Task Force on Indigent Defense

Review of Wichita County's Indigent Defense Systems

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Introduction

Task Force Background

In January 2002, the Texas Fair Defense Act (FDA) became effective after its passage by the 77th Texas Legislature in 2001. The FDA established an organization to oversee the provision of indigent defense services in Texas, the Texas Task Force on Indigent Defense (Task Force). The mission of the Task Force is to promote justice and fairness to all indigent persons accused of criminal conduct. The Task Force assists counties to provide quality representation in a cost-effective manner that meets the needs of local communities and the requirements of state and constitutional laws. The Task Force is given a directive under Tex. Gov't Code § 71.062(b) to monitor local jurisdictions' compliance with the Fair Defense Act ("FDA").

Goal

Promote local compliance and accountability with the requirements of the FDA through evidence-based practices and provide technical assistance to improve processes where needed. This visit is intended to assist the local jurisdiction in developing procedures to monitor its own compliance with its indigent defense plan and the FDA. The review process will also help the Task Force test its monitoring procedures.

Core Requirements of the Fair Defense Act

1. Conduct prompt and accurate magistration proceedings:
    - Inform and explain right to counsel to accused;
    - Provide reasonable assistance to accused in completing necessary forms to request counsel;
    - Maintain magistrate processing records.
2. Determine indigence according to standards directed by the indigent defense plan.
3. Establish minimum attorney qualifications.
4. Appoint counsel promptly.
5. Institute a fair, neutral, and non-discriminatory attorney selection process.
6. Promulgate a standard attorney fee schedule and payment process.

Methodology

Wichita County requested assistance from the Task Force on Indigent Defense (Task Force) to review the County's indigent defense systems. The Task Force conducted the review in coordination with the Public Policy Research Institute at Texas A&M (PPRI) study to evaluate the impact of type of counsel on case outcomes. Task Force staff made three site visits to the County in October and November 2011. In an attempt to document local processes for managing the requirements of the FDA, we interviewed representatives from various departments in Wichita County's criminal justice system and examined records related to indigent defense.

Task Force staff interviewed the following persons: the county auditor's office; the indigent defense services office; a district judge; the public defender's office; the district clerk's office; the county clerk's office; multiple defense attorneys; a justice-of-the-peace; a municipal court judge; the district attorney; jail staff; and police staff. The monitor examined the following records:

- Jurisdiction's indigent defense plan
- Magistrate warning forms to determine the time from arrest to magistration and to determine whether all Article 15.17 requirements are part of standard procedures
- Affidavits of indigence, orders appointing attorneys, and bonding information to determine the time from request to appointment of counsel
- Documentation showing the number of cases assigned to each attorney in order to determine whether appointments were made in a fair, neutral, and non-discriminatory manner

Summary of Commendations / Recommendations

Based upon the Task Force's program assessment, Wichita County has many solid processes for ensuring that the County meets Texas' indigent defense requirements. These solid processes are listed in the commendations that follow. The County was challenged in making timely appointments of counsel. When arrestees request counsel at magistration, assistance is not always given to arrestees in filling out affidavits of indigence. As a result, requests for counsel are not always promptly forwarded to the indigent defense coordinator, and may not be forwarded at all. When requests for counsel are not promptly forwarded to the indigent defense coordinator, appointments are not always timely, and occasionally invalid waivers of counsel result.

Commendation: Wichita County has implemented procedures for ensuring prompt and accurate magistration hearings.

Commendation: Wichita County's indigent defense plans meet Article 26.04 requirements that the County establish procedures and financial standards for determining whether a defendant is indigent.

Commendation: Wichita County maintains records of attorney CLE hours as required by administrative rule.

Commendation: Wichita County has solid procedures for making timely attorney appointments for juveniles.

Commendation: Wichita County's appointment methods create a distribution of attorney appointments that fall well within the Task Force's administrative rules. Task Force rules require that a recommendation be made concerning a jurisdiction's appointment methods if the top 10% of attorneys at any level (misdemeanor, felony, or juvenile) receive more than three times their representative share of appointments.

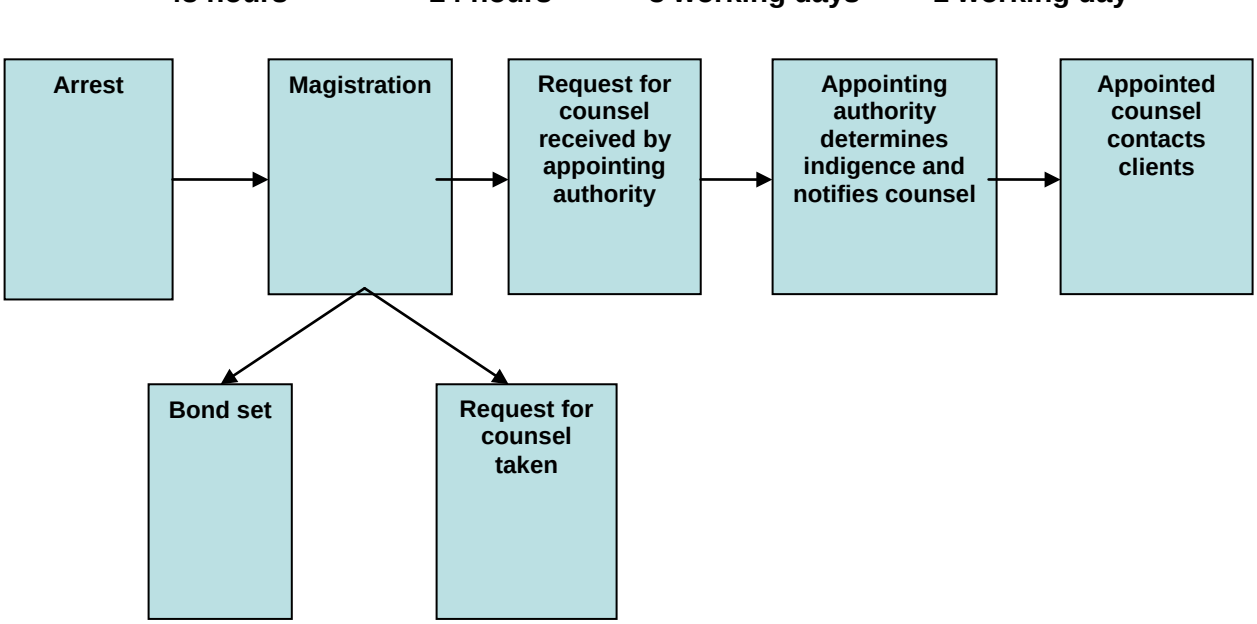
Recommendation: Wichita County must ensure that reasonable assistance is provided to arrestees in completing affidavits of indigence at the time of magistration as required by Article 15.17 of the Code of Criminal Procedure.

Recommendation: Wichita County must ensure that all requests for counsel are ruled upon before any waivers of counsel are signed, pursuant to Article 1.051(f-2). It appears that the root cause of invalid waivers of counsel is that if a defendant requests counsel at magistration that the courts are not always notified of the request.

Recommendation: Wichita County must examine its appointment processes for both felony and misdemeanor cases and must implement procedures that ensure timely appointment of counsel. Task Force rules require that a recommendation be made regarding timely appointments of counsel if less than 90 percent of the monitor's sample is timely.

Overview of Wichita County's Indigent Defense System

Fair Defense Act Timeline Model for Counties with Populations Under 250,000



Persons arrested in Wichita County will initially be booked at either a municipal jail or at the Wichita County Jail. If booked at a municipal jail, the arrestee will be quickly transferred to the Wichita County Jail, where a magistrate will set bond and will administer Article 15.17 warnings that include whether the arrestee is requesting counsel. If the arrestee requests counsel, the arrestee will be given an affidavit of indigence to complete. Jail staff later collect the affidavit of indigence and send it to the Central Magistrate's Office. The indigent defense coordinator picks up the affidavit of indigence from the Central Magistrate's Office, notes whether the person qualifies under the County's standard, and sends the application for appointed counsel to the appointing judge. If a judge determines that the requester is indigent, an attorney is appointed from a rotating wheel.

A summary of indigent defense statistics, which were submitted by the County to the Task Force on Indigent Defense through the Office of Court Administration (OCA), follows on the next page. The tables show appointment rates for the court systems as well as respective expenditure data.

Wichita County	2001 Baseline	2006	2007	2008	2009	Texas 2009
2000 population	131,664	131,664	131,664	131,664	131,664	20,851,464
Population Estimate	131,854	129,069	131,412	129,719	129,719	24,105,062
Felony Cases Added		1,861	1,712	1,976	2,011	283,619
Felony Cases Paid		1,178	1,382	1,246	1,070	191,936
Felony Appointment Rate		63.30%	80.72%	63.06%	53.21%	67.67%
Felony Attorney Fees		$245,815	$304,507	$465,920	$297,727	$95,432,450
Total Felony Expenditures		$277,707	$338,583	$604,334	$341,980	$108,305,552
Misdemeanor Cases Added		5,418	4,492	3,480	3,492	598,777
Misdemeanor Cases Paid		1,498	1,184	1,062	1,316	210,725
Misdemeanor Appointment Rate		27.65%	26.36%	30.52%	37.69%	35.19%
Misdemeanor Attorney Fees		$72,651	$93,046	$149,951	$127,943	$32,021,577
Total Misdemeanor Expenditures		$72,651	$93,112	$151,578	$131,784	$32,694,487
Juvenile Cases Added		165	138	188	100	44,300
Juvenile Cases Paid		316	403	246	239	56,090
Juvenile Attorney Fees		$99,761	$110,743	$96,653	$72,230	$11,681,900
Total Juvenile Expenditures		$103,011	$111,407	$96,837	$72,252	$12,376,584
Total Attorney Fees	$176,104	$431,578	$590,730	$763,703	$568,828	$145,597,795
Total ID Expenditures	$763,154	$1,187,545	$1,418,540	$1,676,851	$1,492,779	$186,306,799
Increase In Total Expenditures over Baseline		55.61%	85.88%	119.73%	95.61%	109.97%
Total ID Expenditures per Population	$5.79	$9.20	$10.79	$12.93	$11.51	$7.73
Task Force Formula Grant Disbursement		$73,478	$64,808	$65,090	$64,161	$11,637,486
Task Force Equalization Grant Award		n/a	$27,889	$91,965	$201,908	$12,000,000
Recoupment of Fees		$26,718	$40,031	$38,969	$34,877	$10,235,183

Part I: Program Assessment

In the assessment that follows, the core requirements of the FDA are listed with a description of statutory provisions and then compared to the County's performance with regard to each requirement. The local indigent defense plans are listed in an appendix to the report.

Core Requirement 1. Conduct prompt and accurate magistration proceedings:

- Inform and explain right to counsel to accused;
- Provide reasonable assistance to accused in completing necessary forms to request counsel;
- Maintain magistrate processing records.

Statutory Provisions

The FDA requires that magistration is conducted without unnecessary delay, but not later than 48 hours after the person is arrested. At magistration, the arrestee is to be informed in clear language of the following:

- the accusation against him/her and of any affidavit filed;
- the right to retain counsel;
- the right to remain silent;
- the right to have an attorney present during any interview with peace officers or attorneys representing the state;
- the right to terminate the interview at any time;
- the right to have an examining trial; and
- the person's right to request the appointment of counsel if the person cannot afford counsel.

The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. Tex. Code Crim. Proc. art. 15.17(a). If the arrestee requests appointed counsel, the arrestee is required to complete under oath a questionnaire concerning his financial resources. Tex. Code Crim. Proc. art. 26.04(n).

The record of the magistrate's warning must comply with Article 15.17(e), and must contain information indicating that:

(1) the magistrate informed the person of the person's right to request appointment of counsel;

(2) the magistrate asked the person whether the person wanted to request appointment of counsel; and

(3) whether the person requested appointment of counsel.

This record may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a). Tex. Code Crim. Proc. art. 15.17(e)-(f).

Jurisdiction's Process

Wichita County uses centralized magistrate warnings where all arrestees in the County are brought to the Wichita County Jail so that probable cause can be determined, bond can be set, and requests for counsel can be taken. Magistrate warnings are conducted on a rotating basis where justices-of-the-peace handle weekday proceedings, and municipal judges handle weekend proceedings. Magistrates warnings are typically given a couple of times each day during the week (often in the morning and later in the afternoon or evening) and once per day on the weekend (often in the morning).

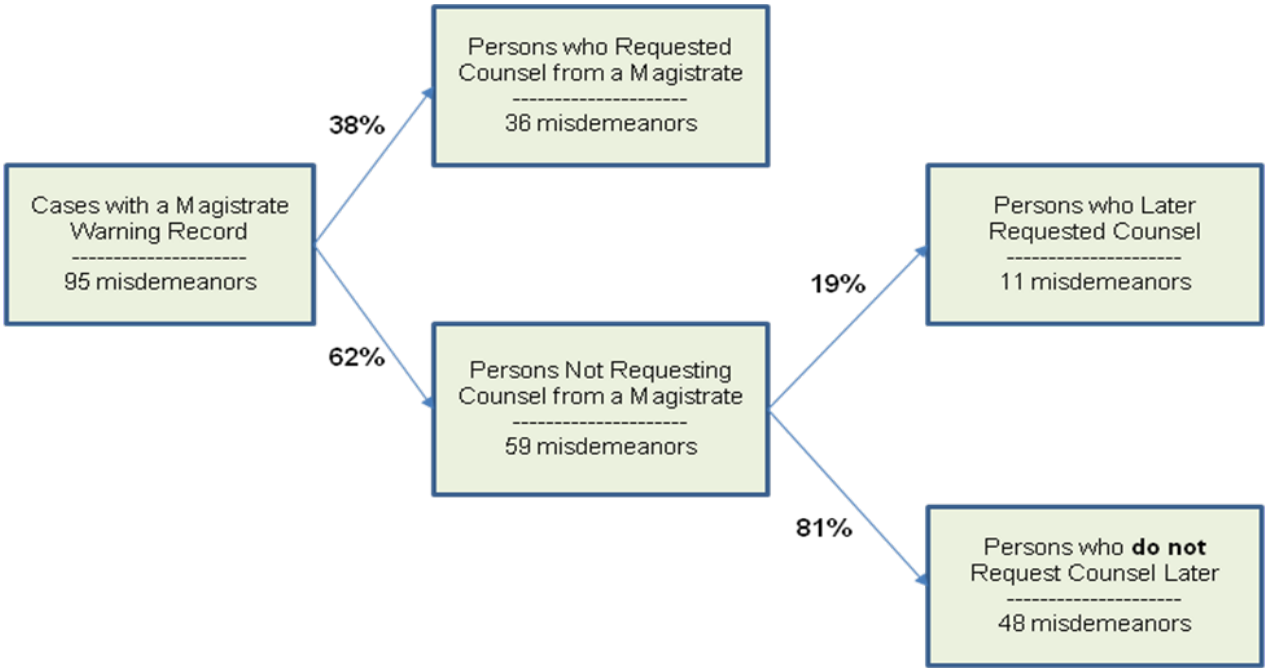
Magistration Records Reviewed

The monitor examined the timing of magistrate warnings. The date of arrest was very accessible in the case file, but the time of arrest was less accessible. To speed the review of case files, the monitor only noted the date of arrest and not the time of arrest. As such, the monitor cannot verify that magistrate warnings occurred within 48 hours but can verify that magistrate warnings occurred within two days of arrest. If the warnings occurred within two days of arrest, the warnings were considered timely.

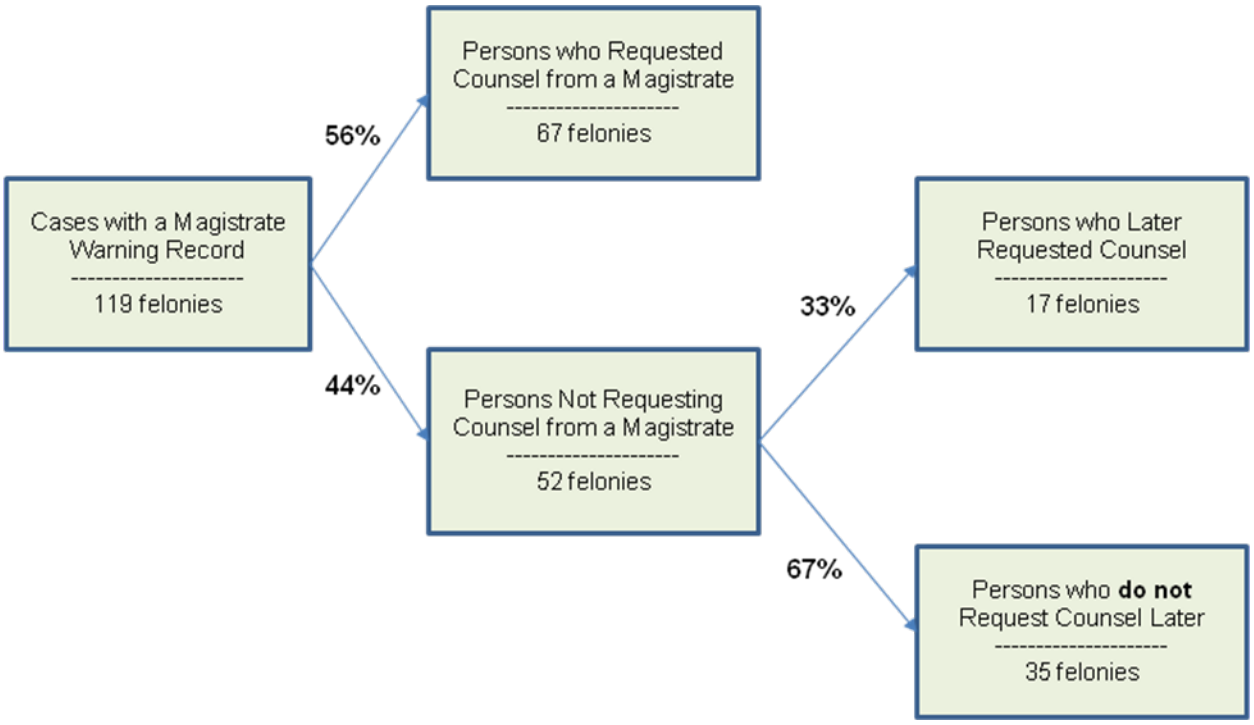
Wichita County Time to Magistration Data	Sample Size	Percent
Magistrate warnings where time to magistration could be determined	207	
Magistration Occurs x days after arrest:		
0 days	66	31.9%
1 day	140	67.6%
2 days	1	0.5%
Timely Magistration	**207**	**100.0%**

The monitor examined the percent of arrestees requesting counsel at magistration. The monitor examined 95 misdemeanor cases and 119 felony cases where a magistrate warning form was in the case file and the form noted whether there was a request for counsel. Of these cases, 38% of the misdemeanor arrestees and 56% of the felony arrestees requested counsel at the magsitrate warnings. If an arrestee does not request counsel at the magistrate warnings and later appears in court without counsel, Article 1.051(f-2) requires that the procedures for requesting counsel be explained to the defendant. See the following flow charts that summarize data showing when requests for counsel were made.

Misdemeanor Requests for Counsel



Felony Requests for Counsel



Commendation: Wichita County has implemented procedures for ensuring prompt and accurate magistration hearings.

Core Requirement 2. Determine indigence according to standards directed by the indigent defense plan.

Statutory Provisions

Each jurisdiction must establish procedures and financial standards for determining indigence. The procedures must apply to each defendant equally, regardless of whether or not bail has been posted. In determining whether a defendant is indigent, the court or the court's designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The court or the courts' designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations previously listed. Tex. Code Crim. Proc. art. 26.04(l)-(m).

A defendant who requests a determination of indigence and appointment of counsel must:

(1) complete under oath a questionnaire concerning his financial resources;
(2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or
(3) complete the questionnaire and respond to examination by the judge or magistrate. Tex. Code Crim. Proc. art. 26.04(n).

