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**Initial Interim Report to the Texas Task Force on Indigent Defense:  
An Analysis of the Newly Established Bexar and Hidalgo Public  
Defender Offices**

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## Introduction

In early 2005, The Spangenberg Group (TSG) contracted with the Texas Task Force on Indigent Defense (Task Force) to conduct a review of the soon-to-be established public defender offices in Bexar and Hidalgo Counties. The contract consisted of three separate tasks: (1) to develop performance measures for two new public defender offices being established in Bexar and Hidalgo Counties through grant funds provided by the Task Force; (2) to provide an evaluation of each program's progress in meeting those measures; and (3) to provide technical assistance to each program.

The site work for this evaluation was conducted in the fall of 2005 and early 2006 by TSG staff Robert Spangenberg, President, Jennifer Saubermann, Associate, and Ross Shepard, Senior Associate. David Newhouse, MIS Analyst has also contributed to the evaluation, providing data analysis and consulting with both Chief Public Defenders on the best possible method for case tracking. Accompanying the TSG team at various stages of their site work were two members of the Texas Task Force on Indigent Defense staff, Wesley Shackelford, Special Counsel and Bryan Wilson, Grants Administrator. The group met with representatives from the courts, County Commissioners Court, County Auditor's Office, County Budget Office, and data services and the chief defenders from each public defender's office.

The Spangenberg Group is a research and consulting firm that specializes in improving indigent defense systems. TSG has performed work in Texas for many years, including site analysis and research 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, also known as Senate Bill 7, or SB 7. Senate Bill 7 made significant changes to the indigent defense system in Texas, including the establishment of the Texas Task Force on Indigent Defense, an organization charged with administering statewide indigent defense appropriations and policies.

As part of its mandate, the Task Force awards discretionary grants "to encourage courts and counties to examine their indigent defense processes to improve the local system by developing innovative programs." Grants are awarded on a competitive basis, and to be eligible to receive grant money counties must comply with the requirements of the Fair Defense Act. Counties must agree to contribute monetarily to the programs, and to eventually take over the full responsibility for funding the new public defender programs.

For fiscal year 2005, two counties in Texas, Bexar and Hidalgo Counties, received multi-year discretionary grants from the Task Force to establish new public defender offices. Bexar and Hidalgo Counties join the FY 2004 discretionary grant recipients: Dallas, El Paso and Limestone Counties. Grants distributed to all five counties in FY 2005 totaled \$872,178.

Bexar County was awarded \$370,076 to establish an appellate public defender's office in San Antonio. Hidalgo County was awarded \$395,490 to establish a misdemeanor public

defender office that will represent in-custody defendants charged with a misdemeanor and will also handle concurrent felonies.

Previous multi-year discretionary grants have been awarded to create: a mental health division added to the existing public defender office in Dallas County; a mental health public defender unit in El Paso County; and a mental health/mental retardation office in Limestone County. For FY 2006, Val Verde County was added to the list of multi-year discretionary grantees, receiving money to create a regional public defender that will cover several neighboring counties. Other counties have received single-year grants for video conferencing systems between courtrooms, law enforcement centers and defense attorneys and the creation of indigency determination systems.

## Part I: Bexar County, Texas

### Initial Site Visit

Robert Spangenberg visited San Antonio, Texas, the county seat for Bexar County, September 7-8, 2005 to conduct an initial site visit of the newly established Bexar County Appellate Public Defender Office (APDO). He was accompanied by Task Force staff Wesley Shackelford and Bryan Wilson. TSG staff member Ross Shepard also visited Bexar County March 13-14, 2006. During our site work, we met with the newly hired Chief Public Defender and several members of her staff, a Judge from the Fourth Court of Appeals, the Criminal District Court Administrator, the Juvenile District Court Coordinator, District Court Judges including the Local Administrative District Judge, the Executive Director of the Criminal Justice Planning and Coordination Department, someone from the Auditor's Office, the Chief of Staff and Special Projects/Administrative Coordinator from the County Commissioners Court, the statutory County Judge, and two members of the private defense bar.

