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**A Review of Dallas County's Indigent
Defense System
August 2004**

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INTRODUCTION

In the fall of 2003, The Spangenberg Group (TSG) was contacted by the Texas Task Force on Indigent Defense to conduct a review of the Public Defender's Office in Dallas County. The purpose of this request was so that TSG could evaluate the current operations and provide constructive advice on best practices of the Dallas Public Defender's Office. This information can be used not only to improve the Dallas office, but to also use the Dallas office as a model for developing additional public defender offices in Texas.

The site work for this study was conducted from December 1-4, 2003 by TSG staff Robert Spangenberg, President, Jennifer Saubermann, Research Associate, and David Newhouse, MIS Analyst. Accompanying the TSG team were three members of the Texas Task Force on Indigent Defense staff, Jim Bethke, Director, Wesley Shackelford, Special Counsel, and Lisa Price, Program Monitor. The group met with representatives from the courts, county commissioners court, Public Defender's Office, County Auditor's Office, County Budget Office, data services, members from a Dallas Bar Association Committee for Indigent Defense, as well as several court-appointed attorneys.

The Spangenberg Group is a research and consulting firm that specializes in improving indigent defense systems. TSG had previously visited the Dallas County Public Defender in August 2000 as part of our 23-county field sample for the *Fair Defense Report*. The *Fair Defense Report* was written in conjunction with Texas Appleseed and was the result of extensive research, conducted during 2000-2001, of indigent defense practices in Texas. The findings from the report were helpful in encouraging a reform movement that culminated in the passage of the Fair Defense Act in 2001. The Fair Defense Act, also known as Senate Bill 7, or SB 7, not only changed the way that lawyers are appointed in indigent criminal cases, it also created the Texas Task Force on Indigent Defense, an organization charged with supporting counties in reaching the directives of the new law. Although our encounter at that time with the Dallas office was brief, we were able to make an assessment of several of the program's strengths and weaknesses. For example, we observed that while the Public Defender's Office had a dedicated leadership and a desire to improve existing programs and create additional ones, the system for funding and staffing of the office was dependent on judges' willingness to allow public defenders into their courtrooms. Also, the office lacked a case management system to track office workload.

As we found on our most recent site visit, the participation of public defenders in the courtroom is still wholly dependant on whether a judge requests the assistance of a public defender.¹ In addition, while the public defender office still lacks a case management system, they recently received a discretionary grant from the Texas Task Force on Indigent Defense to develop one.

The system for providing and compensating counsel to represent indigent defendants in criminal proceedings in Texas is almost exclusively a local responsibility.² Each of the state's

¹ For further discussion please see the section below "How Public Defenders are Assigned to Courtrooms," pg. 11.

² The exception is that the state pays for representation in capital post-conviction proceedings and through the Task

254 counties is responsible for paying for all costs associated with indigent defendant representation in juvenile, class A and B misdemeanor, capital and non-capital felony cases and appeals. Those costs include the cost of counsel, expert witnesses such as psychiatrists or DNA specialists, investigators and any other related services, such as transcripts, transportation costs, etc.

Counties are able to apply for formula and/or discretionary grants from the Texas Task Force on Indigent Defense to supplement local funds. In fiscal year 2003, Dallas County received \$1,042,618 in formula grant money and a total of \$291,348 in discretionary grant money from the Task Force.³ Presently, in fiscal year 2004, the Task Force has awarded Dallas County \$910,199 in formula grant money and \$300,000 in discretionary grant money to be used for a case management system for the Public Defender's Office.

Each county is free to select the type of system it will use to represent indigent defendants, be it court-appointed counsel, public defender, contract counsel or some combination of these. The vast majority of counties in Texas use the rotation assigned counsel method. There are only seven counties that have public defender offices, including Dallas.⁴

Dallas County uses a combination of public defenders and assigned counsel to represent indigent defendants. Assigned counsel are appointed in both public defender conflict of interest cases as well as non-conflict cases. The percentage of cases handled by the Public Defender's Office is on average slightly less than the percentage handled by assigned counsel. In other words, assigned counsel are the primary providers of indigent defense in Dallas County. The "primary provider" is the program or delivery system that provides more than half of all indigent defense representation in the jurisdiction. A number of states use assigned counsel as the primary providers of indigent defense representation in less populous areas of the state and utilize public defender programs in large metropolitan areas with assigned counsel handling conflict of interest and overload cases in those areas.

The Public Defender's Office has attorneys assigned to 37 courts in Dallas County. There are public defenders assigned to each of the 15 Criminal District Courts with felony jurisdiction, in 12 out of 13 County Criminal Courts with misdemeanor jurisdiction, two District Juvenile Courts handling both delinquency and child welfare cases, seven District Family Courts

Force on Indigent Defense, distributes supplemental state money to counties that apply for formula and discretionary grants. In FY03 More than \$130 million was spent on indigent defense by the counties, and state grant funding constituted approximately 10% of that amount. See Texas Task Force on Indigent Defense, *Annual Expenditure Report Fiscal Year 2003*.

³ The money for the discretionary grant was comprised of three separate awards. One award was for 54 laptop computers, which allowed the County to provide a computer for each public defender. Previously, five computers were shared among more than 50 attorneys, excluding the chief, first assistant, and juvenile supervisor who had their own computers. In addition, the chief public defender sought and received a grant for an innovative Parent/Youth Advocate to predominately provide assistance to parents of youths in detention hearings. Finally, a discretionary grant, applied for by the County Criminal Court Manager, was awarded to the County for an indigent defense coordinator to provide indigent defense process coordination between county courts, law enforcement, and attorneys.

⁴ The offices are in Cameron (juvenile only), Colorado, Dallas, El Paso, Travis (juvenile only), Webb, and Wichita counties.

hearing child welfare cases and IV-D child support issues, and one Probate Court that hears civil commitments of mentally ill patients. The on

In both felony and misdemeanor cases, when a defendant is held pretrial and either has a court appearance or if an attorney has requested that the sheriff bring his or her client to the courthouse for a meeting, the defendant is brought with a group of other inmates through secured access tunnels to a holding cell attached to each courtroom. This is called the "jail chain." Defendants are brought out of the holding cell, one at a time, to speak with their attorney through a small glass partition, similar to what one may see at a prison. Public defenders may also go to the jails or state hospitals to speak with defendants.

PUBLIC DEFENDER'S OFFICE

Background

Creation of public defender offices is governed by Article 26.044 of the Texas Code of Criminal Procedure, which was amended effective January 2002 as part of the SB 7 reforms. Under the recently amended statute, offices are created by a county's commissioners court with written approval by a criminal court judge in the county. A public defender office is defined as a "governmental entity or nonprofit corporation." Prior to appointing a public defender, the commissioners court must solicit proposals for the public defender and then "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 who has "substantial" experience in practicing criminal law, has practiced for at least three years and is a member of the Texas Bar.

The Dallas County Public Defender's Office, however, was created in 1983, prior to the Senate Bill 7 amendments, and thus the legislation that governs the Dallas office is different from the legislation that is used to establish new offices in Texas. The grandfather provision in SB 7 allows public defender offices already in existence at the time of the new legislation to choose whether to continue operating under the old legislation or to completely recreate an office under the new legislation. The Dallas County Public Defender's Office chose to remain governed by the earlier legislation.

Staffing and Salaries

When the Public Defender Office in Dallas was established in 1983, it began with eight attorneys, two secretaries and two investigators in four felony courts. The attorneys at that time had an average of 14 years of experience. The office has grown a great deal over the past 20 years to a current staff of 64 full-time equivalent (FTE) attorneys and 13 FTE support staff for a total FTE staff of 77.⁵ The current attorneys have an average of 12 years of experience. The staff are housed in three separate locations. The main office is housed in the Frank Crowley Courthouse Building and is comprised of the misdemeanor and felony divisions. There is one receptionist and two secretaries for 58 staff members.

There are two smaller satellite offices, one located at the juvenile district courthouse that is comprised of nine attorneys, two investigators, and one secretary, and the other located at the family district courthouse that is comprised of six attorneys and one paralegal.

⁵ All totals are current as of December 2003, the time of The Spangenberg Group's site visit to Dallas County.

Table 1

Dallas County Public Defender's Office Personnel Totals Full Time Positions	
Director	1
First Assistant	1
Mental Health Attorney	1
Misdemeanor & Assistant Misdemeanor Supervisors	2
Felony Attorneys	28 (includes 5 supervisors)
Misdemeanor Attorneys	16
Family & CPS (Child Protective Services) Attorneys	8 (includes 1 supervisor)
Juvenile Attorneys	6
Juvenile Grant Attorney (grant ends in September 2004)	1
Investigators	6
Secretaries/Receptionist/Paralegal/Interpreter	7 (1 vacant)
Total Positions	77 (2 vacant)⁶

Information provided by the Public Defender's Office, *Public Defender Organizational Chart - 12/02/03*.

The current chief public defender has been in her position for two years. Prior to that, the chief public defender was with the office for close to five years before her appointment to the misdemeanor bench. The current and previous chief public defenders in Dallas County were hired by the Dallas County Commissioners Court based on the recommendations of a hiring committee consisting of two felony and two misdemeanor judges; one member from each the Dallas County Criminal Bar Association, the Hispanic Bar Association, and the J.L Turner Legal Association which is the African-American Bar Association in Dallas; two members of the Commissioners Court; and the administrator from the Commissioners Court.

The salary range for attorney positions is based on a county formula. There are three "steps" within each salary range for new hires and 3 steps above the hiring salary until a maximum salary is reached and a person cannot receive raises or additional salary. The chief public defender is given an in-hire salary range at which she may hire, but is provided leeway as to which step within the range she can start a new attorney, up to a maximum amount approved by the County's Human Resources Department. Following the original version of Article 26.044, the chief public defender is prohibited from hiring attorneys with less than one year of legal experience.⁷ The District Attorney's office, on the other hand, may hire attorneys directly from law school.

⁶ This chart does not include three part-time employees. There is one juvenile clerk that assists with detention hearings, a drug divert attorney that works three hours a week, and a paid intern position that is currently vacant.

⁷ This provision has been interpreted by some public defender offices to apply only to the chief public defender. In Dallas County, there is a consensus that the requirement is that all attorneys must have practiced law for at least one year before they can be considered for employment at the public defender's office. However, a recent District

In addition to the different requirements for entry-level attorney positions, there is a gross discrepancy with regards to the salaries of supervisors between the Public Defender's Office and District Attorney's Office. For example, a felony supervisor at the Public Defender's Office who has 15 years of service, carries a full felony caseload and supervises between 4-5 felony attorneys and has a salary of \$71,540. A comparable position at the District Attorney's Office called a "Court Felony Chief," who is responsible for supervising two attorneys and one investigator and also carries a full felony caseload, has a starting salary of \$81,612. The most senior Court Felony Chief, who has been there for 13 years, has a salary of \$99,750 (which includes \$4,080 of longevity pay from the State of Texas). The least senior Court Felony Chief, with six years of service, has a salary of \$88,000. The average discrepancy in county pay between each of the five public defender felony supervisors and the assistant district attorney with the closest comparable seniority and position type is \$19,213. This does not include longevity pay, which averages \$3,552 per assistant district attorney.

Longevity pay, which is used to supplement the salaries of assistant district attorneys and is funded by the state through a new \$15 fee on certain surety bonds, is not provided to the Public Defender's Office. This longevity pay thus exacerbates the pay disparities between more senior attorney positions in the Public Defender and District Attorney offices.

In 1999 there was an attempt made to create salary parity for the Public Defender's Office and the District Attorney's Office. The Public Defender and District Attorney's offices, Human Resources and the Commissioners Court worked together to make similar attorney grades for both the district attorneys and public defenders. The chief public defender is severely limited in her ability to grant discretionary increases or raises pursuant to the Dallas County policies and procedures manual. A raise can only be up to the approved maximum in-hire range at either six months or one year from the time a person is hired or promoted into a new position. The cost of living raises for higher salaries can exacerbate the difference over time since the lower salaried position's cost of living raise is less and the increase is less dramatic.

Lack of Adequate Support Staff

The support staff-to-attorney ratios at the Dallas County Public Defender's Office are the lowest that The Spangenberg Group has encountered in its 19 years of evaluating public defender work. There is one receptionist in the main Public Defender's Office who answers the phone for 58 staff members and handles all public inquiries. There is an administrative assistant who provides secretarial and administrative support to the chief, first assistant and misdemeanor supervisor, as well as manages the entire office regarding budgets for supplies, HR, facilities issues, IT issues and statistics. One secretary in the public defender office is responsible for typing all transcripts of witness interviews for four investigators and performs all secretarial duties, such as typing motions and letters, for the 28 felony attorneys. The other secretary is responsible for completing the time and attendance records for all 68 people in the office and is the secretary for the 16 misdemeanor attorneys. There is only one secretary in the juvenile office

Attorney opinion has allowed the chief public defender to consider the amount of time law students or recent graduates practiced with a third year bar card.

for nine attorneys. She serves as the office receptionist, assigns cases within the office, handles time and attendance issues, and types letters and motions for the attorneys.

There are only four investigators at the misdemeanor/felony office and two at the juvenile office. While praising the work of the investigators, a number of attorneys complained that there are not enough investigators in the office. Several attorneys mentioned that they interview witnesses and do much of the investigations themselves.

The chief public defender informed us that the budget department will not honor her request for more support staff and in fact argues that since the public defender office received 54 new computers from a grant from the Texas Task Force, they do not need as many secretaries.

This lack of support staff has negative effects on the efficiency and effectiveness of the office and requires attorneys to do work that would be better done by support staff. For instance, several attorneys give clients their direct number rather than have the receptionist field calls; almost all attorneys asked for more investigators; there is no access to a paralegal so attorneys must ask interns to do the work of a paralegal; several attorneys said that they type all of their client letters and, other than form motions that the secretary can easily fill in, attorneys type their own motions as well.

To function efficiently, the Dallas County Public Defender's Office needs to significantly increase its number of support staff. The Indiana Public Defender Commission for example, established model attorney to support staff ratios for public defender offices. *See* Table 2, below. These staff ratios are used to justify specific caseload standards also established by the Indiana Public Defender Commission. The attorney to support staff ratios at the Dallas County Public Defender's Office fall well below these suggested guidelines.⁸

⁸ For instance, there are 28 felony attorneys in the Dallas Public Defender's Office that have access to four investigators and one secretary. The felony attorneys share a receptionist with the misdemeanor attorneys and do not have access to a paralegal. Under the Indiana Public Defender Commission's model, the 28 felony attorneys in the Dallas County office would have seven investigators, seven paralegals and seven secretaries.