In addition the defendant is required to sign an oath that substantially conforms to the following:

> On this _____ day of _____, 20 ___, I have been advised by the (name of the court) Court of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)
> Tex. Code Crim. Proc. art. 26.04(o).

A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigence or non-indigence is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination. Tex. Code Crim. Proc. art. 26.04(p).

For juveniles, Tex. Fam. Code § 51.10(f)-(g) states:

(f) The court shall appoint an attorney to represent the interest of a child entitled to representation by an attorney, if:
(1) the child is not represented by an attorney;

(2) the court determines that the child's parent or other person responsible for support of the child is financially unable to employ an attorney to represent the child; and

(3) the child's right to representation by an attorney:

(A) has not been waived under Section 51.09 of this code; or

(B) may not be waived under Subsection (b) of this section.

(g) The juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

The rules of Article 26.04 still apply to juveniles, except that the income and assets of the person responsible for the child's support are used in determining whether the child is indigent. Tex. Fam. Code § 51.102(b)(1).

Jurisdiction's Process

According to the County's indigent defense plan (see Appendix A), adults are presumed indigent if their income is less than 100% of the federal poverty guidelines or if they are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing. If the defendant does not meet the above conditions but if the cost of obtaining private counsel would create a substantial hardship, the court will also deem the defendant to be indigent. For juveniles (see Appendix B), this same standard applies, except that the standard of indigence applies to the person responsible for the welfare of the child.

Commendation: Wichita County's indigent defense plans meet Article 26.04 requirements that the County establish procedures and financial standards for determining whether a defendant is indigent.

Core Requirement 3. Establish minimum attorney qualifications.

Statutory Provisions

Judges of the statutory county courts are to establish an appointment list of qualified attorneys to provide representation in misdemeanor cases. Likewise, judges of the district courts are to establish an appointment list of qualified attorneys to provide representation in felony cases. The judges are to specify objective qualifications necessary to be included on the list and may establish graduated lists, according to the seriousness of the offense. Each attorney applying to be on an appointment list must be approved by a majority of the judges who try criminal cases at that court level. In a county where a public defender is used, the courts may appoint the public defender to represent defendants. Tex. Code Crim. Proc. art. 26.04(d)-(f). Attorneys accepting appointments are required to annually obtain 6 hours of criminal law continuing legal education (CLE) credit per Title 1, §174.1 of the Texas Administrative Code.

For juveniles, the juvenile board is to establish qualifications necessary for an attorney to be included on the appointment list. The plan must recognize the differences in qualifications and experience necessary for appointments involving supervision, delinquent conduct, or commitment to the Texas Youth Commission. Tex. Fam. Code § 51.102. Attorneys accepting appointments are required to annually obtain 6 hours of juvenile law continuing legal education (CLE) credit per Title 1, §174.2 of the Texas Administrative Code.

Appointed attorneys are to make every reasonable effort to contact the defendant by the end of the first working day after receiving the appointment and to interview the client as soon as practicable. Tex. Code. Crim. Proc. art. 26.04(j). The public defender may have additional objective qualifications in providing quality representation as the duties of the public defender are to be specified by the commissioner's court in a written agreement. Art. 26.044(b). Attorneys must also meet the standard of care set by the Texas Bar in the Texas Disciplinary Rules of Professional Conduct.

Jurisdiction's Process:
Attorney CLE records are maintained by the indigent defense coordinator for both attorneys representing adults and attorneys representing juveniles.

Commendation: Wichita County maintains records of attorney CLE hours as required by administrative rule.

Core Requirement 4. Appoint counsel promptly.

Statutory Provisions

An indigent defendant is entitled to have an attorney appointed to represent him/her in any adversarial judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. Tex. Code Crim. Proc. art. 1.051(a). If the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not more than 24 hours after the request, transmit or cause to be transmitted to the appointing authority, the forms requesting counsel. Art. 15.17(a). For counties with a census population over 250,000, **if an indigent defendant is not released from custody prior to the appointment of counsel**, the court or court's designee shall appoint counsel as soon as possible, but **not later than the end of the first working day** after the date on which the court or the court's designee receives the defendant's request for appointment of counsel. Art. 1.051(c). **If an indigent defendant is released from custody prior to the appointment of counsel** under this section, appointment of counsel is not required until **the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first**. Art. 1.051(j).

Once adversarial judicial proceedings have been initiated, a prosecutor may not initiate or encourage waivers of counsel. If a defendant has requested counsel but is not represented, the prosecutor may not communicate with the defendant unless the court has denied indigence. If indigence has been denied, the prosecutor may communicate with the defendant if the defendant has been given a reasonable opportunity to retain counsel but has failed to do so or if the defendant has waived the opportunity to retain private counsel. Tex. Code Crim. Proc. art. 1.051(f).

If counsel has not been requested but the defendant is not represented, the court must advise the defendant of the right to court appointed counsel and of the procedures for making the request and give the defendant a reasonable opportunity to request appointed counsel. If the defendant refuses to make a request for appointed counsel, a waiver of counsel may be obtained, and the court

may proceed with the matter on 10 days' notice to the defendant of the dispositive setting. Art. 1.051(e)-(g).

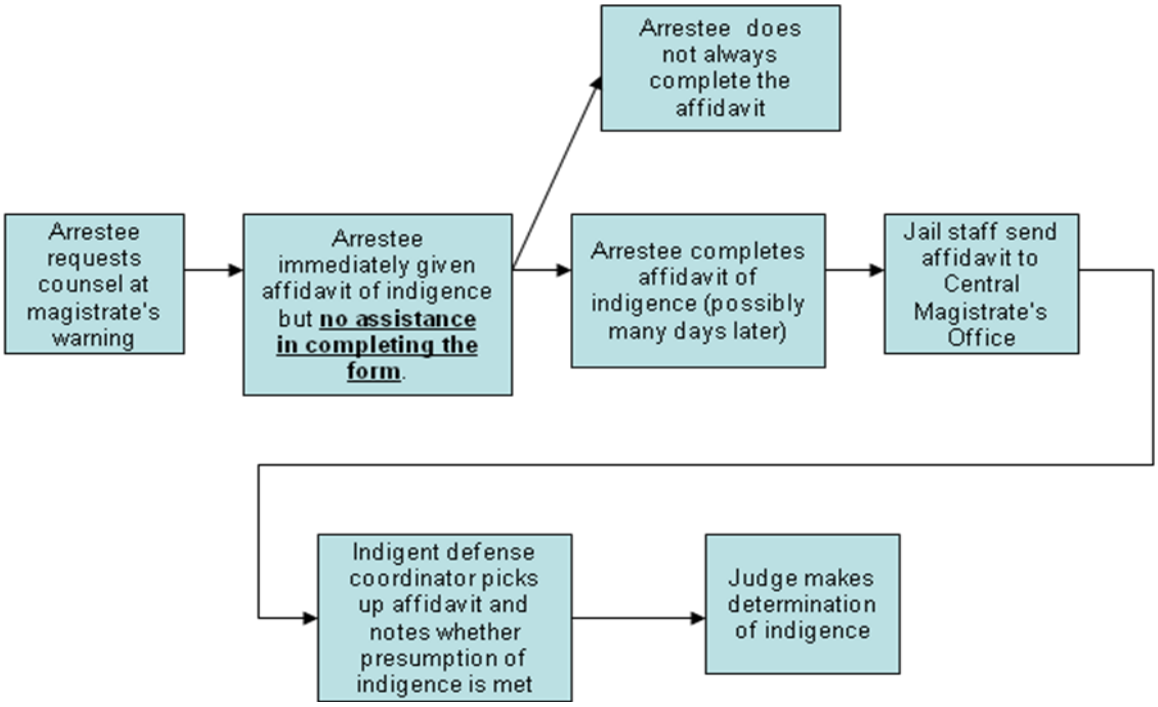
For juveniles, if the child does not have counsel at the detention hearing and a determination was made to detain the child, the child is entitled to immediate representation of an attorney. The court must order the retention of an attorney or appoint an attorney. Tex. Fam. Code § 51.10(c).

If a determination was not made to detain the child, determinations of indigence are made on the filing of a petition if: (1) the child is released by intake; (2) the child is released at the initial detention hearing; or (3) the case was referred to the court without the child in custody. Tex. Fam. Code § 51.101(c). A juvenile court that makes a finding of indigence under Subsection 51.101(c) must appoint an attorney to represent the child on or before the fifth working day after the date the petition for adjudication or discretionary transfer hearing was served on the child. § 51.101(d).

Jurisdiction's Process

If counsel is requested at magistration, the arrestee is given an affidavit of indigence to complete. When the arrestee completes the affidavit, jail staff then forwarded the forms to the Central Magistrate's Office. The indigent defense coordinator picks up the completed forms from the Central Magistrate's Office. The indigent defense coordinator examines the forms, and notes whether the requesting person meets the presumed standard of indigence. The indigent defense coordinator forwards the forms to either a felony or a misdemeanor judge, who makes a determination of indigence and who appoints counsel. See the following diagram describing the appointment process for someone requesting counsel at magistration. While the process for transferring a request for counsel to the appointing judges goes through many steps, the only step with significant delays appears to be the completion of the affidavit of indigence.

Local Procedures for Handling Requests for Counsel



Recommendation: Article 15.17(a) of the Code of Criminal Procedure states, "… The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. …" Wichita County must ensure that reasonable assistance is provided to arrestees in completing affidavits of indigence. Article 15.17 puts this responsibility on magistrates who conduct the Article 15.17 hearing.

Action Plan:

_____

_____

_____

_____

Contact person(s):_____
Completion date:_____

The monitor's case sample examined cases filed during FY2009. Some of these cases were from arrests made much earlier than FY2009. *Rothgery v. Gillespie County* was decided in June 2008 and affected the timing of appointments for persons who bonded out of jail. Those cases where the defendant requested counsel prior to July 2008 were thrown out of the monitor's sample. The timeliness of appointments samples included both appointments for bonded persons and for detained persons.

Misdemeanor Appointments:

The monitor examined 52 misdemeanor cases that were filed in FY2009 where an arrestee requested appointed counsel. The time from request until appointment of counsel ranged from 0 work days to 104 work days. Twenty-eight (28) of these files contained timely determinations of indigence. Twenty-four (24) contained late determinations of indigence. Nine of those 24 late determinations were cases in which a request for counsel had been made to the magistrate but where no corresponding determination of indigence had been made. Another ten late determinations were cases where counsel was requested at magistration, but where an affidavit of indigence was completed on some day later than the day when counsel was originally requested.

Wichita Misdemeanor Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	52		
Appointment / Denial of Indigence Occurred in:			
0 work days		9	17.3%
1 work day + 24 hour transfer		11	21.2%
2 work days + 24 hour transfer		5	9.6%
3 work days + 24 hour transfer		3	5.8%
Timely appointments		**28**	**53.8%**
Late Appointments		24	46.2%

The review of misdemeanor case files showed that in six instances defendants pled guilty to an offense while they had a pending request for counsel that had not been ruled upon. Article 1.051(f) of the Code of Criminal Procedure states:

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

Article 1.051(f-2) then states:

> … If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county **has denied the request** and, subsequent to the denial, the defendant:
>
> (1) has been given a reasonable opportunity to retain and has failed to retain private counsel; or
> (2) waives or has waived the opportunity to retain private counsel.

If a defendant has requested counsel, Article 1.051(f-2) requires that there must be a denial of indigence before a waiver of counsel can be signed. If this procedure is not followed, Article 1.051(f) presumes that the waiver is invalid. These statutes mean that all requests for appointed counsel must be ruled upon before any waiver of counsel can be signed. Local practices that inhibit a judge's ability to rule upon a request for counsel may affect the validity of any resulting waiver of counsel.

Recommendation: Article 1.051(f-2) requires that if a defendant has requested counsel that the request be denied before a waiver of counsel is signed. The county courts must ensure that all requests for counsel are ruled upon before any waivers of counsel are signed. It appears that the root cause of these invalid waivers of counsel is that if a defendant requests counsel at magistration the courts are not always notified of the request. To ensure that waivers of counsel are valid, all requests for counsel must be transmitted to the courts within 24 hours of the request as required by Article 15.17(a). If a defendant does not complete the affidavit of indigence but notes a request for

counsel to the magistrate, the courts must still be made aware of the request so that they can rule on the request.

Action Plan:

_____

_____

_____

_____

Contact person(s):_____
Completion date:_____

Felony Appointments:

The monitor examined 79 felony cases that were filed in FY2009 where an arrestee requested appointed counsel. The time from request until appointment of counsel ranged from 0 work days to 130 work days. Forty-nine (49) of these files contained timely determinations of indigence. Thirty (30) files contained late determinations of indigence. Two of the late determinations were cases in which a request for counsel had been made to the magistrate but where no corresponding determination of indigence had been made. Another twenty late determinations were cases where counsel was requested at magistration, but where an affidavit of indigence was completed on some day later than the day when counsel was originally requested.

Wichita Felony Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	79		
Appointment / Denial of Indigence Occurred in:			
0 work days		15	19.0%
1 work day + 24 hour transfer		19	24.1%
2 work days + 24 hour transfer		9	11.4%
3 work days + 24 hour transfer		6	7.6%
Timely appointments		**49**	**62.0%**
Late Appointments		30	38.0%

Recommendation: Task Force rules require that a recommendation be made regarding timely appointments of counsel if less than 90 percent of the monitor's sample is timely. Wichita County must examine its appointment processes for both felony and misdemeanor cases and must implement procedures that ensure timely appointment of counsel. From my review, a number of these untimely determinations of indigence may have been caused by requests which were forwarded to the appointing authority more than 24 hours after the requester signaled a desire to have counsel appointed.

Action Plan:

_____

_____

_____

_____

Contact person(s):_____
Completion date:_____

Juvenile Appointments:

In Wichita County, if a juvenile has a detention hearing or if a petition is to be filed, the juvenile judge appoints counsel for the juvenile. The County's processes ensure that if a petition is filed that counsel will be appointed in a timely manner because counsel is appointed before the petition is filed. The juvenile's parents (or other caretaker) are required to fill out an affidavit of indigence, but this is often done after the appointment of counsel. If the parents are deemed able to afford counsel, attorney fees are assessed against them, but the appointed attorney continues to represent the juvenile. If the parents desire retained counsel, they can hire retained counsel. Absent such retention, juveniles are represented by court appointed counsel.

The monitor examined cases for 16 juveniles that had either a detention hearing or a petition filed in FY2009. All cases had counsel appointed for the respective detention hearings. All cases had counsel appointed within five working days of the petition being served on the juvenile.

Wichita Juvenile Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Juvenile Case Files Examined	16		
Number of detention hearings listed in case files		37	
Number of detention hearings with an attorney representing the juvenile		**37**	**100%**
Petitions filed		13	
Petitions filed where juvenile received counsel within 5 working days of being served:		**13**	**100%**

Commendation: Wichita County has solid procedures for making timely attorney appointments for juveniles.

Core Requirement 5. Institute a fair, neutral, and non-discriminatory attorney selection process.

Statutory Provisions

Tex. Code Crim. Proc. Art. 26.04(b) requires that appointments are allocated among qualified attorneys in a fair, neutral, and non-discriminatory manner. Article 26.04(a) states: "A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (h), or (i)." Subsection (f) allows for the court to appoint the public defender. Subsection (h) allows the court to appoint counsel via an alternative program. Subsection (i) allows for appointment of attorneys from the court's administrative judicial region when a person is accused of a felony and the court is unable to adequately appoint appropriate counsel. When a rotational system is used for appointments, "the court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order". Art. 26.04(a). When an alternative system is used for appointments, procedures must ensure that "appointments are reasonably and impartially allocated among qualified attorneys". Art. 26.04(g)(2)(D).

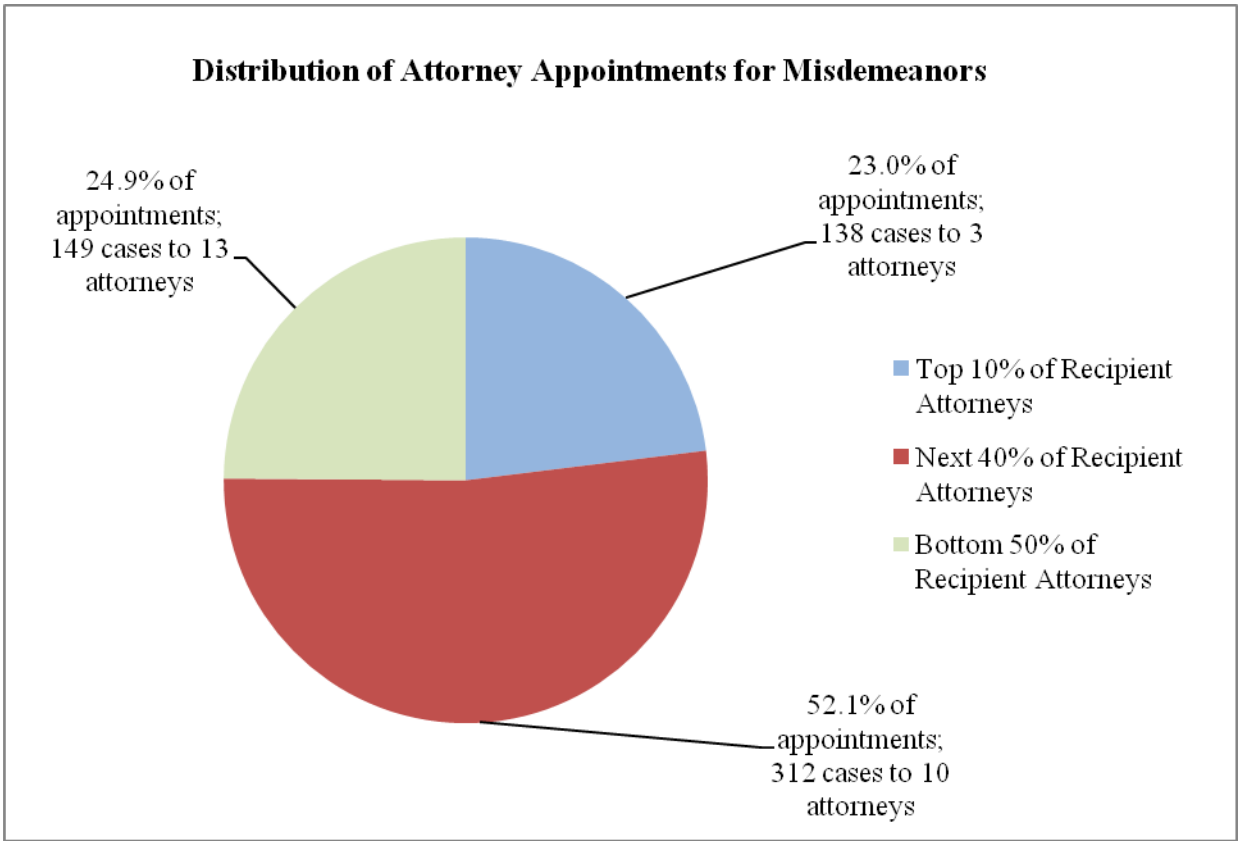
Jurisdiction's Process

All attorney appointments (whether made in court or prior to court) follow the appointment wheel unless good cause is found for deviating from the wheel.

The monitor examined the distribution of cases paid for felony, misdemeanor, and juvenile cases from auditor data covering payments made in FY2009. The misdemeanor, felony, and juvenile appointment distributions that follow do not break down appointments by sub-groups on each list. For instance, the felony list has a sub-group where attorneys are appointed for state jail and third degree felonies and another more stringent sub-group where attorneys are appointed for first and second degree felonies. When analyzing the distribution of felony appointments, the monitor grouped all felony appointments together.

