



# **BLUEPRINT FOR CREATING A PUBLIC DEFENDER OFFICE IN TEXAS**

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**Prepared for:**  
**Texas Task Force on Indigent Defense**

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## FOREWORD

The *Blueprint for Creating a Public Defender Office in Texas* is intended to be a tool for Texas local and state officials who seek a deeper understanding of what a “public defender” is and whether creating one makes sense. The appendices provide more in-depth coverage of local and national practices as well as information on how to obtain additional resources and help. Texas jurisdictions vary widely in population, resources, and legal culture, and officials in each jurisdiction must independently weigh the advantages and disadvantages of creating a public defender.

Accordingly, this *Blueprint* is comprised of three chapters to accommodate Texas officials who are at varying stages of exploring their public defender options: Chapter One: Indigent Defense Overview; Chapter Two: How to Tell Whether a Public Defender is Right For Your County; and Chapter Three: How to Create a Public Defender.

The Task Force at its last meeting in April 2004 allocated \$1.7 million of its annual budget for the benefit of counties that undertake the task of establishing a public defender office in their counties or regions. Request for Applications are being developed this summer by staff and will be considered for adoption and publication at the Task Force’s August 16, 2004 public meeting. Funding for this program will provide a county or region 80 percent of its costs the first year, 60 percent in year two, 40 percent in year three, and 20 percent in the final year of the grant.

Special appreciation is extended to The Spangenberg Group, nationally recognized experts in the study and improvement of indigent defense systems, and those acknowledged on the previous page who also provided extensive input and guidance. The Task Force believes, through the collective and collaborative efforts of many, that this publication should prove to be a valuable tool in determining whether a public defender office is right for your community.



Sharon Keller

Chair, Task Force on Indigent Defense



# Chapter 1

## Indigent Defense Overview

The U.S. Constitution's Sixth Amendment provides:

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial... and to have the assistance of counsel for his defense.*

Texas's Constitution mirrors this language: "In all criminal prosecutions the accused ... shall have the right of being heard by himself or counsel."<sup>1</sup> Prior to the 1963 landmark case of *Gideon v. Wainwright*,<sup>2</sup> the assistance of counsel was only constitutionally guaranteed to criminal defendants who had enough money to hire an attorney. Indigent defendants—those too poor to hire an attorney—could only access legal representation if a state law created a right to appointed counsel, or if a court in its discretion ordered an attorney to provide representation as an "officer of the court."

In *Gideon*, the U.S. Supreme Court named several reasons for requiring states to pay for attorneys to defend indigent people who are accused of crime. These include the increased accuracy and public safety that result from adequate legal representation, the public perception of fairness in the criminal justice system that results when access to representation does not depend on a defendant's financial resources, and the constitutional text itself, which applies equally to "all criminal prosecutions." Texas's Court of Criminal Appeals has embraced *Gideon* and its rationale as a matter of Texas constitutional law.<sup>3</sup>

During the past 40 years, *Gideon* and its progeny<sup>4</sup> have generated heightened awareness regarding the question of how best to make attorneys available to indigent criminal defendants. "Indigent defense" has grown into its own specialized area of legal practice and generated its own body of case law throughout the United States.

In the United States, three primary models have evolved for providing legal representation to indigent people who are accused of crimes:

- The ***assigned counsel model*** involves the assignment of indigent criminal cases to private attorneys on either a systematic or an ad hoc basis.
- The ***contract model*** involves a bar contract with an attorney, a group of attorneys, a bar association, or a private non-profit organization, which provides representation in some or all of the indigent cases in the jurisdiction.
- The public defender ***model*** involves a public or private non-profit organization with full or part-time salaried staff attorneys and support personnel.

The vast majority of indigent defense services in state and federal courts throughout the United States are delivered through urban and rural public defenders. The major features of the three indigent defense delivery methods may be compared as follows:



	Public Defender	Assigned Counsel	Contract
<b>Cost</b>	Predictable	Varies	Fixed
<b>Support Staff</b>	In-house	Private	Private
<b>Cases Handled</b>	Large volume	Limited volume	Varies according to the contract
<b>Organization</b>	Governmental entity or non-profit corporation	Private	Private or non-profit corporation
<b>Rural Areas</b>	Possible -- if part of a regional office.	Yes	Yes
<b>Strengths</b>	Organizational; judiciary not beholden to rely on volunteers; economies of scale; internal quality controls; in-house training; and budget predictability	Experienced attorneys who would not serve as public defenders may choose to participate on a case-by-case basis.	Experienced attorneys who would not serve as public defenders may choose to participate on a contractual basis.
<b>Weaknesses</b>	Low pay and excessive caseloads may lead to turnover and poor representation	Some highly qualified attorneys may not be willing to accept appointments, because of low pay; budget unpredictability from year to year; lack of meaningful performance measures.	Pool of qualified attorneys may diminish and force the jurisdiction to increase the contract payments substantially; budget unpredictability after term of contract
<b>Conflict between providing service to paying clients and appointed clients.</b>	No	Yes	Yes
<b>Development</b>	In-house training and expertise in criminal law	Court room experience	Court room experience
<b>Need for a supplemental indigent defense delivery method for conflicts cases</b>	Yes	No	Yes

The right to counsel when facing criminal charges has grown steadily for indigent defendants. From its roots in *Gideon*, the Texas legislature mandates that counsel be provided to:

- juveniles;
- persons charged with misdemeanors punishable by confinement in jail;
- persons charged with probation violations;
- persons charged with felonies, and violating conditions of probation;
- persons charged with contempt including cases involving child support;
- persons seeking to appeal adverse rulings in any of the foregoing cases;



- persons bringing some types of habeas corpus proceedings;
- convicted sex offenders requesting DNA testing to support their claims of innocence; and
- in any other criminal proceeding if the court concludes that the interests of justice require representation.

Historically, in Texas the financial burden of supporting the costs associated with indigent representation was carried exclusively by the counties in which the cases occurred. Today, the responsibility for providing counsel to represent indigent defendants in criminal proceedings is still primarily a local responsibility.<sup>5</sup> Each county is free to select the type of system it will use to represent indigent defendants, be it assigned counsel, public defender, contract counsel or some combination of these. The vast majority of counties in Texas use the assigned counsel model as the primary delivery system. There are only seven counties that have public defender offices representing a portion of the indigent defense caseload: Cameron, Colorado, Dallas, El Paso, Travis, Webb and Wichita.<sup>6</sup>

In 2001, the Texas legislature enacted the Texas Fair Defense Act (still commonly called by its bill number, SB7), triggering significant changes in the way in which indigent defense is administered in the state. The following chart shows some of the most significant changes.

<p><b>Established Statewide Mandate for New Local Rules and Standards to Improve Indigent Defense</b></p>	<ul style="list-style-type: none"> <li>• Prompt access to appointed counsel</li> <li>• Fair and neutral methods for selecting attorneys</li> <li>• Qualifications for appointed counsel</li> <li>• Financial standards and procedures for determining whether a person is indigent</li> <li>• Procedures for fees and schedule for expenses for attorneys, investigators, and experts</li> </ul>
<p><b>Established State Body to Administer Statewide Indigent Defense Policies</b></p>	<ul style="list-style-type: none"> <li>• Task Force on Indigent Defense as standing committee of Texas Judicial Council with administrative support by the Office of Court Administration</li> <li>• Task Force to develop policies and standards related to indigent defense for the approval of the Texas Judicial Council</li> </ul>
<p><b>Established State Funding Dedicated to Assist Counties in Improving Indigent Defense</b></p>	<ul style="list-style-type: none"> <li>• Task Force to distribute grants to counties to improve indigent defense systems based on a county's compliance with certain legal requirements under S.B. 7 and policies developed by the Task Force</li> <li>• Task Force was appropriated \$19.8 million for the 2002-2003 biennium and \$24.2 for the 2004-2005 biennium for administration and grants</li> </ul>

Among other changes, the Fair Defense Act codified a process to create a public defender office that no longer requires special legislation to be passed.<sup>7</sup> The Act also permits creation of regional public defender programs among two or more counties.





Prior to appointing a public defender, the commissioner's court must solicit proposals. A public defender office may either be a governmental entity or nonprofit corporation.<sup>8</sup> The commissioners are required to "select a proposal that reasonably demonstrates that the proponent will provide adequate quality representation." Each new office must be led by a chief public defender that has substantial experience practicing criminal law, has practiced law for at least three years, and is a member of the Texas Bar.

The threshold issue in considering a public defender program is whether the county's or region's caseload is large enough to make a public defender system cost effective. Another key consideration is what system will best allow the county or region to comply with the requirements of the Fair Defense Act.



## Chapter 2

# How to Tell Whether a Public Defender Is Right for Your County

All 254 Texas counties have indigent defense delivery systems and have plans on file with the Task Force. As noted in Chapter One, only seven counties have established the office of public defender as part of their system.

Although a scientific study has not been conducted to determine why more counties in Texas have not established a public defender system, a likely explanation is that court and county officials have not had the time nor resources needed to seriously explore the establishment of a public defender office.

Common questions among court and county officials across the state include –

- *What effect would a public defender have on the quality of criminal justice delivered?*
- *Would a public defender be as good, better, or worse than a privately assigned counsel?*
- *Would the local criminal defense bar support a public defender office or rebel against the establishment of such an office?*
- *How much would a public defender office cost?*
- *How would the cost of a public defender office compare to current expenditures?*
- *What will be the long-term financial impact to the county?*
- *Would the judiciary utilize the public defender office so that economies of scale can be realized?*
- *Does the county have the resources to adequately fund such an office?*
- *Why change if the current system appears to be functioning adequately?*
- *How much effort and time will be needed to obtain the local political buy-in to put in place an effective and efficient public defender office?*

To determine whether a public defender office is right for your community, court and county officials must consider these and other questions. Prior to the passage of the Fair Defense Act, local officials were left entirely to their own devices to address these questions and to fund such systems. No longer must local court and county officials work in isolation. Local officials may now turn to the Task Force and its staff to assist in answering these questions as well as the possibility of state financial assistance to fund such a program.

During the past year, a number of court and county officials have expressed interest in establishing a public defender office. This is the primary reason that the Task Force has undertaken the effort to prepare and publish the *Blueprint*.

In addition to this publication, the Task Force in its April 2004 meeting signaled its intent to target special grant resources to assist counties that want to begin a public defender program.<sup>9</sup>



Part of the local interest results from the fact that many indigent defense services in other state and federal courts throughout the United States are delivered through urban and rural public defenders.<sup>10</sup> These jurisdictions outside Texas have grappled with the same questions and concerns now facing Texas local court and county officials. The experiences of these jurisdictions inside and outside Texas indicate not only what benefits may be gained by expanding the use of public defenders, but also what the pitfalls may be. Based on its studies to date, the Task Force has gathered information to identify the relevant factors that local officials should weigh to determine whether a public defender office might be the most cost-effective way to deliver good quality indigent defense services. While public defenders are by no means the instant solution to any budget or quality difficulties that a county has with its indigent defense system, when carefully implemented they may prove to be the most effective use of limited resources for indigent defense.

Although public defenders are not common in Texas, there is no evidence that the reason is that private attorneys in Texas will do the same work as a public defender for less money. When comparing costs, performance evaluations should include the actual work expected to be performed in each attorney's average caseload, and not just the number of cases to be assigned each attorney. In measuring actual as well as expected public defender workloads, administrative staff may be used rather than the busy judiciary, which renders the work product of public defenders more susceptible to measurement and verification than that of private counsel who work as independent contractors.

After reviewing this publication, the next step should be to convene a meeting of judges, commissioners, and other appropriate stakeholders to briefly review the advantages and disadvantages of a public defender - without necessarily making any decision on the matter - and to decide whether to perform a feasibility study as described below. By investing a few hours in this way, officials can gain a much clearer sense of whether switching to a public defender is a prudent choice.

## **Advantages of Switching to a Public Defender**

Governments choose public defenders for a mix of three basic reasons: to be more cost-effective, to improve the reliability of indigent defense services, and to create an institutional resource that is valuable to the bench, the bar, the commissioner's court and the community at large.

Positive reasons for creating a public defender office include:

- desire for budget predictability;
- desire for quality controls over representation;
- lack of qualified attorneys willing to accept court-appointments;
- desire for primary oversight responsibility to reside with an entity other than the courts; and
- desire for hands-on administration and supervision.



## Cost

The first consideration that must be evaluated carefully is the cost of a public defender system. Public defenders can provide comparable quality legal services at less cost than any other indigent defense delivery method. While individual private attorneys are certainly capable of performing the same or even higher quality work than public defenders, they ordinarily cost more to do so. The fact that public defenders cost less to operate is a matter of the same basic economic factors that lead most attorneys to work in law firms rather than operate individual offices and that enable prosecutors to operate more efficiently as an organized agency.