Table 2

Indiana Public Defender Commission's Adequate Support Staff Guidelines	
<u>Support Staff Position</u>	<u>Ratio of Support Staff to Attorneys</u>
Paralegal - Felony	1:4
Paralegal - Misdemeanor	1:5
Paralegal - Juvenile	1:4
Paralegal - Mental Health	1:2
Investigator - Felony	1:4
Investigator - Misdemeanor	1:6
Investigator - Juvenile	1:6
Law Clerk - Appeal	1:2
Secretary - Felony	1:4
Secretary - Misdemeanor	1:6
Secretary - Juvenile	1:5

Spanish-Speaking Attorneys

The office has a low turnover rate overall, however, there is a higher turnover rate for attorneys who are bilingual. While Spanish-speaking attorneys may not have a higher caseload than other attorneys, there are additional time demands such as requests to interpret for court coordinators and clerks and assisting other public defenders if the translator is busy or out of the office, that place a greater burden on Spanish-speaking attorneys. In addition, translating legal documents or explaining proceedings to clients is time consuming. The Public Defender's office currently has five fluent Spanish-speaking attorneys with approximately four additional attorneys who have limited ability to communicate in Spanish. Ideally, the chief public defender would like at least ten fully fluent Spanish speakers.

The office has one Spanish-speaking interpreter. If a public defender has a client that speaks a language other than Spanish, the court must appoint an interpreter and pay for those expenses out of the judge's court budget. A licensed interpreter is required in felony court proceedings. There is new legislation regarding interpreters and, at this time, attorneys can not use their language skills in court proceedings unless they become licensed interpreters, however they can communicate outside of court with their clients or witnesses without an interpreter.

In Juvenile Court, we received one report that 50-60% of the juvenile clients' parents speak only Spanish. However the chief public defender informed us that this number may be closer to 20-25%. In either case, this places a higher burden on the two Spanish speaking public defender attorneys in the juvenile office.⁹

⁹ One of the two Spanish-speaking attorney positions is a grant position that is only funded until the end of September 2004. The chief public defender would like to make it a full-time position.

To address this lack of attorneys who are bilingual, the public defender interpreter has begun giving lessons to attorneys who have previous Spanish language training from high school or college. In addition, as an incentive for new attorneys to learn Spanish, the chief public defender has experimented with hiring new attorneys at the lowest salary step within the second level instead of at the highest step for level one and informs the attorney that if they learn Spanish within six months to a year, she will bump them up to a higher step within their salary level. This method of hiring was recently employed for two new hires. The chief public defender is extremely concerned about hiring Spanish-speaking attorneys and is attempting to take creative steps, both inside and outside of Dallas County, to attract more Spanish-speaking attorneys.

One judge recommended that the public defender office be especially sensitive to hiring Spanish speaking attorneys when they formulate their staff. In fact, one misdemeanor judge who almost exclusively uses public defenders in her courtroom, praised the public defender system, however stressed that if one of her public defenders did not speak Spanish she would utilize assigned counsel attorneys far more often. We were informed by the chief public defender that each of the misdemeanor judges who have two public defenders in his or her court, with the exception of one judge, have stated that they prefer that at least one of those attorneys be Spanish-speaking.

Advancement Within the Office

Typically new attorneys start in the misdemeanor division unless they have prior criminal experience. Attorneys may start in the juvenile division as well, but would be hired at a higher salary level than a misdemeanor attorney, except for a detention attorney who would be hired at the same level as misdemeanor attorneys.¹⁰ Unlike the misdemeanor division, juvenile attorneys do not normally cross over to the felony division after working in the juvenile division due to the specialized nature of the practice. The length of time attorneys spend in the misdemeanor division before transferring to the felony division depends on the needs of the office and the attorney's trial experience, although two years is typical. Factors that may affect time of transfer include whether an attorney has been placed in the family violence court (misdemeanor) because of that court's high trial rate or whether the attorney has sat second, or even first, chair with a felony attorney. Post-SB 7, an increasing number of felony judges have added public defenders to their courtrooms and therefore attorneys have been advancing from misdemeanor to felony work at a more rapid rate. During our site visit, it was indicated to us that transfers to the felony division are also affected by seniority.

When attorneys transfer from a misdemeanor court to a felony court they may handle their cases already set for trial through the end of the month while handling a felony caseload. One attorney said that the person taking her place in the misdemeanor division will take all of her cases set for trial except those for which a significant amount of preparation was done. Help is provided in the felony court while the attorney is in trial in the misdemeanor court. If a case is reset, which will allow time for the defendant to meet the new attorney, the case may be transferred at that time to the new attorney, unless the original attorney asks to remain on the case.

¹⁰ Attorneys hired for delinquency and child protective services cases will be hired at higher attorney salary levels.

Supervision

There are five supervisors in the felony division, one misdemeanor supervisor and one assistant misdemeanor supervisor. In addition, the first assistant supervises the felony, misdemeanor, family and juvenile supervisors as well as the mental health attorney, investigators and interpreter. She provides assistance to all attorneys when needed. Unlike the misdemeanor supervisor, the felony supervisors carry a full caseload and are assigned to a particular court. Their duties include training and advising newer attorneys, supervising those attorneys within their courtrooms, and performing staff evaluations once a year. The first assistant, who is not assigned to a court, will also provide guidance for newly promoted felony attorneys.

The misdemeanor supervisor is not assigned to a particular court but rather covers a courtroom if an attorney is unavailable. Her duties include training new misdemeanor attorneys, providing support when legal issues come up in court, acting as a liaison between the judges and public defenders in their courtrooms, sitting with attorneys in trial if they request assistance, helping with investigations, and giving suggestions to attorneys on who to contact for various things. Normally the supervisor circulates among the courtrooms to see how things are going, and should not have a caseload, however, recently she has been assigned to a specific courtroom every day to cover for an attorney shortage. There is also an assistant misdemeanor supervisor who works part time as the Southern Methodist University (SMU) Law School legal clinic advisor. The clinic students not only assist some public defenders with legal research or investigations, they also carry their own caseload, averaging between 15-20 cases per semester. Individual judges determine whether to use the program. If a judge is participating in the SMU program, either the court coordinators will contact the SMU advisor and let her know that they have a good teaching case, or occasionally a public defender may contact her with a good teaching case. The advisor also serves as a floater who covers courtrooms if needed, handles all post-conviction DNA petitions, and carries a reduced felony caseload.

Finally, there is a juvenile section supervisor who oversees all attorneys and support staff in the juvenile office and is assisted by a delinquency supervisor who provides assistance to the other delinquency and detention attorneys. Both supervisors carry a full caseload. There is also a family law supervisor who is responsible for overseeing the family law division and also carries a full caseload.

Training

There is no formalized training program in the Public Defender's Office. There is one supervisor in the misdemeanor division who is responsible for training new attorneys and the first assistant and assistant misdemeanor/SMU supervisor will also assist when needed. When a new attorney is hired, the misdemeanor supervisor will go over routine paperwork, explain the nuances of each court/judge, and take the attorney to the jail chain for the first time.

Depending on the attorney's prior experience and level of comfort in the courtroom, the misdemeanor supervisor may go to court with the new attorney for a couple of months. Training was characterized as "in the field training." When two public defenders are assigned to one court, the office tries to pair a more senior public defender with a newer attorney to provide

additional training. As for training in the felony division, the felony supervisors are assigned newer attorneys to train and advise while balancing a full felony caseload of their own.

During our site visit we were told that due to an unexpected loss of several attorneys, the misdemeanor supervisor has not had much time to train new attorneys because she has been busy “putting out fires.” We were told by a number of attorneys, however, that there are any number of people in the office to go to at any one time with questions and that the office relies heavily on informal idea-sharing in lieu of more structured training.

A consistent complaint that we heard during our site work is that the Public Defender’s Office does not have the money to pay for continuing legal education (CLE) training and attorneys are responsible for paying out of pocket.¹¹ The prosecutor’s office, on the other hand, pays for all attorneys’ CLE classes.

How Public Defenders are Assigned to Courtrooms

In Dallas County, it is within the discretion of each individual judge as to whether they will have a public defender in their courtroom. Once a judge determines that he or she would like to utilize a public defender, a request is made to the County Budget Office. The Budget Office then informs the Commissioners Court whether the addition of a public defender will be cost effective, including how many cases the new court must appoint to be cost effective. In making this assessment, the Budget Office considers the number of cases the requesting judge intends to assign and calculates a cost-per-case based on this projected number of cases. It is unclear exactly how the Budget Office determines the cost attributed to a public defender in order to calculate an anticipated cost-per-case.¹² The number and types of cases a judge commits to assigning the public defender varies among judges. In felony courts it may be between 30-45 cases per attorney each month and in one briefing prepared by the Budget Office for an additional public defender in a County Criminal court, the judge stated that he “intends to use the Public Defender as much as possible, in order to maximize the potential savings to the tax payer.” Based on the range of cases assigned to public defenders in County Criminal Courts, the Budget Office calculated that a new public defender could handle up to 1,200 cases a year in the court. According to nationally recognized caseload standards, this number far exceeds any reasonable misdemeanor attorney caseload.¹³

¹¹ We were informed by the chief public defender that there are low-cost or free alternatives for public defenders to receive CLE credit. For instance, the Public Defender’s Office provides free one-hour CLE’s in the office 3-6 times a year. In addition, certain bar associations offer scholarships for CLE classes and/or reduced rates for public defenders.

¹² See “Expenditures and Cost Per Attorney Calculation” section below, page 18, for further discussion of how cost per attorney is calculated in the Dallas County Management Report. Presumably that method of calculation is the same method used by the Budget Office when determining whether a new public defender would be cost efficient.

¹³ See “Caseload” section below, pg. 15, for further discussion. The caseload standards recommended by the National Advisory Commission (NAC) and adopted by the American Bar Association, recommend that an attorney handling exclusively misdemeanor cases handle no more than 400 misdemeanor cases a year. In Dallas County, cases are counted by charge. This would mean that to fall within the nationally recommended standards, each defendant must have no more than 3 charges.

If the County Budget Office feels it would be cost effective to place a public defender in the court, the Commissioners Court will approve the position and transfer money from the general fund for indigent defense to pay the public defender's salary in the specified court. It is up to each judge to determine how many cases are appointed to each public defender in his or her court, but if the public defender consistently falls below the cost effective level, it will be brought to the attention of the Commissioners Court. The Commissioners Court also approves support staff requests. Funding for expert witnesses for public defenders is paid out of the same general fund used for indigent defense.

The percentage of cases covered by public defenders varies among each courtroom and assigned counsel cover those cases to which the public defenders are not assigned. Currently, of the 15 Criminal District Courts, each court has at least one public defender and seven have either two or three public defenders. Of the 12 County Criminal Courts, eight make use of one public defender and four use two public defenders. Of the two District Juvenile Courts, one court has three public defenders (two for delinquency cases, one for child welfare cases) and the other has four public defenders (three for delinquency cases and one for child welfare cases).

After the passage and implementation of SB 7, a number of Criminal District Court judges requested an additional public defender in their courtroom. This has caused several vacancies within the misdemeanor division of the public defender office, as attorneys are being transferred to the felony division to fill the newly created positions. The increased demand for public defenders seems to be a result of judges' concerns regarding the quality of court-appointed counsel, coupled with the new rigid appointment protocol. To avoid appointment of what judges consider objectively qualified but subjectively unqualified private attorneys,¹⁴ a number of judges have opted to increase the number of public defenders in each courtroom. Judges have also added more public defenders or assigned more cases to the public defenders in an effort to cut costs to the County.

Assignment of individual attorneys to each courtroom is done by the chief public defender. Once a judge determines that he or she wants a public defender in his or her courtroom, and the Commissioners Court approves the position, the chief public defender assigns attorneys within the limitations of positions and levels that have been created. For courts that have more than one public defender, the chief public defender tries to pair a more senior attorney with a newer attorney to provide additional training. Occasionally the two public defenders will sit with each other in trial, but generally they handle their own individual caseloads. Attorneys in County Criminal Court with more initial trial experience are placed in the family violence court, as this court has a higher trial rate.

Assignment of Cases Within Courtrooms

The types of cases that are assigned to the Public Defender's Office in Criminal District Court vary depending on the desires of the individual judges. Some judges use the Public Defender's Office for probation revocation cases only, others assign all types of cases to the public defenders, while still others assign only lower level felonies such as state offenses and

¹⁴ See "Changes Post-SB 7" section below, pg. 24, for further discussion of this point.

third degree felonies. For instance, one judge stated that he assigns all new cases to the public defenders, with lower-level felonies assigned to the newest public defender, and all probation revocations to assigned counsel. To “justify the expense” of adding a third public defender to his courtroom, he aims to assign 30 cases a month to each public defender.¹⁵

In County Criminal Courts, again it depends on the judge as to what cases are assigned to the public defenders. Some judges use primarily public defenders and assign only public defender conflict of interest cases to assigned counsel, others judges that do not have a Spanish speaking public defender assign all cases but Spanish speaking clients to the public defender, while still other judges assign all cases set for trial or all in-custody defendants to the public defender.

Once it is determined that a public defender will be handling a case, and there is more than one public defender in the courtroom, it depends on the courtroom as to whether the judge, court administrator or public defenders determine which attorney will take the case.

In juvenile cases, both judges typically assign the public defender office to represent all youths held in detention. If the juvenile is not in custody the public defender office is automatically assigned to every youth so that families have somewhere to call with questions or for information. A specific attorney is not assigned to out of custody cases and the secretary is generally responsible for answering parents’ questions. However, she will forward the call to a public defender if she is unable to answer the question. The Public Defender’s Office will stay on the case until the youth has his or her first hearing at which time the associate judge will decide if the public defender stays on the case or if court-appointed counsel is chosen from the list.¹⁶ Typically the associate judge will appoint assigned counsel at that point because the juvenile is not detained.

There is also a public defender, assigned daily, that appears before an associate judge and handles all detention hearings, except those for which a private attorney has been retained. The associate judge appoints counsel at the initial detention hearing so that, according one juvenile judge interviewed, the judge rarely appoints an attorney herself because the attorney has already been assigned by the associate judge. There are typically 200 youths detained at one time, most of whom are represented by the Public Defender’s Office.

This method of assignment in juvenile detention hearings provides a situation ripe for conflicts of interest. According to the American Bar Association, “[e]xcept for preliminary matters such as initial hearings or applications for bail, defense counsel who are associated in practice should not undertake to defend more than one defendant in the same criminal case if the duty to one of the defendants may conflict with the duty to another.”¹⁷ By representing every detained youth, including youths that may be co-defendants in a delinquency proceeding, the

¹⁵ See section on “Caseloads,” pg. 15, for further description of how cases are counted.

¹⁶ Only those cases where the public defender remains the attorney of record are counted towards the office caseload.

¹⁷ ABA STANDARDS FOR CRIMINAL JUSTICE, PROSECUTION FUNCTION AND DEFENSE FUNCTION, Standard 4-3.5 (3d ed. 1993).

juvenile office is placed in a situation that could potentially present a conflict of interest in violation of ethical rules.

Efficiency of the Public Defender's Office

A recent Dallas County Management Report found that "[t]he number of public defenders in a court does not appear to be the primary cause of lower overall indigent defense cost [per case]. The greater cost factor appears to be the number of cases assigned to each public defender."¹⁸ In recognition of this, a number of judges tend to assign lower level felonies to the public defenders in their courtrooms so that the public defenders can move cases along more quickly.