Misdemeanors:

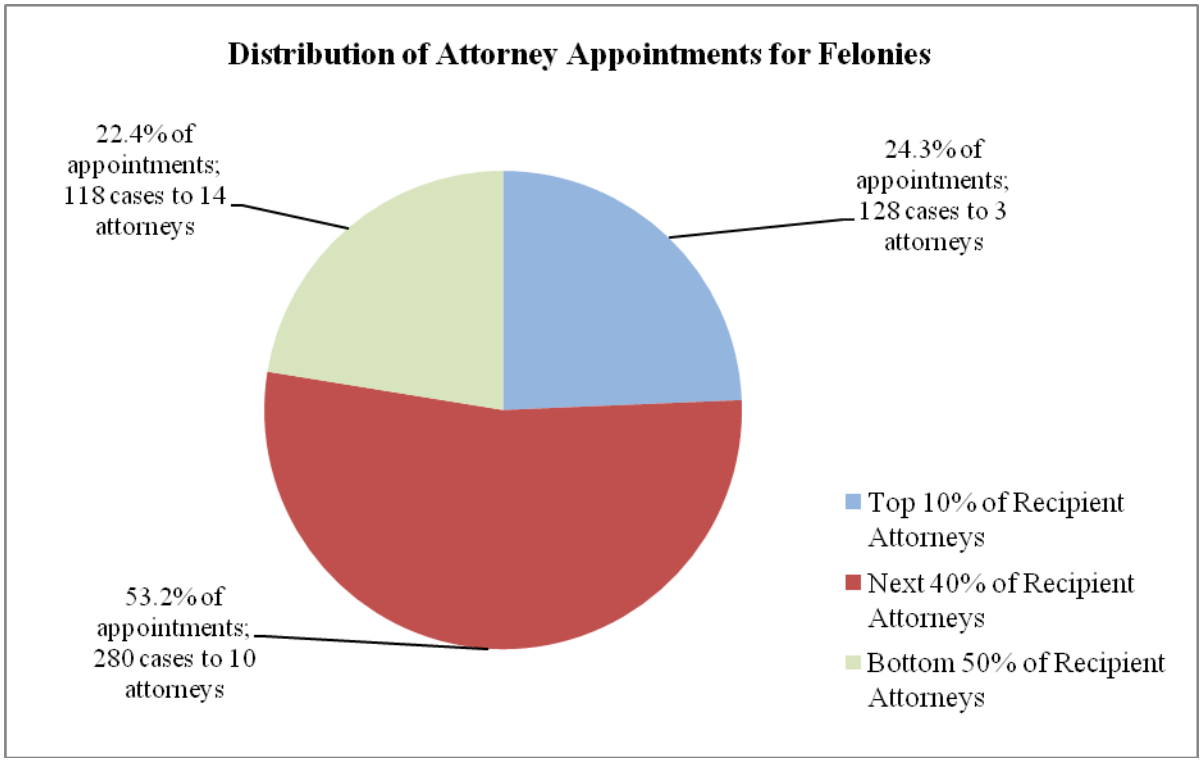
Twenty-six (26) different attorneys received misdemeanor appointments in FY2009. The top 11.5% of attorneys receiving cases received 23.0% of total misdemeanor appointments (or 2.0 times their representative share). See the following pie chart that displays the share of appointments received by different groups of attorneys.[1]



[1] The pie chart breaks down appointments by the top 10% of recipient attorneys, the next 40% of recipient attorneys, and the bottom 50% of recipient attorneys. The top 10% here is really the top 11.5%, but is displayed as the top 10% in order to display the top 10% without splitting attorneys.

Felonies:

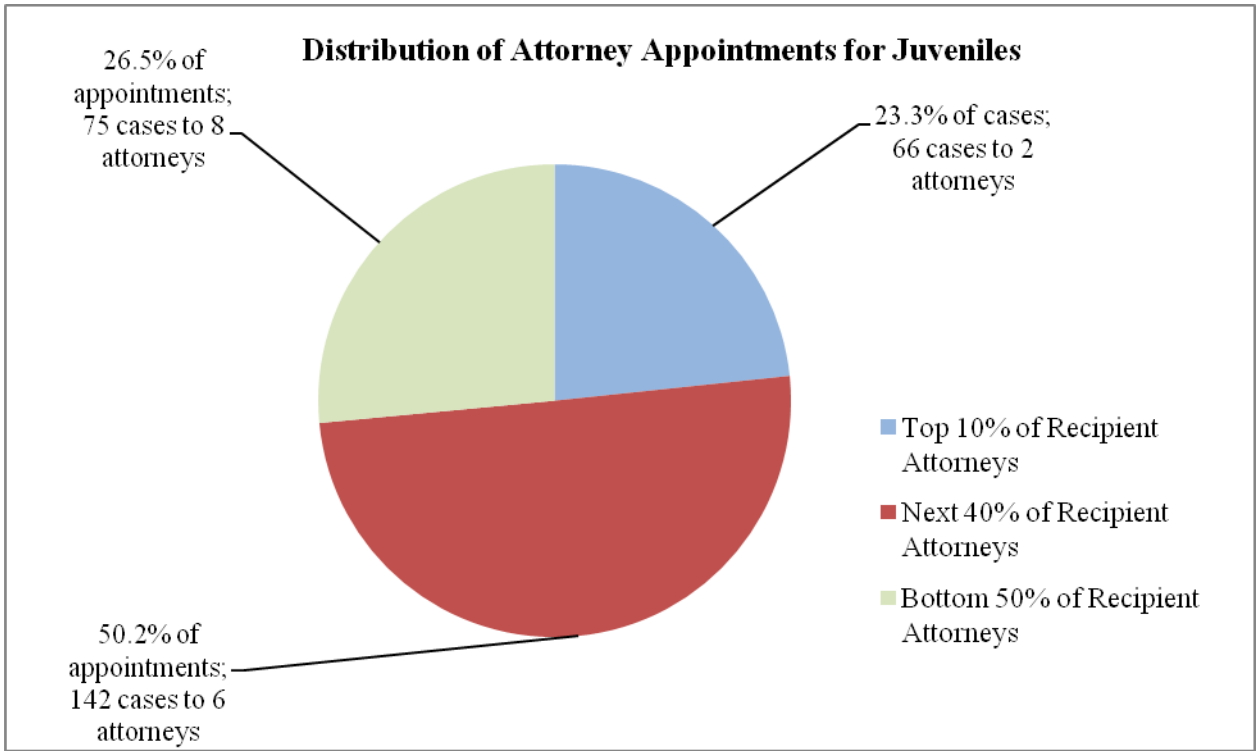
Twenty-seven (27) different attorneys received felony appointments in FY2009. The top 11.1% of attorneys receiving cases received 24.3% of total misdemeanor appointments (or 2.2 times their representative share). See the following pie chart that displays the share of appointments received by different groups of attorneys.[2]



[2] The pie chart breaks down appointments by the top 10% of recipient attorneys, the next 40% of recipient attorneys, and the bottom 50% of recipient attorneys. The top 10% here is really the top 11.1%, but is displayed as the top 10% in order to display the top 10% without splitting attorneys.

Juveniles:

Sixteen different attorneys received juvenile appointments in FY2009. The top 12.5% of attorneys receiving cases received 23.3% of total juvenile appointments (or 1.9 times their representative share). See the following pie chart that displays the share of appointments received by different groups of attorneys.[3]



Commendation: Task Force rules require that a recommendation be made concerning a jurisdiction's appointment methods if the top 10% of attorneys at any level (misdemeanor, felony, or juvenile) receive more than three times their representative share of appointments. Wichita County's appointment methods create a distribution of attorney appointments that fall well within the Task Force's threshold.

[3] The pie chart breaks down appointments by the top 10% of recipient attorneys, the next 40% of recipient attorneys, and the bottom 50% of recipient attorneys. The top 10% here is really the top 12.5%, but is displayed as the top 10% in order to display the top 10% without splitting attorneys.

Appointed Caseloads

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals (NAC) published maximum standard caseloads for public defenders, which are detailed in the following table.[4]

NAC Caseload Standards

Type of Case	Maximum caseload
Felonies	**150**
Misdemeanors	**400**
Juvenile	**200**
Mental Health Act	**200**
Appeals	**25**

The NAC caseload standards represent the maximum number of cases for each category that are recommended to be handled by a single attorney in a twelve month period. Caseloads given for each category represent the recommended maximum for an attorney handling only cases in that category. For example, on average, an attorney who handles only felonies should not be assigned more than 150 felony cases annually. When an attorney handles a mixed caseload, the standard should be applied proportionally. For example, an attorney who is given 120 felonies annually is working at 80 percent of the caseload maximum and could not be assigned more than 80 misdemeanors (or 20% of the misdemeanor maximum).

The NAC standards are a good starting point in developing caseloads but should not be accepted as universal standards. They may not account for administrative work, travel time, or other professional requirements that reduce the time an attorney can spend on cases. They also are limited by the differences in work required by cases within a category. For example a case involving felony homicide may require significantly more work than a burglary case.

In Wichita County, based on the number of cases paid by the auditor in FY2009, no attorney approached the caseload threshold established by NAC for their appointed caseload. This does not mean that no attorney exceeded the threshold as neither cases from other jurisdictions, retained cases, nor civil cases were included in this analysis. However, the fact that no attorney's appointed caseload exceeded the NAC standard could be interpreted as a sign that attorneys are mindful of their caseloads when accepting appointed cases.

Thirty-two (32) different attorneys received a criminal or juvenile appointment, and the highest appointed caseload was at 50% of the maximum total recommended caseload. See the following table. Where unindicted cases are listed, the actual case level was not determinable. These unindicted cases were generally paid the same as misdemeanor cases, and for caseload purposes were weighted the same as misdemeanor cases.

[4] National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973).

Listing of Attorney Caseloads

Vendor Name from Auditor Files	Misdemeanor Cases Paid	Felony Cases Paid	Juvenile Cases Paid	Unindicted Cases	Number of Attorneys Required per NAC Standards	Amount Paid
ALLENSWORTH, THOMAS	28	38	30	12	0.50	$58,356
WILSON, REGINALD R	31	29	31	16	0.47	$31,689
HARRIS, JAMES BRUCE	40	46	9	2	0.46	$42,070
KING, GREG	25	37	17	14	0.43	$34,725
VALVERDE, MICHAEL A	28	31	26	5	0.42	$40,371
BUTLER, GARY	34	44	0	0	0.38	$30,990
LATHAM & ROWLEY	53	33	0	10	0.38	$46,906
SMITH, CHUCK	21	28	19	8	0.35	$28,505
LAW OFFICES OF JEFF McKNIGHT	22	24	21	11	0.35	$32,277
BARBER, MARK	27	29	12	3	0.33	$17,500
BJORDAMMEN, STEPHEN	34	22	15	0	0.31	$18,875
MARSH, LEE ANN	35	15	18	3	0.29	$18,140
BARRICK, MILISSA	45	16	1	2	0.23	$21,515
RAFUSE LAW FIRM PC	34	21	0	0	0.23	$12,017
CANNEDY, MARTY	2	26	0	0	0.18	$12,409
HALE, BRETT W	1	0	35	0	0.18	$7,000
MAHLER, RICK	31	14	0	0	0.17	$23,301
EAVES, JEFF	13	17	2	1	0.16	$13,255
SMITH JR, S PRICE	16	17	0	1	0.16	$19,798
RUSSELL JR, ROBERT C	1	0	28	0	0.14	$6,450
LEWIS, LARRY	6	19	0	0	0.14	$5,000
BUNCH, LAW OFFICES O	24	8	0	0	0.11	$9,396
SCHENK & SCHENK, ATT	30	3	0	0	0.10	$13,928
MERKLE, GREG	0	0	15	0	0.08	$4,448
BIANCHI, ANNE	16	1	0	0	0.05	$3,400
PRESLEY, CAREN	0	0	4	0	0.02	$550
COPELAND, ERIKA	0	2	0	0	0.01	$1,829
SANDERS, DEAN A	0	2	0	0	0.01	$810
PAYNE, MICHAEL F	0	2	0	0	0.01	$11,440
STEVENS, RITA J.	1	1	0	0	0.01	$925
BENNETT, JOHN C	0	1	0	0	0.01	$2,000
REDDELL, D SCOTT	1	0	0	1	0.01	$400

Core Requirement 6. Promulgate standard attorney fee schedule and payment process.

Statutory Provisions

Attorneys are to be paid a reasonable fee for the following: time spent in court making an appearance; reasonable and necessary time spent out of court on the case, supported by documentation that the court requires; preparation of an appellate brief and preparation and presentation of oral argument to an appellate court; and preparation of a motion for rehearing. A fee schedule is to govern these payments, taking into account reasonable and necessary overhead rates. No payment is to be made to the attorney unless the judge approves the payment. If the judge disapproves the requested amount, the judge shall make written findings stating the amount of payment and the reasons for any disapproval. An attorney whose request for payment is disapproved may appeal the disapproval. Tex. Code Crim. Proc. art. 26.05(a)-(e).

Counsel is to be reimbursed for reasonable and necessary investigation and expert witness fees. Expenses incurred without prior court approval shall be reimbursed if the expenses were reasonably necessary and reasonably incurred. Tex. Code Crim. Proc. arts. 26.05(d), 26.052(h).

Jurisdiction's Process

Wichita County's fee schedule (see Appendix A and Appendix B) set the method for making indigent defense payments.

Commendation: Wichita County's fee schedule comports with the Task Force requirement that a fee schedule set out how counsel is to be paid and reimbursed for expenses.

Recommendations Not Included in the Quality Assessment

Self-Assessment

Wichita County's indigent defense services would benefit from periodic internal self-assessments. Self-assessment is necessary for the county to maintain up-to-date knowledge of the effectiveness of its indigent defense processes. The assessment becomes very complicated and time consuming if all pertinent records which measure times between events are not in a central location, such as in defendant court files. The self-assessment would measure:

1) times from arrest to magistration;
2) that magistration records are maintained
3) times from request for counsel to appointment;
4) that counsel is appointed according to the indigent defense plan in a fair, neutral, and non-discriminatory manner; and
5) that only properly qualified attorneys are on the appointment list.

See Appendix B for more details.

Direct Electronic Filing in Criminal Cases

The Public Policy Research Institute at Texas A&M University has published a study titled *Evaluating the Impact of Direct Electronic Filing in Criminal Cases: Closing the Paper Trap* (http://www.courts.state.tx.us/tfid/pdf/FinalReport7-12-06wackn.pdf) which highlights the benefits of early screening and direct filing of case information from law enforcement to prosecutors to the courts. The study noted that quicker filing between entities results in improved case screening and prompt disposition of cases, better case quality, greater protection of defendants' rights and a better quality of legal defense for persons charged with crimes, and a reduction in hidden costs.

Conclusion

The Task Force staff were impressed with Wichita County's dedication to indigent defense. Task Force staff enjoyed meeting with court personnel and was impressed with the commitment to serving the community.

Appendix A – Adult Indigent Defense Plan

Wichita District and County Courts Plan

Prompt Magistration

Arresting Officer Responsibility

The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested. "Magistrates" shall be the Justices of the Peace for Wichita County, the Presiding Judge of the Municipal Court of Wichita Falls, Texas, and the Contract Weekend Magistrates in Wichita County, together with any other persons approved by the County, County Court at Law and District Judges for Wichita County.

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

Magistrate Duties

At the Magistrate's hearing, the magistrate should determine if accused can speak and understand English, or if the defendant is deaf.

After making such determination, the magistrate shall, in an appropriate manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, do the following:

1. Advise the accused of the accusation against him/her and any affidavit filed therewith;
2. Admonish the accused of:
    a. The right to retain counsel;
    b. The right to remain silent;
    c. The right to have an attorney present during any interview with peace officers or attorneys representing the state;
    d. The right to terminate an interview at any time;
    e. The right not to make a statement and that any statement made by the accused may be used against him/her; and
    f. The right to an examining trial.
3. Inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel.
4. Inquire as to whether accused is requesting that counsel be appointed.
5. Provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in

completing required forms is provided to the accused at the time of the magistrate's hearing. Members of the jail staff will assist the Magistrate if requested to do so. The Declaration of Inability to Hire Counsel and Request for Court-Appointed Counsel is attached hereto as **"Exhibit A."**

6. If the magistrate has reason to believe the accused is not mentally competent, the magistrate shall enter a request for counsel on behalf of the accused. Such a request will alert the appointing authority that counsel competent to represent mentally ill persons should be appointed. The Certification of Magistrate's Warning, Probable Cause Determination, and Order Setting Bond is attached hereto as **"Exhibit B."**

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

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

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

The magistrate shall make a record of the following:

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

If the magistrate is not authorized to appoint counsel and if the accused requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the magistrate form **("Exhibit B"**) and any other forms requesting appointment of counsel **("Exhibit A"**) to the Court Administrator of Wichita County. The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel. Delivery may be accomplished by depositing the completed forms in a receptacle located in the Book-in area of the Wichita County jail labeled "Court Administrator".

The Court Administrator shall make an initial determination of indigence and recommend the appointment of counsel within three working days, if the defendant is indigent. After that determination has been made, the Court Administrator shall provide the completed forms and the initial determination to the judge making court appointments for the decision of appointment of counsel. The Order Appointing Attorney is attached hereto as **"Exhibit C."**

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

If a request for counsel was not made at magistration, but the defendant requests court appointed counsel at a subsequent time, such request shall be made either to a member of the jail staff, if the defendant is incarcerated, or to the Court Administrator's Office, if the defendant has been released on bail. In either event, the defendant's application shall be completed in its entirety and signed under oath by the defendant. The jail staff and the Court Administrator's Office, as applicable, shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided. An application for court appointed counsel is subject to denial unless all questions are answered by the defendant. The trial courts of Wichita County, Texas, reserve the right to require the defendant to appear in open court for the purpose of inquiring into the defendant's indigency or for the purpose of completing the required application.

Indigence Determination Standards

A. Definitions, as used in this rule:

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

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

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

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

B. Eligibility for Appointment

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

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

ii. An accused who does not meet any of the standards above shall nevertheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused's dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:
1. the nature of the criminal charge(s),
2. anticipated complexity of the defense,
3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
4. the amount needed for the support of the accused and the accused's dependents;
5. accused's income,
6. source of income,
7. assets and property owned,
8. outstanding obligations,
9. necessary expenses,
10. the number and ages of dependents, and
11. spousal income that is available to the accused.

iii. Factors NOT to be considered in determining indigence:

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

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

C. Indigence Proceedings:

i. The appointing authority can require the accused to respond to questions about the accused's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.

ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:
1. Determining if accused is (or is not) indigent; or
2. Impeaching direct testimony of accused regarding the accused's indigence.

iii. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines

specified in Parts I and IV of these rules and contained in Code of Criminal Procedure article 1.051.

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

1. An accused's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the accused, the accused's attorney, or the attorney representing the state. The accused's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:
    a. Evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or
    b. Additional information regarding the accused's financial circumstances that shows that the accused does not meet any of the standards for indigence contained in these rules.
2. If an accused previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.

v. If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

Minimum Attorney Qualifications

The Judges hearing criminal cases shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists. The Application for Attorney Appointment List – Wichita County is attached hereto as **"Exhibit D."** To be eligible for an appointment list, an attorney must meet the following minimum requirements:

Misdemeanor Qualification Requirements:

1. All attorneys on the appointment list must ensure all information on their application is correct;

2. An attorney must be a licensed practicing attorney, have experience in criminal law and a member in good standing of the State Bar of Texas;

3. An attorney shall complete a minimum of 6 hours of CLE in the area of criminal law and procedure each year. All attorneys on the appointment list must file a certificate with the Court Administrator's office each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in criminal law. Continuing legal education activity completed with-in a one year period immediately preceding an attorney's initial

reporting period may be used to meet the educational requirements for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum of 6 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;

4. An attorney must have experience (either as a prosecutor or defense counsel) in criminal law;
5. An attorney may not have been found to be ineffective counsel by an appellate court;
6. An attorney must not have been determined, by formal proceedings or otherwise, to provide ineffective criminal representation by any trial court;
7. An attorney must maintain a permanent address other than a post office box and an office capable of receiving email, fax, telephone calls, and telephone messages.
8. An attorney must have the ability to produce typed motions and orders.
9. An attorney shall notify the Court Administrator's office promptly, in writing, of any matter that would disqualify the attorney by law, regulation, and rule or under these guidelines from receiving appointments to represent indigent defendants.