During our discussions with the Chief Public Defender and court staff, we emphasized the necessity of the courts' involvement and cooperation in the transition from a court-appointed counsel system to a public defender system. The court administrators we spoke with expressed their willingness to cooperate and the discussion was very positive. We spent a considerable amount of time discussing TSG's concern regarding excessive caseload, particularly during the first few months of the APDO's operation. Two issues in particular were discussed: the concern that some judges may overload the new office with appointments, particularly in its early stages of development, and, on the other hand, some judges may not choose to appoint the APDO, or appoint them infrequently.

Mr. Spangenberg had a lengthy discussion with the Chief Public Defender and made several recommendations to assist in the start-up of the office. They include:

- The development of workload standards for APDO staff, rather than caseload standards. A caseload standard merely counts the number of cases an attorney handles and does not take into consideration the complexity of the case and additional work required on certain types of cases. With a workload standard, for instance, an appeal from a sentence of 25 years to life in prison would be weighted more heavily when calculating an attorney's total caseload than an appeal from a probation violation.
- Specifically, the workload standard should be developed by units of work, appropriately weighted by the type and complexity of the appeal, rather than by the number of open cases or total number of dispositions per attorney.<sup>1</sup>
- It is important to have each appellate brief reviewed by a second lawyer before it is filed.
- An automated tracking system is absolutely necessary and should be coordinated with the court's case tracking system.

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<sup>1</sup> In late September 2005, TSG provided the Chief Appellate Defender with a memo outlining how a number of other appellate defender offices across the country have developed case weighting standards. This memo also discussed the *Anders* policies of other appellate defender offices.

- *Anders* briefs should be filed sparingly.
- Any court forms that can be standardized should be, and the forms should be made available to all attorneys in the office through an internal computerized network.
- Appellate counsel should consistently communicate with trial counsel, whenever possible.
- Until the office is fully functional, attorneys should not accept abuse and neglect cases as requested by some judges.
- A written manual of procedural and performance standards should be created. TSG offered to provide the Chief Defender with examples from other appellate defender programs around the country.
- Appellate defenders should be encouraged to provide advice to trial counsel, when requested, on how to preserve an issue for appeal; however, the appellate defenders should not become directly involved with the case at the trial level.
- Written standards regarding the representation of co-defendants should be established. These written standards should be shared with the appointing judges to get feedback and inform them of the standards.
- Finally, time records should be kept by each appellate attorney, by type of case and type of activity, for all cases.

During our site visit, we also met with a representative from the County Auditor's Office who informed us that the office would be able to supply us with cost and time data for the former private assigned counsel program. The private attorneys we spoke with were extremely pleased to learn that the APDO would be able to provide some assistance at trial, regarding how to preserve issues for appeal, and by providing periodic training sessions. The Chief of Staff at the County Commissioners Court expressed interest in our proposed evaluation design, and he expressed hope that in the future, Bexar County can also establish a trial public defender office. Finally, during our meeting with the County Judge, he expressed concern about the unwillingness of the District Attorney to meet with us, and her unwillingness to cooperate with the APDO. He told us he was planning to meet with the District Attorney privately to discuss these issues. In addition, the County Judge also voiced concern about the appointment process whereby the APDO receives appointments directly from the bench, because of the danger of the lack of independence from the judges.

### **The System Before the Public Defender**

When Senate Bill 7 was passed, Bexar County reevaluated its appellate indigent defense system and realized that there were only a handful of qualified people on the appeals panel. Trial judges make appellate appointments in Bexar, and as it turned out, the same several people were appointed again and again to represent indigent defendants at the appellate level. County officials felt that this practice created an appearance of impropriety, especially in light of the fact that judges were also reviewing attorney vouchers for payment.