Some judges interviewed said that the Public Defender's Office is good for handling a large volume of cases whereas court appointed attorneys are given more high profile/serious cases. While not true of all judges, one judge did note that "I don't give the public defender anything complex or labor intensive; not for lack of resources in the Public Defender's Office, but because they are moving a lot of cases and I don't want them to get bogged down with complex cases." One family violence judge said that she has the second lowest cost per case among misdemeanor judges because she has a public defender that can move cases and is very efficient.

One misdemeanor judge stated that she almost exclusively uses public defenders in her courtroom because there is more consistent representation, it increases efficiency when the same two people are in the court all the time, and it improves follow-through ability. In addition, there is greater accountability with the Public Defender's Office. She further stated that given the volume of the misdemeanor docket it is helpful having this type of system. One thing to note is that one of her public defenders speaks Spanish fluently. Without a Spanish-speaking public defender the judge would use assigned counsel much more often. However, the judge commented that she does not like the lack of discretion in appointing court-appointed counsel. Unlike the felony wheel, the misdemeanor judges do not have the option of viewing the next five attorney names on the list.

A felony judge commented that the public defenders in her courtroom are a good fit, particularly because one of the attorneys speaks fluent Spanish. She said that the quality, resources and morale of the Public Defender's Office improved significantly under the prior chief public defender. She has also seen an increased willingness of the District Attorney's Office to work with the Public Defender's Office. The current chief public defender has continued this positive trend.

According to the judges' observations, public defenders and assigned counsel do not differ significantly with regards to frequency of jury trials. Although, one judge commented that the majority of the trials in his court have been from the public defender's office due largely to the fact that he assigns the public defender all non-conflict cases so there is a greater opportunity

¹⁸ Dallas County Management Report, *Volume II: Judicial System Workload and Efficiency Measures*, 3-2003, pg. 2.0a.

for jury trials. In both fiscal years 2002 and 2003, the District Attorney's Office reported that approximately three percent of all felony dispositions ended in a jury trial.¹⁹

In terms of numbers of motions filed, we heard that public defenders file the same or fewer motions than court-appointed attorneys. One judge attributed the limited motion practice to the fact that the public defenders have a better working relationship with the district attorneys and are able to resolve issues informally. While formulating good working relationships with the district attorney's office may expedite the trial process, there is a danger that attorneys may not zealously represent their clients. We did not, however, observe this as an issue during our site visit.

Several judges suggested that the chief public defender meet with them regularly to address issues. A number of judges also pointed out that the Public Defender's Office has grown under the leadership of the current and prior chief public defenders; they made a big difference in improving the perception of the Public Defender's Office by contacting the judges and asking how the office could improve. One judge noted that it is good that the current chief public defender attends the Dallas County Criminal Bar Association's monthly board meetings.

Caseloads

According to the chief public defender, the office strives to maintain attorney caseloads at levels deemed to be reasonable for providing quality representation, yet high enough to be cost effective. In Dallas County, judges, the District Attorney's Office and the Public Defender's Office count cases by cause numbers, or charges.²⁰ In other words, each charge that a defendant faces arising out of one incident is counted as one case. A case is anything that has been assigned to an attorney, including writs.

The most frequent and acceptable method of counting criminal cases is recommended by the National Center for State Courts, which states that a single criminal case should be counted by "each defendant and all charges involved in a single incident."²¹ Using this method of case counting, the Office of Court Administration/Judicial Council developed reporting instructions for monthly court activity reports. The Texas Task Force on Indigent Defense, in turn, adopted this definition of a case.²² The method of case counting employed by Dallas County artificially inflates the number of cases, which makes it difficult to accurately analyze cost per case.

¹⁹ See Dallas County Management Report, *Volume III: Performance Indicators, 1-2004*, pg. 34.

²⁰ In Dallas County, there are separate cause numbers (indictments or informations) for each criminal offense. In juvenile court, however, multiple offenses are listed within one cause number. For consistent case counting throughout the office, the chief public defender has juvenile attorneys record their hours to show that some cases are more time consuming because of multiple counts within one cause number.

²¹ STATE COURT MODEL STATISTICAL DICTIONARY 19 (1989).

²² The Task Force definition states: "For the purpose of these reports, the number of criminal cases reported on this monthly reporting form should be based on the number of defendants named in an indictment or information. That is:... [i]f an indictment or information contains more than one count (Article 21.24, CCP), report this as one case and report the case under the category for the most serious offense alleged."

The Public Defender's Office now handles most 72 hour writs,²³ which may slightly inflate caseload numbers. For felony attorneys who handle a variety of cases, it is suggested by the chief public defender that they be assigned 30 to 35 new appointments a month. If the attorney handles a majority of revocations, then the case count target is between 40 to 45 new cases a month. Misdemeanor attorneys are to be assigned between 80 and 100 new cases a month.

The following table illustrates the total new cases assigned to the Public Defender's office between October 1, 2002 and September 30, 2003:

Table 3

Division	Caseload	Number of Attorneys	Average Yearly Caseload Per Attorney	Average Monthly New Caseload Per Attorney
Felony	11,772	28	420	35.03
Misdemeanor	18,190	16	1,137	94.75
Juvenile Delinquency	2,055	6	343	28.58
Family Court	1,088	8	136	11.33
Mental Health	1,442	1 ²⁴	1,442	120.16

Source of Data: Public Defender's Office

When asked how she thought staff would categorize their caseload, the chief public defender thought that they would say between a reasonable and heavy caseload. During our site visit, we were given a variety of current open caseloads from the attorneys including between 45 and 60 new felony cases a month; 35-45 open juvenile cases; and approximately 80 new cases a month for misdemeanor attorneys. Because of the method of counting cases in the office, we were not able to compare caseloads with other public defender offices.

According to a recent Dallas County Management Report,²⁵ one misdemeanor public defender was assigned 1,328 cases in the first nine months of FY03, while another misdemeanor public defender was assigned 748 during the same time period. Public defender caseloads in the Criminal District Courts vary widely between courts as well. For instance, according to the same Management Report, one felony public defender was assigned 515 cases in the first nine months of FY03 and another felony public defender was assigned 229 cases.

The caseload numbers far exceed those numbers recommended by the National Advisory Commission (NAC) and adopted by the American Bar Association. This is the only national organization that has proposed annual caseload limits for public defenders. A number of states

²³ In Dallas County all arresting agencies making arrests for felony or class A and B misdemeanor offenses must file charges against a detainee within 72 hours from the time of the initial arrest. If this does not occur, a defendant may file a 72 hour writ to compel the arresting agency to file charges or release the defendant.

²⁴ During our site visit we were informed by the chief public defender that she is applying for a grant for a second mental health attorney.

²⁵ See Dallas County Management Report, *Volume II: Judicial System Workload and Efficiency Measures*, 3-2003.

and counties have developed similar numerical standards appropriate for the types of cases handled in that jurisdiction.²⁶ The NAC limits are as follows:

- 150 felonies per attorney per year; or
- 400 misdemeanors per attorney per year; or
- 200 juvenile cases per attorney per year; or
- 200 mental commitment cases per attorney per year; or
- 25 appeals per attorney per year.²⁷

It is unknown exactly how many charges there are per defendant, per incident in Dallas County, thus an accurate comparison to the NAC case numbers listed above cannot be completed. However, it is clear that the reported case counts are high and we believe that the caseload numbers exceed national standards.

The Need for an Integrated Case Management System

The Dallas County Public Defender's Office currently has no case management system in place. The office keeps track of the number of cases assigned to each attorney in an Excel spreadsheet, which does not keep track of any information about the individual cases. Each satellite office has a separate computer system that tracks limited case information to which the main public defender office does not have access.

This situation has caused several problems involving conflicts of interest, where a conflict was not detected until after a number of court settings and substantial case preparation had occurred. For example, one felony public defender told us that during preparation for a recent case, the investigator assisting her found a conflict with the juvenile public defender's office during the investigation. The case system on the computer did not show co-defendants or complaining witnesses so the conflict was not discovered during an initial check. Significant work had been done on the case before the conflict was discovered and the Public Defender's Office had to withdraw.

The Texas Task Force on Indigent Defense recently approved a \$300,000 discretionary grant for the purposes of setting up a case management system. As a requirement of the grant, the new system must interface with the County system. The office is investigating various options for implementing a case management system. Our recommendation is that any case management system that is purchased or developed by the Public Defender be compatible with, and geared toward, integration with other case management systems in use or under design for the courts and other county agencies. Specifically, the system should be designed with an open architecture database structure, which would allow other applications to easily transfer information to and from the case management system, significantly reducing data entry time and ensuring data accuracy. We also recommend that any system be designed with Justice XML standards, which is a set of common identifiers for elements of information in use by criminal justice agencies. Justice XML improves data sharing between agencies by reducing confusion as to which elements of information are being requested.

²⁶ See Appendix A for a table illustrating public defender workload standards by state.

²⁷ NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, COURTS 13.12 (1973)

It should be noted that a robust case management system capable of tracking many elements of information would require a sufficient number of data entry personnel and adequate training to ensure reliable entry of information.

Expenditures and Cost Per Attorney Calculation

The proposed budget for the Public Defender's Office during fiscal year 2003 was \$5,086,667.²⁸ Of the total amount, \$53,907 was earmarked for the operating budget, which included property less than \$5,000, notary fees, office supplies, postage, printing, photo supplies for investigators, law library books, transportation, fees for the family law section, copiers and fax machines. The Public Defender's office does not have to pay for interpreter costs for languages other than Spanish, expert witness costs or transcripts. These three items are paid from each court's budget and therefore are not included in the figure above.

The average cost per Dallas County public defender attorney in fiscal year 2003 was \$79,479.17.²⁹ Over the years, The Spangenberg Group has developed a system of analyzing the sufficiency of public defender expenditures based on expenditures per attorney. If average expenditures per attorney fall within the range of \$75,000 to \$90,000, the office is in the low range for the country; between \$90,000 and \$125,000 is average; and \$125,000 to \$165,000 is high. When a public defender office falls within the low range, certain assumptions can be made about the office: that assistant public defender salaries are fairly low; the office has few support staff; the office has little or no technology; and the office faces high caseloads. These assumptions hold true for the Dallas County Public Defender's Office, although improvements, especially with regards to technology, have been made.

Calculating the reasonable average cost per public defender is an important tool in developing public defender office budgets. Once this is done it should be determined how many public defenders are needed to handle the jurisdiction's caseload and a budget can be calculated. As explained in the Dallas County Management Report,³⁰ the County calculates costs for each individual public defender by adding the approximate salary of the public defender assigned to a particular court with a pro-rated share of all other non-attorney salaries and operating expenses, plus the pro-rated share of an additional 10% cost, or \$350,000, added by the Management Report to account for space usage, utilities, central services and employee grievances. (The Management Report does not indicate how much money it attributes to each attorney for the pro-rated share of non-attorney salaries and operating expenses.) It is not clear whether this is the same method used to determine cost per public defender when budget requests are made.

The County's approach of calculating the cost for each individual attorney differs from an average unit cost per public defender approach highlighted below. Either method may be used, however, the Management Report currently calculates cost per attorney based on the existing insufficient attorney-to-support staff ratio. TSG has created an example of how a unit

²⁸ See Appendix B for a copy of the budget provided by the County Auditor's Office.

²⁹ The figure is simply the total budget divided by the number of FTE attorneys.

³⁰ See Dallas County Management Report, *Volume II: Judicial System Workload and Efficiency Measures*, 3-2003, pg. 2.0.

cost per public defender in Dallas County may be calculated based on salary and benefit information provided by the chief public defender, the suggested attorney to support staff ratios from the Indiana Public Defender Commission (see discussion pgs. 7-8) and other public defender agencies that use a similar method.

Table 4
Alternative Method to Determine an Average Unit Cost for One Full-Time Public Defender

\$62,000	Average salary for a public defender in a district criminal court
+ \$6,884.63	1/7 of the average salary of the investigators
+ \$4,627.52	1/7 of the average salary of the secretaries
Salaries: \$73,512.15	
+ \$13,967.31	19% of the salaries – this constitutes the percentage of the salaries attributed to fringe benefits
Salaries plus fringe: \$87,479.46	
+ \$13,121.92	15% of the salaries plus fringe which is attributed to overhead – this ratio is not uncommon in other parts of the country
Grand total: \$100,601.37	

This is an example of how to calculate a more reasonable cost per public defender attorney than Dallas County's current cost of \$79,479.17. Based on our expertise, the total expenditure per public defender attorney in Dallas County should be at least \$100,601.37. While this total falls within the lower end of the average range of expenditures per attorney discussed above, it is a sound starting point for determining cost per attorney and thus calculating an accurate cost per case.

Cost-per-case Calculation

The Dallas County Management Report has attempted to calculate a cost-per-case for the public defender attorneys in both the District Criminal and County Criminal courts and use this information to compare the cost effectiveness of the public defenders and court-appointed attorneys. The primary reason why determining an accurate cost per case for the Dallas County Public Defender's Office is difficult is due to the fact that different judges assign different types of cases to the public defenders, particularly in felony cases, and the cases are not weighted, accurate cost per case analysis is difficult.

Once an accurate unit cost per attorney is determined, the weight of each case should be considered in calculating cost-per-case. Weighting cases provides a more accurate means of assessing attorney caseload by acknowledging that the amount of time required to work on

various types of cases within a case category (e.g., felonies) differs among case type.³¹ For instance, a state jail felony should not require as much time to defend as a first degree felony. However, in Dallas County, both cases would be counted equally.

The Dallas County Management Report on Judicial System Workload and Efficiency Measures for the First Quarter of Fiscal Year 2004 has attempted to compute a cost per disposition for public defender representation in each of the District Criminal Courts and a cost per case assigned for public defender representation in all County Criminal Courts. It is our professional opinion that this methodology is seriously flawed because it is unable to provide appropriate weights for the various types of felony cases assigned to public defenders in each of the individual courts. For example, if a public defender handled only probation violations in a Criminal District Court, the average cost per disposition would be substantially lower than a public defender in a court that was handling serious and complex felonies.

Such a method would only be possible with the development of a new computerized case tracking system that could uniformly report case dispositions or assignments on a weighted caseload basis. Hopefully, this process can be accomplished with the installation of the new case management system in the Public Defender's Office.

³¹ The Spangenberg Group has developed a case-weighting model that requires public defenders or contract attorneys to keep detailed time records of their work over a given period of time, typically ranging from ten to thirteen weeks, on specially designed time sheets. The time records provide a means by which caseload (the number of cases handled) can be translated into workload (the amount of effort, measured in units of time, for the lawyer to complete work on the caseload). The ability to weight cases allows thorough consideration of not just the raw number of cases assigned to a criminal justice agency annually, but also the severity of various case types handled by the program.