Consider a small public defender office consisting of five attorneys. These attorneys share an office in the courthouse that eliminates inefficiencies associated with travel time. They also share support staff who quickly gain experience in working on specific types of cases. They divide their work on cases so that the work done by each attorney best matches that attorney's experience and abilities. Over time people in this public defender office learn the most efficient ways to provide quality indigent defense services, to systematically train and supervise newer attorneys and staff, and to share information and skills among more experienced attorneys and staff. They develop model forms, pleadings, and briefs that can be shared, modified, and reused by other attorneys. By contrast if these same five attorneys worked on these same cases as separate and individual private attorneys, the county would have to fund part of the overhead of five separate smaller offices. Efficiency through division of labor on cases is obvious. And when each private attorney eventually builds up a retained practice and stops accepting indigent defense cases, the institutional knowledge of how to efficiently perform this work is lost. Counties that primarily rely on private attorneys expend a lot of resources paying new attorneys to reinvent the same wheel time and time again.

A recent report reviewed indigent defense costs in El Paso County, which relies partly on a public defender and partly on private attorneys to deliver indigent defense services. This report compares costs and concludes with a single recommendation: "Reduce Costs for the representation of indigent defendants by assigning more cases to the Public Defender's Office."<sup>11</sup>

In addition to basic economies of scale in criminal defense representation, a public defender offers another set of cost advantages because it is an organized institution. Public defenders are more likely than private attorneys to qualify for grants from the federal government, legal organizations, and private foundations and more likely to attract free or low-cost assistance from law students and paralegal students. Similarly, officials who choose to require attorneys to evaluate each client's indigence or to require co-payment of attorney fees from partially indigent defendants, may expect more uniform compliance from a single public defender as compared to an unorganized group of private attorneys who accept indigent defense cases.<sup>12</sup>

Finally a public defender's institutional character saves administrative time for judges, other court personnel, and the county auditor. For example, having a public defender dramatically reduces the number of decisions judges have to make about



appointment of individual attorneys and about individual attorneys' fee applications. It reduces the time court personnel have to spend notifying individual attorneys of their appointment, following up on attorneys who fail to appear, and dealing with attorney scheduling conflicts. The number of individual checks that must be prepared and tracked by the county auditor is reduced. These time savings translate into cost savings for the county.

## **Dependability**

In addition to cost benefits, a public defender system may increase the dependability of the county's indigent defense representation. One of the main advantages of public defenders is that it is much easier to oversee and supervise the quality of each attorney's work. Individual private attorneys may be more or less competent and committed than individual public defenders, and the average skill level of indigent defense counsel under either delivery method will vary from time to time. However, the performance of private attorneys is more unwieldy to assess, control, and maintain over time, while public defenders provide judges with a single point of contact for any quality issues that arise. The chief public defender has direct supervisory authority over each public defender. If a judge has questions about whether a public defender has the necessary skills to adequately represent a client, the judge may either undertake the time-consuming task of personally addressing the matter and overseeing any remedial action, or the judge has the simpler option of asking the chief public defender to take care of the problem – including assigning an attorney to that case or that court who does have the necessary skills.

## **Quality Controls**

Moreover, public defender offices offer important quality controls that assigned counsel and contract programs do not have, including office policies, in-house training, and supervision. These three key tools assure officials that decisions about how to perform the work of indigent defense are deliberately considered and refined over time, effectively communicated to staff, and properly implemented. Thus, when a new legal standard is handed down by courts or by the legislature, it is more likely to be promptly and accurately applied by a team of criminal law specialists than by a cross-section of individual private attorneys who practice criminal law with varying levels of frequency and ability.

## **Standardization**

The standardization made possible through policies, training, and supervision may be useful not only for improving quality of service, but also for saving money. Over time, officials may choose to explore a range of new cost-saving measures, including payments by partially indigent defendants, indigence verifications, and prompt evaluations of disposition opportunities for jailed defendants who are accused of non-violent offenses. Defense counsel may be assigned an appropriate role in implementing these ideas, and the standardization that is available through public defenders makes them the most reliable choice for doing so.



## **Budgeting**

Finally, public defenders can improve the dependability and efficiency of indigent defense budgeting. Judges and commissioners can focus once annually on the public defender budget rather than returning to the subject each time a case or group of cases is concluded. The public defender may be required to report all information that judges and commissioners believe is necessary to decide upon a budget, and that information can be explored in detail as the matter is decided once each year. Moreover, public defender budgeting becomes easier over time as a performance and cost history develops, and the matters to be decided concern adjustments to an existing system.

## **Institutional Resource**

Particularly at the outset, public defenders may be perceived as a threat to the private criminal defense bar. This perception may even present an insurmountable barrier to creation of a public defender, as discussed below. Candid, complete discussions with members of the organized or informal criminal defense bar are essential to the success of any public defender proposal. These discussions should include the concrete benefits that public defenders offer to the private criminal defense bar, and to the overall quality of criminal justice in the community.

Existing Texas public defenders and local bar associations describe the important benefits that become available when the indigent defense function is institutionalized in a public defender. Public defenders provide new attorneys a place to gain the mentoring and experience needed before joining or beginning a private practice. They develop and make available to the private bar forms, pleadings, and substantive briefs. They consult with the private bar on special issues as they arise in cases, even to the point of second-chairing complex trials. They are reliable sources of up-to-date general courthouse information. Generally, the institutional knowledge that is gained by a public defender office is available to private appointed counsel, which improves the cost efficiency of private counsel and the quality of justice.

For judges, commissioners, and the community at large, a public defender office provides a unique institutional "voice" for indigent defense that is comparable to the necessary voice that a district attorney provides for the prosecution. Through the public defender, judges, commissioners, and the community may learn of specific facts that they seek, of criminal justice trends and their impact on various members of the community, of ideas for procedural improvements, and of the many ways in which the criminal justice system interacts with other government functions.



## Disadvantages of Switching to a Public Defender

Public defenders may be cost-effective, but there are few of them in Texas. This is an important fact, particularly considering the budget pressure that counties currently face in many areas including indigent defense. Three of the most common barriers are: 1) status-quo – resistance to change, 2) start-up costs, and 3) absence of caseloads large enough to make a public defender cost effective.

### Status Quo

Satisfaction with the status quo can be a powerful and perfectly appropriate reason for declining to invest the work that is necessary to switch to a public defender. In evaluating the status quo, two considerations are paramount: what are the reasons for satisfaction with the status quo, and what options, short of switching to a public defender, are available to address any concerns with the status quo?

If, upon examining a county's actual indigent defense practices, the judges and commissioners are satisfied with the quality of indigent defense and find its costs tolerable, there may be little reason to consider a public defender at this time. Minor concerns about quality may be addressed by upgrading the attorney qualifications in the county's indigent defense plan, by closer screening of attorney qualifications by judges, and by placing reporting requirements on appointed counsel. Options for addressing minor cost concerns without a public defender are limited and largely untested, but they include creating a pretrial services office to conduct indigence verifications, bond evaluations, partial-indigence co-payments, and expanding the use of the misdemeanor pre-trial diversion programs.<sup>13</sup>

To the extent that satisfaction with the status quo derives from existing low indigent defense costs regardless of quality, consideration of a public defender is unnecessary at this time. It must await an appropriate incentive to provide indigent defense services of quality and scope that meet all constitutional and statutory minimum standards, regardless of the appointment method chosen.

The impact that a public defender would have on the work currently made available to the private bar merits candid discussion in every county. Officials may reasonably conclude that the demonstrated quality of service currently provided by the private bar justifies increased costs when compared to cost estimates for a public defender. Before doing so, however, an attempt should be made to gauge the realistic share of any type of case that would be assigned to the public defender (usually about 50 percent), the extent to which members of the private bar would seek employment in the public defender office, and the extent to which creation of a public defender would provide an opportunity for officials to exclude the most unproductive and least competent attorneys from representing further indigent clients. Only after gauging these numbers can the actual impact of a public defender on legitimate indigent defense providers be estimated.



## Start-up Costs

Creating a public defender requires a significant one-time start-up investment to cover costs for planning the operation of the office, conducting a bidding or hiring process, purchasing furniture and electronic equipment, and preparing office space. Unavailability of start-up resources may pose an absolute barrier to counties that would otherwise benefit from a public defender. Grant resources will be available from the Task Force to assist *some* counties with necessary public defender start-up costs. The Task Force anticipates having sufficient resources this year to assist between two and four communities with start-up costs as described in the forward to this *Blueprint*.<sup>14</sup>

## Small Caseloads

Public defenders may cost more to operate than a private appointed counsel system in rural areas where caseloads are small, because the cost advantages described above depend upon full caseloads. This is why the Fair Defense Act enables rural counties to join together, or to join a nearby more populated county, in providing indigent defense services through one regional public defender that is assigned a high enough number of cases so that the economies of scale provided by public defenders are triggered. Thus, if inadequate caseloads to make a public defender cost-effective are a concern, officials should proceed with the feasibility study described below to decide whether sufficient cases may be aggregated to render a public defender cost effective.

Moreover, a public defender may be worth considering for regions where judges have difficulty recruiting sufficient numbers of private counsel, and even in urban areas where judges may have difficulty recruiting attorneys with specialized skills that regularly become necessary, for example, in cases involving defendants with serious mental disabilities.<sup>15</sup>

## Feasibility Study

Deciding whether a public defender is a feasible option in your county requires a simple study that may be completed in a few hours. One method of completing such a study is described below, and in the accompanying worksheet in Appendix F. The study is intended to produce a rough guide to the cost and quality of a public defender as compared to your county's existing indigent defense delivery system. The only value of this guide is in helping officials decide whether to invest the effort that is necessary to establish a full public defender proposal for formal consideration by the judges and commissioners. A feasibility study is worth undertaking if, after discussing the advantages and disadvantages of switching to a public defender, a substantial majority of judges and commissioners remain open to further consideration of the idea.<sup>16</sup> A feasibility study is broken down into seven steps:

- Prepare a rough estimate of a Public Defender Caseload
- Calculate Public Defender Staff Needs
- Draft a Rough Budget
- Calculate the Public Defender Cost per Case





- Compare the Public Defender Cost per Case to Your Current Cost per Case
- Report the Cost Comparison
- Convene Judges and Commissioners to Decide Whether to Develop a Proposal

### **First Step: Prepare a Rough Estimate of a Public Defender Caseload**

The choice of what type(s) and share of cases may be assigned to a public defender should be made at the outset, since most of the other decisions that must be made are built upon this choice. The Fair Defense Act allows flexibility in public defender caseload choices. Thus, a large public defender could be created to provide representation in all cases against indigent defendants except the 10 to 20 percent in which conflicts of interest arise,<sup>17</sup> or a small public defender could be created to provide representation only in appeals, in cases involving mentally disabled defendants, or in any other subset of cases. Misdemeanors are generally good candidates for beginning a study because of the high volume and relative simplicity of these cases. El Paso and Webb counties both operate longstanding and vigorous public defender offices that are assigned roughly 50 percent of all felony cases and 50 percent of all misdemeanor cases against indigent defendants. Approximately 85 percent of criminal defendants may be expected to be indigent.

In urban counties, decide whether to conduct the study for felonies, misdemeanors, or both, depending on the wishes of the district and county court at law judges. Then get the number of last year's felony and Class A and B misdemeanor case filings in your county from the district and county clerks, the Office of Court Administration, or the Task Force. Multiply the felony and misdemeanor caseloads by 0.85. Divide the resulting numbers in half. This is a rough estimate of the number of cases that a public defender may be expected to be assigned, based on public defender experiences in Webb and El Paso, and is adequate for purposes of a feasibility study.

In rural counties, begin by getting the number of last year's felony and misdemeanor criminal case filings in your county from the district and county clerks, the Office of Court Administration, or the Task Force. If roughly 1,000 Class A and B misdemeanors and roughly 200 felonies were filed in your county last year, it likely has enough caseload to sustain a three-or-four attorney public defender office. Otherwise, find the caseloads of any adjoining counties, particularly those that share district court jurisdiction that may be interested in considering a regional public defender, and determine whether contiguous counties can be identified with caseloads that total in the 1,000 range for Class A and B misdemeanors and in the 200 range for felonies. Another important option for rural counties is to contact the nearest urban county with a public defender and simply inquire how much the public defender would charge to accept responsibility for your county's indigent caseload. Of course more rural counties may access this option as the number of urban counties with public defenders expands.



## Second Step: Calculate Public Defender Staff Needs

Decades of experience in dozens of jurisdictions with varying characteristics indicate that each attorney employed in a public defender office can competently represent defendants in the trial court in either 150 non-capital felony cases or 400 misdemeanor cases per year in accordance with recommended national standards. Where attorneys handle special types of cases, parts of cases, or appeals, these two numbers can vary in practice, but they are adequate for purposes of the feasibility study.