Appeals in Bexar County are brought before the Fourth Court of Appeals, which covers 32 counties in Texas, with Bexar being the largest. Prior to the establishment of the Bexar County Appellate Defender Office, the Fourth Court of Appeals raised concerns with the quality of appellate briefs being filed. Other concerns included the fact that most of the caseload fell on

a small group of lawyers, which caused serious appellate delay, as the attorneys were asking for two to three extensions on every brief filed due to overload. The criminal district court administrator, whose office oversees court-appointments, saw a need to address the issue of the appearance of impropriety and appellate delay. Thus a grant application was submitted to the Texas Task Force on Indigent Defense, and money was granted to establish an appellate defender office in Bexar County.

The Bexar County Plan, which was established following SB7 but prior to the establishment of the APDO, enumerates the following attorney qualifications for appointment in appellate cases:<sup>2</sup>

- To qualify for the Appellate list for State Jail and Third Degree Felonies, an attorney must have at least two years prior experience in criminal litigation and/or appellate experience, and at least one brief filed in a criminal or juvenile cases.
- To qualify for the Appellate list for First, Second, and 3(g) Felonies, an attorney must have at least three years prior experience in criminal litigation and/or appellate experience, and at least two briefs filed in a criminal or juvenile case.

According to the County Plan, appointment of qualified appellate attorneys is made by the trial court, and an attorney is selected from the next five names on the appropriate list of appellate attorneys eligible to accept appointments. Also, the rules allow the trial court judge to “make a finding of good cause on the record for appointing out of order, and may appoint any qualified, willing attorney regardless of whether the attorney’s name is among the next five names on the appropriate list.” This rotating list of attorneys eligible for appointment is known as the “wheel system.” There is no administrator or office overseeing the appointments, although the criminal district court administrator does keep track of the wheel and makes sure the attorneys meet the qualifications necessary to remain on the wheel.

Also in the County Plan is the compensation scheme for appellate cases, which pays attorneys on an hourly basis. The schedule has changed in recent years. In 2004, appointed appellate attorneys were compensated on the following schedule: \$125/hr for out-of-court work, \$150/hour for in-court work, with a cap of \$6,500; and capital cases received \$150/hour out-of-court and \$200/hour in-court with a cap of \$15,000. In September 2005, a new fee schedule was adopted: out-of-court cases are compensated at \$50/hour for state jail felonies, third degree; \$60/hour for second degree felonies; and \$75/hour for appeals from a first degree felony conviction. The in-court rate on all felony cases is \$150/hour with a total cap of \$6,500. Death penalty appeals are compensated at the 2004 rate.

For this interim report we attempted to provide reliable data on appellate cases assigned to court-appointed counsel in the two year period prior to the establishment of the appellate defender program. Our goal was to provide baseline costs, disposition data and information on the time various stages of the appellate process took for court-appointed counsel that could be

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<sup>2</sup> These qualifications and the compensation rates, discussed below, have not changed with the establishment of the APDO; however, the method of appointment in counsel has changed in that an appellate public defender is appointed in all cases unless there is a conflict of interest. If this is the case, the appointment process as described below, is utilized.

compared with similar appellate public defender data after the APDO's first full year of operation. The required data to create this baseline was maintained in two separate databases, one by the Fourth Court of Appeals and the other by the Bexar County Auditor's Office. The format of the cause numbers, which are used to uniquely identify the case records, was different in both databases. We made a serious effort to match the data from both sources through various methods, but were able to provide a match in only 162 instances.

There were a number of challenges presented in attempting to analyze appellate cases from Bexar County. In some circumstances there were multiple cause numbers associated with a case. We attempted to group these cases by defendant name and match the attorneys who submitted vouchers on these cases to the appropriate defendant. A number of cases involved multiple attorneys including retained and appointed attorneys and defendants who were pro se. Therefore, while a case may have had an attorney appointed to represent the defendant, that attorney may have only handled the case for a short time.

In compiling the number of days between events, the results were widely divergent, and displaying an average number of days between events is a misleading indicator. A better measure would be to compile the information in cohorts (i.e. number of cases from 30-60 days from appointment of counsel to brief filed, number from 60-90 days, etc.), which can be done when we analyze the results of cases handled by the APDO, if we find that there would be value in making such comparisons.