PRIVATE BAR

Qualifications for Receiving Court Appointments

Senate Bill 7 made significant changes to the system of appointing private attorneys in Texas by requiring that each county prepare and publish procedures for appointing private counsel for indigent defendants in misdemeanor cases punishable by confinement and felony cases.³² The plans for each county are available on the Texas Task Force on Indigent Defense's website.³³

The qualifications for court appointed attorneys in Dallas County vary depending on the court: district, county or juvenile, and within district court, the level of offense. All courts require some number of completed CLE hours. The County Criminal Courts specifically require that attorneys have a secretary, receptionist, local area code with answering service or regularly monitored answering machine and a fax machine and an e-mail address. The District Criminal Courts require a certain number of years of practice depending on the degree of offense and felony jury trial experience. Finally, the Juvenile District Courts require a specific number of CLE hours and either a year of practice in juvenile law or a minimum number of juvenile cases.³⁴

As an additional requirement of the Fair Defense Act, the Texas Task Force on Indigent Defense is required to develop policies and standards for providing legal representation to indigent defendants in criminal cases.³⁵ This includes performance and qualification standards for attorneys desiring appointments. As of the time of this report, the Task Force had only developed and proposed minimum CLE requirements for court appointed attorneys among the performance and qualification standards.³⁶

At the time of our site visit there were 208 attorneys approved for the District Criminal Court wheel, 297 for the County Criminal wheel and 224 on the Juvenile Court list.

How Attorneys are Appointed

If it has been determined that a court-appointed attorney will be assigned to a case, a system for assigning attorneys that was created pursuant to the requirements of SB 7 is used in Dallas County. In felony cases, a computer generated wheel is used. The wheel is divided into several categories according to attorney experience and severity of the case: first, second and third degree felonies and state jail offenses. In addition, there are separate Spanish speaking lists for each category. To select an attorney for assignment, the wheel is accessed by the court administrator and the next five names on the list are revealed. A judge then has the option of

³² See Article 26.04, Code of Criminal Procedure.

³³ <http://tfid.tamu.edu/Public>

³⁴ See Appendix C for copy of Juvenile, District and County Criminal Courts' qualifications for court-appointed counsel.

³⁵ See Section 71.060, Government Code.

³⁶ See [http://www.courts.state.tx.us/tfid/Rules%20on%20CLE%20\(TJC%20Ratification\).htm](http://www.courts.state.tx.us/tfid/Rules%20on%20CLE%20(TJC%20Ratification).htm) for the proposed CLE requirements.

taking whomever's name comes up first or any one of the next four names. This is specifically for felony cases; the misdemeanor judges have a separate list and only one name comes up on the list. This is a centralized computer list so all judges have the same list. As a systematic safeguard in felony cases, judges can only skip one person three times before they must select that attorney. If an attorney is qualified for first degree felonies then he or she is automatically put on the wheel for all other offenses falling below first degree (second degree attorneys are qualified for second degree and lower, and so forth). Theoretically the attorneys qualified for first degree cases, and thus qualified for all lesser felonies, should be getting the most appointments, however, it is not certain that this is happening.

In the County Criminal Courts, appointments are made by each individual court coordinator from a list of qualified attorneys. The list is organized alphabetically and to fairly distribute the appointments, each court starts at a different place on the list. Unlike the felony system, the judges must select the next attorney name that comes up on the misdemeanor list.

At the time of our site visit, each judge in the juvenile court had his or her own court appointed attorney list. We were told by the presiding juvenile judge that the separate lists were to be integrated by early this year. Assignments are generally made on a rotating basis, however if an attorney has previously represented a juvenile, that attorney is assigned to the new case. This system results in certain attorneys receiving more assignments than others. Also, unlike the felony wheel, which allows some leeway in appointing by allowing judges to view the next five names on the list, in juvenile and misdemeanor cases, the next attorney on the wheel will receive an appointment.

Efficiency of appointment has improved since SB 7. Most attorneys, with very few exceptions, said that they received notice of appointment the day after arrest or within two days of arrest. We were told by a private attorney that 99 percent of the time he is in court with his client the first time he/she is brought into the court because a number of court administrators call court-appointed attorneys the day before first appearance, or the morning of, so that the attorney is present when the defendant is brought to court on the jail chain.

It was clear from our site visit that the Dallas County courts are still struggling with the task of implementing a fair system of appointment that will guarantee effective assistance of counsel. While the wheel system provides a fair and objective means by which to assign counsel, there are still issues that must be addressed.

Removal of Attorneys From the Court-Appointed List

To remove attorneys from the Criminal District Court wheel, a Review Panel comprised of "1) a member, other than a judge of a criminal district court in Dallas County, appointed by the criminal district court judges, 2) an attorney selected by the DCDLA president together with the chair of the DBA Criminal Justice Committee and 3) an attorney selected by the first two members who shall have at least 15 years of criminal practice experience,"³⁷ will review referrals for disciplinary action. A majority of the criminal district judges must determine whether

³⁷ *Review Panel Referral Procedure*, at <http://tfid.tamu.edu/CountyDocuments/Dallas/2004%20Dallas%20District%20Court%20Attorney%20Removal%20Procedures.pdf>.

removal is justified. An attorney may be removed from the wheel if they have repeatedly failed to contact or interview clients in a timely matter; submitted an improperly documented or inaccurate request for payment; repeatedly failed to provide reasonable assistance of counsel; or another stated good cause.

In County Criminal Court the judges vote on a quarterly basis to update the master list, adding names of newly qualified attorneys and removing names of those attorneys who fail to appear in court or who fall below the minimal standards and qualifications. Removals from the list are for a minimum of one year.

Juvenile Court has not specified removal procedures and thus must adhere to the requirements under Senate Bill 7.³⁸

Compensation

Court-appointed attorneys are compensated for their work based on a set attorney fee schedule. See Tables 5 and 6 below. The Fair Defense Act requires that judges in the county, statutory and district courts exercising criminal jurisdiction adopt a schedule of fees paid to court-appointed counsel.³⁹ Judges are responsible for reviewing requests for reimbursement submitted by the attorneys practicing before them.

The following tables set out the compensation schedules for County Criminal Court and Criminal District Court cases:

**Table 5
Compensation Paid in Misdemeanor Cases**

	Fixed Daily Rate	
	Minimum	Maximum
Non-Jury Disposition	\$75.00	\$750.00
Jury Trial	\$200.00	\$1,000.00
Dismissals	\$25.00	\$500.00
Appeals	\$500.00	\$2,500.00
	Hourly Rates	
Non-Appeals	\$75.00	\$100.00
Appeals	\$60.00	\$120.00

Data from 2003 Dallas County Coversheet and Plan, Texas Task Force on Indigent Defense website:
<http://tfid.tamu.edu/CountyDocuments/Dallas/2003%20Dallas%20County%20Coversheet%20and%20Plan.pdf>.

³⁸ See Article 26.04 (k), Code of Criminal Procedure.

³⁹ See Article 26.05, Code of Criminal Procedure.

Table 6
Dallas County Felony Fee Schedule for Court Appointed Counsel

Type of Case	Rate
Plea of Guilty or Nolo Contendre:	
Mini-Cap/1 st Degree	\$500 based on 6 hours of work
2 nd Degree	\$400 based on 5 hours of work
3 rd Degree/State Jail	\$300 based on 4 hours of work
Revocations	\$200 based on 3 hours of work
Trials Before the Court	\$500 based on 6 hours of work
Jury Trials	\$750 per trial day with a jury
Meetings, Examining Trials, Writ Hearings, Competency Hearings, Etc.	\$75 per hour for all reasonable, documented legal activity
<i>If the attorney documents more time spent than the schedule allows on the above listed cases, the judge may approve additional time at \$75 per hour.</i>	
Appeals	
Hourly Rate	\$100 per hour
Jury trial range	\$1,800-\$3,500
Anders brief	\$400-\$1,000

Data from 2004 Dallas District Court Attorney Fee Schedule, Texas Task Force on Indigent Defense website
http://tfid.tamu.edu/Public/Default.asp?county_id=57

The intent of the new appointment system was to remove conflicts of interest existing in the pre-SB 7 system. While this goal has been achieved, some judges expressed dissatisfaction with the fact that the present system requires felony judges to review attorneys' bills for reimbursement of services.

Changes Post-SB 7

Several judges interviewed expressed dissatisfaction over the new appointment system. One judge in particular referred to it as a "welfare entitlement program for mediocre lawyers" and another judge said that a number of defense attorneys view appointed work as a "right to work." There was an overall consensus that appointed counsel representation has not substantially improved since SB 7 was implemented and two judges suggested that they were "discouraged" that the new system has not improved the quality of representation. A consistent complaint heard was that the objective qualifications required by SB 7 are not enough to weed out the bad lawyers.

One judge suggested that a mechanism for flagging attorneys who meet the objective qualifications for inclusion on the court appointed list but who are not providing effective assistance of counsel for removal from the list would be helpful. In the alternative, another judge suggested changing the objective qualifications so that attorneys not performing up to par do not get appointments.

A significant change that occurred after the implementation of Senate Bill 7 is that a number of court-appointed attorneys can no longer make a living from taking appointments, especially those attorneys taking primarily misdemeanor cases. While this may be in part due to

the fact that with significant budget cuts, the fee paid to court-appointed attorneys in misdemeanor pleas was reduced, it was suggested that a large pool of attorneys available for misdemeanor appointments has resulted in attorneys receiving fewer appointments annually, thus making it difficult to make a living from taking appointments. However, data does not support the latter, as we were told that there are 297 attorneys on the misdemeanor wheel and over 25,000 cases handled by court-appointed counsel.

While a number of judges have added additional public defenders to their courtrooms since the implementation of SB 7, judges continue to limit the use of public defenders. One judge stated that politically, a judge would not want too many public defenders in their courtroom because they want to keep the private bar happy. Another stated that the risk of conflicts necessitates the continual use of appointed-counsel.

In addition to the positive changes regarding appointment of counsel that occurred because of SB 7, other areas of indigent defense have improved as well. For instance, with regards to experts, we were told that in general, judges were very good about granting requests for expenses for independent experts. Dallas County Criminal District Court requests prior court approval for investigator and expert witness expenses, however counsel may incur expenses without prior court approval and will be reimbursed up to a maximum of \$750. All expenses in excess of \$750 must receive prior court approval. The Juvenile Court also requests prior court approval, but it is not necessary we were told.

To assist with the additional work the Senate Bill 7 created, the Dallas County Courts received a discretionary grant from the Task Force on Indigent Defense to hire an indigent defense coordinator. The grant was for one year and the person hired to fill the position left after six months. The position was recently filled for the remaining six months. Because of the turnover it is too early to assess the value of the indigent defense coordinator.⁴⁰

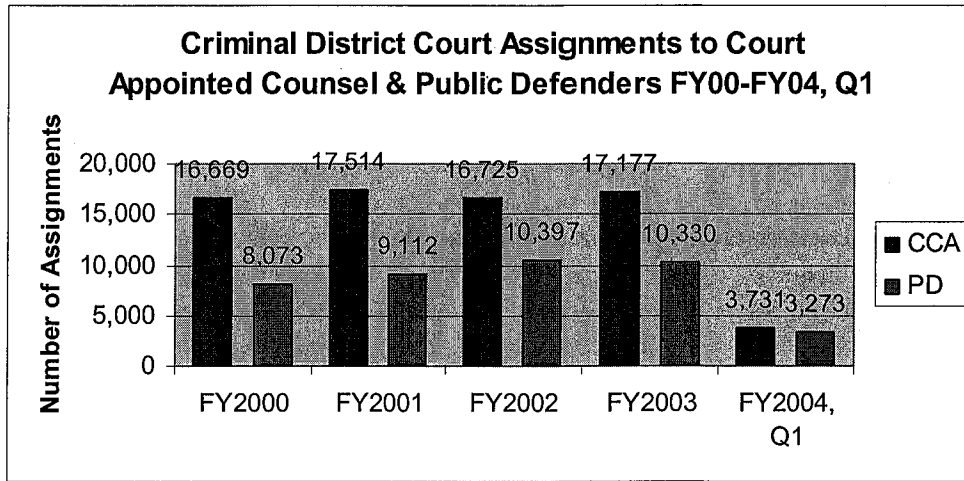
Caseloads

Overall, court appointed counsel are used on average slightly more often than public defenders, however, there was a higher increase in cases assigned to the public defender during the first quarter of fiscal year 2004. The Dallas County FY 2004 Performance Measures found that in felony courts in FY03, 11,772 total cases, or 39% of all indigent cases, were assigned to the public defender while in the first quarter of FY04, 3,273 cases, or 47% of all indigent cases, were assigned to the public defender. There is no corresponding information available for misdemeanor cases.

Assignments made to court-appointed counsel in the Criminal District Courts have remained fairly steady over the past four years. *See* Table 7. An accurate cost per court-appointed attorney assignment is difficult to calculate in light of inconsistent expenditure data reported in the Dallas County Management Report. However, it appears that cost per assignment is at its lowest since FY96.

⁴⁰ Wichita County, the only county in Texas using a public defender office as the primary indigent defense provider, has an indigent defense coordinator and has found the position to be quite valuable. In fact, once the Task Force grant runs out, Wichita County would like to create a permanent County-funded position.

Table 7



Source of Data: Dallas County Management Report, Vol. II: Judicial System Workload and Efficiency Measures, 1-2004.

Prior to SB 7, Dallas County used an assigned counsel lawyer for the day system to represent indigent misdemeanor defendants. Now attorneys are appointed to represent individual defendants. There were 43,441 class A and B misdemeanor cases filed in FY03. With 18,190 of those cases handled by the Public Defender's Office, there are over 25,000 cases a year handled by court-appointed counsel. As a large percentage of misdemeanor defendants plead guilty at first appearance, it is not efficient to assign court-appointed attorneys on a rotating basis by case.

Expenditures

The following table illustrates county expenditures for court-appointed attorneys' fees, as reported by the Dallas County Auditor's Office:

Table 8

Attorneys' Fees and Other Court Costs For Court-Appointed Attorneys	FY 2003 Expenditure
Misdemeanor Attorneys' Fees	\$1,166,059.22
Felony Attorneys' Fees	\$5,245,890.03
Death Penalty Attorneys' Fees	\$1,000,716.45
Appeals (District) Attorneys' Fees	\$2,235,827.80
Writs Attorneys' Fees	\$178,582.43
Investigators	\$369,099.85
Child Welfare Attorneys' Fees	\$1,122,282.24
Delinquency Attorneys' Fees	\$2,172,499.57
<i>Total</i>	<i>\$13,490,957.59</i>

Source of Data: Dallas County Auditor's Office.

INDIGENT DEFENSE ISSUES GENERALLY

Indigency Screening

Pursuant to Article 15.17 of The Texas Code of Criminal Procedure, no later than 48 hours after initial arrest, each person must be brought before a Dallas County magistrate. The magistrate is charged with delivering admonishments, determining probable cause for further detention, setting bail, and informing the arrestee on the process for requesting court-appointed counsel. By statute, the magistrate should be assisting the defendant with filling out an indigency form for each defendant that requests court appointed counsel after arrest. If a defendant is not magistrated, we were told, the bailiff or the defendant's court-appointed attorney may help complete the indigency form.