Divide the number of annual felony cases expected for the public defender in your county by 150 and divide the number of Class A and B misdemeanor cases expected for the public defender in your county by 400. Round these numbers to determine the appropriate number of attorneys needed to handle your county's public defender caseload. Then add one staff assistant and one investigator for each five attorneys. This is the recommended number of staff necessary to competently represent defendants in the number of cases assigned to the public defender.

## Third Step: Draft a Rough Budget

Once you know the staff to be assigned to felony cases and those to be assigned to misdemeanor cases, you can draft a rough public defender budget for misdemeanors and another one for felonies. Use any salary guide that you find realistic for your county, such as those for county employees and district attorneys, or you can budget \$60,000 to \$70,000 for one chief defender and \$40,000 to \$50,000 for each of the other attorneys, \$25,000 for each investigator, and \$20,000 for each staff assistant. Then add 20 percent of salary for fringe benefits, and 20 percent of salary and fringe benefits for office and litigation expenses, which are both consistent with typical indigent civil and criminal legal services budgets. However, it is recommended that you use your county's fringe benefit percentage. It is not uncommon for fringe benefits to exceed 30 percent in some jurisdictions. Thus, an example rough budget for a five-attorney public defender office that could handle 2,000 misdemeanor cases might be:

<b>Salaries:</b>	
1 Chief Defender	\$60,000
4 Staff Attorneys (average \$40,000/yr DOE)	\$160,000
1 Investigator	\$25,000
1 Secretary/Technology Assistant	<u>\$20,000</u>
Sub-total for Salaries	\$265,000
<b>Fringe Benefits (20% of salaries)</b>	\$53,000
<b>Office Expenses (20% of salaries + fringe)</b>	\$63,600
Office Space & Utilities	
Computer/Electronics Updates	
Office Supplies	
Litigation Expenses (experts, etc.)	
Travel/Training	
Research/Library	
<b>Total</b>	<b>\$381,600</b>



#### **Fourth Step: Calculate the Public Defender Cost per Case**

Divide your budget total by the number of cases to determine the cost per case. The above example yields a public defender cost per case of  $\$381,600 / 2,000 \text{ cases} = \$190.80$  per misdemeanor case.

#### **Fifth Step: Compare the Public Defender Cost per Case to Your Current Cost per Case**

Your county auditor should be able to supply you with the information necessary to calculate the average actual cost per misdemeanor and felony case in which counsel was appointed to represent an indigent defendant. In most counties, payments to individual attorneys are made on a case by case basis, and the auditor records the case number with the payment. Expert and investigator fees and other litigation expenses may be recorded by case number in a separate account. To calculate the average cost per case, identify a large pool of cases, preferably 500 or more, of the same type (felony or misdemeanor) in which attorney payments are recorded. Add the total amount paid to the attorneys in that pool of cases. Add to this total all amounts that were paid in expert and investigator fees and other litigation expenses for that pool of cases. Finally, divide this total amount paid by the number of cases in your pool. The result is the average actual indigent defense expenditure per case for either misdemeanors or felonies.

#### **Sixth Step: Report the Cost Comparison**

If your projected cost per case for a public defender is less than your current actual cost per case, the feasibility study provides you with one more reason to proceed in developing a full public defender proposal in your county. The study indicates that a public defender can provide fully competent legal representation, within caseload standards, at less cost than your current indigent defense delivery method.

If your projected cost per case for a public defender is more than your current actual cost per case, then the following actions are necessary. First, recheck your calculations to ensure that they are accurate, particularly your actual cost per case; additional information and guidance may be available from the Task Force. Second, ensure that your salary estimates are realistic by consulting members of the private bar who might be candidates for the public defender attorney positions to gauge what salaries would be necessary for them to consider accepting such a position.<sup>18</sup>

#### **Seventh Step: Convene Judges and Commissioners to Decide Whether to Develop a Proposal**

Judges and commissioners should reconvene to discuss the advantages and disadvantages of switching to a public defender once more in light of the feasibility study, and to decide whether to proceed with the project. The only commitment necessary at this point is to develop a full proposal for consideration by the board of judges and by the commissioner's court. The decisions of these two bodies, of course, will rest upon the final details of the proposal.



## **Chapter 3**

# **How to Create a Public Defender**

Once it is decided to create a public defender office the following action plan should be executed. Initiate a planning group of key stakeholders to determine and establish the qualifications of the chief public defender, the structure, organization, and makeup of the office and staff, prepare a budget, and last solicit proposals for public defender. It is likely many of the same persons who served on the planning group to determine the viability of establishing the public defender will also be active members of this planning group. After judges and commissioners accept a public defender proposal, the task of incorporating the proposal into the county's indigent defense plan is a straightforward matter.

### **Planning Group**

While decision-making authority on all features of a public defender plan rests exclusively with judges and commissioners, the creation of a public defender office has a broad impact on the functioning of the overall criminal justice system. So it is recommended that the process be inclusive of all affected stakeholders. These stakeholders may include defense attorneys, prosecutors, court administrators and coordinators, indigent defense coordinators, district and county clerks, pre-trial services officers, the county auditor, the county treasurer, heads of law enforcement agencies, magistrates, and local providers of civil legal services to the poor. The object of involving all of these stakeholders is by no means to attempt to find consensus on every issue that needs to be decided. Instead, all of these stakeholders should have a forum to be heard, for they all may have constructive suggestions and criticisms that will improve the end product. Also, by participating in the planning process they all may gain a better understanding of how a public defender may impact the efficiency and effectiveness of their work.

In addition to stakeholders, at some point in your planning process you may wish to involve others who have gained expertise on public defender issues. These individuals include the federal public defender in your jurisdiction, the chief public defenders from Texas, Task Force staff, Texas Association of Counties, and the County Judges and Commissioners Association of Texas, Conference of Urban Counties, and various advocates or associations in Texas and throughout the nation who consult with jurisdictions on public defender implementation issues.<sup>19</sup>



To begin the process provide a copy of this publication to any who were not involved the feasibility study and call a meeting among individuals described above. A sample agenda might look like:

### **Sample Agenda**

1. Commencement of Meeting
2. Introduction of Members Participating in Meeting
3. Explain Purpose and Objective of Meeting
4. Discuss Current Defense Delivery System
5. Discuss Advantages and Disadvantages of Switching to Public Defender System
6. Brainstorm Decisions and Action Needed to Establish a Public Defender Office
7. Discuss Planning Process and Steps Needed to Establish a Public Defender Office
8. Discuss Time-Line of Activities that Will Need to be Accomplished
9. Request Volunteers to take the Lead on Each Activity Needed
10. Assign Responsibilities and Schedule Next Meeting
11. Adjourn

From this initial meeting, a core group of interested individuals will emerge, who may meet as one group or by committees once or more to assemble a plan that will serve as the basis for a proposal.

### **Texas Public Defender Statute and Other Resources**

Texas has a single statute that governs public defenders: Texas Code of Criminal Procedure Art. 26.044. A working knowledge of this statute is necessary for all members of a public defender planning team. Appendix B provides the text of the statute and also a question-and-answer summary of the provisions.

Also, a number of national standards and guidelines have been developed over the past 15 years to assist in establishing indigent defense organizations and in evaluating the quality of services provided. There are national and state standards and guidelines in the areas of attorney performance, attorney eligibility, caseloads, conflict of interest, indigency screening, and administration of indigent defense systems. When developing a public defender system from scratch, these standards and guidelines can serve as useful reference resources not only for planning the public defender office, but also for evaluating the adequacy of other indigent defense delivery methods used in your jurisdiction. While these standards and guidelines are not binding on any local program, they can serve as a benchmark and facilitate compliance with the Fair Defense Act.<sup>20</sup> The American Bar Association has also developed a useful document called "The Ten Principles of a Public Defense Delivery System" that is included as Appendix G.



## Organization of the Public Defender Office

Next, the group must decide on the organization of the public defender office and its role in the county. The issues described below should provide a framework for the office.

➤ *What type and number of cases will be assigned to the public defender?*

The core decision to be made in creating a public defender is what type and number of cases it will be assigned. The Fair Defense Act allows a public defender to be assigned any mix of cases. Assignable case types include any combination of any case type imaginable, including cases assigned to a particular court or courts, appeals, felonies, state jail felonies, capital felonies, sex offenses, murders, Class A and B misdemeanors, DWI's, juvenile delinquency cases, multiple-defendant cases, and cases involving a defendant with a severe mental disability. Case numbers assigned to the public defender can realistically range from about 15 percent to 85 percent of the county's caseload in each case type selected for public defender assignment.<sup>21</sup>

Begin the planning process for a public defender office by selecting case types and numbers that result in a modest-sized office for your jurisdiction. Presumably all rural offices would be modest, and in urban areas a public defender consisting of roughly ten to fifteen attorneys would enable you to compare the cost and performance of a public defender to your alternative system over time. Gradual expansion of the public defender can be accomplished as cost and performance justify expansion, and as the office overcomes the challenges of start-up, initial recruiting, standardization of its indigent defense practices, and acceptance and respect in your community.

Below are some common questions that should be considered regarding the type and number of cases being assigned to the public defender:

- What felony and juvenile case types and numbers are likely to gain the broadest support among district judges?
- What misdemeanor case types and numbers are likely to gain the broadest support among the judges of the county courts at law?
- What percentage of indigent defense cases will be assigned the public defender office?<sup>22</sup>
- How will conflict cases be handled?
- If your county does not have sufficient caseload to warrant the establishment of a public defender office, are there contiguous counties where efforts and resources could be combined to create regional public defender office?

After deciding what type and number of cases you plan to assign to the public defender, consider specifying what other responsibilities you want to place with the public defender, including administrative duties like collecting, reporting and publishing facts and policies concerning office operations, and cost savings measures like indigence verifications.



➤ ***What staff will be necessary to cover the public defender's caseload?***

Next, consider what staff is realistically necessary to do the work that you expect the public defender to perform. The size and type of staff that is necessary can be gauged by considering the experiences of other jurisdictions.

Throughout the United States, state and county public defender programs have developed caseload and workload standards for their public defender attorneys to assure that they are working at maximum capacity but are not undertaking a workload that jeopardizes their ability to provide adequate representation to each of their clients. Appendix I describes and cites numerous current caseload standards. In developing caseload standards, reference should be made to this document and other national standards developed by the National Advisory Commission, the American Bar Association and the National Legal Aid and Defender Association.

Most of caseload standards adopted by individual jurisdictions are similar to the caseload limits developed by the National Advisory Commission in 1973:

- 150 Felonies (excluding those in which the death penalty is being sought) per attorney per year, or
- 400 Misdemeanor cases per attorney per year, or
- 200 Juvenile cases per attorney per year, or
- 200 Civil Commitment Cases per attorney per year, or
- 25 Appeals per attorney per year.

The above standards, and those in Appendix I, address the maximum number of cases that a full-time attorney should handle in a 12-month period. So at any one point in the year, a public defender's open caseload must include far fewer cases than the annual numbers set out in the standards. The standards are disjunctive, thus, if a public defender is assigned cases from more than one category, the percent of the maximum caseload for each category should be assessed and the combined total should not exceed 100 percent.



## Checklist: Actions Needed to Establish a Public Defender Office

The following checklist is designed to assist the planning group in forming an action plan. This is by no means an exhaustive list. No doubt it will be expanded with use and experience. The Task Force is always available as a resource for counties, judges, and members of the defense bar seeking assistance in developing a public defender office.

The items in the checklist below are recommended to be part of any developmental process for a public defender in Texas:

### Consensus Building

- Consensus building begins with the commissioner's court, an interested judge or judges, or jointly.
- Enlarge the group to include members of the local bar association or attorneys practicing criminal law in the county or district, and the local elected prosecutor.
- Determine if there is general consensus to consider a public defender as a local alternative.
- If there is no consensus, the commissioners and/or judge(s) must decide if they should continue.
- If there is consensus then continue the process.
- Should the public defender be a government entity or a non-profit corporation?

### Qualifications of the Public Defender

- Should more than the minimum statutory public defender qualifications be adopted?
- If yes, what additional qualifications should the person possess?
  - A specific and clearly defined history of experience.
  - Attorney of record in a given number of cases?
  - Board certified in criminal law?
  - Administrative experience?
  - Prior government experience?
  - Budgetary experience?
- Should the public defender be appointed to serve a term or serve at the pleasure of the commissioner's court, courts, or some other entity?
  - If a term, for how long?
  - Method of removal?
- What type(s) of cases will be assigned to the public defender?
- In which courts will the public defender be required to appear?
- What will the duties of the public defender be?
- What is the case appointment mechanism?