State Jail and Third Degree Felony Case Qualification Requirements

1. An attorney must meet general requirements for misdemeanor appointments;
2. An attorney must have at least one year's experience (either in prosecution or defense) in criminal misdemeanor or felony representation;
3. An attorney must have exhibited proficiency in providing quality representation in criminal cases;

First and Second Degree Felony Case Qualification Requirements

1. An attorney must meet the general requirements for State Jail and Third Degree Felony appointments.
2. An attorney must have tried to jury verdict 2 or more criminal trials; or
3. Have demonstrated superior quality representation to defendants in criminal cases to such an extent that the Courts feel the attorney can provide representation equal to or greater than the attorneys currently on the First and Second Degree Felony list.

Capital Case Qualification Requirements

1. Lead trial counsel must be on the list of attorneys approved by the local selection committee of this Administrative Judicial Region for appointment as lead

counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.

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

Appeal Qualification Requirements

An attorney must meet at least one of the following criteria:

1. Be currently board certified in criminal law by the Texas Board of Legal Specialization; or
2. Have personally authored and filed at least three criminal appellate briefs or post-conviction writs of habeas corpus; or
3. Have worked as a briefing clerk of an appellate court for a period of at least one year; or
4. Have demonstrated superior quality appellate representation to defendants in criminal cases to such extent that the Courts feel the attorney can provide representation equal to or greater than the attorneys on the Appellate list.

Approval for Appointment Lists

Felony, Misdemeanor and Appellate Lists – An attorney must be approved by a majority of the County and District Court Judges hearing criminal cases.

The attorneys assigned by the Public Defender's Office to handle the specific cases, shall be required to meet the same standards for appointment.

Removal from Appointment List

The Judges will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges. A majority of the judges trying criminal cases in the county may remove an attorney from consideration for appointments, if the attorney intentionally or repeatedly does not fulfill the duties required by law, rules, local rules, or provisions for providing effective assistance of counsel or fails to comply with the requirements for inclusion on the approved list for counsel for indigent accused persons. The judges shall provide the attorney with reasonable notice of their intention to consider sanctions or removal from the list of approved attorneys.

An attorney requesting to be removed from the list of eligible court appointed attorneys shall make such request in writing and deliver it to the Court Administrator. Upon receipt of the

request, the Court Administrator shall immediately remove the attorney's name from the list and notify the Judges that the name has been removed. Once the attorney's name has been removed from the list of eligible court appointed counsel, the attorney shall not be appointed as counsel until and unless the attorney successfully reapplies for inclusion on list. The attorney shall not be permitted to withdraw as attorney of record in any pending case except upon written motion and leave of court in such case.

Reinstatement to Appointment Lists

An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan.

An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

Duties of Appointed Counsel

Appointed Counsel shall:

1. Make every reasonable effort to:
    a. Contact the defendant by the end of the first working day after the date on which the attorney is appointed; and
    b. Interview the defendant as soon as practicable after the attorney is appointed;
2. Represent the defendant until:
    a. Charges are dismissed;
    b. The defendant is acquitted;
    c. Direct appeals are exhausted; or
    d. The attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.
3. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
4. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
5. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
6. Be prepared to try the case to conclusion either with or without a jury;
7. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;

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

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

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

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

Prompt Appointment of Counsel

A. Prompt Appointment of Counsel

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

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

B. Appointment Authority

The appointing authority for all cases is the County and District Judges.

C. Defendants Appearing Without Counsel

If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement:

1. The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.
2. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant:
    a. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
    b. Waived or has waived the opportunity to retain private counsel.

3. The attorney representing the state may not:

    a. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or
    b. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:

        i. Has been given a reasonable opportunity to retain counsel; or
        ii. Waives or has waived the opportunity to retain private counsel.

D. <u>Waiver of the Right to Counsel</u>

A defendant may voluntarily and intelligently waive the right to counsel.

A waiver obtained in violation of sub-section C. above is presumed invalid.

If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

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

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

Attorney Selection Process

<u>Appointment of Counsel</u>

The appropriate judge making an appointment shall make the appointment using a system of rotation from among the first five names on the appointment list of the attorneys qualified to handle that type of case, unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:

1. The defendant requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients' language, if one is available;

2. The defendant has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case; or
3. Other good cause exists for varying from the list.

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

Public Defender's Office

The District and County Judges may, from time to time, adjust the percentage of cases received by the County Public Defender's Office. The County Public Defender's Office may be removed from a specific list by the judges, if it is determined that the office will no longer handle that category of cases. In such cases, the public defender's appointment rates will be increased for the other categories of offenses to maintain an adequate workload. The public defender's office may refuse to accept appointment to a case, if:

1. A conflict of interest exists;
2. The office has insufficient resources to provide adequate representation;
3. The office is incapable of providing representation in accordance with the rules of professional conduct; or
4. The office shows other good cause for refusing appointment.

Judicial Removal from Case

The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:

1. Counsel's failure to appear at a court hearing;
2. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
3. Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;
4. Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;
5. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
6. The defendant requests an attorney, other than trial counsel, for appeal; or
7. The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

Appointment of Replacement Counsel

Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

Fee and Expense Payment Process

Compensation

Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the judges hearing criminal cases in the county. The Schedule of Fees for Compensation of Appointed Counsel for Indigent Defendants is attached hereto as "Exhibit E."

Payment Process

No payment of attorney's fees will be made other than in accordance with the rules set forth below.

1. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered. The Applications for Compensation of Court-Appointed Counsel are attached hereto as "Exhibit F" (Fixed rate) and "Exhibit G" (Hourly Rate).
2. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.

If a judge disapproves the requested amount of payment, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.

An attorney whose request for payment is disapproved or is not otherwise acted on by the 60^{th} day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.

The Order for Compensation of Court-Appointed Counsel is attached hereto as "Exhibit H."

Payment of Expenses

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

Procedure with Prior Court Approval

Appointed Counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state the below, as applicable:

1. The type of investigation to be conducted or the type of expert to be retained;
2. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
3. An itemized list of anticipated expenses for each investigation and/or each expert.

The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

1. State the reasons for the denial in writing;
2. Attach the denial to the confidential request; and
3. Submit the request and denial as a sealed exhibit to the record.

Procedure without Prior Court Approval

Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

SCHEDULE OF FEES FOR COMPENSATION OF APPOINTED COUNSEL FOR INDIGENT DEFENDANTS – WICHITA COUNTY

REVISED 2-26-07

Pursuant to the provisions of Art. 26.05, Texas Code of Criminal Procedure, the following Schedule of Fees is hereby adopted by the County, County Courts at Law and District Judges of Wichita County, Texas, for use in criminal and civil cases where required by law. **This Schedule of Fees is effective February 26, 2007.**

Fixed rate for agreed criminal pleas	**$200.00**
Initial CPS hearings, juvenile detention hearings and agreed orders	**$150.00**
Subsequent CPS hearings, juvenile detention hearings, and Attorney General (Title IV-D) child support hearings	**$100.00**
Fixed rate for juvenile adjudication and/or disposition hearings	**$200.00**
Minimum hourly rate	**$ 65.00**
Maximum hourly rate	**$120.00**
Daily rate for actual trial in court	**$455.00**

REASONABLE EXPENSES, INCLUDING EXPENSES FOR INVESTIGATION AND FOR MENTAL HEALTH AND OTHER EXPERTS, SHALL BE REIMBURSED PURSUANT TO THE PROVISIONS OF ART. 26.05 (d), CCP.

Compensation for court-appointed counsel will be approved on a case by case basis, depending upon the time and labor required, the complexity of the case and the experience and ability of the appointed counsel.

The following criteria shall be considered in calculating the attorney fees:

1. Time spent in court making an appearance
2. Time spent in trial
3. Reasonable and necessary time spent out of court, supported by documentation as required by the Court
4. Time spent in the preparation of an appellate brief

The form for claiming fixed rate compensation and/or expenses reimbursement is attached hereto, labeled "Exhibit A" and incorporated herein by reference. The form for claiming hourly rate compensation and/or expenses reimbursement is attached hereto, labeled "Exhibit B" and incorporated herein by reference. **ALL APPLICATIONS FOR COMPENSATION MUST BE SUBMITTED ON ONE OF THESE FORMS IN ORDER TO BE APPROVED.**

Appendix B – Juvenile Indigent Defense Plan

Wichita Juvenile Board Plan

Preamble

The Juvenile Board of Wichita County, Texas hereby adopts, orders, establishes and orders published these procedures, rules, and orders for the timely and fair appointment of counsel for indigent children in Wichita County, Texas. This document is the Wichita County Juvenile Board Plan and is adopted to conform to the requirements of Section 51.101 of the Texas Family Code. This plan incorporates, by reference as if copied verbatim herein, the provisions of Title 3 of the Texas Family Code, also referred to as the Juvenile Justice Code.

Responsibility of Law Enforcement Officers and/or Others Persons Taking a Child into Custody

a. The responsibilities enumerated herein shall be in addition to any other legal obligations or responsibilities imposed on law enforcement officers or other persons taking a child into custody by any other order, code, statute, constitution or court opinion.

b. A law enforcement officer or other person taking a child into custody shall comply with the provisions of Section 52.02 of the Texas Family Code.

Prompt Detention Hearings

A. A child taken into custody must either be brought to a juvenile processing office without unnecessary delay where they may not be detained for longer than six hours pursuant to §52.025, Family Code, or another disposition authorized by §52.02, Family Code, including referral to the office designated by the Juvenile Board as intake for the juvenile court. The intake officer shall process the child according the requirement of §53.01, Family Code, and shall also inform the child and the child's parents of the right to appointed counsel if they are indigent and provide a form for the purpose of determining eligibility for appointment of counsel. If the child is not released by intake, then a Detention Hearing shall be held not later than the second working day after the child is taken into custody unless the child is detained on a Friday, Saturday or listed holiday in which case the detention hearing shall be held on the first working day after the child is taken into custody.

B. Prior to the detention hearing the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent, and of the child's right to remain silent as to the alleged conduct.

C. The detention hearing may be conducted without the presence of the child's parent(s) or other responsible adult(s), however, in these cases the court must immediately appoint counsel or a guardian ad litem to represent the child.

D. The court shall provide the attorney for the child access to all written matter to be considered by the Court in making the detention decision.

Indigence Determination Standards

A. Definitions, as used in this rule:

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

ii. "Net household income" in the case of a child is the income of the child's parents or other person determined responsible for the support of the child. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the person determined responsible for the support of the child has no income or lesser income.

iii. "Household" means all individuals who are actually dependent on the child's parent(s) or person(s) deemed responsible for the support of the child, for financial support.

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

B. Eligibility for Appointment

i. A child is presumed indigent if either of the following conditions or factors are present:

1. At the time of requesting appointed counsel, a child is presumed indigent if the child's parents or other persons determined responsible for the support of the child are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;

2. The net household income of the child's parent(s) or other person(s) determined responsible for the support of the child does not exceed 100 % of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register;

3. Both of the child's parents or all other persons determined responsible for the support of the child are currently serving sentences in a correctional institution, are currently residing in a public mental health facility, or are subject to a proceeding in which admission or commitment to such a mental health facility is sought; or

ii. The child who does not meet any of the standards above shall nevertheless be considered indigent if the child's parent(s) or other person(s) responsible for the child is unable to retain private counsel without substantial hardship. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:

1. the nature of the charge(s);
2. anticipated complexity of the defense;
3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
4. the amount needed for the support of the child, the child's parent(s)/person(s) responsible, and other dependents of the child's parent(s)/person(s) responsible;
5. child's parent(s') income or the income of other person(s) determined responsible for the support of the child;
6. source of income;
7. assets and property owned by the child, child's parent(s), or other person(s) determined responsible for support of the child;
8. outstanding obligations;
9. necessary expenses;
10. the Federal Poverty Guidelines, as determined by the U.S. Department of Health and Human Services and published annually in the Federal Register, in effect at the time the child applies for the appointment of counsel; and
11. the number and ages of any siblings of the child.

iii. Factors NOT to be considered in determining indigence:

1. The resources available to friends or relatives of the child, other than the child's parent(s) or other person(s) deemed responsible for the child, may not be considered in determining whether the child is indigent.
2. Only the child's parent(s) or other person(s) responsible for the child and the child's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. Indigence Proceedings:

i. The appointing authority can require the child and the child's parent(s) or other person(s) responsible for the child to respond to questions about the child's household financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.

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

1. Determining if child is (or is not) indigent; or

2. Impeaching direct testimony of the child or the child's parent(s)/person(s) responsible regarding the child's indigence.

iii. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the time lines specified in Parts I and IV of these rules.

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

1. A child's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court. The child's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:

a. Evidence of a material change in the child's parent(s)/person(s) responsible and the child's financial circumstances; or

b. Additional information regarding the child's parent(s)/person(s) responsible and the child's financial circumstances that shows that they do not meet any of the standards for indigence contained in these rules.

2. If a child previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.

v. If the court determines that a child's parent(s) or other person(s) responsible for the child has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the child's parent(s) or other person(s) responsible for the child to pay during the pendency of the charges or, if found to have engaged in delinquent conduct or CINS, as court costs the amount that it finds the child's parent(s) or other person(s) responsible for the child is able to pay.

Minimum Attorney Qualifications

A. Attorney Appointment Lists - The Juvenile Board shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists. To be eligible for an appointment list, an attorney must meet the following minimum requirements:

i. General Requirements:

1. All attorneys on the appointment list must ensure all information on their application is correct;

2. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;

3. An attorney shall complete a minimum of 6 hours of CLE in the area of juvenile law and procedure each year. All attorneys on the appointment list must file a

certificate with the court administration office each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in juvenile law. Continuing legal education activity completed with-in a one year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum of 6 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;

4. Must be knowledgeable in juvenile law and be aware of collateral consequences of a juvenile adjudication and disposition;
5. May not have been the recipient of any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States;
6. An attorney must maintain a permanent address other than a post office box and an office capable of receiving email, fax, telephone calls, and telephone messages;
7. An attorney must have the ability to produce typed motions and orders;
8. An attorney shall notify the Juvenile Board promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule, or under these guidelines from receiving appointments to represent indigent defendants.

ii. **CINS Charges or Delinquent Conduct, and Commitment to TYC Is Not an Authorized Disposition:**

1. Meet the General Requirements;
2. Must have a minimum 1 year of work experience in juvenile law; and,
3. Must have experience and have demonstrated proficiency in providing quality representation to children in juvenile cases or and/or adults in criminal cases

iii. Delinquent Conduct, and Commitment to TYC Without a Determinate Sentence Is an Authorized Disposition:

1. Meet General Requirements;
2. Have a minimum 2 years of work experience in juvenile law; and,
3. Participated in at least 4 criminal or juvenile cases, of which at least 1 was tried to a jury verdict; **or** have demonstrated superior quality representation to children in juvenile cases or adults in criminal cases to such an extent that the Juvenile Board determines that counsel can provide representation equal to or greater than the other attorneys on the Category iii list.

iv. Determinate Sentence Proceedings have been Initiated; or Proceedings for Discretionary Transfer to Criminal Court Have Been Initiated:

1. Meet General Requirements;
2. Have a minimum 3 years of work experience in juvenile law;
3. Tried at least 4 criminal or juvenile cases as lead counsel; and,
4. Participated in at least 6 criminal or juvenile cases, of which at least 2 were tried to a jury verdict **or** have demonstrated superior quality representation to children in juvenile cases or adults in criminal cases to such an extent that the Juvenile Board determines that counsel can provide representation equal to or greater than the other attorneys on the Category iv list.

B. Approval for Appointment Lists - An attorney must be approved by a majority of the Juvenile Board for each appointment list for which the attorney applies.

C. Removal from Appointment List - The Juvenile Board will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges. An attorney requesting to be removed from the list of eligible court appointed attorneys shall make such request in writing and deliver it to the Juvenile Probation Department and the Chairman of the Juvenile Board. The Chairman shall immediately cause the name to be removed from the list and shall notify the other judges that the name has been removed.

D. Reinstatement to Appointment Lists

i. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan.

ii. An attorney who has been removed from the appointment list for any other reason or who has requested that his or her name be removed from the list and who wishes to be reinstated must apply through the original application process.

E. Duties of Appointed Counsel - Appointed Counsel shall:

i. Make every reasonable effort to:

1. Contact the child by the end of the first day after the date on which the attorney is appointed; and
2. Interview the child as soon as practicable after the attorney is appointed;

ii. Represent the child until:

1. The case is terminated;
2. The family retains an attorney;
3. The attorney is relieved of his duties by the court or replaced by other counsel.

iii. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense that may be reasonably and arguably available to the child;

iv. Brief the law of the case and be prepared to present any legal defense that may be reasonably and arguably available to the child;

v. Be prepared to negotiate with the prosecutor for the most favorable solution of the case as can be achieved through a plea agreement;

vi. Be prepared to try the case to conclusion either with or without a jury;

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

viii. Maintain reasonable communication and keep the child informed of the status of the case; and

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

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

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

Prompt Appointment of Counsel

A. Appointment of Counsel for Children in Detention

i. Prior to the detention hearing the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent, and of the child's right to remain silent as to the alleged conduct.

ii. Prior to the initial detention hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the detention decision.

iii. If there is no parent or other responsible adult present, the court must appoint counsel or a guardian ad litem for the child.

iv. If the juvenile is detained, the child has an immediate right to counsel. If counsel has not already been appointed, the court must either appoint counsel or direct the juvenile's parent or other responsible adult to retain an attorney promptly. The court may enforce an order to retain counsel by appointing an attorney to represent the

child and requiring that the child's parent or other responsible adult reimburse the court for attorneys' fees.

v. Upon appointment, the Juvenile Probation Department shall notify the appointed attorney by fax, e-mail, or personal contact of the appointment and the scheduled hearing time and date.

vi. The appointed attorney shall make every reasonable effort to contact a child in detention by the end of the first working day after receiving the notice of appointment or to inform the court that the appointment cannot be accepted. Contacting the child in detention may be by personal visit (including contact during a detention hearing), by phone, or by video teleconference. Contacting the court may be by fax, email, phone or personal visit. A court-appointed attorney shall contact the child, in one of the ways mentioned above, no less than once every ten working days while the child remains in detention.

vii. An attorney appointed for a detention hearing shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.

viii. Court-appointed attorneys shall make every effort to comply with the Texas State Bar Code of Ethics for communication with a client.

B. Appointment of Counsel for Children not Detained at Intake

i. If the child is released from detention and if a petition to adjudicate or a motion to modify is filed, the juvenile court will use the financial forms gathered at intake to make a determination of indigence. If no financial information is available, the juvenile court shall promptly summon the child's parent/guardian/custodian to the court or the court's designee so that financial information may be gathered for a determination of indigence.

ii. If the court makes a finding of indigence, the court shall appoint an attorney on or before the fifth working day after:

   a. The date a petition for adjudication or discretionary transfer hearing has been served on the child; or

   b. A motion to modify disposition seeking commitment to TYC or placing in secure correctional facility has been filed.

iii. If the family does not qualify for appointed counsel or if the parent or guardian is not available, and the family fails to provide an attorney, the juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

iv. The prosecuting attorney/court clerk shall notify the juvenile court upon the filing of and return of service of a motion to modify or the return of service of a petition for adjudication or discretionary transfer.