The indigency form asks for very little information: total monthly income, total assets, total monthly expenses and number of dependent children. We were told by several different people including judges, public defenders and private attorneys, that if a defendant signs the form and requests an attorney, he or she is provided one. One felony judge complained that there is no time to check indigency. In addition, we were told that almost everyone detained in jail pretrial gets a court appointed attorney. If a defendant is on bond, occasionally he or she must prove to the court administrator that he or she needs appointed counsel. This process is not standardized and is subjective, varying among courts. Based upon our site work it is not clear whether indigency screening is being done in all cases where a defendant requests assigned counsel.

The public defender misdemeanor supervisor complained of several situations where judges will assign a public defender to represent a defendant who wants to plead the day they are brought over to court from the jail. The result of this is that the public defender is appointed to some defendants who are not indigent. Many of the misdemeanor lawyers never challenge the determination of indigency, however, the misdemeanor supervisor occasionally challenges appointment of the Public Defender's Office. It appears that the Public Defender's Office is sometimes appointed for efficiency's sake to move cases quickly when a defendant wants to plead.

In juvenile court, indigency is presumed until first announcement when parents' financial information is reviewed. Parents have to pay if able to contribute.

Misdemeanor Cases

In misdemeanor cases a large percentage of defendants on the jail chain, we heard estimates of 80-90 percent, enter a plea of guilty on the day of the defendant's first appearance. A common reason suggested to us was that a typical jail sentence for misdemeanor defendants is approximately 30 days imprisonment and Dallas County has a three-day-for-one-day policy on jail time so that those defendants who have spent close to ten days in jail before first appearance have already served, or have come close to serving, their likely jail sentence. Defendants who

cannot make bond may have to stay in jail for up to 10 days until they can get a trial. Thus, there is an incentive to plead at the first appearance. For defendants who have bonded out, approximately 50-60 percent plead guilty at first appearance.

The Dallas County Court Coordinator for County Courts informed us of a problem that results in additional unnecessary costs to the County. Pursuant to the requirements of SB 7, defense attorneys are appointed and must meet with their clients within 1-2 working days after an arrest. However, there is no corresponding requirement that the police and/or the District Attorney must file charges within that same timeframe. Arresting agencies in Dallas County must have charges filed within 72 hours from time of initial arrest. A charge is considered filed when it has been presented and accepted by the District Attorney's Office. Therefore, attorneys are meeting clients on the jail chain, just to find out that charges have not been filed yet. The defendant must return to jail and be brought to court again once charges are filed. Not only does this result in some defendants spending more time than necessary in jail, it also results in increased jail costs to the County as defendants that may have plead guilty at their first hearing must now stay in jail an extra day or more. It costs Dallas County approximately \$30 a day to house a misdemeanor defendant pretrial. With over 40,000 misdemeanor cases filed in fiscal year 2003, assuming that half of those defendants bonded out, that is an added cost to the County of \$600,000 a year.

Harris County does not have this problem because the County has a direct filing system, which streamlines the system of filing charges and allows the County to save money on housing defendants unnecessarily. In October 2004, Dallas County is implementing an integrated county-wide directing filing system that should remedy this problem.

During our site visit we observed a large jail chain that was brought down to the misdemeanor courts and were informed that this occurs occasionally. This means that a significant number of defendants are brought together at one time from the jail to a misdemeanor court for first appearance. Since a number of misdemeanor defendants enter guilty pleas at first appearance, this requires the public defender office to pull attorneys from their regular courtrooms to assist those attorneys facing a large jail chain, and in addition requires the misdemeanor supervisor to take a caseload from the large jail chain. The County Courts Manager stated that large jail chains are a cost saving issue. In order to reduce jail costs, misdemeanor defendants are brought into court soon after arrest because many defendants plead guilty at first appearance, thus reducing the cost of housing inmates. For felony cases, the costs of housing inmates in jail awaiting adjudication are attributed to each court's budget. The average annual jail cost for each courtroom is \$1,166,345, thus making it the largest single expense for each courtroom. This provides an added incentive to move cases along more quickly.

Examining Trials

Pursuant to the Code of Criminal Procedure Article 16.01, those accused of a felony have the right to an examining trial before indictment. Examining trials are similar to preliminary hearings: the prosecutor must produce evidence which establishes that there is probable cause to believe that a crime has been committed and that the defendant committed the crime. While the

Code provides the right to an examining trial to any accused in a felony case, in Dallas County the ability to receive an examining trial is on a first come, first served basis and is only available Monday through Wednesday from 1:30-4:30 for 15 minute time slots. The Dallas County felony judges created the limited examining trial policies. If an attorney is able to get an examining trial and the arresting officer fails to show up, the attorney can waive the examining trial and take notes from the police report or reset the case for a hearing, even if the case is heard by the grand jury. There are occasions where an examining trial is reset two or three times and an officer is subpoenaed by the defense to appear.

During our site visit we heard several complaints that getting an examining trial was a problem. According to the Dallas County FY2004 Performance Measures, there were 20,308 felony filings in FY2003. With a possible 36 time slots available a week for examining trials, this would mean that less than 10% of felony cases will get an examining trial. If a defendant requests an examining trial, but does not receive one, it is a clear violation of his or her rights. While we were informed that attorneys can request an examining trial from the judge in the original charging court, this happens most often in cases involving serious felonies and not all attorneys are aware of this mechanism for getting an examining trial. Examining trials can be a useful tool for defense attorneys by giving them a sense of the prosecutor's strategy, legal theory and potential witnesses. In addition, if the prosecutor is slow to indict, prosecutors may be more likely to indict rather than have an examining trial.

While we were informed that some attempts are being made to address the problems discussed above, the ability to receive an examining trial still remains an issue.

Court System Case Management

The Dallas County courts have an antiquated case management system for docketing purposes, and are awaiting development of a new statewide system that is 3 to 4 years in the offing. Records of payments to assigned counsel are kept by the County in a separate system, which keeps track of voucher information. While both systems track the same cases, they are not linked, and analysis such as cost per case or time to disposition for a particular case class or attorney cannot readily be made.

Currently, the Texas Conference of Urban Counties is coordinating an initiative to develop a new Common Integrated Justice System (CIJS) across multiple counties. The project is structured so that all participating counties can use the project output. At last report, 13 counties were participating, including Dallas County.

The Dallas County Public Defender, Travis County and Tarrant County submitted grant applications with the Texas Task Force on Indigent Defense. The Dallas County Public Defender's application is for the purchase of a case management system for the office. As mentioned above, the request was granted and the Public Defender's Office was given a \$300,000 grant to develop a case management system. The system must interface with the county system.

Tarrant County and Travis County already have systems for basic management of the indigent defense appointment process, and are members of the Texas Conference of Urban Counties Common Integrated Justice System project. They plan to integrate their current application with the current and planned information systems in the counties, and to provide web-based interfaces for judges, law enforcement and attorneys to access and update information within the system, which is currently performed via fax and entered in the system manually.

One aspect of each of these projects is to enable reporting of indigent defense statistics relevant to administration of the Texas Fair Defense Act. Reports which can detail time to disposition by case type and classification, number of hours spent on each case, and reduction or dismissal of charges are elements which can be used to evaluate the efficiency of the criminal justice system. Ongoing dialogue between administrators and information technology personnel should encourage further exploration of performance measures useful to all elements of the criminal justice system and to state legislators.

We wholeheartedly encourage this type of collaboration, and recommend that any agency planning on implementing or improving their case management systems consider joining these efforts.

Expenditures

The total indigent defense expenditures for Dallas County as reported by the Texas Task Force on Indigent Defense for fiscal year 2003 was \$19,660,911.⁴¹ This includes \$18,326,945 in total county expenditures, \$1,042,618 for the formula grant and \$291,348 for a discretionary grant. Table 9 represents TSG's calculation of indigent defense expenditures for fiscal year 2003. Attorneys' Fees, Other Court Costs, and Public Defender's Office Budget are based on information provided by the Dallas County Auditor's Office. The Task Force Formula and Discretionary Grants total is from information provided by the Texas Task Force on Indigent Defense.

⁴¹ See Texas Task Force on Indigent Defense, *Annual Expenditure Report Fiscal Year 2003*, 9.

Table 9
Dallas County Indigent Defense Expenditures for Fiscal Year 2003

Attorneys' Fees	FY 2003 Expenditure
Misdemeanor Attorneys' Fees	\$1,166,059.22
Felony Attorneys' Fees	\$5,245,890.03
Death Penalty Attorneys' Fees	\$1,000,716.45
Appeals (District) Attorneys' Fees	\$2,235,827.80
Writs Attorneys' Fees	\$178,582.43
Investigators*	\$369,099.85
Child Welfare Attorneys' Fees	\$1,122,282.24
Delinquency Attorneys' Fees	\$2,172,499.57
<i>Subtotal</i>	<i>\$13,490,957.59</i>
Other Court Costs**	
Psychiatric Investigation	\$247,028.96
Transcripts	\$882,638.15
Interpreter	\$425,545.08
Expert Testimony	\$119,018.92
Other Professional Fees	\$422,162.99
<i>Subtotal</i>	<i>\$2,096,394.10</i>
Public Defender's Office Budget	
<i>Subtotal</i>	<i>\$5,086,667</i>
Task Force Formula and Discretionary Grants	
<i>Subtotal</i>	<i>\$1,333,966</i>
Grand Total	\$22,007,987.69

Source of Data: Dallas County Auditor's Office

* Investigator costs are included in the Attorneys' Fees section because these costs are attributed only to court-appointed counsel.

** "Other Court Costs" can be attributed to both court appointed attorneys and public defenders, however for the most part the Public Defender's Office uses their own interpreter and thus the majority of the interpreter costs above would not apply to the office.

FINDINGS

There have been a number of overall, improvements to the indigent defense system in Dallas County since the passage of Senate Bill 7. For instance, Dallas County has consistently increased indigent defense expenditures. The Criminal District, County Criminal and Juvenile District Courts have made positive steps to comply with the requirements of SB 7. In addition, it is clear that the Public Defender's Office is regarded as an integral part of the criminal justice system, and has gained the respect of those involved in the system. The following findings examine several specific improvements and note several areas that still need attention.

Public Defender's Office

1. **A number of judges complimented the work of the current and prior chief public defenders and commented that public perception of the Public Defender's Office has improved over the years.** There has been an increased use of public defenders by judges in Criminal District, County Criminal and Juvenile District Courts in recent years. In addition, it was noted that both the current and prior chief public defenders were proactive in communicating with judges and other key people in the criminal justice system and the current chief attends and participates in a variety of criminal justice committee meetings.
2. **In general there is a low turnover for public defender attorneys, with the exception of Spanish-speaking attorneys, who have a higher turnover rate.** Spanish-speaking public defenders have additional time demands that other public defenders do not have, such as requests to interpret for court coordinators, clerks and other public defenders and translating legal documents for Spanish-speaking clients, however they are not paid a salary differential for this additional work. There is also a serious problem in recruiting and hiring Spanish-speaking attorneys.
3. **The current chief public defender has been proactive in seeking grants from the Texas Task Force on Indigent Defense.** In fiscal year 2003, the chief public defender secured two discretionary grants from the Task Force totaling \$216,195, which enabled the chief public defender to purchase 54 computers for the public defender attorneys and to hire a parent/youth advocate attorney. In fiscal year 2004, the chief public defender successfully secured a \$300,000 grant from the Task Force to be used to purchase a case management system.
4. **The Dallas County Commissioners Court, upon request of a judge, is receptive to adding new attorney positions to the public defender's office.** In the last two years, we were told that 14 new positions have been requested and none were denied.
5. **The office does not have a sufficient number of support staff.** The support staff-to-attorney ratios at the Public Defender's Office are the lowest that TSG has encountered in its 19 years of evaluating public defender offices. The lack of support staff negatively affects the efficiency and effectiveness of the office by requiring attorneys to do work

that is done by support staff in other public defender offices. This is a significant problem because it limits the time attorneys can devote to legal, as opposed to administrative work.

6. **The method of case counting employed by the Public Defender's Office and the other agencies participating in the indigent defense system make it impossible to determine an accurate cost per case.** Without attributing proper case-weights to different case types, it is not possible to compare the efficiency of the Public Defender's Office with court-appointed counsel. *See* "Public Defender, Cost per Case Calculation" section, pg. 19, for a more detailed explanation of case weighting.
7. **The formula used in the Dallas County Management Report for calculating costs associated with the Public Defender's Office is flawed and seriously understates the total amount of money needed to run a public defender's office efficiently.**
8. **There is no formalized training program for new public defenders.** While there are a number of senior attorneys and supervisors available for informal idea sharing, this does not address on-going training on substantive and procedural law.
9. **The Public Defender's Office lacks adequate funds for non-salary related expenditures,** such as: an improved telephone system; upgrade on technology, other than computers; additional space; a substantial upgrade in the law library; computerized legal research system; and other non-salary needs.
10. **The Public Defender's Office does not have salary parity with the District Attorney's Office.** While both agencies are limited to the same County salary formula, assistant district attorneys in supervisory positions receive substantially more money than their public defender counterparts.
11. **The types of cases public defenders receive and overall caseloads are wholly dependant upon each individual judge's decision to use the public defenders for certain cases. A number of judges stated that they use the Public Defender's Office to handle a large volume of cases because the public defenders are more cost effective than assigned counsel.** In its long history of evaluating public defender systems throughout the country, TSG has never seen another public defender system that operates in a similar manner. While overall we have seen a number of improvements to the Dallas County Public Defender's Office over the years, we feel strongly that the system of total reliance on judges determining individual caseloads needs to be changed. *See* below Public Defender's Office Recommendation 1.
12. **The computer systems among the three separately located public defender offices do not interface and thus conflicts of interest between the three public defender offices are not easily identifiable.** This results in conflicts going undetected until after a number of court settings and substantial case preparation before withdrawal and appointment of private counsel.

13. **Based on the FY03 Public Defender's Office budget, the average cost per attorney is very low.** In our experience, a low cost per attorney is, in part, indicative of inadequate public defender salaries, few support staff, little or no technology, and high caseloads. We found all of these problems to exist in the Dallas Public Defender's Office.
14. **The felony supervisors carry a full felony caseload in addition to their supervisory duties.** It is not possible for the felony supervisors to adequately perform their required functions while carrying a full felony caseload. In addition, as we have stated above, there is no formal training program for attorneys new to the felony division.
15. **The misdemeanor supervisor, in addition to her primary function of training and oversight, provides direct representation to in-custody defendants in instances where a large jail chain is brought in or there are not enough misdemeanor attorneys to fully cover the courtrooms.** When a large jail chain is brought in the misdemeanor supervisor must take those cases that the public defender(s) assigned to the courtroom cannot, either due to over-burdened caseloads, illness, or inability of the chief public defender to fully staff each misdemeanor court. This shift in duties takes much needed time away from attorney supervision.