## Caseload and Cost Trends

- Using prior reports prepared for the Task Force and any other local records, determine how many cases of the type that will be handled by the public defender were disposed of in the previous three years.
- Were attorneys appointed in those cases?
- If not, estimate how many cases will be eligible to be served by a public defender.
- What was the cost per case?
- Is this cost going up?
- Is the trend in filings increasing?
  - If so, project the number of cases that will be filed in the first year the public defender will be in operation.
- Evaluate other litigation costs

## Office Development

- Establish caseloads and determine how many attorneys will be needed.
- Determine compensation of attorneys.
  - Parity with similarly qualified assistant district attorneys is good benchmark.
  - Basis of compensation should be an objective standard of some kind.
- Other positions
  - Job description for each position.
- Training program development and costs of the program
- Overhead costs.
- Add allowance for assigned counsel in conflict cases.

## Prepare a Budget

- Add the amount expended by the county for the type(s) of cases to be handled by the public defender and the related amount of the general grant from the Task Force for the last reporting year.
- Compare the total with the draft budget for the public defender.
- Evaluate the cost effectiveness of creating a public defender program.
- Consider applying for grant funds from the Task Force for the purpose of starting a public defender program



## Solicit Proposals for Public Defender

- Applicants who are Eligible to Bid to Operate the Public Defender Office.**
  - government entity; or
  - non-profit corporation organized under Texas law.
- Minimum Qualifications of Chief Public Defender.**
  - member of the State Bar of Texas;
  - practiced law for at least three years;
  - substantial experience in the practice of criminal law;
  - will not engage in the private practice of criminal law outside service with the Public Defender Office, nor allow any employee to do so; and
  - will not accept anything of value not authorized by law for providing indigent defense services, nor allow any employee to do so.
- Application Procedures.** *On or before [specify date], any eligible government entity or non-profit corporation as defined in article 26.044 (a), Code of Criminal Procedure must submit an application that meets the above minimum qualifications, by providing the following information to the county commissioners' court:*
  - a detailed budget for operation of the Public Defender Office for a specified two year period, including all salaries;
  - a description of the responsibilities for each personnel position, including the position of Chief Public Defender;
  - a detailed description of the policies and methods the applicant will use to ensure that defendants whom the Public Defender Office is appointed to represent receive good quality legal representation provided by qualified attorneys in a cost-effective manner;
  - the maximum allowable caseloads for each attorney who will provide indigent defense services through the applicant;
  - a description of all training that will be available to attorneys and other personnel employed by the applicant;
  - a description of anticipated overhead costs for the Public Defender Office; and
  - proposed policies regarding use of licensed investigators and expert witnesses.
- Selection and Term of the Applicant.** *Before [select date], one or more judges who try criminal cases in this county, together with the county commissioners' court, will select the eligible applicant that they find will most efficiently and effectively deliver adequate quality representation to indigent defendants in this county. Before making this determination, officials may request interviews with people who propose to serve as Chief Public Defender. The selected applicant will serve for an initial term of two years.*
- Compensation.** *The selected Public Defender Office will be compensated by the County Commissioners' Court in accord with the budget submitted in the applicant's bid.*



- Removal.** *The Public Defender Office may be removed from service during a term only for good cause found by a majority of both the commissioners' court and the judges trying criminal cases in the county.*

In closing, this publication outlines how to make an informed decision about whether a public defender is right for your community. Like any other new governmental program or new non-profit initiative, there are risks and benefits associated with the implementation. Regardless of what decision your community makes, the authors of this publication wish you only the best in your efforts to improve the delivery of indigent defense services in your community. The Task Force looks forward to its continued work with the counties and courts to improve the quality and delivery of indigent defense services. It is only through all our efforts that the right to counsel is preserved and the interests of justice are assured for all Texans.

## ENDNOTES

<sup>1</sup> Tex. Const. Art. I § 10.

<sup>2</sup> 372 U.S. 335 (1963).

<sup>3</sup> *Ex Parte King*, 550 S.W.2d 691 (Tex.Cr.App. 1977); *Ex Parte Gonzales*, 945 S.W.2d 830 (Tex.Cr.App. 1997).

<sup>4</sup> In addition to *Gideon*, which involved felony cases, the U.S. Supreme Court has found that the Sixth and Fourteenth Amendments to the United States Constitution require counsel to be provided to indigent defendants in state juvenile delinquency proceedings, *In Re Gault*, 387 U.S. 1 and state misdemeanor proceedings in which actual imprisonment is imposed, *Argersinger v. Hamlin*, 407 U.S. 25 (1972). In *Alabama v. Shelton*, 535 U.S. 654 (2002), the Court extended *Argersinger* by holding that a suspended sentence may not be imposed in misdemeanor cases unless the defendant was offered an attorney at trial. Further, the Court has held that the right to counsel attaches at various pre-trial stages, including custodial interrogations, *Miranda v. Arizona*, 384 U.S. 436 (1966), line-up identifications, *United States v. Wade*, 388 U.S. 218 (1967), and preliminary hearings *Coleman v. Alabama*, 399 U.S. 1 (1970).

<sup>5</sup> The exception is that the state pays for representation in capital post-conviction proceedings and the Task Force distributes supplemental state money to counties that qualify for formula and discretionary grants.

<sup>6</sup> See Appendix A for summaries of the structure, goals and budget of these seven public defender offices.

<sup>7</sup> See Appendix B for the text of Article 26.044, Code of Criminal Procedure and Frequently Asked Questions about the article.

<sup>8</sup> See Appendix C that provides examples of what other states have done regarding the use of non-profit corporations.

<sup>9</sup> See Appendix D which provides a summary of state funding available to counties to establish a public defender office.

<sup>10</sup> Public defender offices are the primary delivery system for indigent defense services in most of the nation's largest cities and counties. In 1999, public defender programs operated in 90 of the 100 largest counties in the United States. See Bureau of Justice Statistics Bulletin, "Indigent Defense Services in Large Counties, 1999," November 2000. Many rural jurisdictions also benefit from public defender programs, including statewide public defenders in states such as New Mexico, Kentucky, Florida, and Colorado, and the increased use of rural public defenders in states like North Carolina, Georgia, Virginia and others. In Texas, counties with public defender offices vary in size from large (Dallas, population 2,218,899) to relatively small (Wichita, population 131,664).

<sup>11</sup> The Comptroller's report on El Paso in Appendix E.



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<sup>12</sup> Public defenders are statutorily authorized to investigate the financial condition of any person they are appointed to represent, and they must report results of these investigations to the appointing judge, who may hold a hearing to determine whether any client is indigent and entitled to counsel.

<sup>13</sup> Discussed in *Shelton v. Alabama*, 122 S.Ct. 1764, 1774-75 & n.11 (2002).

<sup>14</sup> See Appendix D.

<sup>15</sup> There are many specialized mechanisms, procedures, and laws that apply to defendants with mental illness. A county may want to consider establishing a mental health public defender office, staffed with specially trained attorneys and social workers, to bring mental health expertise to its indigent defense system. Such an office would represent an investment in a more systematized and efficient manner of dealing with these difficult cases and in streamlining communication for all relevant social services. By bringing mental health resources to the criminal justice system, a mental health public defender may help alleviate the extraordinary burdens placed on law enforcement, court administration staff, pretrial services, jailers, appointed attorneys, and judges by defendants with serious mental illness. As such, it may be easier for a county considering a public defender to obtain the buy-in of key stakeholders for this type of office.

<sup>16</sup> A majority of commissioners in any single county or group of counties may act to create a public defender. The approval of one or more judges is also required because the public defender may only represent defendants in courts where the judge has approved of using the public defender, unless a majority of judges with felony or misdemeanor jurisdiction in a county decide that the public defender may represent defendants in all courts. But even though the Fair Defense Act permits one judge and a majority of commissioners to establish a public defender for that one judge's court, broader acceptance from judges and commissioners is practically necessary for the project to be successfully sustained.

<sup>17</sup> Due to conflicts of interest and other special circumstances, public defenders always provide indigent defense services in conjunction with an assigned counsel or contract defender system staffed by private attorneys.

<sup>18</sup> When comparing costs, keep in mind that a specialized and innovative public defender systems may cost more than the current system because it may be bringing features to your indigent defense system that were previously absent and that aim to address particularly intractable issues and their attendant extraordinary expenses. However, by alleviating the toughest issues in your indigent defense system, these innovations may also produce extraordinary cost savings to the county, above and beyond the expected cost efficiencies of a generalized public defender office. For example, a mental health public defender staffed with social workers and specially trained attorneys would bring mental health resources and expertise to your county's indigent defense system. This, in turn, may promote client stability, resulting in significantly shorter jail stays for nonviolent offenders, lower recidivism rates and the ability of clients to pay the costs and fines associated with their cases.

<sup>19</sup> Participating in training sessions and conferences also may enable those planning a public defender office to access strategies and ideas by interacting with public defenders from across Texas and the nation. The National Legal Aid and Defenders Association holds annual skills and management training sessions, and hosts an annual conference specifically designed for public defenders.

<sup>20</sup> See Chapter 4, ABA STANDARDS FOR CRIMINAL JUSTICE PROSECUTION FUNCTION AND DEFENSE FUNCTION, THIRD EDITION (1993); Chapter 5, ABA STANDARDS FOR CRIMINAL JUSTICE PROVIDING DEFENSE SERVICES, THIRD EDITION (1992); ABA GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN DEATH PENALTY CASES (Rev Ed. Feb. 2003); Robert B. Shepherd, Jr. Editor, *Juvenile Justice Standards Annotated: A Balanced Approach*, ABA INST. OF JUDICIAL ADMIN. (1996); ABA STANDARDS OF PRACTICE FOR ATTORNEYS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996); National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services* (1984); National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems* (1989); National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (1995). See Appendix H for a list of internet links to additional public defender resources.



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<sup>21</sup> A public defender office will not be able to handle a percentage of cases because they present conflicts of interest. Co-defendants pose the most common type of conflicts, but public defender offices will also be precluded from representing defendants who were previously prosecution witnesses. Juvenile delinquency and misdemeanor cases are somewhat more likely to involve co-defendants than felonies.

<sup>22</sup> El Paso and Webb County assign about half of the indigent defense caseload to the public defender – this leaves room for the best private attorneys to continue serving indigent clients.



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❖ **Appendix A: Public Defenders  
in Texas**



## PUBLIC DEFENDER OFFICES IN TEXAS

### **Cameron County (juvenile only)**

Post Office Box 1690  
San Benito, TX 78566  
ph: (956) 399-3075

### **Colorado County**

400 Spring St. - Rm 111  
Columbus, TX 78934  
ph: (979) 732-9425

### **Dallas County**

Frank Crowley Courts Building  
133 N. Industrial Boulevard, 9th Floor  
Dallas, Texas 75207  
Ph: (214) 653.3550

### **El Paso County**

500 E. San Antonio Suite 501  
El Paso, Texas 79901  
Ph: (915) 546-8185

### **Travis (juvenile only)**

2201 Post Road, Suite 103  
Austin, TX 78704  
Ph: (512) 854-4128

### **Webb County**

1110 Victoria  
Laredo, TX 78040  
ph: (956) 523-4107

### **Wichita County**

900 7th Street - Rm 405  
Wichita Falls, TX 76301  
ph: (940) 766-8199



## CAMERON COUNTY

### OVERVIEW

Cameron County has an estimated population of 335,227 and a poverty rate of 35.25%. The overall caseload for the county in FY03 was 2,375 cases. Cameron County established a juvenile public defender's office (PDO) in 1999 when its indigent defense system was not functioning properly. Previously, the county contracted with private attorneys to provide indigent juveniles with representation, but due to conflicts with the attorneys' other clients and schedules, court appointments were often rescheduled. In addition, indigent clients were often shifted to different attorneys, hampering relationship-building and continuity.

Through the PDO, clients are more likely to be represented in a timely manner by one attorney throughout the case. Through the dedication of the PDO attorneys, indigent juveniles are provided with fair and professional legal services. The PDO currently represents juvenile indigent defendants who are arrested for or charged with a felony or a misdemeanor punishable by confinement.

The PDO currently employs one part-time administrative support staff, no investigators, and two full-time attorneys.

### BUDGET

This chart shows the budget and caseload for PDO as compared to the overall budget and caseload for the county.

	<u>Total County</u>	<u>PDO</u>
<u>FY03 Indigent Defense Expenditures</u>	\$976,615	\$126,272
<u>Number of Cases</u>	2,375	1,016
<u>Average Cost Per Case</u>	\$411	\$124

In summary, the PDO handles 42% of the indigent criminal cases in the county, which accounts for 20% of the overall defense expenditures





# COLORADO COUNTY

## OVERVIEW

Colorado County has an estimated population of 20,390 people and a poverty rate of 20.07%. The overall caseload for the county in FY03 was 186 cases. Colorado County established a public defender's office (PDO) in 1987 because local attorneys in the county were reluctant to handle cases through court appointments. The PDO currently represents most indigent defendants, adult and juvenile, who are arrested for or charged with a felony or a misdemeanor punishable by confinement.