Additionally, some data in the court records had to be derived from text entries made in the system, rather than having a separate field for that particular data element. Sentence lengths were not entered in a consistent manner, and we grouped them manually. Cases in which *Anders* briefs were filed were identified as cases in which the word *Anders* was found in a search of the memo fields associated with each case. In other words, there was no specific field marked just to indicate whether a brief was an *Anders* brief.

This difficulty in analyzing data raised more questions than we could answer. For example, what percentage of the total briefs filed were *Anders* briefs? Were the number defendants reportedly sentenced to 25 years to life accurate? How many of these sentences were multiple sentences for the same defendant? Also, the information gathered indicated that of a total of 597 defendants over a two-year period in Bexar County, in only 162 of these cases was there any payment reported by the Auditor's Office. The following data reported gives an idea of the type of information that is available; however, the data analysis is by no means comprehensive or complete.

Due to these factors, the data provided is for informational purposes only, to indicate what types of information can be derived from the data provided to us. Before an accurate picture about appellate cases can be drawn, we need to analyze data going back several more years to get a sample large enough to provide statistically relevant data. Therefore, no conclusions should be drawn from the results.

According to the records obtained from both the County Auditor's Office and Fourth Court of Appeals, there were 67 attorneys who represented one or more defendant on appeal over



the two year period covering 2004-2005. There were a total of 216 defendants represented over that two year period, and a total of \$656,591 was paid for all appeals during this time, thus the average cost-per-case was \$3,040. Specifically, there were two attorneys earning greater than \$70,000 handling appeals in the county, one attorney making approximately \$50,000, three attorneys making between \$40,000 and \$49,999, nine attorneys making between \$10,000 and \$39,999, and 52 attorneys making less than \$10,000. *See* Table 1 and Appendix A. Five attorneys represented defendants in 10 or more appeals, which accounted for 42 percent of all the appointments made over the two-year period. One attorney, who earned \$41,199, represented only one defendant. The table below contains a list of only those attorneys who received greater than \$10,000 from 2004-2005. *See* Appendix A for the full list of all billings. Table 1 includes all vouchers paid in 2004 and 2005, regardless of the type of case or when it was disposed for only those attorneys earning \$10,000 or more.

**Table 1: Top Billers  
For CY 2004 & 2005**

Attorney	Amount Paid	Number of Defendants Represented
A	\$71,356	28
B	\$70,595	21
C	\$50,162	12
D	\$44,923	8
E	\$41,425	3
F	\$41,199	1
G	\$26,546	6
H	\$24,063	12
I	\$23,581	4
J	\$20,727	18
K	\$20,000	3
L	\$16,313	2
M	\$13,440	1
N	\$12,328	6
O	\$10,350	5

TSG was also provided data on the amount of time certain stages of the appellate process takes. This includes information on the number of extensions filed by defense counsel, by appeal type, and gives a picture of the cause of any appellate delay. *See* Table 2 below. This table reflects cases for which vouchers were submitted for payment, and the corresponding defendant was included in the table of cases provided by the Fourth Circuit Court of Appeals. There were a number of vouchers submitted that are not reflected in this table; in most situations, either the case was closed before 2004 or after 2005, or the voucher was submitted in a juvenile case. In addition, the court data we received included only non-juvenile actions closed in 2004 or 2005. Additional data must be received to provide a statistically significant picture of the timing for appeals in Bexar County.