Court-Appointed Counsel Findings

1. **In compliance with the requirements of Senate Bill 7, a new method of appointing counsel, using a wheel system, was established in the District Criminal Courts, County Criminal Courts and Juvenile District Courts.** The new wheel system in Dallas County has generally met with success, and takes away much of the concern directed toward conflict of interest that was felt to be present in the old system.
2. **In compliance with Senate Bill 7, formal standards for certification of court-appointed counsel have been established in the District Criminal Courts, County Criminal Courts and Juvenile District Courts.** Despite the formal standards, judges differ about whether these methods have improved the quality of representation among private court-appointed counsel.
3. **The flat fee system for compensating court-appointed counsel results in a disincentive for court-appointed counsel to spend the necessary time to assure that individual defendants have their cases prepared properly, whether the case is disposed by plea or trial.** Flat fees limit the amount of hours an attorney can be paid for work in a case. For instance, if a second degree felony case pleads, an attorney is paid \$400 based on an estimated five hours of work. While there is a mechanism for judges to pay more money above the flat rate, we were told this happens infrequently and only when a significant amount of extra time is expended. In addition, the overall County budget for indigent defense was cut 10 percent in fiscal year 2003, most of which came out of money budgeted for assigned counsel compensation.

Findings Related to Court Processing of Indigent Criminal Cases

1. **The process for determining indigency in Dallas County is extremely weak.** There is very little comprehensive indigency screening in Dallas County. We were informed that if an in-custody defendant requests an attorney, he or she receives one. The standardized form used to assist in determining indigency is not comprehensive, asks for very little information and is often completed after counsel has already been assigned. Virtually no verification is performed and seldom do judges raise questions about the recommendations following screening.
2. **There is an incentive for some in-custody defendants to plead guilty in misdemeanor cases at first appearance because the jail time a defendant has already served is typically his or her "back time" or close to it.** Dallas County has a three-day-for-one-day policy on jail time so that if a defendant serves 10 days, or close to 10 days, before first appearance, he or she will have already served, or come close to serving, a typical misdemeanor jail sentence of 30 days. In addition, if a defendant wants a trial, it may take up to 10 days before a trial can be scheduled, thus adding additional time served for in-custody defendants.
3. **The new requirements of SB 7 regarding early appointment of counsel still remain a problem in Dallas County. Charging procedures in the County Criminal Courts, coupled with these new requirements, result in a number of misdemeanor in-custody indigent defendants being held longer than necessary before formal charges are filed, thus costing the County additional money in unnecessary jail and processing time.** Frequently, in-custody misdemeanor defendants are brought to the County Criminal Courts for first appearance, only to learn that they have not yet been formally charged with a crime. This can occur because law enforcement agencies have not completed the necessary paperwork for the District Attorney's Office or because the district attorneys have not yet filed formal charges in the case. Unlike Harris County, Dallas County does not yet have a direct charging program, although such a process is being developed. Meanwhile, however, these delays raise serious questions about in-custody indigent defendants' rights in receiving timely representation which could, in part, result in many defendants spending additional unnecessary days in jail.
4. **Due primarily to scheduling problems, not every felony defendant that requests an examining trial will receive one.** Those accused of a felony have the right to an examining trial before indictment and the limited availability of examining trial hearing slots in Dallas County may result in a violation of some defendants' rights.
5. **At the present time there does not appear to be any method of screening for conflicts of interest and thus both public defenders and private court-appointed counsel may represent co-defendants or a defendant with an interest adverse to a former client in violation of the Rules of Professional Conduct.** For instance, the Public Defender's Office is appointed to represent all youths at detention hearings regardless of whether a conflict of interest exists. Court-appointed attorneys often take

appointments in the misdemeanor, felony, juvenile and family courts and courts do not have a method of tracking conflicts between courts.

RECOMMENDATIONS

Public Defender's Office

1. **The Public Defender's Office should be redesigned to operate as the primary provider of indigent defense services in Dallas County, similar to the vast majority of urban public defender systems throughout the country. Over the next two years, county officials, judges, the county criminal bar association, the chief public defender and other criminal justice agencies, should agree upon a plan under which the office is organized to provide a similar level of defense services in each of the Criminal District, County Criminal and Juvenile District Courts.** Given the growing support for the Public Defender's Office by the County and the judges, we feel that a two-year plan needs to be agreed upon to change the current structure under which each judge determines the types of cases and number of public defender attorneys who are to provide indigent defense services in his or her individual court. Such a plan would be consistent with virtually every other urban public defender system in the country. The primary advantage would be that the County could begin the year with a budget sufficient to provide quality services, but at a funding level far more predictable than today. While recognizing that an accurate cost-per-case comparison between public defenders and private assigned counsel is difficult, based on the data provided by the Dallas County Management Report, utilization of the Public Defender's Office is more cost effective for the County. We are fully aware of the view of many judges that each individual judge should determine the level of work to be performed in his or her courtroom by the Public Defender's Office, however growing requests by judges for additional public defenders to staff courtrooms supports the possibility of reorganization in the next 2-3 years.
2. **The Dallas Public Defender's Office is in substantial need of additional support staff. Currently the ratio of attorneys to support staff appears to be the lowest of any metropolitan public defender office TSG has visited throughout the country.** The County and the chief public defender need to determine the exact staffing needs of the office. At the time of our visit, the office had 64 attorneys, 62 of whom were full-time attorneys performing trial work, and only 12 support staff. In our judgment, while it appeared that all attorneys were working to capacity, a disproportionate amount of the attorneys' time was taken up with numerous non-legal tasks better performed by support staff. The limited number of support staff affects the attorneys' ability to handle a full caseload and is both an inefficient and ineffective use of the attorneys' time. It is imperative that the current office be provided with additional support staff as soon as possible to assure improved quality of representation. We believe that the hiring of additional support staff will not, in fact, result in any substantial additional cost to the office due to the increased legal productivity of the attorneys. Finally, by increasing the public defender attorney-to-support staff ratio, coupled with an increase in attorney

earnings through establishing salary parity with the District Attorney's Office (*see* Public Defender Recommendation 3 below), the average cost per public defender attorney should be more in-line with other metropolitan public defender offices.

3. **Dallas County public defender attorneys should have salary parity with assistant district attorneys based on similar experience and job title.**
4. **Spanish-speaking public defender attorneys should be paid a salary differential to attract qualified bilingual attorneys to the office.**
5. **The Public Defender's Office should establish a formal training program for new attorneys.** Currently, attorneys are provided only informal training and mentoring.
6. **In order to perform informal mentoring, evaluations and supervision, the felony public defender supervisors should carry a reduced felony caseload.**
7. **The Public Defender Office's new case management system should be designed with an open architecture database structure, allowing other applications to easily transfer information to and from the case management system.** The system should be designed with Justice XML standards, which is a set of common identifiers for elements of information in use by criminal justice agencies. This system would reduce data entry time, ensure data accuracy and would reduce confusion as to which elements of information are being requested by various criminal justice agencies.
8. **The Public Defender's Office will need additional support staff to implement its new case tracking system.** This includes staff to perform data entry into the new system and to check for conflicts among the individual public defender offices.
9. **The chief public defender should continue to meet and cooperate with judges on a regular basis, and continue to attend criminal justice system meetings sponsored by the Dallas County Criminal Bar Association and other criminal justice organizations.**

Court-Appointed Counsel

1. **The Dallas County Criminal District Courts should establish a system that identifies those private court-appointed counsel who are repeatedly skipped over before selection is required according to the automated wheel system, and then provide a mentoring program for these attorneys.** This would help to address concerns voiced by a number of judges that there are some court-appointed attorneys that meet objective qualifications for remaining on the wheel but do not meet judges' subjective qualifications for practice and are therefore not removed from the list.

Indigent Defense Issues Generally

1. **It is recommended that county and court officials create a county-wide coordinated criminal justice committee comprised of key players from all affected agencies including, but not limited to, the chief public defender, district attorney, judges and court managers representing each of the Criminal District, County Criminal and Juvenile Courts, to address several of the issues raised in this report.**⁴²
2. **To accurately assess a cost per case for public defenders and assigned counsel, all of the County's criminal justice agencies, including the Public Defender's Office, District Attorney's Office, and the Criminal District, County Criminal and Juvenile Courts, should adopt the definition of a case used by the Office of Court Administration/Judicial Council and adopted by the Texas Task Force on Indigent Defense and thus begin to count cases the same way.** Once a uniform case definition is developed, case weights and workload standards for the Public Defender's Office can be developed.
3. **It is recommended that the County develop a more detailed indigency screening form that will provide judges with more information on which to base indigency determinations. In addition, it is recommended that the County consider adopting a more well defined objective standard of indigency.** Rather than asking generally for total monthly income, total assets, total monthly expenses and number of dependent children, the forms should break out in more detail, assets, expenses and means of income. This form should be completed by the defendant before counsel is assigned. In addition, training for magistrates on how to properly screen for indigency will provide more consistent application of indigency standards.
4. **It is recommended that Dallas County officials monitor the creation of the direct filing system to ensure that it is utilized as soon as possible.** This would not only save the County money in unnecessary jail costs for housing misdemeanor indigent defendants before formal charges are filed, it would help to ensure that defendants receive timely representation and thus possibly reduce the amount of additional unnecessary days defendants spend in jail.
5. **It is recommended that the Criminal District Courts develop a procedure to assure that all defendants who request an examining trial receive one in a timely manner.** Defendants are statutorily guaranteed an examining trial if they so request, however, limiting the number of scheduled slots on the docket has resulted in the denial of this right in a number of cases.
6. **With a large volume of misdemeanor cases assigned to approximately 300 court-appointed attorneys, the County Criminal Courts should consider reinstating a duty day system.** This should result in more efficient court processing of misdemeanor

⁴² For further guidance, see Bureau of Justice Assistance, *Improving State and Local Criminal Justice Systems: A Report on How Public Defenders, Prosecutors, and Other Criminal Justice System Practitioners Are Collaborating Across the Country* (Oct. 1998), Appendix D.

cases by requiring less time for appointing and contacting private court-appointed counsel and would assist the Public Defender's Office in situations where a large jail chain is brought into an individual courtroom and the public defenders in that courtroom cannot take all the cases from the jail chain. Private attorneys should still be assigned to courtrooms randomly based on the wheel system, however attorneys assigned for the day will receive all conflict and overflow cases that the public defenders cannot take. With over 43,000 class A and B misdemeanors filed in fiscal year 2003, there appears to be sound reason to return to the duty day system.

7. **Every effort should be made by the County and Public Defender's Office to establish a mechanism for detecting conflict of interest problems as soon as possible.** While the new case management system in development for the Public Defender's Office will address a number of conflict of interest problems, especially as between the three offices, the issue of conflicts should be addressed before the new system is installed.

APPENDIX 1

Public Defender Workload Standards

Public Defender Workload Standards					
State	Felony	Misdemeanor	Juvenile	Appeals	Author/Authority
Arizona	150	300	200	25	State of Arizona v. Joe U. Smith, 681 P. 2 nd 1374 (1984)
Colorado*	33-386 ¹	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 ²	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 ³	450	280	28	Missouri State Public Defender System. "Caseload Committee Report." September 1992.
Nebraska	50 ⁴	--	--	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.

¹ 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.

² 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.

³ 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.

⁴ 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, 2nd 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.

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.					

APPENDIX 2

**Dallas County Public Defender Office Fiscal Year 2003
Budget**

DALLAS_CO
 Department Summary for Fund 120 – Fiscal Year 2003 Budget
 Current Period: SEP-FY-02
 Date: 13-SEP-02 16:02:13

Department = 4040 (Public Defender)

Account	FY 2002 Approved	FY 2002 Current	Total FY 2002 Act + Encum	FY 2003 Proposed	Variance (FY 2003- FY2002)
Salaries and Benefits					
01010 Salaries - Official	108,670	108,670	8,238	94,442	(14,228)
01020 Salaries - Assistant	3,373,761	3,423,761	3,140,549	3,985,879	612,118
01050 Salaries - Overtime	--	--	281	--	--
04090 Salaries - Extra Help	28,325	28,325	22,994	35,325	7,000
01080 Mileage Reimbursement	--	--	11,440	12,500	12,500
01110 Social Security	265,412	265,412	--	--	(265,412)
01111 FICA	--	--	189,512	247,683	247,683
01112 Medicare	--	--	44,389	56,974	56,974
01120 Sick Leave Payoff	--	--	(154)	--	--
01140 Insurance – Employer	247,690	247,690	260,654	276,150	28,460
01150 Fringe Benefits Retirement - Employer	242,139	242,139	220,682	323,807	81,668
01190 Workers Compensation - County	--	13,000	11,832	--	--
Total Salary and Fringes	4,265,997	4,328,997	3,910,416	5,032,760	766,763
Operating Expenses					
02080 Dues and Subscriptions	1,550	1,550	857	1,200	(350)
20090 Property Less than \$5000	5,137	5,137	7,439	5,132	(5)
02155 Notary/Bonds Fees	275	275	213	275	--
02160 Office Supplies	11,000	11,000	6,193	11,500	500
02170 Postage	2,300	2,300	1,757	2,300	--
02180 Printing/Imaging Expense	800	800	743	800	--
02230 DDA – Spendable Balance	5,000	10,442	3,846	5,000	--
02640 Maintenance/Labor on Building/Office Equipment	400	400	338	400	--
02930 Photo Supplies	800	800	542	1,000	200
02950 Books & Supplements	13,000	13,000	8,604	13,000	--
02980 Auto Expense - Incidental	10,000	10,000	244	--	(10,000)
05140 Transportation Assistance	100	100	104	300	200
05590 Other Professional Fees	1,500	1,500	1,201	2,000	500
07020 Equipment Rental	7,500	7,500	5,972	7,500	--
07213 Cellular Phones	4,000	4,000	2,564	3,500	(500)
07214 Pagers	--	--	30	--	--
Total Operating	63,362	68,804	40,647	53,907	(9,455)
Grand Total	4,329,359	4,397,801	3,951,063	5,086,667	757,308

Information Received from the Dallas County Auditor's Office, April 12, 2004.

APPENDIX 3

**Juvenile, district and county criminal courts
qualifications for court-appointed counsel**

DEATH PENALTY

DALLAS COUNTY PROCEDURES FOR APPOINTMENT OF COUNSEL IN DEATH PENALTY CASES

PURPOSE

The judges of the Criminal District Courts and the District Courts giving preference to criminal cases of Dallas County have found that Article 26.052 of the Code of Criminal Procedure is controlling in establishing the procedures for the appointment and payment of counsel to represent indigent defendants in death penalty cases. This statute sets forth the practices and procedures which have been followed by the district courts trying capital cases in Dallas County. Even so, the purpose of the procedures set forth below is to further codify and publish the statutory requirements so that members of the bar and the public may be more fully informed about the operation of the criminal justice system and the procedures followed in Dallas County in death penalty cases. To that end, a copy of these procedures shall be filed with the Dallas County District Clerk and Indigent Defense Task Force in Austin for publication.