The PDO may not represent a client if there is a conflict of interest, insufficient resources, or other good cause. If a public defender is unavailable, the district or county court judge may appoint private counsel from an approved list who is in good standing with the State Bar of Texas and who has practiced in the area of criminal law for at least one year. An appointed attorney is required to make reasonable effort to contact the defendant for an interview in person or by phone.

The PDO currently employs one full-time administrator, no investigators and two part-time attorneys. Colorado County is unique in its use of part-time attorneys, which are no longer permitted under the Fair Defense Act. The OPD was established under a statute that has since been repealed; however the county is permitted, under Section 17 of the Code of Criminal Procedure, to continue the existence and operation of the PDO under its original terms.

## BUDGET

This chart shows the budget and caseload for the PDO as compared to the overall budget and caseload for the county.

	<u>Total County</u>	<u>PDO</u>
<u>FY03 Indigent Defense Expenditures</u>	\$101,873	\$87,031
<u>Number of Cases</u>	186	173
<u>Average Cost Per Case</u>	\$547	\$503

In summary, the PDO handles 93% of the indigent criminal cases in the county, which accounts for 85% of the overall defense expenditures.



# DALLAS COUNTY

## OVERVIEW

Dallas County has a population of 2,218,899 and a poverty rate of 11%. The overall caseload for indigent criminal cases is 51,237. Dallas established a public defender's office (PDO) in 1983. The county administrator submitted the idea in a "working paper" to the county judge and the commissioners court, and the original proposal suggested that the chief public defender be a non-lawyer. The commissioner's court liked the idea but insisted that the chief PD be an attorney. From there, the PDO has grown to handle some misdemeanor and juvenile cases. The PDO currently employs 64 attorneys, eight administrative staff and six investigators.

The PDO is focused on the use of cost effective means to provide zealous legal defense to individuals who cannot afford representation. The PDO accomplishes this through hiring and training competent attorneys and providing meaningful investigation of cases. The PDO aims to provide effective representation to clients at all levels of the trial proceedings. In addition to these goals, the chief PD is responsible for expanding the scope of the office by convincing judges that the PDO is more cost-effective than other forms of representation.

## BUDGET

This chart shows the budget and caseload for the PDO compared with the overall county budget and caseload. Some of their overhead expenses include: notary fees, office supplies, postage, printing, law library books, copiers, and fax machines.

	<u>Total County</u>	<u>PDO</u>
<u>FY03 Indigent Defense Expenditures</u>	\$ 18,326,945	\$ 5,086,667
<u>Number of Cases</u>	51,237	27,693
<u>Average Cost Per Case</u>	\$ 358	\$ 184

In summary, the PDO handles about 50% of the indigent criminal cases in the county, which accounts for 28% of the overall defense expenditures.



## EL PASO COUNTY

### OVERVIEW

El Paso County has an estimated population of 679,622 people and a poverty rate of 27.89%. The overall caseload for the county in FY03 was 15,580 cases. In 1987, El Paso County established a Public Defender's Office (PDO) as a direct result of a lawsuit's settlement in which jail inmates claimed to have been incarcerated too long before obtaining counsel. The PDO handles felony, misdemeanor, juvenile, capital murder and appeals cases. The PDO and private attorneys share representation of indigent defendants in El Paso County through the El Paso Plan.<sup>1</sup>

Some of the PDO's objectives in providing quality legal representation to clients are to:

- assist members of the private bar with complex cases;
- be available on short notice to enforce and protect an individual's rights;
- serve as "troubleshooters," where a situation has developed on a case;
- train and supervise less experienced attorneys appointed to felony cases;
- help speed up the criminal justice process and keep the jail population down.

The PDO currently employs 30 attorneys with 2 division chiefs specializing in litigation and capital murder. The PDO staff includes 2 investigators and 11 administrators comprised of social workers, paralegals and clerks. In 2004, the PDO was awarded a grant from the Task Force to develop and staff a Mental Health Unit. Unit staff will consist of one attorney and two social workers. Staff attorneys are assigned to cases in teams of two or three, then each team is assigned to specific courts.

### BUDGET

This chart shows the budget and caseload for the PDO as compared to the overall budget and caseload for the county.

	<u>Total County</u>	<u>PDO</u>
<u>FY03 Indigent Defense Expenditures</u>	\$5,669,717	\$2,978,235
<u>Number of Cases</u>	15,580	8,551
<u>Average Cost Per Case</u>	\$363	\$348

In summary, the PDO handles 55% of the indigent criminal cases in the county, which accounts for 52% of the overall defense expenditures.

<sup>1</sup> Private attorneys under 55 years of age who practice law and live in El Paso County and cannot claim financial hardship must either accept appointments to represent indigent individuals or pay a fee to the county of \$600 per year. Cases that present potential conflicts of interest for the Public Defender's Office must be assigned to a private attorney. If an attorney with no prior criminal law experience is assigned, the courts will sometimes appoint the Public Defender's Office to "second-chair" the case.



## TRAVIS COUNTY

### OVERVIEW

Travis County has an estimated population of 812,280 and a poverty rate of 13.09%. The overall caseload for the county in FY03 was 14,678 cases. The Travis County Juvenile Public Defender's Office (PDO) became the first juvenile defender office in the United States in 1971. In response to an increasing need for indigent defense, the Juvenile court submitted a grant proposal which was approved and funded by the Texas Criminal Justice Council. The Council extended the grant until 1974, when the commissioner's court began providing funding for the office. However, in order to maximize the quality and integrity of its services, the PDO sought complete independence from the court system. As a result, the PDO has been self-sufficient since 1975.

The PDO strives for excellence through vigorous representation of clients. The attorneys and staff pride themselves on providing clients with superior and fair legal services to ensure that no client be wrongfully adjudicated or incarcerated.

The PDO currently employs four full-time administrative staffers, one full-time investigator, and seven attorneys.

### BUDGET

This chart shows the budget and caseload for the PDO as compared to the overall budget and caseload for the county.

	<u>Total County</u>	<u>PDO</u>
<u>FY03 Indigent Defense Expenditures</u>	\$5,582,397.97	\$856,182
<u>Number of Cases</u>	14,678	2,143
<u>Average Cost Per Case</u>	\$380.42	\$354.82

In summary, the PDO handles 15% of the indigent criminal cases in the county, which accounts for 16% of the overall defense expenditures



## WEBB COUNTY

### OVERVIEW

Webb County has an estimated population of 193,117 and a poverty rate of 35.17%. The overall caseload for the county in FY03 was 4,218 cases. Webb County established a public defender's office (PDO) in 1988, when county judges and officials sought to carefully follow the United States Supreme Court decision in *Gideon v. Wainright*<sup>1</sup>, which interpreted the constitutional right to counsel to entitle indigent defendants to representation by counsel in criminal cases.

The PDO is confident that when an indigent person is arrested and hears these words of the Miranda warning, "...you have the right to an attorney, if you cannot afford an attorney, one will be appointed to you..." he or she can be assured a public defender is ready and able to protect the individual's rights.

The PDO currently employs eight full-time administrative staffers, two full-time investigators, and fourteen attorneys.

### BUDGET

This chart shows the budget and caseload for Webb County's PDO as compared to the overall budget and caseload for the county.

	<u>Total County</u>	<u>PDO</u>
<u>FY03 Indigent Defense Expenditures</u>	\$2,182,915.00	\$1,503,048.00
<u>Number of Cases</u>	5,145	2,834
<u>Average Cost Per Case</u>	\$424.27	\$530.36

In summary, the PDO handles 55% of the indigent criminal cases in the county, which accounts for 69% of the overall defense expenditures

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<sup>1</sup> 372 U.S. 335 (1963).



# WICHITA COUNTY

## OVERVIEW

Wichita County has a population of 131,664 and a poverty rate of 16%. Wichita County has an overall caseload of 2,396 for indigent cases in FY03. Wichita County created a public defender's office (PDO) in the late 1980's to handle all indigent criminal and juvenile delinquency cases, except those in which there was a conflict of interest. The PDO replaced the previous system in which all practicing attorneys in Wichita County accepted appointments to indigent defendants, regardless of the attorney's area of practice. The PDO currently employs six attorneys, six administrative staff and two investigators.

The PDO's mission is to provide effective and competent defense in an ethical, timely, and cost-efficient manner to indigent citizens accused of crimes, regardless of the cost. Some important concerns and objects for the PDO include:

- Availability of counsel on short notice
- Assistance to the private bar with complex case issues
- Pinpoint and correct situations where a client's rights are in jeopardy
- Ensure that the client does not spend unnecessary time in jail
- Work with other groups to develop programs to reduce overall indigent defense expenditures

## BUDGET

This chart shows the budget and caseload for the PDO. Some of their overhead expenses include: training for attorneys and investigators, office space and equipment, experts, and research materials.

	<u>Total County</u>	<u>PDO</u>
<u>FY03 Indigent Defense Expenditures</u>	\$ 871,285	\$ 478,898
<u>Number of Cases</u>	2,396	1,557
<u>Average Cost Per Case</u>	\$ 364	\$ 308

In summary, the PDO handles 65% of the indigent criminal cases in the county, which accounts for 55% of the total defense expenditures.



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❖ **Appendix B: Article 26.044,  
Public Defender and Q&A  
format**



## **Art. 26.044. Public Defender**

(a) In this chapter, "public defender" means a governmental entity or nonprofit corporation:

- (1) operating under a written agreement with a governmental entity, other than an individual judge or court;
- (2) using public funds; and
- (3) providing legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 71.001, Government Code.

(b) The commissioners court of any county, on written approval of a judge of a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity or nonprofit corporation to serve as a public defender. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a regional public defender. In appointing a public defender under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify, if appointing a regional public defender:

- (1) the duties of the public defender;
- (2) the types of cases to which the public defender may be appointed under Article 26.04(f) and the courts in which the public defender may be required to appear;
- (3) whether the public defender is appointed to serve a term or serve at the pleasure of the commissioners court or the commissioners courts; and
- (4) if the public defender is appointed to serve a term, the term of appointment and the procedures for removing the public defender.

(c) Before appointing a public defender under Subsection (b), the commissioners court or commissioners courts shall solicit proposals for the public defender. A proposal must include:

- (1) a budget for the public defender, including salaries;
- (2) a description of each personnel position, including the chief public defender position;
- (3) the maximum allowable caseloads for each attorney employed by the proponent;
- (4) provisions for personnel training;
- (5) a description of anticipated overhead costs for the public defender; and
- (6) policies regarding the use of licensed investigators and expert witnesses by the proponent.

(d) After considering each proposal for the public defender submitted by a governmental entity or nonprofit corporation, the commissioners court or commissioners courts shall select a proposal that reasonably demonstrates that the proponent will provide adequate quality representation for indigent defendants in the county or counties.





- (e) The total cost of the proposal may not be the sole consideration in selecting a proposal.
- (f) To be eligible for appointment as a public defender, the governmental entity or nonprofit corporation must be directed by a chief public defender who:
- (1) is a member of the State Bar of Texas;
  - (2) has practiced law for at least three years; and
  - (3) has substantial experience in the practice of criminal law.
- (g) A public defender is entitled to receive funds for personnel costs and expenses incurred in operating as a public defender in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the public defender serves more than one county.
- (h) A public defender may employ attorneys, licensed investigators, and other personnel necessary to perform the duties of the public defender as specified by the commissioners court or commissioners courts under Subsection (b)(1).
- (i) Except as authorized by this article, the chief public defender or an attorney employed by a public defender may not:
- (1) engage in the private practice of criminal law; or
  - (2) accept anything of value not authorized by this article for services rendered under this article.
- (j) A public defender may refuse an appointment under Article 26.04(f) if:
- (1) a conflict of interest exists;
  - (2) the public defender has insufficient resources to provide adequate representation for the defendant;
  - (3) the public defender is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or
  - (4) the public defender shows other good cause for refusing the appointment.
- (k) The judge may remove a public defender who violates a provision of Subsection (i).
- (l) A public defender may investigate the financial condition of any person the public defender is appointed to represent. The defender shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this article.
- (m) If it is necessary that an attorney other than a public defender be appointed, the attorney is entitled to the compensation provided by Article 26.05 of this code.



