misdemeanors in Fort Bend
- Reduced case time and costs
  - ↓ 43 days in misdemeanors and 176 days in felonies in Bowie
  - ↓ 25% lower costs in capital cases across the state
- Reduced likelihood of conviction
  - ↓ 23% in misdemeanors and felonies in Wichita
- Reduced recidivism
  - ↓ 22% fewer rearrests in mental health cases in Travis

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



## Research on Public Defenders—Studies Cited

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