ATTORNEY QUALIFICATIONS

As required by Article 26.052 of the Code of Criminal Procedure, the Courts adopt the standards and procedures for appointment of counsel in capital cases promulgated by the local selection committee for the First Administrative Judicial Region. The local selection committee is appointed by the Presiding Judge of the First Administrative Judicial Region and is comprised of not less than four members, including the Presiding Judge of the First Administrative Judicial Region, at least one district court judge, a representative from the local bar association, and at least one practitioner who is board certified by the State Bar of Texas in criminal law. [Art. 26.052 (c)]. The standards and procedures for the First Administrative Judicial Region are attached to this plan and are hereby incorporated by reference as if fully set forth in this plan.

In addition to the continuing legal education requirements for first chair or lead attorney set forth in the standards promulgated by the local selection committee for the First Administrative Judicial Region, in order to be qualified for appointment as first chair or lead attorney in a death penalty case in Dallas County, the attorney must have completed an additional four hours of continuing legal education or other training related to criminal defense in death penalty cases over the previous two year period, bringing the minimum amount of such training to sixteen hours over the previous two year period.

APPOINTMENT OF COUNSEL

The presiding judge of the district court in which a capital case is filed shall appoint two attorneys, at least one of which is from the list of qualified attorneys approved by the local selection committee, to represent an indigent defendant. Attorneys shall be appointed as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty. [Art. 26.052(e)].

FELONY

Calculation Sheet

Name: _____

Date: _____

Point System for Qualification*: Please indicate your experience and total points in each category below. Experience must come within the preceding ten (10) years. **You must have points in three of the five categories in order to be qualified, unless you have sufficient points in categories 1 and 4.** Each qualified attorney must attend the Advanced Criminal Law Seminar once every three (3) years to retain qualification.

*Attorneys on the capital murder appointments list are automatically qualified to be appointed to any felony.

Experience	Points
1. Number of felony jury trials as lead counsel**: _____ x 2 =	_____
2. Number of felony jury trials as second chair: _____ x 1 =	+ _____
3. Number of felony appeals: _____ x 1 =	+ _____
4. Fifteen (15) hours of Continuing Legal Education in criminal law within the preceding two (2) years, add two (2) points	+ _____
5. Board Certified in Criminal Law by the Texas Board of Legal Specialization, add five (5) points	+ _____
Any appellate court finding of ineffective assistance of counsel within last five (5) years, subtract five (5) points	- _____
Any sustained grievance by the State Bar of Texas within last five (5) years, subtract five (5) points	- _____
TOTAL POINTS	= _____

** Unusual or exceptional experience demonstrating substantial involvement in criminal law may be substituted for trial experience. If claiming this exception, please provide a detailed explanation of your experience as an attachment to this application.

Your total points, along with your years of licensure, will determine what level of appointment you may receive. The following standards have been established:

Felony Level	Requirements
State Jail	Licensed for two (2) years AND six (6) points
Third Degree	Licensed for three (3) years AND twelve (12) points
Second Degree	Licensed for four (4) years AND eighteen (18) points
First Degree	Licensed for five (5) years AND twenty-five (25) points

Signature: _____ Date: _____

SWORN TO and SUBSCRIBED before me on _____.

Notary Public in and for
Dallas County, The State of Texas
My commission expires on _____

AMENDMENT TO THE DALLAS COUNTY INDIGENT DEFENSE PLAN

The Dallas County Indigent Defense Plan for the Criminal District Courts of Dallas County and the district courts giving preference to criminal cases is amended by adding a new Section 4A to read as follows:

- 4A. (a) To be eligible for appointment an attorney must:
- (1) complete a minimum of six hours of continuing legal education pertaining to criminal law during each 12 month reporting period; or
 - (2) be currently certified in criminal law by the Texas Board of Legal Specialization.
- (b) Continuing legal education may include self-study, teaching at an accredited CLE activity, or other CLE activities accredited under Section 4, Article XII, of the State Bar Rules.
- (c) CLE activity completed during any reporting period in excess of the minimum six hour requirement may be applied to the following period's requirement. CLE hours may only be carried over for one year.
- (d) The judges of the criminal district courts and the district courts giving preference to criminal cases shall set the applicable 12 month reporting period. Attorneys placed on the master list for appointments must provide proof during each 12 month reporting period that they meet the requirements of this section. Attorneys who fail to provide proof that they meet the requirements of this section will be removed from the master list.

I certify that this amendment has been approved by at least two-thirds of the judges of the criminal district courts and the district courts giving preference to criminal cases. This amendment is to take effect immediately.

SIGNED this 29 day of October, 2003.



LANA McDANIEL
PRESIDING LOCAL ADMINISTRATIVE
DISTRICT JUDGE, DALLAS COUNTY

MISDEMEANOR

**MISDEMEANOR COURT APPOINTMENTS
ATTORNEY QUALIFICATIONS**

Attorneys who wish to be placed on the misdemeanor court appointment wheel pursuant to the Dallas County Criminal Courts indigent defense plan must be qualified to represent criminal defendants charged with misdemeanor offenses. The qualifications are:

Mandatory

A. General Qualifications

1. An attorney must be a member in good standing with the State Bar of Texas.
2. An attorney must have a secretary, receptionist, local area code- answering service, or a local area code- regularly monitored answering machine.
3. An attorney must have a functioning fax machine and an e-mail address, both available 24 hours a day.
4. An attorney shall have on file with the Court Managers Office a completed sworn application approved by the Judges of the County Criminal Courts.
5. An attorney shall promptly notify, in writing, the Court Managers Office and each individual Court Coordinator of any changes to the information contained in the application for appointments.
6. An attorney shall promptly notify, in writing, the Court Manager of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments in representing indigent defendants.
7. An attorney shall annually file with the Court Managers Office each year a copy of his/her State Bar of Texas Continuing Legal Education annual reporting form which demonstrates the annual completion of **at least six hours of criminal law continuing legal education.**
8. An attorney shall meet any additional requirements that may be later imposed by the Judges of the County Criminal Courts trying misdemeanor cases.

B. Experience

Licensed to practice law and provide proof of participation in a law school criminal clinic; or attend either the Criminal Defense Lawyers Project Criminal Trial Advocacy Institute held at Sam Houston State University in Huntsville, in March each year or The National Institute of Trial Advocacy Course held in Dallas, at SMU every June; or

Licensed to practice law and have been lead counsel in two (2) or more criminal jury trials; or

Licensed to practice law and have sat co-counsel / second chair in five or more criminal trials, of which at least 3 must be jury trials; or

Licensed to practice law and are employed as a public defender in the Dallas

County Public Defender's Office;

If applying for appeals, you must have authored briefs on at least 5 appeals;

And, be of sound mind and good character.

C. Distribution of cases.

1. Appointments will be made from a rotating list of eligible attorneys.
2. New attorneys or attorneys being reinstated will be added to the end of the list as it exists at the time they are added.
3. The Court Appointed Attorney list will be updated quarterly. All necessary applications and information should be delivered to the Court Managers Office by the following dates: November 1, 2002, March 1, 2003, June 1, 2003, September 1, 2003, and December 1, 2003.
4. Court Appointed Attorneys are appointed to the defendant within 24 hours of the request. The court appointed attorney shall remain on that case through disposition.

D. Grounds for Removal from Misdemeanor Court Appointment List

1. An attorney shall be removed from the misdemeanor court appointment list and from any case to which the attorney has been appointed for the following:
 - a. Conviction or deferred adjudication for any felony, or
 - b. Conviction or deferred adjudication for any crime of moral turpitude, or
 - c. Under indictment or formally charged with a felony or crime of moral turpitude, or
 - d. Intentional misrepresentation by the attorney on the application for misdemeanor court appointment.
2. An attorney may be removed from the misdemeanor court appointment list and from any case to which the attorney has been appointed for the following:
 - a. Failing to perform the attorney's duty owed to the defendant, or
 - b. A finding by the court that the attorney provided ineffective assistance of counsel, or
 - c. Failing to maintain compliance with each of the misdemeanor court appointed guidelines and qualifications.
 - d. If after a hearing it is shown that the attorney submitted a claim for services not performed by the attorney, or for good cause at the discretion of the county criminal court judges.
 - e. Any attorney called for an appointment who cannot appear in the notifying court by 9:30 a.m. the following morning, will be removed from that appointment and his/her name will go back on the bottom of the list for appointments in the future.

APPENDIX 4

Improving State and Local Criminal Justice Systems

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance



IMPROVING STATE AND LOCAL CRIMINAL JUSTICE SYSTEMS

A Report on How Public Defenders, Prosecutors,
and Other Criminal Justice System Practitioners
Are Collaborating Across the Country

BIA Bureau of Justice Assistance
Monograph

INDIGENT DEFENSE SERIES

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Bureau of Justice Assistance
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For grant and funding information contact
Department of Justice Response Center
1-800-421-6770

The opinions, findings, and conclusions or recommendations expressed in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice. Moreover, the views expressed herein, unless otherwise noted, have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

IMPROVING STATE AND LOCAL CRIMINAL JUSTICE SYSTEMS

A Report on How Public Defenders, Prosecutors,
and Other Criminal Justice System Practitioners
Are Collaborating Across the Country

October 1998

NCJ 173391

Prepared by Robert L. Spangenberg and Marea L. Beeman of
The Spangenberg Group for the American Bar Association, Bar Information Program

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Attorney General Janet Reno and senior U.S. Department of Justice officials met with eight prominent criminal defense representatives on January 27, 1998, to explore ways to improve the quality of criminal defense services for indigent defendants—individuals who are unable to post bond and are routinely detained up to 45 days prior to arraignment, without access to counsel. A crucial component of this meeting was identifying successful programs from across the country in which public defenders, prosecutors, and other key criminal justice figures are collaborating to create a more effective and efficient criminal justice system.

The group identified three major challenges to improving indigent defense representation:

- Ensuring that public defender programs receive their fair share of federal dollars earmarked for Edward Byrne Memorial State and Local Law Enforcement Assistance Program grants, Violence Against Women Act (VAWA) funds, and other funds available to components of the criminal justice system.
- Managing increasing caseloads for public defenders.
- Providing indigent defenders with the same advanced technology currently available to prosecutors.

At the conclusion of the meeting the Attorney General asked the American Bar Association, Bar Information Program, to prepare a brief report on current collaborations between public defenders, prosecutors, and other criminal justice system agencies. Research shows that seven basic models of collaboration are employed by jurisdictions across the country. This report describes the major initiatives under way in each model.

The initiatives discussed in this report represent practical attempts to make the best use of limited justice system resources by implementing projects that depend on collaborative, interagency planning. The seven models are: criminal justice planning commissions; cooperation in programs receiving federal funds; task forces; Fill the Gap coalitions; joint prosecutor/public defender unions; cooperation in case tracking and criminal history systems; and fiscal impact statements. Although a few of these collaborative undertakings require additional funds, the majority do not.

To receive information on any of the initiatives discussed in this report, please refer to the list of contacts in the appendix.

Criminal Justice Planning Commissions: California, Georgia, Kentucky, and Nebraska

Criminal justice planning commissions bring together representatives from key criminal justice agencies in a given jurisdiction to conduct planning from a multiagency or systemwide perspective.

Criminal justice planning commissions were first formed in the early 1970s when federal funds from the Law Enforcement Assistance Administration (LEAA) were distributed to state and local governments. Planning groups were formed to determine, in a coordinated fashion, how the funds would be allocated to the various criminal justice system components. When LEAA funds were terminated in 1980, some jurisdictions chose to maintain the planning commission structure to administer locally funded programs.

California. The Los Angeles County-wide Criminal Justice Coordination Committee (CCJCC) was formed in 1981 and currently has 40 members. On the Committee are a wide range of officials from county and municipal government, including the county sheriff, chiefs of municipal police departments, state and federal law enforcement agency personnel, superior and municipal court judges, the district attorney, city prosecutors, the chief public defender and probation officer, and other local leaders representing education, health, and human services.

CCJCC recognizes that the overall effectiveness and efficiency of the local criminal justice system depends on stable and balanced relationships among its components. Examples of CCJCC's past projects include:

- Programs and strategies to reduce trial delays and relieve jail overcrowding.
- Community-based alternatives to incarceration.
- A county drug court program that provides court-enforced drug treatment for nonviolent offenders.
- Legislative proposals in areas that include video arraignment, revenue collection, drug court diversion, and child abuse.
- A cooperative CD-ROM legal research project that provides information access to the courts, prosecutors, law enforcement agencies, and probation and public defender's offices.
- Leadership in developing Los Angeles County's first fully automated link between the courts and a proprietary justice agency data system.

Georgia. Turbulence in the local criminal justice system spurred the formation of the Ad Hoc Committee on Criminal Justice in Fulton County (Atlanta) in the early 1990s. A review of the Fulton County Public Defender Program by The Spangenberg Group in 1990 described a system on the verge of collapse. Central to the program's troubles was serious underfunding; an underlying problem was fragmentation throughout the local criminal justice system. Following heightened public scrutiny of the program through extensive local press coverage, the Atlanta Bar Commission convened a small group to review the situation. The Bar wrote its report on the subject, and the Ad Hoc Committee on Criminal Justice was formed shortly thereafter. The Committee's goal was to implement the Bar's recommendations for changes to the indigent defense system. Over the long term, it hopes to establish a criminal justice plan for Fulton County to respond to the rapidly increasing demands on its criminal justice system.

The Ad Hoc Committee evolved into a cohesive, staffed, systemwide body now known as the Fulton County Justice System Coordinating Committee, which was formally recognized by the county in 1995. It has played a critical role in shaping the county's movement toward a redesigned criminal justice system. Committee membership includes representatives from the following entities:

- Fulton County district attorney, public defender, and sheriff.
- Fulton County superior court judges, court administrator, and clerk.
- Fulton County state court solicitor general and state court judges.

- Fulton County marshal, manager, and board of commissioners.
- Georgia Indigent Defense Council and the Atlanta and Gate City Bar Associations.
- Municipalities in North Fulton and South Fulton County.
- City of Atlanta.

In a county where the criminal justice system consumes, by far, the largest portion of county funds, the policymakers who are elected are not necessarily familiar with the system. Therefore, the Committee's input is invaluable and provides county commissioners with cohesive proposals for changes to the criminal justice system that reflect consensus among Committee members. Written into the Committee's mission statement is the commitment to support projects that benefit all components of the criminal justice system.