## FREQUENTLY ASKED QUESTIONS

1. **DOES TEXAS LAW PROVIDE FOR THE CREATION OF A PUBLIC DEFENDER?**

Yes. Article 26.044, Code of Criminal Procedure authorizes the creation of a public defender office.<sup>1</sup>

2. **IS THERE A LEGAL DEFINITION FOR A PUBLIC DEFENDER OFFICE?**

Yes. A public defender office must be a governmental entity or nonprofit corporation:

- 1) operating under a written agreement with a governmental entity, other than an individual judge or court;
- 2) using public funds; and
- 3) providing legal representation and services to indigent defendant accused of a crime or juvenile offense, as those terms are defined in Section 71.001 Government Code.<sup>2</sup>

3. **WHY WOULD A COMMISSIONERS COURT OR COURTS CONTRACT WITH A PUBLIC DEFENDER?**

There are two reasons a commissioners court or courts would contract with a public defender:

- 1) to provide relative certainty in the annual expenditure of public funds for indigent representation; and
- 2) to ensure that indigent defendants receive constitutionally acceptable representation.

4. **IS A PUBLIC DEFENDER OFFICE A WAY FOR A COMMISSIONERS COURT OR COURTS TO MINIMIZE THE COST OF INDIGENT REPRESENTATION?**

A public defender office may not be the least expensive method of meeting a county's constitutional obligation to provide indigent defendants with an attorney. It does provide the commissioners court a mechanism to stabilize costs.

5. **WHO MAY CREATE A PUBLIC DEFENDER OFFICE?**

The commissioners court on written approval of a judge of a county court, statutory county court, or district court trying criminal cases in the county.<sup>3</sup>

6. **MAY TWO OR MORE COMMISSIONERS COURTS ENTER INTO AN AGREEMENT TO CREATE A REGIONAL PUBLIC DEFENDER OFFICE TO SERVE THEIR COUNTIES?**

Yes, provided that a judge in each participating county approves.<sup>4</sup>

7. **WHAT KIND OF PERSONS MAY A PUBLIC DEFENDER REPRESENT?**

The public defender may represent an indigent person accused of committing a misdemeanor punishable by confinement in jail, a felony (including capital cases), certain juvenile offenses, appeals to the court of appeals, an appeal to the Court of Criminal Appeals, a habeas corpus proceeding if the interests of justice require representation, and any other appellate proceeding if the court concludes that the interests of justice require representation.<sup>5</sup>

8. **CAN A COMMISSIONERS COURT OR COURTS LIMIT THE PUBLIC DEFENDER TO THE TYPES OF CASES TO WHICH IT MAY BE REQUIRED TO APPEAR?**

Yes. The commissioners must specify the types of cases to be assigned to the public defender<sup>6</sup>



9. **CAN A COMMISSIONERS COURT OR COURTS LIMIT THE NUMBR AND TYPE OF EMPLOYEES A PUBLIC DEFENDER CAN HIRE?**

Yes. A public defender may employ attorneys, licensed investigators, and other personnel necessary to perform the duties of the public defender as specified by the commissioners court or courts based upon the duties the commissioners court or courts assigns to the public defender.<sup>7</sup>

10. **CAN A COMMISSIONERS COURT MAKE ANY OTHER DECISIONS ABOUT THE PUBLIC DEFENDER?**

Yes. The commissioners court or courts:

- 1) set the duties of the public defender;
- 2) whether the public defender is appointed to serve a term or serves at the pleasure of the court or courts; and
- 3) if appointed to serve a term, the length of the appointment and the procedures for removing the public defender.<sup>8</sup>

11. **IF A COMMISSIONERS COURT OR COURTS CONTRACTS WITH A PUBLIC DEFENDER WILL THERE EVER BE A NEED TO PAY ANOTHER LAWYER TO REPRESENT AN INDIGENT PERSON ACCSUED OF A CRIME?**

Yes. The most frequent occurrences requiring the appointment of a lawyer other than the public defender are cases involving codefendants, or recognized ethical conflicts.<sup>9</sup>

12. **IF A LAWYER OTHER THAN THE PUBLIC DEFENDER IS APPOINTED, HOW IS THAT ATTORNEY COMPENSATED?**

If it is necessary that an attorney other than a public defender be appointed, the attorney is entitled to the compensation provided in a fee schedule adopted by the formal action of the judges.<sup>10</sup>

13. **CAN THE COMMISSIONERS COURT OR COURTS INSTRUCT THE PUBLIC DEFENDER TO INVESTIGATE THE FINANCIAL CONDITION OF A PERSON HE IS ORDERED TO REPRESENT AND REPORT THE RESULTS TO THE APPOINTING JUDGE?**

Yes. A public defender is authorized to investigate the financial condition of any person the public defender is appointed to represent if the commissioners court or courts makes such an investigation one of the duties of the public defender.<sup>11</sup>

14. **IS A COMMISSIONERS COURT OR COURTS REQUIRED TO SOLICIT BIDS FOR A PUBLIC DEFENDER OFFICE?**

Before appointing a public defender, the commissioners court or courts is required to solicit proposals.<sup>12</sup>

15. **WHAT MUST BE INCLUDED IN THE PROPOSAL?**

A proposal must include:

- 1) a budget for the public defender, including salaries;
- 2) a description of each personnel position, including the chief public defender position;
- 3) the maximum allowable caseloads for each attorney employed by the bidder;
- 4) a provision for personnel training;
- 5) a description of anticipated overhead costs; and
- 6) policies regarding the use of licensed investigators and expert witnesses.<sup>13</sup>



16. **WHO MAKES THE FINAL DECISION TO ACCEPT OR REJECT A PROPOSAL?**

The commissioners court or courts.<sup>14</sup>

17. **ARE THERE ANY STATUTORY STANDARD A COMMISSIONERS COURT MUST APPLY IN REVIEWING PROPOSALS?**

Yes. The commissioners court or courts must select a proposal that reasonably demonstrates that the proponent will provide adequate quality representation for indigent defendants in the county or counties.<sup>15</sup>

18. **MUST THE SELECTED PROPOSAL ALSO BE THE LOWEST BID?**

No. The total cost of the proposal may not be the sole consideration in selecting a proposal.<sup>16</sup>

19. **WHAT LEGAL OBLIGATION DOES A COMMISSIONERS COURT OR COURTS HAVE WHEN FUNDING A PUBLIC DEFENDER OFFICE?**

A public defender is entitled to receive funds for personnel costs and expenses incurred in operating as a public defender in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the public defender serves more than one county.<sup>17</sup>

20. **CAN ANYONE BE APPOINTED AS THE CHIEF PUBLIC DEFENDER?**

No. To be eligible for appointment as a public defender, the governmental entity or nonprofit corporation must be directed by a chief public defender who:

- 1) is a member of the State bar of Texas;
- 2) has practiced law for at least three years; and
- 3) has substantial experience in the practice of criminal law.<sup>18</sup>

21. **MAY A CHIEF PUBLIC DEFENDER OR AN ATTORNEY EMPLOYED AS A PUBLIC DEFENDER BE PROHIBITED FROM HAVING AN OUTSIDE CRIMINAL LAW PRACTICE?**

Yes. Except as authorized by law, the chief public defender or an attorney employed by a public defender may not:

- 1) engage in the private practice of criminal law; or
- 2) accept anything of value not authorized by article 26.044.<sup>19</sup>

22. **WHAT IF THE CHIEF PUBLIC DEFENDER OR ATTORNEY EMPLOYED AS A PUBLIC DEFENDER ENGAGES IN THE PRIVATE PRACTICE OF CRIMINAL LAW OR ACCEPTS SOMETHING OF VALUE NOT AUTHORIZED BY LAW?**

The judge may remove a public defender who violates a provision of subsection (i).<sup>20</sup>



**23. MAY A PUBLIC DEFENDER REFUSE AN APPOINTMENT?**

Yes. A public defender may refuse an appointment if:

- 1) a conflict of interest exists;
- 2) the public defender has insufficient resources to provide adequate representation for the defendant;
- 3) the public defender is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or
- 4) the public defender shows other good cause for refusing the appointment.<sup>21</sup>

**24. ARE THERE ANY STATE FUNDS AVAILABLE TO ASSIST A COMMISSIONERS COURT OR COURTS AND LOCAL JUDGES IN FUNDING A PUBLIC DEFENDER?**

Yes. The Task Force on Indigent Defense has special grant funds available to assist in paying for a public defender.

**25. IF A COUNTY ACCEPTED SPECIAL GRANT FUNDS, WOULD IT STILL BE ELIGIBLE FOR THE GENERAL GRANT IT HAS BEEN RECEIVING?**

Yes. The county would receive both its general grant funding and special grant funds for the public defender program as long as it demonstrates costs to support the grant.

**26. WHAT IS THE FIRST THING A COMMISSIONERS COURT OR COURTS SHOULD DO WHEN CONSIDERING WHETHER A PUBLIC DEFENDER IS AN APPROPRIATE CHOICE**

A commissioners court or courts, or judge interested in exploring the feasibility of a local public defender should begin by reviewing the *Blueprint* or contacting Jim Bethke, at the Task Force on Indigent Defense at (512) 936-6994, or by email at [jim.bethke@courts.state.tx.us](mailto:jim.bethke@courts.state.tx.us).

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<sup>2</sup> 26.044(a)

<sup>3</sup> 26.044(b)

<sup>4</sup> 26.044(b)

<sup>55</sup> 26.044(f), 1.051(d), 61.053 Family Code

<sup>6</sup> 26.044(b)(2)

<sup>7</sup> 26.044(h)

<sup>8</sup> 26.044(b)(1), (2), and (3)

<sup>9</sup> Let the defense bar or public interest representatives cite the authority they feel is most appropriate.

<sup>10</sup> 26.044(m)

<sup>11</sup> 26.044(l) and 26.044(b)(1)

<sup>12</sup> 26.044(c)

<sup>13</sup> 26.044(c)(1)—(6)

<sup>14</sup> 26.044(d)

<sup>15</sup> 26.044 (d)

<sup>16</sup> 26.044(e)

<sup>17</sup> 26.044 (g)

<sup>18</sup> 26.044(f)

<sup>19</sup> 26.044(i)

<sup>20</sup> 26.044(k)

<sup>21</sup> 26.044(j)



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❖ **Appendix C: Non-Profit  
Corporations Overview**



## Non-Profit Corporations Overview

In a contract model defender system the state, county, or other jurisdictional district contracts with private attorneys, law firms, bar associations, or non-profit organizations to provide representation to indigent defendants. Some examples of states that contract with non-profit organizations are South Carolina, Pennsylvania, Washington, New York, and Illinois.

Ordinarily a jurisdiction will designate the contract for a specific purpose within the indigent defense system, such as cases where the public defender has a conflict of interest, or a certain category of cases. However, in some jurisdictions non-profit corporations are the primary or only method of providing indigent defense services.

### South Carolina

The South Carolina public defender system is a county based system organized by each county's Bar Association (BA). The BA establishes a non-profit corporation, known as Defender Corporation, for the county. The BA elects members to the Defender Corporation's board of directors, and organizes a public defender office to serve the county. Currently, there are 39 Defender Corporations in South Carolina serving all 46 counties. The Bar Associations of two or more counties may merge together to establish a Defender Corporation that serves multiple counties. The Defender Corporations receive funding from the State through the Office of Indigent Defense and the local county but they are not county or state agencies.

#### Information compiled from:

The South Carolina Office of Indigent Defense

<http://www.scoid.state.sc.us>

Contact Person: Lisa A. Graves

Telephone: (803) 734-1343

1122 Lady Street, Suite 1110

Columbia, SC 29211-1433

### Pennsylvania

In the State of Pennsylvania, the city of Philadelphia has its own non-profit defender corporation. The Defender Association of Philadelphia is an independent, non-profit corporation that was created in 1934 by a group of Philadelphia lawyers. The Defender Association currently has 215 full-time assistant defenders who represent adult and juvenile clients in state and federal court. The Defender Association of Philadelphia represents approximately seventy percent of all persons arrested in Philadelphia. Although the Defender Association receives funding through the City of Philadelphia it is not a city or state agency. The Association is directed by a Board of Directors who select the Chief Defender and First Assistant Defender. The Philadelphia Courts determine standards of indigence and make all counsel appointments for the Association.

#### Information compiled from:

The Defender Association of Philadelphia

<http://www.phila.gov/defender/>

Contact Person: Ellen T. Greenlee

Telephone: (215) 568-3190

70 N. 17th Street

Philadelphia, PA 19190

### Washington

Washington State's 39 counties use several different public defense systems such as county government defender's offices and contract systems. King and three other counties pay non-profit agencies that specialize in indigent defense to handle all of their cases. King County contracts with four separate non-profits. The non-profit's attorneys are salaried and handle only court-appointed cases. The Associated Counsel for the Accused is the second-largest of the contract non-profits in King County. The Counsel keeps sophisticated caseload statistics for each of its attorneys, such as how many cases an attorney has, how long the cases were open, and how the cases were resolved. King County, through the



Office of the Public Defender, puts specific caseload limits and other standards into its contracts with the non-profit agencies.