Attorney Selection Process

A. Initial Appointment - The appointing authority will identify which of the appointment lists, discussed in the attorney qualifications section, is most appropriate based on the accusations against the child and will appoint the attorney whose name is first on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:

i. The child requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients' language, if one is available;

ii. The child has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case;

iii. An initial detention hearing is scheduled and the first attorney on the list is unavailable; or

iv. Other good cause exists for varying from the list.

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

C. Judicial Removal from Case - The judge presiding over a case involving a child may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:

1. Counsel's failure to appear at a court hearing;
2. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
3. Current information about the child and the charges against the child indicate that another qualified attorney is more appropriate for the child under these rules;
4. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
5. The child requests an attorney, other than trial counsel, for appeal; or
6. The child shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the child.

D. Appointment of Replacement Counsel - Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

E. Appointment of the Wichita County Public Defender - The Juvenile Board, by majority vote, may elect to include the Wichita County Public Defender in the appointment process at

any time. Public Defenders appointed to represent children shall comply with all aspects of this plan.

Fee and Expense Payment Process

A. Compensation of Court Appointed Counsel - Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the child. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by the Juvenile Board.

B. Payment Process - No payment of attorney's fees will be made other than in accordance with the rules set forth below.

i. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered.

ii. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.

1. If a judge disapproves the requested amount of payment, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.

2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.

C. Payment of Expenses:

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

ii. Procedure With Prior Court Approval:

1. Appointed Counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state the below, as applicable:

a. The type of investigation to be conducted or the type of expert to be retained;

b. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and

c. An itemized list of anticipated expenses for each investigation and/or each expert.

2. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

    a. State the reasons for the denial in writing;

    b. Attach the denial to the confidential request; and

    c. Submit the request and denial as a sealed exhibit to the record.

iii. Procedure Without Prior Court Approval:

1. Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

SCHEDULE OF FEES FOR COMPENSATION OF APPOINTED COUNSEL FOR INDIGENT DEFENDANTS – WICHITA COUNTY

REVISED 2-26-07

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Fixed rate for juvenile adjudication and/or disposition hearings	**$200.00**
Minimum hourly rate	**$ 65.00**
Maximum hourly rate	**$120.00**
Daily rate for actual trial in court	**$455.00**

REASONABLE EXPENSES, INCLUDING EXPENSES FOR INVESTIGATION AND FOR MENTAL HEALTH AND OTHER EXPERTS, SHALL BE REIMBURSED PURSUANT TO THE PROVISIONS OF ART. 26.05 (d), CCP.

Compensation for court-appointed counsel will be approved on a case by case basis, depending upon the time and labor required, the complexity of the case and the experience and ability of the appointed counsel.

The following criteria shall be considered in calculating the attorney fees:

1. Time spent in court making an appearance
2. Time spent in trial
3. Reasonable and necessary time spent out of court, supported by documentation as required by the Court
4. Time spent in the preparation of an appellate brief

The form for claiming fixed rate compensation and/or expenses reimbursement is attached hereto, labeled "Exhibit A" and incorporated herein by reference. The form for claiming hourly rate compensation and/or expenses reimbursement is attached hereto, labeled "Exhibit B" and incorporated herein by reference. **ALL APPLICATIONS FOR COMPENSATION MUST BE SUBMITTED ON ONE OF THESE FORMS IN ORDER TO BE APPROVED.**

Appendix C -- How to Conduct an Initial Indigent Defense Self-Assessment

Self-assessment is a technique where the local jurisdiction periodically samples relevant data to determine whether all Fair Defense Act (FDA) requirements are being met. The Task Force recommends that self-assessments be conducted to verify procedures and operational practices (e.g. local plan, rules and procedures, attorneys' applications, attorneys' CLE hours). Self-assessments ensure familiarity with county policies, procedures, and operational practices. Moreover, best practices indicate that internal periodic reviews of documents/forms and processes assist in identifying possible problems or errors. Self-assessment can be performed by any jurisdiction and adds accountability to the indigent defense process. Court personnel may have an internal belief of performance based on experience with a part of the indigent defense process, but without actual records, one cannot know the effectiveness of the system.

Self-assessment items

1. Time to magistration

Check magistration records to see that magistration occurred within 48 hours of arrest (use an acceptable sample size as defined in the methodology). Compare the time of arrest to the time of magistration. The magistration record may be on a paper magistration form or on an electronic record.

The sample should be as random as reasonably possible, from a representative cross-section of persons/places where magistration was conducted. For instance, if magistration duties are rotated between justices-of-the-peace, the sample should include magistration data from all the different justices. The sample size should be large enough to allow one to gauge performance of the system. A sample size calculator is available at http://www.surveysystem.com/sscalc.htm and allows for the calculation of an appropriate sample size. Reasonable confidence requirements may be a 95% confidence level with a 15% confidence interval. In this way if the sample showed that 75% of magistrations were timely, one could say with 95% confidence that all magistrations are timely 75% +/- 15% of the time (or between 60% and 90% of the time). More accurate confidence intervals may be used but require larger sample sizes or a basis for knowing the performance level of the system. If a second review were conducted, the performance from the initial review could be used as a base level for system performance. Plugging this initial review percentage into the sample size calculator may yield much tighter confidence intervals with the same sample size.

2. Timely appointment of counsel

Review counsel request forms for each court system and make separate performance estimates for each court system (i.e. district courts and statutory county courts) to see that counsel was appointed for each court system within the time required by the FDA. Under the FDA, for persons not making bond, a jurisdiction has 24 hours to transfer a request for counsel to an appointing authority. The appointing authority has one or three working days (depending on whether the 2000 county population was over 250,000 persons) in which to appoint counsel. This means that from the time of request, the arrestee must receive appointed counsel within one or three working days plus 24 hours of the request. For persons bonding before the deadline to appoint

counsel is reached, counsel is to be appointed by the earlier of the initiation of adversarial judicial proceedings (the indictment or information) or the defendant's initial appearance (arraignment).

Take random samples of defendants receiving counsel from both the district and statutory county courts using the appropriate sample sizes listed above. Check the percentage of persons who receive timely appointment of counsel. Appropriate forms for this verification are the attorney appointment form and the affidavit of indigence.

3. Review attorney qualifications

Check all attorneys who have received appointments from the previous 12 months to see that they are on the approved list (voted by a majority of judges) and that they have met the applicable CLE requirements.

4. Review attorney selection process

To check that a rotation system is fair, neutral and non-discriminatory, observe the distribution of all criminal appointments in each court system (district courts and statutory county courts) from the previous year. Look for instances when an individual or small group of individuals are given a far greater share of appointments than one would expect if given out according to the wheel. Mere disparity in felony appointments is not an indication of discriminatory appointments, as some attorneys may be qualified to receive more types of appointments than other attorneys.

5. Review indigence standards

Check that a determination of indigence has been made for persons requesting counsel (use an acceptable sample size as done when measuring time to appointment of counsel).

6. Review payment for indigent services

a. Check that attorney fee vouchers are complete. (Did the judge and attorney sign the voucher? Is the voucher for a felony or a misdemeanor?)
b. Do the amounts on the attorney fee voucher add up correctly?
c. Is the voucher payment in accordance with the attorney fee schedule?
d. Are written findings made for disapproved/reduced reimbursements?

The attorney fee voucher and attorney fee schedule should be used in reviewing payment for indigent services. A representative cross-section of vouchers is necessary in reviewing this item. Errors in processing payment may be caused either by judge or attorney error. Using a sample from the entire criminal court system may not yield a large enough sample to observe errors in the system. On the other hand, making separate sample estimates of performance for each court processing criminal matters could be very time consuming. To adequately review this item in a timely manner, one may want to review the district courts together as a sample and the statutory county courts together as a sample.

Part II -- Analysis of the Impact of Local Practices on Jail Populations and Case Dispositions

In August 2010, Wichita County Judge Woodrow Gossom requested that the Task Force conduct a review of Wichita County's indigent defense systems and, as part of the review, examine local practices that may affect the jail population (see Appendix F). Wichita County's jail population has increased in recent years and as a result of this increased jail population, the expenses for maintaining the jail have also increased. This analysis will attempt to describe how local practices affect the jail population and will attempt to offer alternative practices that may reduce the jail population.

I. A Historical and Comparative Description of Wichita County's Jail Population

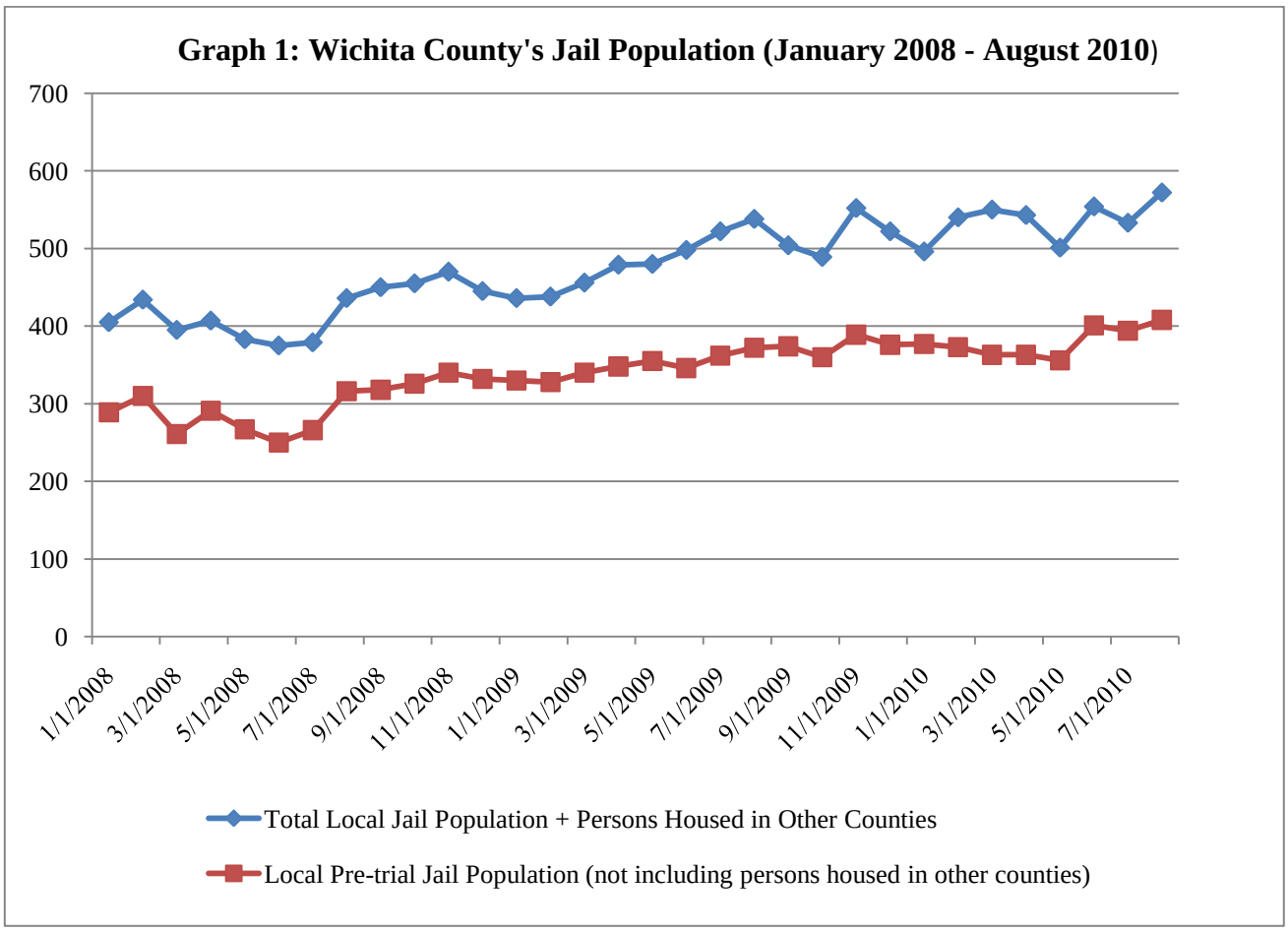
Wichita County's population has experienced periodic increases and decreases, but the population has shown no long term trends of growth or shrinkage since the 1960 census when the population was reported to be 123,528.[1] In recent years, the Texas Data Center estimated the County's population to be 129,719[2] on January 1, 2008, and 135,385 on January 1, 2010 (a 4.4% increase).[3]

In spite of the County's relatively stable population, the jail population has steadily increased, causing the County to routinely transfer inmates to other counties' jails beginning in September of 2009 (*see Graph 1 below*).

[1] US Census Bureau, available at http://mapserver.lib.virginia.edu/php/county.php.

[2] Texas Data Center, available at http://txsdc.utsa.edu/tpepp/2007_txpopest_county.php.

[3] Texas Data Center, available at http://txsdc.utsa.edu/tpepp/2009_txpopest_county.php.



The pre-trial jail population is a large component of the total jail population, and any examination of factors contributing to jail population changes should consider the pre-trial jail population. If one observes pre-trial jail populations in counties across Texas, one will see very different pre-trial population levels. These different population levels are the result of differences in crime rates, cultural and wealth characteristics, and local criminal justice practices. To gain a better understanding of the causes and consequences of the increasing pre-trial jail population in Wichita County, the monitor examined the pre-trial jail population in Wichita County and in six other counties that are similar to Wichita.

In 2008, Wichita County's per capita pre-trial jail population was in the middle of the selected group of seven counties that included Ector, Grayson, Midland, Potter, Taylor, and Tom Green Counties. By 2009, Wichita County's per capita pre-trial jail population was higher than all but one of the selected counties. This rank continued through the first eight months of 2010. For five of the selected counties, the per capita pre-trial jail population increased in 2010 from 2008. For two of the selected counties, the per capita pre-trial jail population decreased in 2010 from 2008. See Table 1 below for county-level comparisons. These tables understate the increase in Wichita County's pre-trial jail population because pre-trial inmates housed in other counties were not considered. Several of the counties listed had no inmates housed in other counties during these periods.

Table 1: Per Capita Pre-Trial Jail Populations in Selected Texas Counties 2008-2010

County	Calendar Year	Jan. 1 Population Estimate	Average Pre-trial Jail Population	Per Capita Pre-Trial Jail per 1000 Population
Ector	2008	128,753	336.3	2.61
Grayson	2008	118,713	212.4	1.79
Midland	2008	126,353	168.9	1.34
Potter	2008	121,743	322.8	2.65
Taylor	2008	128,413	230.3	1.79
Tom Green	2008	103,040	264.1	2.56
Wichita	**2008**	**129,719**	**297.2**	**2.29**

County	Calendar Year	Jan. 1 Population Estimate	Average Pre-trial Jail Population	Per Capita Pre-Trial Jail per 1000 Population	Percent Per Capita Change from 2008
Ector	2009	132,153	377.5	2.86	9.4%
Grayson	2009	118,830	178.8	1.50	-15.9%
Midland	2009	130,203	188.6	1.45	8.3%
Potter	2009	121,938	316.4	2.59	-2.1%
Taylor	2009	127,764	247.0	1.93	7.8%
Tom Green	2009	105,477	263.1	2.49	-2.7%
Wichita	**2009**	**130,305**	**356.7**	**2.74**	**19.5%**

County	Calendar Year (Jan. – Aug.)	Jan. 1 Population Estimate	Average Pre-trial Jail Population	Per Capita Pre-Trial Jail per 1000 Population	Percent Per Capita Change from 2008
Ector	2010	135,240	393.8	2.91	11.5%
Grayson	2010	120,050	184.6	1.54	-14.1%
Midland	2010	135,244	198.1	1.46	9.6%
Potter	2010	122,140	327.4	2.68	1.1%
Taylor	2010	128,396	243.6	1.90	5.8%
Tom Green	2010	106,094	252.8	2.38	-7.0%
Wichita	**2010**	**135,385**	**379.4**	**2.80**	**22.3%**

II. Variables Affecting Jail Populations

One straightforward explanation for the increase in Wichita County's jail population could be an increased crime rate. If crime had increased over this period, one would expect an increase in the number of criminal cases filed in the courts.[4] Wichita County's district court case filing rate and

[4] Felony cases are typically filed in the district courts. Misdemeanor cases are typically filed in the county courts. Felony cases are more serious than misdemeanor cases and often involve more jail time than misdemeanor cases. Misdemeanor cases are typically more numerous than felony cases. Any analysis of the effect of case filings on the jail should separate district court filings from county court filings.

its county court filing rate both increased marginally (*see Table 2 below*); however, both increases were less than the increase in the pre-trial jail population. The slight increase in cases filed may have had some effect on the pre-trial jail population, but other factors seem to be driving the overall increase.

Table 2: Percent Change in Cases Added in Wichita District and County Courts

Year	Wichita County Average Monthly District Cases Added	Percent Change in District Cases Added from 2008	Wichita Average Monthly County Cases Added	Percent Change in County Cases Added from 2008
2008	164	n/a	278	n/a
2009	165	0.5%	295	6.1%
2010 (Jan. -Aug.)	173	5.1%	319	14.7%

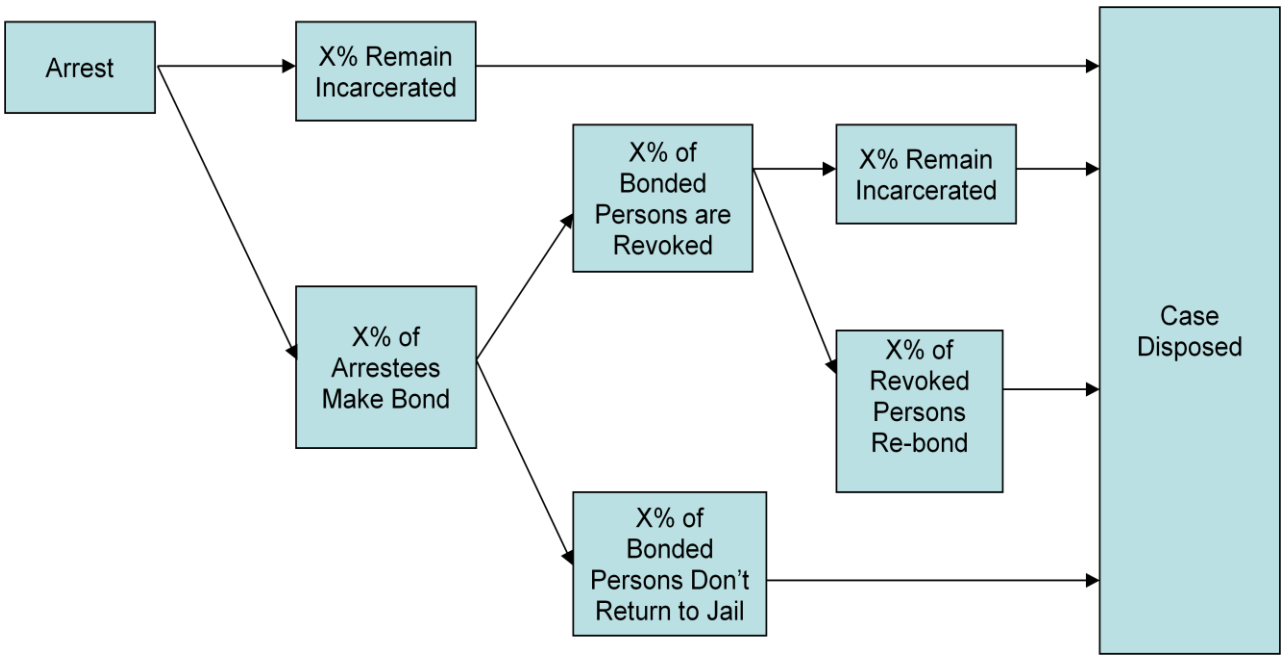
Local practices may have large impacts on how defendants move through the criminal justice system. One jurisdiction may make great efforts to utilize rehabilitative techniques that only minimally use the jail, while another jurisdiction may attempt to safeguard the public by keeping a large portion of arrestees in the local jail until case disposition. The ability of arrestees to make bond and to remain out of jail until case disposition has an impact on the amount of money required by the county to keep the person incarcerated and has an impact on the case outcome (see Appendix D and Appendix E).