The Committee has successfully supported increased funding for the county's public defender office, whose staff is now closer to an adequate level and whose paid salaries are comparable to those in the district attorney's office. However, problems continue to plague the county's criminal justice system. Jail overcrowding forces inmates to sleep in shifts in common areas, and the district attorney's office has a significant backlog in indictments. These problems directly affect the courts, adding to docket backlogs and to demands for indigent defense. In response, the county has acted on a recommendation by the Committee and a consultant and has made a commitment to both short- and long-term improvements to the criminal justice system, the first beginning this year with the pretrial system. In addition, the county is developing an information system that will link all justice system departments.

Kentucky. Formed in 1967, the Louisville-Jefferson County Crime Commission is one of the oldest criminal justice planning commissions in operation. In 1994, the commission received \$1,014,748 from the Byrne Program, and later that year announced a new plan for implementing the JUSSIM (Justice System Improvement Model) computer model in Jefferson County. In June 1995 the commission published an evaluation of the progressive criminal justice plan for the fair, efficient, and effective resolution of criminal cases ("Rocket Docket") for the Jefferson Fiscal Court.

Nebraska. The Lancaster County Justice Council in Lancaster County (Lincoln), a local criminal justice planning group, addresses specific justice system issues through a number of working committees. The county's elected public defender has been a long-time participant on the council. When federal funds recently became available to the county through the Violence Against Women Act, the council determined that they would be distributed through its working committees on domestic violence. The public defender supported efforts of local advocacy groups, shelter representatives, law enforcement, and the county attorney to obtain funding to improve the community's response to domestic violence. These groups also supported the public defender's efforts to obtain funds through VAWA to respond to the anticipated impact on his office.

Cooperation in Programs Receiving Federal Funds: California, Delaware, and Minnesota

California. In Los Angeles County, the public defender currently plays a critical

role on two major policy boards that are responsible for development and oversight of federally funded local law enforcement assistance programs. As a participant on the antidrug abuse steering committee, which oversees \$6 million in Byrne funds, and the local law enforcement assistance block grant program advisory committee, the public defender's office actively participates in the development of justice system grant funding strategies. Thus, although it is not a direct recipient of these funds, the public defender office helps ensure greater system-wide balance in the disbursement of federal funds for criminal justice programs in the county. This balanced grant-funding strategy has shaped an array of programs, many of which have been supported by the Los Angeles Countywide Criminal Justice Coordination Committee (described earlier), such as specialized fast-track prosecution and defense teams for drug cases, court security, drug court treatment, community-based civil abatement antidrug programs, gang suppression and prevention programs, specialized narcotics enforcement units, regional data systems for narcotics investigations, enhanced police operations, and resources to provide increased jail capacity.

Delaware. The Delaware Criminal Justice Council (CJC) is an independent body created within the executive branch of government comprising representatives from the police; the courts; the prosecution, public defender, parole, and medical examiner offices; the schools; and the public. CJC is committed to improving the criminal justice system through a collaborative approach that involves all components of the criminal justice system as well as the community. One CJC function is to allocate federal funds, including those from the Byrne Program, Victims of Crime Act, VAWA, and Juvenile Justice Title V Prevention funding. As in Los Angeles, the public defender

plays a prominent role on this body and in allocating federal funds throughout the criminal justice system.

In fiscal year (FY) 1996, the group allocated Byrne funds to 22 programs throughout the state. Two programs in which the public defender participates are the domestic and juvenile violence case management project and the criminal justice videoconferencing system. Byrne funds support four attorney positions, one psychoforensic evaluator, and two support staff positions in the public defender's office for domestic and juvenile violence case management.

Delaware's criminal justice videoconferencing system, conceived of nearly a decade ago and the only known statewide videoconferencing system, is utilized by local attorney general and public defender offices that are linked with local police departments and courtrooms. The project expedites warrant processing, bail hearings, arraignments, evidentiary hearings, and pro se motions filed by inmates and reduces police commuting costs and time.

As the project is integrated into more sites throughout the state, participants modify the protocol accordingly. For instance, public defenders were not always stationed at the site—the jail, prison, or juvenile detention center—where their clients were being detained. Counsel is now present with clients for the videophone proceedings. Further, judges retain discretion to conduct in-court proceedings if the case warrants a physical hearing. Certain judges refuse to use the videophone when the defendant is a juvenile or if the case involves a domestic abuse matter, under the belief that court orders to these defendants are not as effective when conveyed on videophone. The success of the program, and the extent to which it is used, is subject to whether the courts, correctional facilities, police

agencies, and attorneys make videoconferencing a priority. The current average cost of transporting one detainee from a detention facility to court is estimated at \$76. If fully used, the videoconferencing system will reduce this cost and eventually pay for itself.

Minnesota. The board of public defense in Minnesota uses Byrne funds to develop training sessions for professional staff. Defenders invite prosecutors to participate in their trial advocacy programs, which include role playing in a trial for an entire week. Judges are invited to play themselves and critique both prosecutors and defenders from the mock bench. The quality of practice and the entire criminal justice system are believed to be strengthened by the exercises.

Task Forces: Nebraska, Oregon, and Washington State

The work of broadly based task forces typifies the value of gathering together representatives from key criminal justice agencies, the legislature, the judiciary, the executive branch, and other affected entities to collaboratively tackle a particular problem within the criminal justice system. The common ground found by task forces addressing problems in the indigent defense system can result in sensible, broadly supported proposals to improve indigent defense within the context of the overall criminal justice system. Such proposals are difficult for policymakers to reject. The efforts of task forces formed to work on a topic for just a brief period can lead to long-lasting improvements in the criminal justice system.

Nebraska. One of the nation's best examples of a broad-based task force focusing on indigent defense was formed in Nebraska for a 12-month period beginning in September 1992.

It comprised 36 members, including representatives from the legislative, judiciary, and executive branches, as well as the local academic, prosecution, defender, and county leadership communities. The task force oversaw a statewide study of indigent defense in Nebraska conducted by The Spangenberg Group. The project received partial funding from the Bureau of Justice Assistance.

At the time the task force was formed, Nebraska did not contribute state funds toward indigent defense services; all costs were borne by the counties. Nor was a state entity responsible for tracking basic information such as indigent defense costs and caseloads throughout the state's 93 counties. In its final report, the task force's primary recommendation was for the formation of a state-funded commission on public advocacy that could develop policy and lend uniformity to the delivery of indigent defense services statewide. Owing largely to the continued efforts and leadership of task force members following publication of the report, legislation creating the Nebraska Commission on Public Advocacy was enacted in 1995. The Commission, which has been operating since July 1995, collects data on county indigent defense systems, develops standards and guidelines, represents defendants charged with drug-related crimes, and assists in representing capital cases and noncapital appeals.

Oregon and Washington State. In 1989, the State Justice Institute funded a demonstration project to address problems associated with growth in indigent defense costs and caseloads through statewide task forces. Task forces formed in two pilot sites, the states of Oregon and Washington, included representatives from the legislative, judiciary, and executive branches as well as prosecution and the defense and private bars.

In Washington State, task force members were appointed by the lieutenant governor, who served as chair of the task force. Staff assistance was provided by the office of the administrator for the courts. The Washington group met 13 times in 11 months, and produced 11 recommendations to contain indigent defense costs while maintaining quality representation. A subcommittee of the task force was formed to review misdemeanors that might be treated as bail-forfeitable offenses or otherwise diverted from the criminal justice system. Task force recommendations included the following:

- Make dozens of minor misdemeanors "bail forfeitable."
- Enact legislation that would permit a local prosecutor to treat certain minor misdemeanors as civil infractions.
- Encourage the State of Washington Sentencing Guidelines Commission to review all Class C or unclassified felonies for possible reclassification as gross misdemeanors or misdemeanors and report its findings to the legislature.

Fill the Gap Coalitions: Florida and Arizona

Florida. During the 1995 legislative session in Florida, the state courts system, the Florida State Attorneys Association, the Florida Public Defenders Association, and the office of the state attorney general formed a coalition called "Fill the Gap." Fill the Gap was created to illustrate to the Florida legislature that additional funding would be needed for the three adjudicatory com-

ponents (courts, prosecution, and public defense) if certain proposed legislative initiatives became law.

In a report published in February 1995, the coalition described the imbalance of funding among what it identified as the three components of the criminal justice system: the front end (law enforcement), the back end (corrections), and the middle (courts, prosecution, and defense). The report noted that in Florida, the front and back ends of the criminal justice system are traditionally better funded than the middle, or the "gap." At the time the report was prepared, Florida was poised to receive substantial federal funds, in addition to general fund increases, for the front and back ends, while only minimal general fund increases and no federal funds were slated for the middle component, through which all cases must flow. The report concluded:

The Legislature must "Fill the Gap" in the criminal justice system through increased funding for the State Courts System, prosecution, and defense. This must be a top funding priority for the 1995 Legislature if the public's priority of reducing crime and delinquency is to be realized. A failure by the Legislature to fill the gap will compromise Florida's effort to bring the crime problem under control.

The concerted efforts of the coalition members were highly successful. The budget increases for FY 1996 were roughly double those for FY 1995, an impressive feat considering that the courts, public defenders, and state attorneys were expecting to be flat-funded for FY 1996 due to the state's tight budget constraints.

Arizona. In 1997, a coalition modeled after Florida's Fill the Gap initiative was formed in Arizona to support legislation introduced to reduce delays in the processing of cases.

Between 1992 and 1996, federal and local funding initiatives in Arizona resulted in a 21-percent increase in the number of police officers in the streets, producing corresponding increases in the number of arrests. During the same period, the state legislature increased the operational capacity of state prisons by 6,600 beds. Meanwhile, increased felony filings and more adult probationers led to increasing delays in the middle of the system (courts, prosecution, and defense). For example, in Maricopa County Superior Court, average case processing time increased by 95 days in the majority of felony cases, up from 195 days in 1991 to 290 days in 1997. In a state where just 25 percent of all funding for the criminal justice system originates in the state, the Fill the Gap coalition backed legislation calling for new, ongoing state funding totaling more than \$19 million for prosecutors, public defenders, courts, and clerks to help achieve the goal of processing 90 percent of all criminal cases within 100 days and 99 percent within 180 days by the year 2002. To ensure that the funds would be allocated to this goal, the legislation required the local criminal justice community in each county to collectively examine the way in which criminal cases are processed and to "re-engineer" the system to achieve improved criminal case management. Under the legislation, state funding would continue only if counties established specific goals, measured progress, and reported to the legislature on the success of the collaborative efforts among their criminal justice agencies.

The initiative had the support of county prosecutors, public defenders, the courts, the attorney general, all 15 counties, and the governor. Due to limited state funds, a modified version of the bill was enacted, adopting the county-based re-engineering proposal of the bill. The Fill the Gap coalition plans to continue its push for Fill the Gap state funds in 1999.

Joint Prosecutor/Public Defender Unions: California and Minnesota

California. The Orange County Attorneys Association is a union for county public defenders and district attorneys that ensures virtual salary parity for similar positions among the two groups of attorneys. On each occasion that the county board of supervisors has recommended reducing the salary for public defenders, the district attorneys have helped the defenders resist these cuts, threatening to strike if the cuts were made. The public defender reports that without support from the district attorneys, the cuts surely would have been implemented.

Minnesota. Joint prosecutor/public defender unions that fight for salary parity are also active in Hennepin and Ramsey Counties (Minneapolis/St. Paul) in Minnesota.

Cooperation in Case Tracking and Criminal History Systems: Florida, Delaware, and Rhode Island

Florida. Dade County operates a centralized criminal justice system database that is funded and maintained by the county and shared by various county

agencies on a proprietary basis. Other Florida counties have received state assistance through the Information Resource Management (IRM) program, which awards funds to judicial circuits to develop shared information systems after reviewing proposals submitted by a judicial circuit's public defender, state attorney, and circuit court clerk. IRM awards funds to those circuits that demonstrate a strong likelihood that the circuit-level criminal justice system agencies will work cooperatively with one another as well as with county-level criminal justice agencies in the circuit.

Delaware and Rhode Island. Efforts are under way in these states to create statewide computer systems that link all components of the criminal justice system into one network. The development process necessitates that criminal justice agencies work together as the systems are designed. In Rhode Island, the Justice Link Public Safety Network (J-Link) will be operational by the year 2000. J-Link will eliminate duplicative data entry functions systemwide, implement the highest degree of data-sharing capabilities, automate criminal court calendars, and provide better statistical summaries throughout the criminal justice system. Byrne funds are being used in both states to develop the systems.

Fiscal Impact Statements: Maryland

Although certain states mandate that fiscal impact statements be prepared to respond to pending bills that would impact state-funded agencies, other states have no statutory requirement for preparation of these statements and rely on certain agencies, such as a state court administrator, to prepare this information for their legislature. In Maryland, the fiscal services' research arm of the general assembly is required to collect impact statements from the state court administrator and any other agency that would be affected by a proposed bill concerning the justice system. The department synthesizes the various statements into one statement that accompanies the bill. In a recent fiscal impact statement prepared for the proposed Sexually Violent Predator Act of 1998, both the public defender and the attorney general reported that enactment of the bill would impose needs for additional personnel.

Appendix

To receive more information on the initiatives described in this report, contact the following individuals.

Criminal Justice Planning Commissions

- | | |
|-------------------|--|
| California | Robert Mimura, Executive Director
Los Angeles Countywide Criminal Justice Coordination Committee
Hall of Administration
County of Los Angeles
500 West Temple Street,
Room 520
Los Angeles, CA 90012
Phone: (213) 974-8398
Fax: (213) 613-2711 |
| Georgia | Steve Kinnard, Chief Circuit Mediator
Circuit Mediation Office
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| Kentucky | Ernie W. Lewis, Public Advocate
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| Nebraska | Dennis Keefe, Public Defender
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555 South 10th Street
Lincoln, NE 68508
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Fax: (402) 441-6059 |

Cooperation in Programs Receiving Federal Funds

- | | |
|-------------------|--|
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| Minnesota | John Stuart, State Public Defender
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Task Forces

- | | |
|-----------------|--|
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**Minnesota/
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Fill the Gap Coalitions

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Florida Lisa Goodner, Deputy State
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Supreme Court of Florida
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Cooperation in Case Tracking and Criminal History Systems

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Joint Prosecutor/ Public Defender Unions

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Fiscal Impact Statements

Maryland Tina Wilkins
Department of Legislative
Services
Office of Policy Analysis
Maryland General Assembly
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90 State Circle
Annapolis, MD 21401-1991
Phone: (410) 841-3710

Bureau of Justice Assistance Information

General Information

Callers may contact the U.S. Department of Justice Response Center for general information or specific needs, such as assistance in submitting grant applications and information on training. To contact the Response Center, call 1-800-421-6770 or write to 1100 Vermont Avenue NW., Washington, DC 20005.

Indepth Information

For more indepth information about BJA, its programs, and its funding opportunities, requesters can call the BJA Clearinghouse. The BJA Clearinghouse, a component of the National Criminal Justice Reference Service (NCJRS), shares BJA program information with state and local agencies and community groups across the country. Information specialists are available to provide reference and referral services, publication distribution, participation and support for conferences, and other networking and outreach activities. The Clearinghouse can be reached by:

- | | |
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