Information compiled from:

Office of the Public Defender (King County)

<http://www.metrokc.gov/dchs/opd/>

Contact Person: Kathy Gilman

Telephone: (206) 296-7662

123 Third Avenue South, 4th Floor

Seattle, WA 98104

### New York

Indigent defense in New York City is handled primarily through non-profit organizations such as The Legal Aid Society (Legal Aid) and The Neighborhood Defender Service of Harlem. The Legal Aid Society is a law firm for poor people located in New York City founded over 125 years ago. Legal Aid provides a wide variety of legal services for people who cannot afford a lawyer. Legal Aid is the single largest provider of criminal defense services for the City of New York and represents most of the juveniles appearing in Family Court as legal guardian.

The Neighborhood Defender Service of Harlem (NDSNY) is a non-profit model public law office dedicated to providing the highest quality legal representation to inner city residents in Upper Manhattan. NDSNY's neighborhood-based services are available upon request. The Service involves civil and criminal attorneys, social workers, investigators, paralegals, and law school interns in the defense of its clients. NDSNY is organized differently from traditional defender offices; each client is represented by a small team, rather than by an individual attorney. NDSNY's services go beyond direct legal representation, to helping clients avoid future contact with the criminal justice system.

Information compiled from:

New York Legal Aid Society

<http://www.legal-aid.org/indexStatic.htm/>

Contact Person: Pat Bath

Telephone: (212) 577-3346

199 Water Street

New York, NY 10038

Neighborhood Defender Service of Harlem

<http://ndsny.org/mission.htm>

Contact Person: Yvonne Segarra

Telephone: (212) 876-5500

2031 Fifth Avenue, 2<sup>nd</sup> Floor

New York, NY 10036

### Illinois

In states such as Illinois, non-profits are not the primary method of indigent defense, but they provide support and educational programs for county public defenders offices statewide. In 1969, three incorporators established The Illinois Public Defender Association (IPDA) as a non-profit educational organization for Public Defenders. The Association depends on members of the Office of the State Appellate Defender and other volunteers to coordinate its programs and services. The goals of the IPDA are education, the interchange of ideas, and camaraderie among public defenders and court-appointed counsel in all 102 Illinois counties. The IPDA sponsors an annual Public Defender Trial Advocacy School and works to obtain federal grants for Public Defender offices from the Illinois Criminal Justice Information Authority. The Association also cooperates with the State Bar Association to develop model rules and statutes to standardize Public Defender appointment procedures.

Information compiled from:

Illinois Office of the State Appellate Defender

<http://www.state.il.us/defender/ipda.html/>

Contact Person: Kathy Gilman

Telephone: (312) 793-2053

600 W. Jackson Blvd., Suite 610

Chicago, IL 60661

\*\* For more information regarding these and other non-profit programs please contact  
The Spangenberg Group: <http://www.spangenberggroup.com> Telephone: (617) 969-3820  
1001 Watertown Street; West Newton, MA 02465





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❖ **Appendix D: State Funding  
Available to Establish Public  
Defender Offices**



## State Funding Available to Establish Public Defender Offices

The 78<sup>th</sup> Texas Legislature established a new stream of revenue to be distributed by the Task Force to assist counties with the delivery of indigent defense services. A summary of the new law and action taken at the last meeting of the Task Force in April 2004 is as follows.

**What** – Government Code § 81.054 requires attorneys to pay membership and other fees.

*“(c) .....The comptroller shall credit 50 percent of the remitted fees to the credit of the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent and shall credit the remaining 50 percent of the remitted fees to the fair defense account in the general revenue fund which is established under Section 71.058, to be used, subject to all requirements of Section 71.062, for demonstration or pilot projects that develop and promote best practices for the efficient delivery of quality representation to indigent defendants in criminal cases at trial, on appeal, and in postconviction proceedings.”*

**When** – Estimated to be deposited into Fair Defense Account sometime after June 1, 2004.

**How Much** – Estimated to be \$1.74 million in the first year.

**How Long** – Until September 1, 2007 (four years of funding)

**Task Force Action** – April 2004

Established the following priorities for allocation of this money:

- Applications for creating programs or processes to improve indigent defense services.
- Applications that demonstrate a good likelihood the proposed activity will be a model program or can be duplicated in other jurisdictions.
- Applications that involve multiple counties coordinating their submission as a regional proposal.
- Applications that demonstrate a county's (ies') long term commitment to the program. For instance a seed program that requests funds from the Task Force to start a program the county will maintain over time.
- **Programs that provide direct services to indigent defendants.**
- **Establishment of public defender offices.**
- **Establishment of regional public defender offices**
- **Establishment of mental health defender services.**

Moreover, the Task Force approved providing counties stair-step funding for these priorities in the amount of 80% first year, 60% second year, 40% third year, and 20% in final year. The money awarded under this program will be accounted for separately from the other discretionary grant funds. Request for Applications will be developed this summer by Task Force staff and other interested persons to be considered for adoption and publication at the Task Force's August 16th, 2004 meeting. Awards under this program will be made in November or December 2004 with programs to begin in early 2005. The Task Force anticipates being able to fund between two and four counties or regions this year.



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❖ **Appendix E: Comptroller's El Paso Report**





## Local Government Assistance Financial Management Reviews

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El Paso County  
June 1999

### **Issue 3: Reduce costs involved in representing indigent defendants. Background**

Texas has 254 separate county-based indigent defense systems. Except for appeals of capital crimes, each Texas county pays for all indigent defense services.

In 1987, El Paso County established a Public Defender's Office to provide legal representation for defendants who cannot afford representation. The creation of this office was a direct result of a lawsuit's settlement in which jail inmates claimed to have been incarcerated too long before obtaining counsel. The county's Public Defender's Office employs 27 full-time and three part-time employees. Seventeen of the 27 full-time employees are attorneys. The office's budget was about \$1.3 million for fiscal 1999.

Since 1988, the task of representing indigent defendants in El Paso County has been shared by the Public Defender's Office and private attorneys. Representation by private attorneys has been provided through the so-called El Paso Plan, under which all private attorneys under 55 years of age who practice law and live in El Paso County and cannot claim financial hardship must either accept appointments to represent indigent individuals or pay a fee to the county of \$600 per year. This fee generates about \$200,000 annually for the county's use in indigent defense. El Paso County's legal community totals about 1,150 attorneys; of these, about 375 pay the fee, 375 more are exempt from the plan, and a remaining 400 attorneys are eligible to accept indigent appointments in rotation. The county's budget for private appointments totaled \$2.4 million in fiscal 1999.

Attorneys are assigned to these appointments regardless of their experience in the practice of criminal law, and as a result attorneys with no prior criminal law experience sometimes are selected. In such cases, the courts sometimes appoint the Public Defender's Office to "second-chair" the case, resulting in the appointment of two attorneys to represent one indigent individual when the case would not normally require multiple attorneys.



The Public Defender's Office receives felony, misdemeanor, juvenile, and capital murder cases. Juvenile cases include all types of criminal proceedings. The office also handles the appeals of these types of cases. During fiscal 1997, cases assigned to the Public Defender's Office were parceled out among the office's attorneys based on the type of case, attorney experience, and relative workloads. This method, however, sometimes forced attorneys to handle cases in multiple courts and rush between courts to represent different defendants.

In June 1998, the Public Defender's Office restructured itself to increase its efficiency. Staff attorneys now are assigned in teams of two or three; each team is assigned to specific courts. This new structure has reduced logistics problems and fostered better relationships among the Public Defender's Office, District Attorney's Office, and the courts. Feedback received by the Public Defender's Office from the courts has been very positive, in part because the courts work with the same public defenders on a daily basis.

Certain indigent cases represent potential conflicts of interest for the Public Defender's Office; such cases include those with multiple codefendants or in which the office has previously represented a witness for the prosecution. Often such conflicts are not discovered until the case has been assigned to the Public Defender's Office. These cases then must be reassigned to a private attorney.

## Findings

- **Overall, the county pays more for private attorneys than for the public defender to represent indigent defendants.**

In fiscal 1998, El Paso County paid more than \$3 million to provide criminal representation for indigent individuals. Of this amount, \$1.9 million went to private attorneys while \$1.3 million was spent by the Public Defender's Office.

During the three-year period, from fiscal 1996 through fiscal 1998, the cases closed by the Public Defender's Office increased by at least 78 percent while its budget increased only 19 percent. During the same period, the number of cases closed by private attorneys decreased 19 percent, yet the fees paid to private attorneys decreased by only 4.5 percent.

- **With additional staffing, the Public Defender's Office could handle up to at least 80 percent of the felonies and misdemeanors at a lower cost to the county.**

Increasing the Public Defender's Office staff by 10 attorneys and two investigators would allow the office to handle up to 80 percent of the felonies and misdemeanors in addition to other types of cases assigned. The cost of increasing the staff by 12 employees is estimated to total almost \$580,000.



- **Private attorneys would be required to represent indigent defendants in about 20 percent of cases expected to present conflicts of interest for the Public Defender's Office.**

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## **Recommendation**

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### **Reduce costs for the representation of indigent defendants by assigning more cases to the Public Defender's Office.**

The commissioners court should work with the El Paso County Council of Judges to increase the number of indigent cases assigned to the Public Defender's Office. If the council agrees to assign more cases to the office, the commissioners court should increase its funding for the Public Defender's Office and decrease the amount paid to private attorneys accordingly. The public defender would continue to ask the appropriate court to reassign any cases received when the office sees a conflict of interest.

## **Fiscal Impact**

If the Council of Judges agrees to assign 80 percent of the felony and misdemeanor cases to the Public Defender's Office, the county would reduce its payments to private attorneys, saving an estimated total of \$1.24 million annually. The county would also incur costs of about \$580,000 annually to allow the Public Defender's Office to handle the additional cases. The county should realize net savings of about \$660,000 annually.

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## **Bibliography**

El Paso County, Texas. Adopted Annual Operating Budget for the Fiscal Year Beginning October 1, 1998. El Paso, Texas, October 1, 1998.

Nancy Gallego, executive director, El Paso Bar Association. Telephone interview, May 3, 1999.

The Spangenberg Group, "State Bar Completes Survey on the Status of Indigent Defense in Texas: the Prosecutor's Perspective," *The Spandgenberg Report*, West Newton, Massachusetts, May 1998. Newsletter.



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❖ **Appendix F: Worksheet for  
Feasibility Study**



# Feasibility Worksheet

## For Counties Considering the Texas Public Defender Option

### 1. Caseload

Case Type (felony, misdemeanor, juvenile, mental, complex, etc.)	1	2	3
<b>A. Total Annual Cases Paid</b> (obtain from auditors' report submitted to Office of Court Administration)			
<b>B. Share of Indigent Defense Cases for a Public Defender</b> (choose a number close to 100% if rural and close to 50% if urban)			
<b>C. Public Defender Caseload</b>	$C = A \times B$	$C = A \times B$	$C = A \times B$

### 2. Staff

Case Type	1	2	3
<b>A. Public Defender Caseload</b>			
<b>B. Attorney Staff Ratio</b> (400 misdemeanor cases per attorney per year, 150 felony cases per attorney per year, consult caseload standards for other ratios)			
<b>C. Number of Attorneys Needed</b> (round to the next whole number)	$C = A \div B$	$C = A \div B$	$C = A \div B$
<b>D. Number of Support Staff Needed</b> (roughly 1 investigator and 1 staff assistant for each five attorneys; round upward)	$D = C + 2.5$	$D = C + 2.5$	$D = C + 2.5$

### 3. Rough Budget

Case Type	1	2	3
<b>A. Total Staff Salaries</b>			
<b>B. Fringe Benefits</b>	$B = A \times .25$	$B = A \times .25$	$B = A \times .25$
<b>C. Operating</b> (Calculate based on actual county expenses if data is available e.g. prosecutor operating.)	$C = (A + B) \times .2$	$C = (A + B) \times .2$	$C = (A + B) \times .2$
<b>D. Total Rough PD Costs</b>	$D = A + B + C$	$D = A + B + C$	$D = A + B + C$



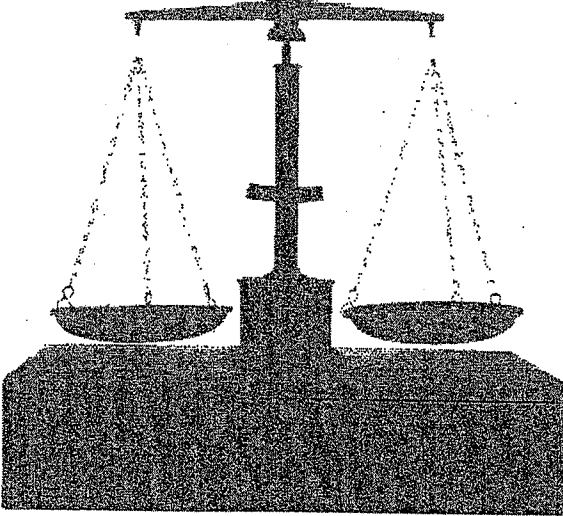


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❖ **Appendix G: ABA Ten  
Principles of Public Defense  
Delivery System**



**ABA**  
**TEN**  
**PRINCIPLES**  
**OF A PUBLIC DEFENSE DELIVERY SYSTEM**

A black and white illustration of a pair of scales of justice, positioned to the right of the main title text. The scales have two pans hanging from a central beam, and a base with a decorative front panel.