Consider two scenarios in which the cost of incarcerating someone in the local jail is $42 per day. In the first scenario, if an arrestee were to bond within 24 hours of arrest and to remain on bond until case disposition, the jail cost to the county is $42. A jail's capacity will likely only be minimally affected. The amount of time spent in detainment will not likely cause the arrestee to lose his/her job, and obligations such as child support payments may continue to be paid. If an arrestee can be released on bond, the arrestee will have an incentive to agree to probation and to probationary terms, such as periodic drug testing and payment of fines and fees.

Alternatively, if an arrestee does not make bond and is incarcerated for 120 days until case disposition, the cost to the county is $5040. The person's continued presence in the jail will have a much larger effect on jail population constraints than the arrestee who immediately made bond. There will also be personal consequences for a failure to make bond. If an arrestee cannot bond, he/she will likely lose her job. Child support payments will likely face a temporary stop, and the county's ability to recoup court-related fees will diminish. The arrestee's case disposition will be affected since the arrestee will have little incentive to agree to any form of probation. If the arrestee agrees to a plea for a term of confinement, the person's future behavior is not influenced in the same manner as if a term of probation had been set.

The following diagram illustrates how arrestees move through the criminal justice system. A jurisdiction may alter its cost structure by changing the percent of persons who move through each event or by changing the timing between events.

Figure 1: Events Moving an Arrestee Into and Out of Jail



From this diagram, one can see that new arrests increase the jail population. Persons making bond reduce the jail population, and bond revocations increase the jail population. Finally, case dispositions establish the amount of time that the arrestee is to remain in confinement. In this way, given a constant rate of incoming arrests, the pre-trial jail population will vary based upon the following factors: A) the arrestee's ability to make bond; B) the propensity for the bond to be revoked; and C) the time until case disposition.

A. Bonds

Bonds are set by the magistrate shortly after arrest and are governed by Article 17.15 of the Code of Criminal Procedure. The rules from Article 17.15 state:

1. *The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.*
2. *The power to require bail is not to be so used as to make it an instrument of oppression.*
3. *The nature of the offense and the circumstances under which it was committed are to be considered.*
4. *The ability to make bail is to be regarded, and proof may be taken upon this point.*
5. *The future safety of a victim of the alleged offense and the community shall be considered.*

The monitor examined a sample of cases filed in FY2009 (October 2008 - September 2009) to determine the bonds set by magistrates for differing offense levels in Wichita County. Although the higher level felony offenses contained rather small sample sizes, the sample bond amounts indicated that for more serious offenses that bonds tended to be significantly higher than for less serious offenses. Within each offense level, however, there was a wide range in bond amounts. Part of the wide range in bond amounts for lower level felony and misdemeanor offenses seemed to be due to differences between arresting and filing offenses. For instance, a defendant may be originally

arrested by the police for a first or second degree felony, but after careful review of the facts, the prosecutors may file the case as a state jail felony. At the time of the arrest, the magistrate would only see the offense level reported by law enforcement and may be inclined to set a high bond based upon a second degree felony charge rather than a state jail felony charge.

Chart 3: Bond Amounts[5]

Offense Level	Sample Size	Median Bond	Range
Felony – 1st degree	9	$100,000	$10,000 to $2 million
Felony – 2nd degree	14	$25,000	$3500 to $165,000
Felony – 3rd degree	38	$15,000	$1500 to $250,000
State jail felony	68	$9,250	$500 to $100,000
Class A misdemeanor	42	$2,000	$500 to $10,000
Class B misdemeanor	55	$750	$200 to $5,000

The higher a bond is set, the less likely the arrestee is to find a bond company to finance the bond. Article 17.15 clearly gives the magistrate wide latitude in setting bonds. However, if an arrestee cannot make bond, the county must pay the resulting jail expenses. (See Table 4 and Table 5 detailing the percentage of sample arrestees who made bond prior to disposition of the case.)

Table 4: Percent of Persons Making Bond in Felony Cases

Original Bond Amount	Sample Size	Number Bonded	Percent Bonded
$100,000 or Greater	13	3	23%
$25,001 to $99,999	13	8	62%
$10,001 to $25,000	29	21	72%
$5001 to $10,000	36	24	67%
$5000 or less[6]	39	33	85%

Table 5: Percent of Persons Making Bond in Misdemeanor Cases

Original Bond Amount	Sample Size	Number Bonded	Percent Bonded
$5,000 to $10,000	9	6	67%
$2,000 to $4,999	18	16	89%
$1,000 to $1,999	27	26	96%
Less than $1000[7]	49	49	100%

Aside from the bond amount, a second factor that affects whether an arrestee can make bond is whether the arrestee's attorney acts as a strong advocate for the client's release. If an arrestee cannot make the bond set by the magistrate, his/her attorney may file a motion for bond reduction or a writ of habeas corpus. Concerning the writ of habeas corpus, Article 17.151 of the Code of

[5] Felony cases with personal recognizance bonds (PR bonds) set at magistration were not included. Felony cases do include cases with PR bonds set at a time later than magistration. The misdemeanor sample size includes cases with PR bonds, but the range and median values do not include these cases, whether the PR bond was set at magistration or was set later.

[6] Includes a person with a PR bond set at magistration. The amount on the PR bond was $25,000.

[7] Includes 15 PR bonds. Nine of the PR bonds were granted at a time later than magistration.

Criminal Procedure states that an arrestee is to be released on personal recognizance bond (PR Bond) or other bond amount that the arrestee can afford if no case has been filed within 15 days of arrest for class B misdemeanors; 30 days for class A misdemeanors; and 90 days for felonies. The monitor found some instances where the person was released well after the Article 17.151 time periods. In particular, misdemeanor arrestees who did not request counsel at magistration were most vulnerable to serving time in jail beyond time frames set by Article 17.151.[8]

If an arrestee cannot make bond, he or she will likely remain in jail until case disposition unless someone acts on his/her behalf. The defense attorney can bring notice of the plight of the arrestee to the judge with jurisdiction over the case. As the time served in jail by the arrestee increases, the incentive for the arrestee to agree to a term of either probation or deferred adjudication decreases because the arrestee may have already served a significant portion of the sentence. From the monitor's felony sample, probation or deferred adjudictation dispositions occurred more frequently when the arrestee had served fewer than 30 days in jail than when the arrestee had served more than 30 days in jail (see Appendix D). These incentives may indicate that if a client is in jail with no case filed against him/her, and the attorney feels that the client will be better served with a probationary outcome than a term of incarceration, the attorney should focus initial efforts at obtaining the client's release from jail.

The monitor found that from a sample of 131 felony cases examined, there were 19 cases with either motions for bond reduction or writs of habeas corpus (14.5% of cases in the sample). From the misdemeanor sample of 103 cases, the monitor found two cases listing a motion for bond reduction or writ of habeas corpus and nine cases with PR bonds where the PR bond was set after the date of magistration (seven of which were after Article 17.151 time frames). In the seven instances where misdemeanor PR bonds were issued after Article 17.151 time frames, there were no records of writs of habeas corpus. These defendants' pre-trial jail days may have been reduced if: 1) a procedure were in place for officials and staff to immediately re-visit pro se inmates as the Article 17.151 deadline is hit; 2) counsel representing these persons were to immediately file a writ of habeas corpus; and 3) a hearing on the writ were to promptly be set. When arrestees are released after a motion for bond reduction, the county benefits from jail cost savings, and the arrestee benefits by having better case outcome options.

B. Bond Revocations

A bond may be revoked if the defendant does not appear in court or upon motion of the bonding company and approval by the judge. Bond revocations bring people who were released from jail back into the jail population. Very often a person who was initially able to make bond will not be able to do so again once a bond has initially been revoked. These persons may stay in jail for long periods of time if the case is not quickly disposed. (See Table 6 and Table 7 detailing the percentage of sample arrestees who initially made bond but who later had their bonds revoked.) The percentage of persons with bond revocations does not seem to be closely related to the amount of the bond.

[8] In the monitor's misdemeanor case sample, 7 of the 103 cases reviewed showed that PR bonds were given at a time when the arrestee had served time in excess of Article 17.151 time frames.

Table 6: Bond Revocations in Felony Cases

Original Bond Amount	Persons Initially Making Bond	Number with Later Bond Revocation	Percent with Later Bond Revocation
$100,000 or Greater	3	1	33%
$25,001 to $99,999	9	4	44%
$10,001 to $25,000	21	6	29%
$5001 to $10,000	24	10	42%
$5000 or less[9]	33	10	31%

Table 7: Bond Revocations in Misdemeanor Cases

Original Bond Amount	Persons Initially Making Bond	Number with Later Bond Revocation	Percent with Later Bond Revocation
$5,000 to $10,000	6	0	0%
$2,000 to $4,999	16	2	13%
$1,000 to $1,999	26	7	27%
Less than $1000[10]	49	7	14%

C. Time to Case Disposition

The time from arrest to case disposition affects the local jail population because incarcerated persons who cannot bond remain in the jail until the case is disposed. If a jurisdiction can reduce the time from arrest until disposition for incarcerated persons, the county reduces its jail population. Conversely, court docket backlogs will tend to increase the jail population.

Description of Steps between Arrest and Case Filing

As an example of the steps that occur between arrest and case filing, consider a hypothetical on-view arrest made by the Wichita Falls Police Department. The time lines listed in this description were based upon interviews with various public officials conducted by Task Force Staff and not upon an examination of sample data from case files. First, the arresting officer transports the arrestee to the county jail. The officer must submit to the jail an initial charge and a probable cause statement (the arresting charge, name of the perpetrator, and facts establishing arrest). The county must accept all incoming arrestees where the officer submits a probable cause statement (a magistrate will later determine whether the jail has probable cause to detain the arrestee); however, the jail can only process two inmates simultaneously. If additional arrestees arrive before current inmates are processed, the officers must wait until the persons in queue are processed. Some weekend nights yield long delays where officers wait to have their arrestee accepted by the jail.

Following arrest, officers work to complete a case packet. The case packet includes the probable cause affidavit, the arrest sheet, all offense reports, and a tracking form. The arrest sheet and the offense report are similar, but the offense report contains additional information, such as the identities of victims and reporting witnesses. The arresting officer can generally complete the offense report without going back to the crime scene. At the end of each shift, the officer is

[9] Includes a PR bond set at magistration. The amount on the PR bond was $25,000.
[10] Includes 15 PR bonds. Nine of the PR bonds were granted at a time later than magistration.

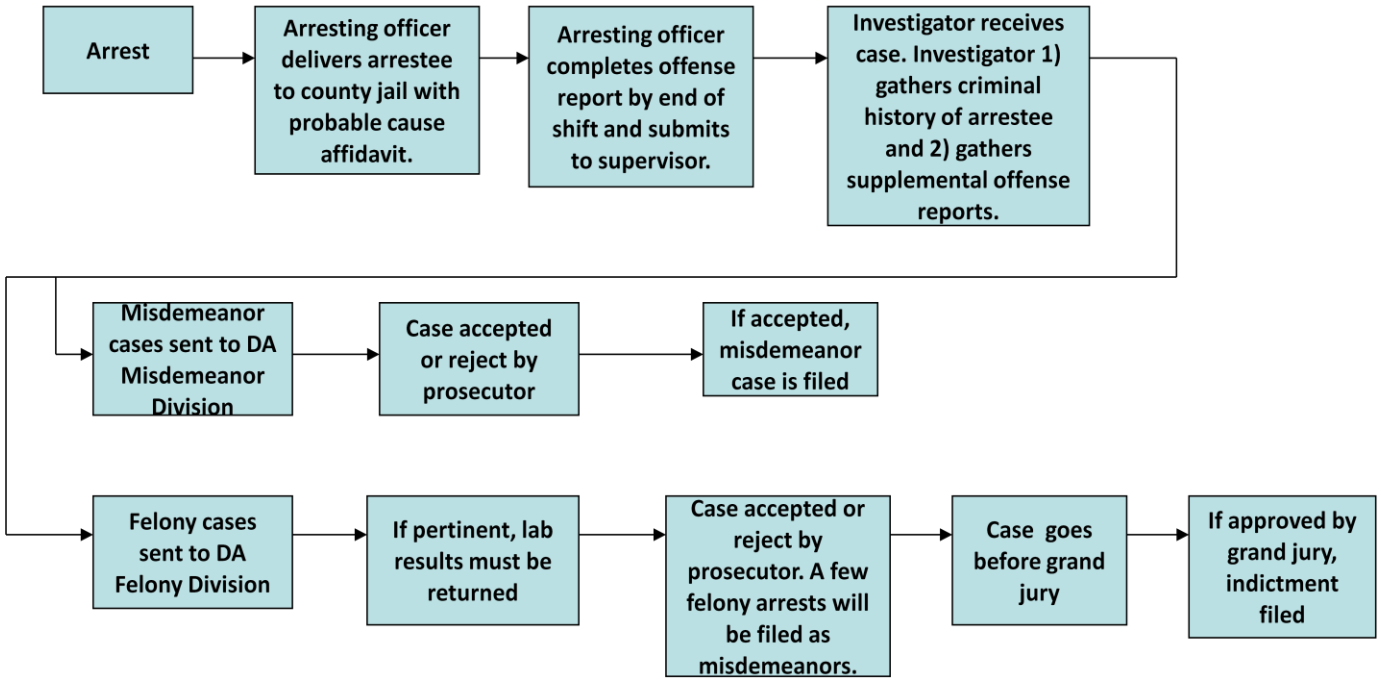
supposed to turn in completed offense reports to the patrolling supervisor. The Wichita Falls Police Department typically makes eighteen to twenty arrests per day.

Once the offense report is complete, the case is turned over to an investigator. The investigator must obtain the arrestee's criminal history and must gather all supplemental offense reports. Occasionally, the arrestee's identification is difficult to ascertain and the arrestee's criminal history cannot easily be obtained. Supplemental offense reports occur when there are multiple officers at the crime scene. Nearly all arrests have supplemental offense reports. The investigator can expect to require five to seven days to gather all supplemental offense reports for an arrestee. The police department makes daily deliveries of completed case packets to the prosecutor, and the packets are then used to file a case.

For felony arrests, case packets are delivered to the district attorney's felony division. The felony prosecutor must accept or reject the case before taking the case before a grand jury. Cases where the arrestee is in jail take priority over cases in which the arrestee has bonded. Most felony arrests that are accepted by the prosecutor continue to be filed as felony cases. If a felony case is accepted, it will go before a grand jury to be formally filed. According to interviews, most felony cases are accepted by the prosecutor, and the determination of whether or not to file is made by the grand jury. Cases will not go before a grand jury without relevant information, such as lab results from a drug case. In this way, backlogs at a drug lab could significantly affect the time required to file a drug case.

For misdemeanor arrests, case packets are delivered to the district attorney's misdemeanor secretary. A prosecutor is assigned the case within 48 hours of the delivery, and the case is filed in the county clerk's office within a week of the delivery. As with felonies, cases where the arrestee is detained in the jail hold priority over cases in which the arrestee has bonded. A misdemeanor prosecutor may reject a case, but the prosecutor must have a valid reason for doing so, such as a missing offense element.

Figure 2: Diagram Showing Individual Steps from Arrest to Case Filing



Description of Steps between Case Filing and Case Disposition

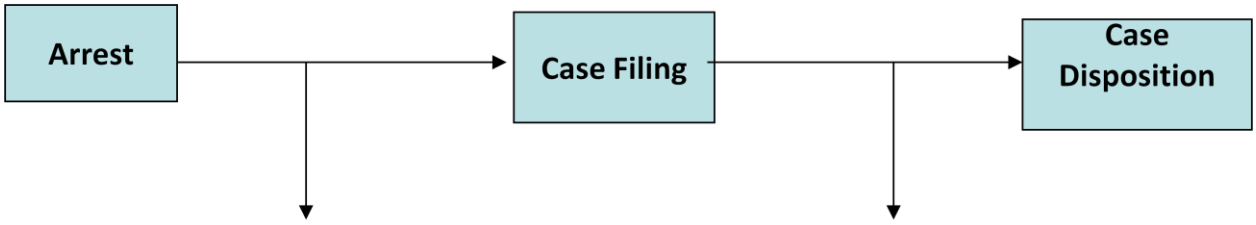
For felonies, a pre-trial conference is held 30 days after indictment. At this conference the defense attorney will appear with the client, will receive an offer from the prosecutor, and will get an opportunity to view the District Attorney's case file. The defense attorney is not allowed to copy items from this case file but may take handwritten notes. Few cases are disposed at this initial pre-trial conference. According to interviews, prosecutorial offers tend to get better in subsequent hearings—especially if a trial is imminent.

Misdemeanor cases tend to be disposed quicker than felony cases. However, if an individual is charged with both a felony and a misdemeanor case, the misdemeanor is put on hold until the felony is resolved. Many misdemeanor defendants plead to time served. Probation or deferred adjudication alternatives are not generally offered to misdemeanor defendants.

Measurement of Times from Arrest until Case Disposition

The monitor examined the times from arrest until disposition in felony and misdemeanor cases. The examination breaks the time into two pieces: the time from arrest to case filing and the time from case filing to case disposition.[11] First and second degree felonies took about twice as long for cases to be filed as third degree and state jail felony cases. Misdemeanor cases were filed much quicker than any level of felony case. For felonies, once the case was filed, higher offense levels were not closely associated with longer times until case disposition.

Figure 3: Time from Arrest to Case Filing and from Case Filing to Case Disposition



Offense Level	Median Time Between Events	Number of Cases Examined
Felony - 1st	114 days	10
Felony - 2nd	131 days	13
Felony - 3rd	64.5 days	38
State jail felony	61 days	68
Misdemeanor (class A & B combined)	27 days	102

Offense Level	Median Time Between Events	Number of Cases Examined
Felony - 1st	178.5 days	8
Felony - 2nd	159.5 days	12
Felony - 3rd	136.5 days	36
State jail felony	176.5 days	62
Misdemeanor (class A & B combined)	73 days	94

How Sample Data Relates to Events Moving an Arrestee Into and Out of Jail

By revisiting the earlier diagram that depicts events moving an inmate into and out of the jail, we can use sample data to show the percentage of cases that follow each path and the average number of pre-trial jail days associated with each path.[12] In this way, we can estimate the average

[11] When examining case files, some data elements were not present (e.g. the arrest date was not in the case file or the case had not yet been disposed), and so sample sizes of the different offenses differ between events.

[12] The monitor only reviewed misdemeanor and felony cases that were filed in a clerk's office. Persons who were arrested but whose case was dismissed without a filing were not considered. The estimates of persons following each path are based upon sample data, and so the true percentage from FY2009 will likely vary from the sample.

jail costs of felony and misdemeanor cases. If one wants to reduce these costs, one must either find a way to keep persons out of the jail or find a way to reduce the time to case disposition.

This analysis looks at: 1) the number of pre-trial jail days from arrest to bonding for persons making bond; 2) the number of pre-trial jail days from arrest until case disposition for persons not making bond; and 3) the number of pre-trial jail days from bond revocation until case disposition for persons who initially bonded but who later had that bond revoked. An estimated average cost for each event is based upon a jail cost of $42 per day. The cost for each event is based upon pre-trial jail days from cases in the monitor's sample. As an example of how this cost is estimated, if a person made bond but did not do so until serving ten pre-trial jail days, the jail cost for the person making bond was considered to be $420.

Pre-trial jail days and corresponding costs are higher for felony offenses than for misdemeanor offenses. The higher number of felony pre-trial jail days occurs because: 1) the percentage of felony arrestees who never bond is higher than the percentage of misdemeanor arrestees who never bond; 2) a greater portion of felony arrestees who make bond have their bonds revoked; and 3) the time from arrest until case disposition is longer for felonies than for misdemeanors.

Analysis of Pre-trial Jail Days in Felony Cases

Figure 4: Events Moving a Felony Arrestee Into and Out of Jail (all felony levels combined)[13]

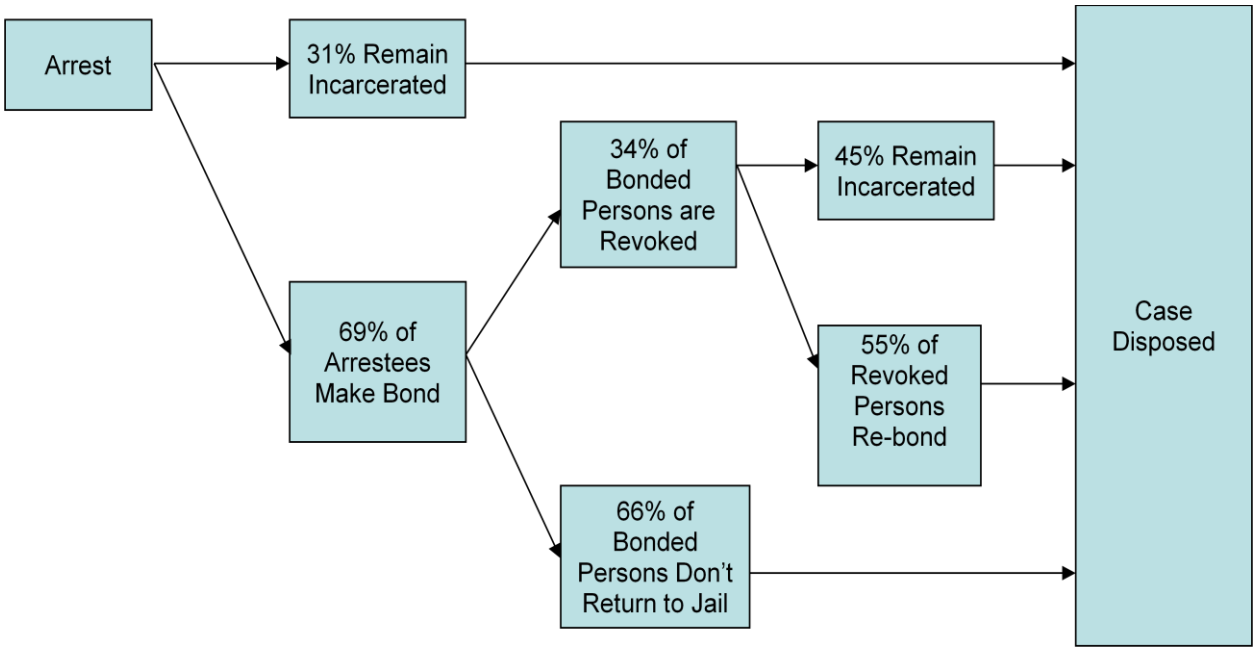


Figure 4 shows that 31% of the felony cases that were examined never made bond and 69% made bond. When the felony defendant made bond, 34% of those persons had their bonds revoked. From the paths in Figure 4, the number of pre-trial jail days for persons following each path was obtained and summarized in Table 8.

[13] The percentage of persons going through each event counted persons whose pre-trial jail day totals could not be determined. Table 9 does not include these persons.

The data in Table 8 shows that of the cases examined, 88 persons made bond. The median time to bonding was three days. The 25% quartile time to bonding (time to bonding for the person that was at the 25% level for bonding quickest) was two days. The 75% quartile (time to bonding for the person that was at the 75% level for bonding quickest) was fourteen days. However, the mean time to bonding was 22 days. This is an odd situation where a few persons are making bond at a time much later than the vast majority of persons. The persons that bond very late are causing the average to be skewed far beyond the median time to bonding. If the persons who made bond at a very late time could be identified and released at an earlier time, the mean time to bonding would be much closer to the median time. As noted in this table, the mean time to bonding in felony cases cost an average of $924 in jail costs. If the mean and median times converged at three days until bonding, the average jail costs for this time would be reduced to $126.

The monitor found 39 cases where persons never made bond. The median time in jail for persons not bonding was 186 days, and the mean time was 230 days. Based on jail costs of $42 per day, the persons in this group cost an average of $9,660 in pre-trial jail costs.

The monitor found 24 cases where bonds were revoked and the number of pre-trial jail days served by the arrestee could be determined. The median number of pre-trial jail days for these persons after the bonds were revoked was 108 days, and the mean was 134 days. The pre-trial jail time after bond revocations cost an average of $5,628.

When all paths are combined, the median number of pre-trial jail days for felony defendants was 67 days, and the mean was 117 days. Based on the monitor's sample, the average pre-trial jail cost of felony defendants was $4,914. To reduce this cost, individual paths should be targeted. For instance if one wanted to reduce the time to bonding, one might monitor the jail population to find those persons who should be able to make bond but who unable to make bond within a week. If one wanted to reduce the time spent in jail for persons not making bond, one might try to speed up times to case filing for this population.

Table 8: Felony Jail Costs Associated with Paths Into and Out of Detention

	Pre-trial Jail Days from arrest to bonding[14]	**Pre-trial Time Spent in Jail by Defendants not Bonding[15]**	**Pre-trial Time Spent in Jail After Bond Revocation[16]**
Sample Size	88	39	24
25% quartile:	2 days	104 days	44.5 days
median:	3 days	186 days	108 days
75% quartile:	14 days	336 days	222 days
Mean	22 days	230 days	134 days
Mean Cost at $42/day	**$924**	**$9,660**	**$5,628**

[14] Does not include one case where the pre-trial jail days until bonding could not be determined.

[15] Does not include two cases that are still active.

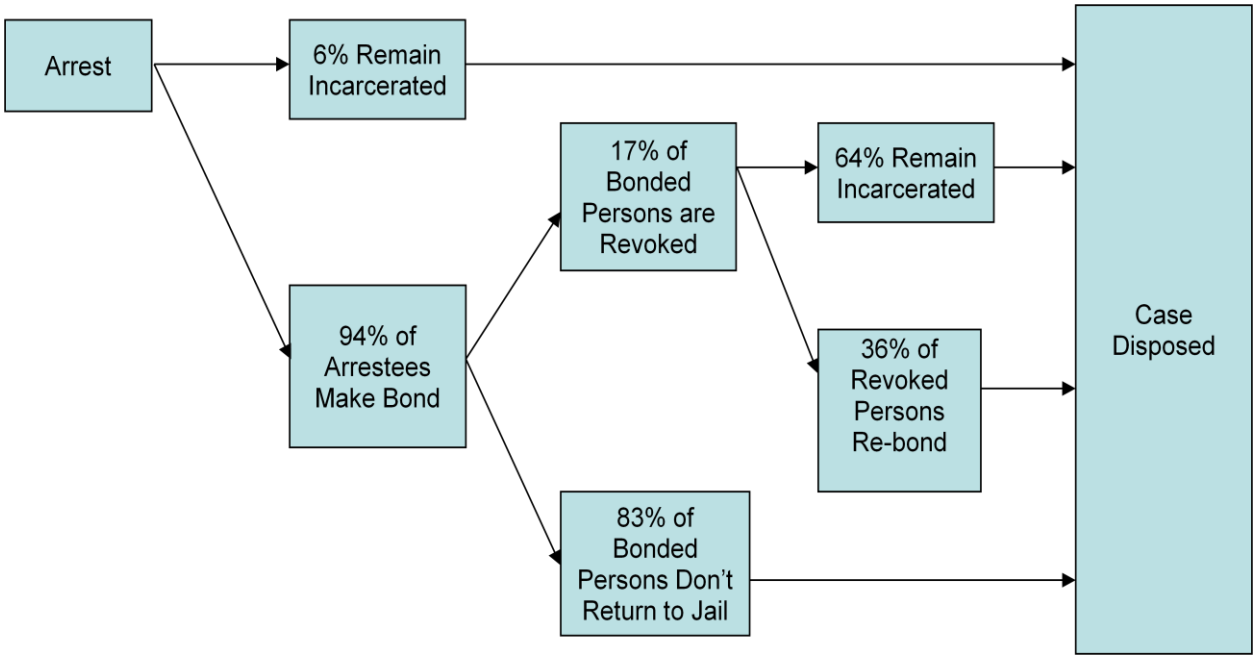
[16] Does not include seven cases where pre-trial jail days could not be determined.

	Total Pre-trial Jail Days for Felony Defendants[17] (all paths combined)
Sample Size	115
25% quartile:	3 days
median:	67 days
75% quartile:	182 days
Mean	117 days
Mean Cost at $42/day	**$4,914**

Analysis of Pre-trial Jail Days in Misdemeanor Cases

Figure 5 shows that 94% of the misdemeanor cases that were examined made bond. When the misdemeanor defendant made bond, 17% of those persons had their bonds revoked. From the paths in Figure 5, the number of pre-trial jail days for persons following each path was obtained and summarized in Table 9.

Figure 5: Events Moving a Misdemeanor Arrestee Into and Out of Jail[18]



The data in Table 9 shows that of the cases examined, 93 persons made bond. The median time to bonding was two days. The 25% quartile time to bonding (time to bonding for the person that was at the 25% level for bonding quickest) was also two days. The 75% quartile (time to bonding for the person that was at the 75% level for bonding quickest) was six days. However, the mean time to bonding was fourteen days. This situation is an even more extreme version of the

[17] If a case was not disposed, it may have been included in the sample showing pre-trial jail days from arrest to bonding but would not have been included in the sample showing total pre-trial jail days.

[18] Two of the persons whose bonds were revoked were not apprehended as of the file review. Their cases were included in the revocation total but were excluded from determining the percentage of revocations that re-bond.

felony times to bonding where a few persons are making bond at a time much later than the vast majority of persons. The persons that bond very late are causing the average to be skewed far beyond the median time to bonding. If the persons who made bond at a very late time could be identified and released at an earlier time, the mean time to bonding would be much closer to the median time. As noted in this table, the mean time to bonding in misdemeanor cases cost an average of $588 in jail costs. If the mean and median times converged at three days until bonding, the average jail costs for this time would be reduced to $84.

The monitor found only six cases where persons never made bond. The median time in jail for persons not bonding was 75 days, and the mean time was 90 days. Based on jail costs of $42 per day, the persons in this group cost an average of $3,780 in pre-trial jail costs. Those that do not bond substantially drive up misdemeanor pre-trial jail costs. It is often the case that when misdemeanor defendants do not make bond, it is the result of a case with one or more pending felonies.[19] Six misdemeanor cases from the sample, however, involved defendants who received PR bonds after serving 50 or more pre-trial jail days, so one cannot assume that all cases in which a misdemeanor defendant served many pre-trial days in jail involved a case with an accompanying felony.

The monitor found twelve cases where bonds were revoked and the number of pre-trial jail days served by the arrestee could be determined. The median number of pre-trial jail days for these persons after the bonds were revoked was 6.5 days, and the mean was 60 days. Apparently, when a misdemeanor bond is revoked, all sides typically will quickly negotiate a disposition, but on some occasions, no disposition is reached until a time much later than the bond revocation. The pre-trial jail time after bond revocations cost an average of $2,520.

When all paths are combined, the median number of pre-trial jail days for misdemeanor defendants was three days, and the mean was 29.5 days. Based on the monitor's sample, the average pre-trial jail cost of misdemeanor defendants was $1,239.

Table 9: Misdemeanor Jail Costs Associated with Paths Into and Out of Detention

	Pre-trial Jail Days from arrest to bonding	**Pre-trial Time Spent in Jail by Defendants not Bonding[20]**	**Pre-trial Time Spent in Jail After Bond Revocation[21]**
Sample Size	93	6	12
25% quartile:	2 days	n/a	1 day
median:	2 days	75 days	6.5 days
75% quartile:	6 days	n/a	75.5 days
Mean	14 days	90 days	60 days
Mean Cost at $42/day	**$588**	**$3,780**	**$2,520**

[19] The monitor's review of case files did not look to determine all of the other pending cases against respective defendants.

[20] A small sample size made quartile measurements meaningless.

[21] Two revocations had no record of apprehension. Two other revocation cases are still active. These four cases' pre-trial jail days were not included in this table.

	Total Pre-trial Jail Days for Misdemeanor Defendants[22] (all paths combined)
Sample Size	90
25% quartile:	2 days
median:	3 days
75% quartile:	17 days
Mean	29.5 days
Mean Cost at $42/day	**$1,239**

III. Possible Ways to Reduce the Jail Population

A. Quicker Case Dispositions

One method to reduce pre-trial jail costs is to reduce the time between arrest and case disposition. Factors that can affect the time until case disposition include: 1) the time from arrest until case filing; 2) the ability of attorneys and clients to meet to discuss the case; 3) the options available to dispose the case; and 4) the ability to track inmates without counsel.

Reduce the Time to Case Filing

If a case has not been filed, an arrestee may face difficulties negotiating a resolution to the case. If the case has not been filed, the prosecutor may not feel that he/she should negotiate a resolution. As an example, if the prosecutor does not promptly receive the offense report, the prosecutor will likely not feel that he/she knows pertinent facts about the case. This difficulty in negotiations means that if the arrestee cannot bond that he/she will likely remain in jail with few options other than to wait until Article 17.151 time frames have passed. This difficulty also means that persons who make bond may be at a greater risk of having their bonds revoked than if cases were quickly filed because the amount of time spent subject to bond conditions will likely increase. If cases are filed shortly after arrest, defense attorneys can begin negotiations with the prosecution at an earlier time than if cases are filed at a time much later than the arrest.

Easy Access for Attorney-Client Meetings

When a defense attorney meets with her client, they will likely discuss the best options available for the client. Sometimes a client meeting may indicate that an investigation needs to be performed so that the client's innocence may be proven. At other times, a meeting may allow for the client to realize that accepting a guilty plea is in his/her best interest or may allow for the attorney to become aware of mitigating factors such as mental health issues. If attorney-client meetings do not regularly occur, the attorney may not be able to actively advocate on behalf of the defendant and find an acceptable resolution to the case. While delay may generally be in the defendant's best interest if he/she can make bond, a quick resolution will often be in the defendant's best interest if he/she cannot make bond.

[22] If a case was not disposed, it may have been included in the sample showing pre-trial jail days from arrest to bonding but would not have been included in the sample showing total pre-trial jail days.

To encourage attorney-client communication, the Task Force provided a grant to Wichita County for a video teleconferencing system that interfaces between the public defender's office and the jail. Local attorneys are allowed to use this system, and several who were interviewed stated that they did periodically use the system. Nevertheless, since the County utilizes several jail sites and houses some inmates in other counties, attorneys also stated that they had difficulties locating their clients. The difficulties locating clients appeared to delay attorney-client meetings. When examining pre-trial jail costs, such delays should be seen as cost drivers that delay case dispositions. Providing attorneys with up-to-date lists of where inmates are housed could speed the time to case disposition and reduce pre-trial jail costs.

More Disposition Options

The time from case filing to case disposition may be shortened with multiple sentencing options. For instance, a defendant may initially be hesitant to plead to a long term of confinement but after having already served the majority of the sentence, the defendant may change his/her mind about agreeing to the plea. If the defendant had been given an initial option of a plea to probation or deferred adjudication, the defendant may have quickly agreed to the plea and reduced the amount of time spent in jail. If the defendant had issues with drugs or alcohol abuse, the root cause of the defendant's criminal acts could have been addressed through counseling and drug testing mandated by the probationary agreement.

The monitor requested the number of probationers in Wichita County and other similar counties for FY2009 from the Texas Department of Criminal Justice - Community Justice Assistance Division (CJAD).[23] See the following table listing per capita probationer totals for both felony and misdemeanor cases. The table shows that on a per capita basis for felony cases, Wichita County has far fewer probationers than the comparable counties, but slightly more than the State of Texas. On a per capita basis for misdemeanor cases, Wichita County has far fewer probationers than either the comparable counties or the State of Texas.

Table 12: Per Capita Felony and Misdemeanor Probationers

County	Fiscal Year	Jan. 1 Population Estimate	Number of Felony Probationers	Per Capita Number Felony Probationers per 1000 Population	Number of Misdemeanor Probationers	Per Capita Number of Misdemeanor Probationers per 1000 Population
State of Texas	2009	24,538,335	241,254	9.8	166,822	6.8
Taylor	2009	127,764	2,245	17.6	1,059	8.3
Tom Green	2009	105,477	2,217	21.0	1,084	10.3
Wichita	**2009**	**130,305**	**1,487**	**11.4**	**249**	**1.9**

The monitor's examination of case files yielded comparable numbers as those reported to CJAD. Of the 94 misdemeanor cases that were disposed, only two had an outcome of either probation or deferred adjudication.[24] Of the 119 felony cases that were disposed, 35 had an outcome of either probation or deferred adjudication (29% of the disposed felony sample). Interestingly, 25

[23] TDCJ-CJAD records this as the number reported by the counties on August 31, 2009.

[24] In one of the misdemeanor cases that had a probationary outcome, we could not determine the number of pre-trial jail days served. This case is not listed in the earlier misdemeanor case outcome table.

of those 35 cases with a probationary outcome occurred when the defendant had served fewer than 30 pre-trial jail days. When the defendant had served greater amounts of jail time, the probationary outcome became less likely. Based upon this data, one may reason that if probationary options are to have an impact on the pre-trial jail population that they must be offered before the client has served substantial jail time. If the client serves a significant amount of jail time, he/she appears more likely to accept a term of confinement plea than a probationary plea.

Track Inmates without Counsel

If an inmate is in jail without a case having been filed within time frames set by Article 17.151, the inmate's attorney may file a writ of habeas corpus and ask that the inmate be released on PR bond. However, if the inmate has no counsel, there is no advocate to determine that the time frame was not met and to file the writ. Unless someone notices that the inmate is statutorily eligible for a PR bond, the county pays the cost of housing the inmate. This is a needless cost to the county because the statute says that the inmate shall be released, but the county is still paying the price of housing the inmate.

The main body of the policy monitoring report mentions that about 38% of persons charged in misdemeanor cases and about 56% of persons charged in felony cases request counsel at magistration. If an arrestee does not request counsel at magistration, the arrestee can request counsel again at the initial appearance after the case has been filed. As noted earlier, the median time to case filing in misdemeanor cases is 27 days from arrest; in third degree and state jail felonies it is a little over 60 days from arrest; and in first and second felonies it is about 120 days from arrest. For class B misdemeanor cases and for first and second degree felonies, these median times exceed the time frames that Article 17.151 sets for requiring that the persons be released on PR bond if no case has been filed.

In the review of case files, the monitor found some misdemeanor cases where inmates received a PR bond, but the PR bond was granted well beyond the time frames set by Article 17.151. These late PR bonds were found in 7 of the 103 misdemeanor case files reviewed (just under 7% of the misdemeanor case files reviewed). If the inmate had been released at the Article 17.151 deadline, the inmates' pre-trial jail days would have been reduced by an average of 93 days which corresponds to over $3,900 for each of these misdemeanor inmates (assuming $42 per day jail costs).

The jail does not seem to have a process in place to automatically trigger a review of an inmate's status if Article 17.151 time frames are not met. Having such a trigger in place could help alleviate the strains of jail overcrowding. When the monitor found that a few uncommon cases were substantially driving up the pre-trial jail costs of misdemeanor cases, those misdemeanor cases with late PR bonds were a large factor in driving up pre-trial misdemeanor jail costs. An automatic trigger to review the status of inmates could weed out many of the rare events causing high pre-trial jail costs.