*February 2002*



ABA STANDING COMMITTEE  
ON LEGAL AID AND INDIGENT DEFENDANTS

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# TEN PRINCIPLES

OF A PUBLIC DEFENSE DELIVERY SYSTEM

*February 2002*

Approved by American Bar Association House of Delegates, February 2002. The American Bar Association recommends that jurisdictions use these Principles to assess promptly the needs of public defense delivery systems and clearly communicate those needs to policy makers.



## INTRODUCTION

The *ABA Ten Principles of a Public Defense Delivery System* were sponsored by the ABA Standing Committee on Legal and Indigent Defendants and approved by the ABA House of Delegates in February 2002. The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney. The more extensive ABA policy statement dealing with indigent defense services is contained within the ABA Standards for Criminal Justice, *Providing Defense Services* (3d ed. 1992), which can be viewed on-line (black letter only) and purchased (black letter with commentary) by accessing the ABA Criminal Justice Section homepage at <http://www.abanet.org/crimjust/home.html>.

## ACKNOWLEDGMENTS

The Standing Committee on Legal Aid and Indigent Defendants is grateful to everyone assisting in the development of the *ABA Ten Principles of a Public Defense Delivery System*. Foremost, the Standing Committee acknowledges former member James R. Neuhard, Director of the Michigan State Appellate Defender Office, who was the first to recognize the need for clear and concise guidance on how to design an effective system for providing public defense services. In 2000, Mr. Neuhard and Scott Wallace, Director of Defender Legal Services for the National Legal Aid and Defender Association, jointly produced a paper entitled "The Ten Commandments of Public Defense Delivery Systems," which was later included in the Introduction to Volume I of the U.S. Department of Justice's Compendium of Standards for Indigent Defense Systems. The *ABA Ten Principles of a Public Defense Delivery System* are based on this work of Mr. Neuhard and Mr. Wallace.

Special thanks go to the members of the Standing Committee and its Indigent Defense Advisory Group who reviewed drafts and provided comment. Further, the Standing Committee is grateful to the ABA entities that provided invaluable support for these Principles by co-sponsoring them in the House of Delegates, including: Criminal Justice Section, Government and Public Sector Lawyers Division, Steering Committee on the Unmet Legal Needs of Children, Commission on Racial and Ethnic Diversity in the Profession, Standing Committee on Pro Bono and Public Services. We would also like to thank the ABA Commission on Homelessness and Poverty and the ABA Juvenile Justice Center for their support.

L. Jonathan Ross  
Chair, Standing Committee on  
Legal Aid and Indigent Defendants



# ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

## *Black Letter*

- 1 The public defense function, including the selection, funding, and payment of defense counsel, is independent.
- 2 Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
- 3 Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
- 4 Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
- 5 Defense counsel's workload is controlled to permit the rendering of quality representation.
- 6 Defense counsel's ability, training, and experience match the complexity of the case.
- 7 The same attorney continuously represents the client until completion of the case.
- 8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
- 9 Defense counsel is provided with and required to attend continuing legal education.
- 10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.



1



# ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

*With Commentary*

**1** The public defense function, including the selection, funding, and payment of defense counsel,<sup>1</sup> is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.<sup>2</sup> To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.<sup>3</sup> Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.<sup>4</sup> The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.<sup>5</sup>

**2** Where the caseload is sufficiently high,<sup>6</sup> the public defense delivery system consists of both a defender office<sup>7</sup> and the active participation of the private bar. The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services.<sup>8</sup> The appointment process should never be *ad hoc*,<sup>9</sup> but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.<sup>10</sup> Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.<sup>11</sup>

**3** Clients are screened for eligibility,<sup>12</sup> and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention, or request,<sup>13</sup> and usually within 24 hours thereafter.<sup>14</sup>

**4** Defense counsel is provided sufficient time and a confidential space within which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.<sup>15</sup> Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client.<sup>16</sup> To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.<sup>17</sup>

**5** Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.<sup>18</sup> National caseload standards should in no event be exceeded,<sup>19</sup> but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.<sup>20</sup>

2



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**6** Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.<sup>21</sup>

**7** The same attorney continuously represents the client until completion of the case. Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.<sup>22</sup> The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

**8** There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.<sup>23</sup> Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.<sup>24</sup> Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess,

unusual, or complex cases,<sup>25</sup> and separately fund expert, investigative, and other litigation support services.<sup>26</sup> No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.<sup>27</sup> This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

**9** Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.<sup>28</sup>

**10** Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.<sup>29</sup>





## NOTES

<sup>1</sup> "Counsel" as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. "Defense" as used herein relates to both the juvenile and adult public defense systems.

<sup>2</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter "NAC"], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3<sup>rd</sup> ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 2.1(D).

<sup>3</sup> NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2; Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter "ABA Monitoring"], Standard 3.2.

<sup>2</sup> Judicial independence is "the most essential character of a free society" (American Bar Association Standing Committee on Judicial Independence, 1997).

<sup>5</sup> ABA, *supra* note 2, Standard 5-4.1

<sup>6</sup> "Sufficiently high" is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase generally can be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

<sup>7</sup> NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2. "Defender office" means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

<sup>8</sup> ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>9</sup> NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>10</sup> ABA, *supra* note 2, Standard 5-2.1 and commentary; Assigned Counsel, *supra* note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

<sup>11</sup> NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

<sup>12</sup> For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

<sup>13</sup> NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(A).

<sup>14</sup> NSC, *supra* note 2, Guideline 1.3.

<sup>15</sup> American Bar Association Standards for Criminal Justice, *Defense Function* (3<sup>rd</sup> ed. 1993) [hereinafter "ABA Defense Function"], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter "Performance Guidelines"], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.



<sup>16</sup> NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

<sup>17</sup> ABA Defense Function, *supra* note 15, Standard 4-3.1.

<sup>18</sup> NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

<sup>19</sup> Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter "Death Penalty"].

<sup>20</sup> ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard 1-F.

<sup>21</sup> Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

<sup>22</sup> NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines

III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(B)(i).

<sup>23</sup> NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (Performance); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). See NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). Cf. NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

<sup>24</sup> ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

<sup>25</sup> NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

<sup>26</sup> ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

<sup>27</sup> ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

<sup>28</sup> NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(4), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 10(e); Contracting, *supra* note 2, Guideline III-17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(A).

<sup>29</sup> NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Monitoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.



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Chicago, Illinois 60611

(312) 988-5750

<http://www.abalegalservices.org/sclaid>



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❖ **Appendix H: List of Internet  
Links to Additional Public  
Defender Resources**



# Texas Indigent Defense Web Resources

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Texas Task Force on Indigent Defense

<http://www.courts.state.tx.us/tfid/TFIDentrance.htm>

Texas County Indigent Defense Plans and Grant/Performance Data for all 254 Counties

<http://tfid.tamu.edu/Public/default.asp>

Texas Bar's Legal Services to the Poor in Criminal Matters Committee

<http://www.uta.edu/pols/moore/indigent/indigentdefense.htm>

Equal Justice Center's Fair Defense Project

<http://www.equaljusticecenter.org/serv01.htm>

Texas Comptroller Report: "Reducing Costs Involved in Representing Indigent Defendants"

<http://www.window.state.tx.us/lga/fmr/el Paso/06elp.html>

Texas Criminal Justice Reform Coalition

[http://www.protex.org/criminaljustice/indigent\\_defense\\_reform/](http://www.protex.org/criminaljustice/indigent_defense_reform/)

U.S. Department of Justice Compendium of Standards for Indigent Defense Systems

<http://www.ojp.usdoj.gov/indigentdefense/compendium/pdf/vol1.pdf>

National Center for State Courts Directory of U.S. Indigent Defense Providers

[http://www.ncsconline.org/WC/Publications/KIS\\_IndDefStatesPub.pdf](http://www.ncsconline.org/WC/Publications/KIS_IndDefStatesPub.pdf)

ABA Indigent Defense Research Library

<http://www.abanet.org/legalservices/sclaid/defender/research.html>

National Association of Criminal Defense Lawyers Indigent Defense Page

<http://www.abanet.org/legalservices/sclaid/defender/research.html>

National Legal Aid and Defender Association Indigent Defense Page

<http://www.nlada.org/Defender/>

Spangenberg Group National Indigent Defense Research

<http://www.spangenberggroup.com/>



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❖ **Appendix I: Various States’  
Caseload Summaries**



## Public Defender Workload Standards<sup>1</sup>

State	Felony	Misdemeanor	Juvenile	Appeals	Author/Authority
Arizona	150	300	200	25	<i>State of Arizona v. Joe U. Smith</i> , 681 P. 2 <sup>nd</sup> 1374 (1984)
Colorado*	33-386 <sup>2</sup>	196-430	249	--	The Spangenberg Group. "Updated Weighted Caseload Study for the Colorado State Public Defender." December 2002.
Florida*	200	400	250	50	Florida Public Defender Association. "Comparison of Caseload Standards." July 1986
Georgia	150	400	200	25	Georgia Indigent Defense Council. "Guidelines of the Georgia Indigent Defense Council for the Operation of Local Indigent Defense Programs." October 1989.
Indiana	120-200 <sup>3</sup>	400	250	25	Indiana Public Defender Commission. "Standards for Indigent Defense Services in Non-Capital Cases: With Commentary." January 1995.
Louisiana	200	450	250	50	Louisiana Indigent Defense Board. "Louisiana Standards on Indigent Defense." 1995.
Massachusetts	200	400	300	--	Committee for Public Counsel Services. "Manual for Counsel Assigned through the Committee for Public Counsel Services: Policies and Procedures." June 1995.
Minnesota*	120	400	175	--	The Spangenberg Group/Minnesota State Public Defender. "Caseload Standards for District Public Defenders in Minnesota." October 1991
Missouri	40-180 <sup>4</sup>	450	280	28	Missouri State Public Defender System. "Caseload Committee Report." September 1992.
Nebraska	50 <sup>5</sup>	--	--	40	Nebraska Commission on Public Advocacy. "Standards for Indigent Defense Services in Capital and Non-Capital Cases." May 1996.
New York* (City)	150	400	--	25	Indigent Defense Organization Oversight Committee. "General Requirements for All Organized Providers of Defense Services to Indigent Defendants." July 1996.
Oregon	240	400	480	--	Oregon State Bar. "Indigent Defense Task Force Report: Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases." September 1996.
Vermont	150	400	200	25	Office of the Defender General. "Policy of the Defender General Concerning Excessive Workloads for Public Defenders." October 1987.
Washington	150	300	250	25	Washington Defender Association. "Standards for Public Defender Services: Objectives and minimum Requirements for Providing Legal Representation to Poor Persons Accused of Crime in Washington State." October 1989.
Wisconsin*	145	323	207	--	The Spangenberg Group. "Caseload/Workload Study for the State Public Defender of Wisconsin." September 1990.

\* = Jurisdictions where caseload standards were developed through case-weighting studies.

<sup>1</sup> Chart prepared by The Spangenberg Group

<sup>2</sup> Colorado's caseload standards vary by severity of case handled. Specific statewide felony caseload standards are 32.6 Class 2 & Felony Sex Assault, 105.5 Class 3, 200.2 Class 4-5 and 386.2 Class 6 cases per year per attorney. Specific misdemeanor caseload standards are 196.4 Class 1 Misdemeanor and Sex Assault and 429.8 Class 2-3 Misdemeanor and Traffic/Other cases per year per attorney.

<sup>3</sup> Indiana's felony caseload standards vary by severity of case handled. The specific standards are: 150 non-capital murder and all felonies; 120 non-capital murder, Class A, B, C felonies only; 200 Class D felonies only; and 300 Class D felonies and misdemeanors.

<sup>4</sup> Missouri's felony caseload standards vary based on the severity of the felony charge. For Felony A and B cases, the public defender caseload standard is 40 cases per year. For Felony C and D cases, the public defender caseload standard is 180.

<sup>5</sup> The Nebraska Commission on Public Advocacy has established a felony caseload standard for only the most serious category of felonies. The standard represents the number of violent crime cases (rape, manslaughter, 2<sup>nd</sup> degree murder, sexual assault) that a single attorney could handle during a year if those cases were the only case she handled during the year.