B. More Bonding Options

As bonding options for arrestees increase, the ability to make bond also increases. Counties are challenged to identify ways to reduce jail costs while ensuring that arrestees will appear in court and while safeguarding the victim and the community.

Pre-trial Diversion

Some jurisdictions release arrestees on pre-trial diversion bonds for certain low level offenses. If the arrestee meets the bond conditions, the case against the arrestee may be dismissed. This type of agreement is most common for theft by check offenses. If the arrestee makes payment for the hot check and does not commit any offenses during the payback period, the charges are dropped.

While most common in theft by check cases, pre-trial diversion can be extended to other offenses as well. Mental health dockets, drug courts, and veterans' courts make use of this principle where the offender's life will be dramatically affected by a conviction and where mere jail time would not likely provide the necessary treatment for the offender. If the offender completes the prescribed treatment, the community is safer than if the offender had not completed the treatment options. The pre-trial diversion program can actually make the community safer than if the individual were kept in jail for a period of time and released without treatment.

Standard Bond Schedule

The monitor's review of misdemeanor and felony case files showed that bonds varied greatly within given offense levels. This could be a sign that magistrates set bond in different manners. A standard bond schedule may act as a guide post and reduce the variability of bonds within the same offense level.

Magistrate Judge

Some counties use a single judge devoted to magistration and to handling early misdemeanor case resolutions. A single judge setting bond would reduce bond variability. A magistrate judge could also provide assistance to arrestees who request counsel and could ensure that all requests for counsel are promptly transmitted to the appointing authority. See the monitoring report for issues related to timely appointment of counsel.

C. Better Court Attendance

If defendants attend all court hearings, their chance of having bond revoked is reduced. Some counties utilize a pre-trial release department to issue bonds. The pre-trial release department verifies that defendants meet the terms of their bonds. This helps with court attendance. Cameron County (a poor county sharing a border with Mexico) uses an internal county department to determine if arrestees are eligible for PR bonds, issues the bonds, and then provides follow-up to ensure that bonded persons meet their stated bond conditions. Cameron County reported that of 618 pre-trial release bonds issued between January 2010 and November 2010, they had 27 failure to appear bond forfeitures (fewer than 5% of the bonds the county issued were revoked).[25] Based upon the monitor's misdemeanor sample, 17% of FY2009 Wichita County misdemeanor cases had revoked bonds. See Appendix G for Cameron County's pre-trial release guidelines and conditions of release.

D. Screen Incoming Arrestees

Some counties use aspects of direct electronic filing in criminal cases to improve the efficiency of processing criminal cases. One aspect of direct electronic filing is that prosecutors

[25] This statistic was based upon a query from the Task Force asking Cameron County their bond revocation rate in county issued bonds.

screen incoming arrests to see that all of the elements of an offense are present. Screening accomplishes two objectives: 1) those arrests that do not contain all of the elements of any offense are immediately dismissed[26]; and 2) arrests are accurately charged so that the arresting charges better match case filing charges. Jail populations are reduced by not detaining arrestees in cases that do not meet any particular offense and by putting some cases on a faster misdemeanor track than on a slower felony track.

As stated in the monitoring report, the Public Policy Research Institute at Texas A&M University published a study titled *Evaluating the Impact of Direct Electronic Filing in Criminal Cases: Closing the Paper Trap* (http://www.courts.state.tx.us/tfid/pdf/FinalReport7-12-06wackn.pdf) that highlights the benefits of early screening and direct filing of case information from law enforcement to prosecutors to the courts. The study noted that quicker filing between entities resulted in improved case screening and prompt disposition of cases, better case quality, greater protection of defendants' rights and a better quality of legal defense for persons charged with crimes, and a reduction in hidden costs.

E. Fail-safe Methods for Ensuring that Inmates are Promptly Paper Ready to Send to the Texas Department of Criminal Justice (TDCJ)

Once someone has been sentenced to a term of confinement in a state prison facility, TDCJ will pick up the inmate within 45 days of the inmate being "paper ready." Inmates cannot be paper ready unless all pending offenses have been disposed. If an inmate is sentenced on a felony case but has pending misdemeanor cases, the inmate will remain in the county jail until the pending misdemeanors are resolved. If a county has procedures to quickly complete any unresolved cases needed to make the inmate paper ready after the inmate has been sentenced, the county can reduce the amount of time that inmates remain in the local jail.

[26] As reported in *Evaluating the Impact of Direct Electronic Filing in Criminal Cases: Closing the Paper Trap* (PPRI 2006), prosecutorial screening reduced El Paso County's misdemeanor arrests by 19%.

Appendix D -- Case Outcomes of Files Reviewed Grouped by Pre-trial Jail Days

As inmates spend more time in jail, they appear more likely to plead to a term of confinement and less likely to receive an alternative disposition like probation or deferred adjudication. See the following tables detailing the case outcomes from the monitor's sample. The data from the felony tables lists outcomes for all felony offense levels combined, so results should be drawn with caution. The felony table below shows that in the cases examined where the defendant served fewer than 30 pre-trial days in jail, only 23% pled to a term of confinement. However, when the defendant had served between 30 and 90 days, 55% pled to a term of confinement. Finally, when the defendant served more than 90 days, 71% pled to a term of confinement. Conversely, the combined percentage of persons agreeing to deferred adjudication or probation totaled 52% of felony cases examined where the defendant had served fewer than 30 days in jail. This combined percentage fell to 13% of cases examined where the defendant had served more than 90 days in jail.

Outcomes of Felony Cases Examined (All felony offense levels combined)[1]

	Number from sample followed by percentage from portion of sample in parenthesis		
	1 - 29 pre-trial jail days served	**30 - 90 pre-trial jail days served**	**More than 90 pre-trial Jail Days Served**
Sample Size	48	11	55
Felony Outcome			
Pled to Term of confinement	11 (23% of sample)	6 (55% of sample)	39 (71% of sample)
Dismissal	11 (23% of sample)	4 (36% of sample)	9 (16% of sample)
Deferred Adjudication	16 (33% of sample)	0 (0% of sample)	5 (9% of sample)
Probation	9 (19% of sample)	1 (9% of sample)	2 (4% of sample)
Acquittal	1 (2% of sample)	0 (0% of sample)	0 (0% of sample)

[1] Five felony cases had dispositions where the number of pre-trial jail days served was not determined. These were not included in this table. Active felony cases were not included either.

Outcome Details of Felony Cases Examined (All felony offense levels combined)

	Number from sample		
	1 - 29 pre-trial jail days served	**30 - 90 pre-trial jail days served**	**More than 90 pre-trial Jail Days Served**
Sample Size	48	11	55
Pled to Term of confinement			
Less than 1 year	7	4	13
1.0 to 4.99 years	2	1	19
5 to 9.99 years	1	1	1
10 years or greater	1	0	6
Dismissal			
Other dismissal	5	2	1
Deferred prosecution completed	3	0	0
Case re-filed	1	1	4
Pled to other case	2	1	4
Deferred Adjudication			
3 years or less	10	0	3
Greater than 3 years	6	0	2
Probation			
3 years or less	4	0	0
Greater than 3 years	5	1	2
Acquittal	1	0	0

In the misdemeanor tables that follow, many defendants were convicted for time served. In this way, a low number of pre-trial jail days served also yielded a low number of total jail time served. When misdemeanor defendants received dismissals without pleading to another case or without the case being refilled, the outcome tended to occur in those instances when the defendant had served few pre-trial jail days.

Outcomes of Misdemeanor Cases Examined (All misdemeanor offense levels combined)[2]

	Number from sample followed by percentage from portion of sample in parenthesis		
	1 - 15 pre-trial jail days served	**16 - 90 pre-trial jail days served**	**More than 90 pre-trial Jail Days Served**
Sample Size	67	13	10
Misdemeanor Outcome			
Pled to Term of confinement	39 (58% of sample)	8 (62% of sample)[3]	7 (70% of sample)[4]
Dismissal	27 (40% of sample)	5 (38% of sample)	3 (30% of sample)
Deferred Adjudication	1 (1% of sample)	0 (0% of sample)	0 (0% of sample)
Probation	0 (0% of sample)	0 (0% of sample)	0 (0% of sample)
Acquittal	0 (0% of sample)	0 (0% of sample)	0 (0% of sample)

[2] Four misdemeanor cases had dispositions where the number of pre-trial jail days served was not determined. These were not included in this table. Active misdemeanor cases were not included either.

[3] One misdemeanor case had served significant jail time but pled to a term of confinement less than 15 days.

[4] Four misdemeanor cases had served significant jail time but pled to a term of confinement less than 15 days.

Outcome Details of Misdemeanor Cases Examined (All misdemeanor offense levels combined)

	Number from sample		
	1 - 15 pre-trial jail days served	**16 - 90 pre-trial jail days served**	**More than 90 pre-trial Jail Days Served**
Sample Size	67	13	10
Pled to Term of confinement[5]			
15 days or less	31	1	4
16 to 89 days	7	4	0
90 days or greater	1	3	3
Dismissal			
Other dismissal	15	1	0
Deferred prosecution completed	4	0	0
Case re-filed	2	0	0
Pled to other case	6	4	3
Deferred Adjudication	1	0	0
Probation	0	0	0
Acquittal	0	0	0

[5] In misdemeanor cases, the defendant typically receives two days credit for each day served. This means that someone pleading to time served for 20 days will likely have actually served 10 days.

Appendix E -- Case Outcomes of Files Reviewed Grouped by Pre-trial Jail Events

If defendants make bond, the probability of pleading to a term of confinement appears less than those who do not make bond. Of the felony cases examined, 72% of defendants who did not bond pled to a term of confinement. Of defendants who bonded but the bonds were revoked, 46% pled to a term of confinement. When defendants bonded without having bond revoked, 33% pled to a term of confinement. Those defendants who made bond were likelier to receive either probation or deferred adjudication than those defendants who did not make bond. (See the tables below for a summary of felony case outcomes grouped by pre-trial jail events.) The data from the felony tables that follow lists outcomes for all felony offense levels combined, so results should be drawn with caution.

Outcomes of Felony Cases Examined (All felony offense levels combined)[1]

	Number from sample followed by percentage from portion of sample in parenthesis		
	Defendant did not bond[2]	**Defendant bonded but bond was revoked[3]**	**Defendant bonded without bond being revoked[4]**
Sample Size	39	28	52
Felony Outcome			
Pled to Term of confinement	28 (72% of sample)	13 (46% of sample)	17 (33% of sample)
Dismissal	6 (15% of sample)	7 (25% of sample)	12 (23% of sample)
Deferred Adjudication	3 (8% of sample)	5 (18% of sample)	15 (29% of sample)
Probation	2 (5% of sample)	3 (11% of sample)	7 (13% of sample)
Acquittal	0 (0% of sample)	0 (0% of sample)	1 (2% of sample)

[1] All disposed cases were included. If the number of pre-trial days was not determinable, the case was still included in this analysis. Because of this inclusion of cases where pre-trial jail days could not be determined, sample sizes for each type of case disposition may vary from Table 8 in Appendix D and from Appendix E.

[2] Does not include 2 active cases.

[3] Does not include 3 active cases.

[4] Does not include 7 active cases.

Outcome Details of Felony Cases Examined (All felony offense levels combined)

	Number from sample		
	Defendant did not bond[5]	**Defendant bonded but bond was revoked**[6]	**Defendant bonded without bond being revoked**[7]
Sample Size	39	28	52
Pled to Term of confinement			
Less than 1 year	10	7	9
1.0 to 4.99 years	11	6	5
5 to 9.99 years	1	0	2
10 years or greater	6	0	1
Dismissal			
Other dismissal	1	2	5
Deferred prosecution completed	0	0	3
Case re-filed	2	2	2
Pled to other case	3	3	2
Deferred Adjudication			
3 years or less	1	3	11
Greater than 3 years	2	2	4
Probation			
3 years or less	0	1	3
Greater than 3 years	2	2	4
Acquittal	0	0	1

[5] Does not include 2 active cases.

[6] Does not include 3 active cases.

[7] Does not include 7 active cases.

Outcomes of Misdemeanor Cases Examined (All misdemeanor offense levels combined)[8]

	Number from sample followed by percentage from portion of sample in parenthesis		
	Defendant did not bond	**Defendant bonded but bond was revoked[9]**	**Defendant bonded without bond being revoked[10]**
Sample Size	6	12	76
Misdemeanor Outcome			
Pled to Term of confinement	4 (67% of sample)	6 (50% of sample)	45 (59% of sample)
Dismissal	2 (33% of sample)	6 (50% of sample)	29 (38% of sample)
Deferred Adjudication	0 (0% of sample)	0 (0% of sample)	1 (1% of sample)
Probation	0 (0% of sample)	0 (0% of sample)	1 (1% of sample)
Acquittal	0 (0% of sample)	0 (0% of sample)	0 (0% of sample)

[8] All disposed cases were included. If the number of pre-trial days was not determinable, the case was still included in this analysis. Because of this inclusion of cases where pre-trial jail days could not be determined, sample sizes for each type of case disposition may vary from Table 9 in Appendix D and from Appendix E.

[9] Does not include 4 active cases. Two of these active cases were for unapprehended defendants.

[10] Does not include 5 active cases.

Outcome Details of Misdemeanor Cases Examined (All misdemeanor offense levels combined)

	Number from sample		
	Defendant did not bond	**Defendant bonded but bond was revoked**	**Defendant bonded without bond being revoked**
Sample Size	6	12	76
Pled to Term of confinement[11]			
15 days or less	0	5	31
16 to 89 days	1	1	10
90 days or greater	3	0	4
Dismissal			
Other dismissal	0	3	13
Deferred prosecution completed	0	1	4
Case re-filed	0	0	3
Pled to other case	2	2	9
Deferred Adjudication	0	0	1
Probation	0	0	1
Acquittal	0	0	0

[11] In misdemeanor cases, the defendant typically receives two days credit for each day served. This means that someone pleading to time served for 20 days will likely have actually served 10 days.

Appendix F -- Letter Requesting an Indigent Defense Review

WOODROW W. "WOODY" GOSSOM, JR.
COUNTY JUDGE
Wichita County Courthouse, 900 7th Street, Room 202
Wichita Falls, Texas 76301
Phone: (940) 766-8101 Fax: (940) 766-8289
county.judge@co.wichita.tx.us

August 20, 2010

Mr. Jim Bethke
Director, Texas Task Force on Indigent Defense
P.O. Box 12066
Austin, Texas 78711-2066
VIA FAX: (512) 475-3450

Dear Mr. Bethke,

I enjoyed speaking with you about how the Task Force can assist local jurisdictions with their criminal justice practices and in particular those practices involving indigent defense. Wichita County, like many other Texas counties, is facing a severe jail overcrowding situation. As we move toward the possibility of expanding our current jail, we must perform a study to determine if there are any administrative reasons for jail overcrowding.

In addition, we would welcome an assessment of the performance of our indigent defense processes. In particular we would like you to examine our practices involving magistrate's warnings, bonding, and the impact that court appointed counsel and retained counsel have on jail population. We understand that we will have to address issues identified as part of the assessment relating specifically to indigent defense practices.

We would also be interested in participating in the study we discussed to be conducted by the Public Policy Research Institute at Texas A&M University. The comparison of the quality, timing and cost of representation provided by our public defender, court appointed attorneys, and retained attorneys would be invaluable as we seek to improve our system.

We look forward to working with you in this endeavor in improving our indigent defense processes. Thank you for your consideration of this request.

Sincerely,

The Honorable Woodrow W. Gossom, Jr
Wichita Constitutional County Judge

The Honorable Barney Fudge
Wichita Local Administrative District Judge

Appendix G – Cameron County Pre-trial Release Eligibility and Conditions

CAMERON COUNTY PRE-TRIAL SERVICES

974 E. HARRISON ST., 2ND FLOOR
BROWNSVILLE, TEXAS * 78520-7198
(956) 574-8118

KEVIN D. SAENZ
DIRECTOR

GUIDELINES FOR PRE-TRIAL RELEASE

We **DO NOT RECOMMEND** release to the Pre-Trial Services for the following allegations:

1.) Any capital offenses: Capital Murder, Murder, Attempted Murder, Aggravated Kidnapping and Aggravated Robbery.
2.) Any Sex offenses: Aggravated Rape, Rape of a Child; Indecency With a Child, (all offenses against children) and Incest.
3.) Any person with an extensive criminal record; any person with a prior felony conviction or a person who has a history of failure to appear in court.
4.) Any person either on parole, probation, or pre-trial service application.
5.) Any person who falsifies any information on his/her pre-trial service application.
6.) Any person who is charged with the possession for sale or dispensing of any hard drugs such as heroin, cocaine, etc, or large quantities of marijuana.
7.) Any person who is not a bona fide resident of Texas or does not live within a radius of 75 miles of Brownsville, Texas for two or more years.
8.) Any person who has a hold for any offense from another jurisdiction.
9.) Any person suspected of having severe mental or emotional problems.
10.) Any person with an extremely high bond.
11.) Any person whom the Pre-Trial Officer feels will not appear for court as promised.
12.) Any person charged with Theft of Public Funds.

EXCEPTION: Any person who does not qualify may receive a Pre-Trial Bond if so ordered by a District or County Court at Law Judge.

We are agents of the courts and make our recommendations based on the probability of appearances in court.

Kevin Saenz, Director
Cameron County
Pre-Trial Services Department
/mlb

CAMERON COUNTY PRE-TRIAL SERVICES

974 E. HARRISON ST., 2ND FLOOR
BROWNSVILLE, TEXAS * 78520-7198
(956) 574-8118

KEVIN D. SAENZ
DIRECTOR

SERVING THE
DISTRICT COURTS

ARTURO CISNEROS NELSON
JUDGE, 138TH
DISTRICT COURT

JANET LEAL
JUDGE, 103RD
DISTRICT COURT

BENJAMIN EURESTI, JR.
JUDGE, 107TH
DISTRICT COURT

MIGDALIA LOPEZ
JUDGE, 197TH
DISTRICT COURT

ELIA CORNEJO LOPEZ
JUDGE, 404TH
DISTRICT COURT

LEONEL ALEJANDRO
JUDGE, 357TH
DISTRICT COURT

DAVID SANCHEZ
JUDGE, 444TH
DISTRICT COURT

ROLANDO OLVERA
JUDGE, 445TH
DISTRICT COURT

AND
COUNTY COURTS

ARTURO A. MCDONALD, JR.
JUDGE, CAMERON COUNTY
COURT AT LAW # 1

LAURA L. BETANCOURT
JUDGE, CAMERON COUNTY
COURT AT LAW # 2

DANIEL T. ROBLES
JUDGE, CAMERON COUNTY
COURT AT LAW # 3

CONDITIONS OF RELEASE

1. Report by **PHONE (956) 574-8118** to the Pre-Trial Office **WEEKLY** on **Mondays or Tuesdays** from 8:00 am to 12:00 pm (CLOSE FOR LUNCH) & 1:00 pm to 5:00 pm **FAILURE TO REPORT** as instructed can result in your bond(s) surrendered and a **WARRANT** being issued for your arrest.

2. The defendant **MUST** appear for his/her court hearing when notified by mail or by the Pre-Trial Release Department. **FAILURE TO APPEAR** in court will result in a WARRANT being issued for your arrest.

3. If arrested for **ANY** other offense, bond (s) will be cancelled or surrendered and a **WARRANT** will be issued for your arrest.

4. If **INDICTED**, you will need to consult an attorney. You **MUST** make an effort to hire an attorney.

5. **DO NOT** leave Cameron-Willacy or Hidalgo County without our permission. Report to Pre-Trial Release any change of address or phone number.

6. The defendant's signature acknowledges the conditions of release by the defendant. (Conditions translated when needed.)

7. Other/Special Condition(s):_____

_____ _____
DEFENDANT'S SIGNATURE PRE-TRIAL RELEASE OFFICER

_____
DATE