**Table 2: Information on Appeals Filed in 2004 and 2005**

	(blank)	Probation	<1 yr	1-4 yr	5-9 yr	10-24 yr	25 - LIFE	Total
Number of Appeals	5	6	9	23	26	48	45	162
Average Days from Sentence Date to File Date of Appeal	25	21	22	24	39	26	30	29
Average days from Appeal Filed to Reporters Record	60	88	100	70	114	115	104	102
Average Days from Reporters Record to Defense Brief	86	105	74	54	85	96	86	85
Average Days from Defense Brief to State Brief	64	72	73	68	87	69	83	76
Average Days from State Brief to Issue Date	49	6	6	5	1	5	9	9
Average Days from Issue Date to Disposition Date	74	65	66	72	63	84	72	74
Average Days from Appeal File Date to Disposition Date	253	298	295	222	253	313	340	295
Number of Cases where State Requested Additional Time to File Brief	3	5	5	3	5	19	33	73
Average Number of Motions for Extension of Time Filed by State (in cases where requested)	1.3	2.0	2.2	1.7	2.0	2.0	1.8	1.9
Number of Cases Where Defendant Requested Additional Time to File a Brief	3	4	7	9	11	30	40	104
Average Number of Motions for Extension of Time Filed by Defendant (where requested)	1.3	1.8	1.7	1.3	1.9	1.9	1.9	1.8
Number of <i>Anders</i> Briefs Filed	1		2	14	15	18	11	61
Number of Attorneys (including Pro Se) During Pendency of Action	1.2	1.5	1.6	1.9	2.1	1.8	1.7	1.8
Average Amount Paid	\$2,470	\$2,672	\$539	\$2,334	\$1,515	\$2,771	\$3,709	\$2,654

The timeline for appellate cases is as follows (assuming the defendant is appealing): defense has 10 days to file a docketing statement following the notice of appeal and appointment, the court reporter then has 60 days to prepare the transcript and file it, after the filing of the

transcript, the defense has 30 days to file a brief, and finally the government has 30 days from the date the defense brief is filed to file a reply brief. This is a total of 130 days from the notice of appeal and appointment to the government's reply brief. The data tends to confirm the concerns initially voiced by the Fourth Court of Appeals regarding the inability of court-appointed counsel to meet required time limits and concerns about the quality of representation; however, more data is needed to provide an accurate analysis.

One interesting point that has come to light in reviewing the databases from the Auditor's Office and the Fourth Court of Appeals is that a significant percentage of the appeals had a number of attorneys involved during the pendency of each appellate action, including retained, appointed and pro se representation. For instance, of 162 appeals filed, 99 appeals had two or more attorneys involved in the appeal, and 25 appeals had three or more attorneys involved. The average number of attorneys per appeal was 1.8. This may be a useful comparison to determine whether the existence of the appellate defender office helps to reduce the number of cases where there is more than one attorney involved in the case.

TSG has evaluated and reviewed a large number of criminal defense appellate systems around the county. It is our professional opinion that we need to continue our data analysis with the hope that we can provide a more reliable baseline for the court-appointed counsel system at a later date.

### **Data Elements to Track**

We requested, and except where indicated, were provided with, the following data elements currently tracked by either the Fourth Court of Appeals (case information) or the County Auditor's Office (voucher information). In order to easily analyze the data, the collection and/or storage of the data should be modified. TSG experienced significant difficulty in matching the case data between the Fourth Court and the Auditor's Office. The Auditor's Office tracks cases by voucher while the Fourth Court tracks cases by cause number. This made the task of analyzing cost-per-case, or any analysis that required a comparison of the two databases, quite difficult. It is important to note that because of the way the data is tracked, the information provided above relates to the number of defendants for which a voucher was paid, not the number of cause numbers reported in each database.

#### **Case Information:**

- Original case number (or cause number)
- Specific charge of underlying offense (top charge)
- Class of crime of underlying offense (i.e. offense type - felony, misdemeanor, juvenile)
- Lower court judge
- Name or ID of attorney
- Length of sentence
- Appeal filed by defense or state?
- Notice of appeal date
- Answer date
- Response to answer date

- Oral argument date
- Disposition (affirmed, reversed, remanded, etc.)
- Disposition date
- Appeal from trial or plea - *not available*
- Was the case stayed pending appeal – *not available*
- Length of record on appeal (# of pages) – *not available*
- *Anders* Brief or “other” – *indicated in notes to case*
- Length of initial brief – *not available*

The last five bullets are data elements not currently tracked by the courts, although whether the brief is an *Anders* brief is contained in the notes of the data provided, but not as a separate data element, which would make those cases easier to identify. All elements listed should be tracked by the APDO. Additional data elements reflecting the office’s case weighting system should be tracked.

**Payment Information:**

- Case number
- Name or ID of attorney
- Voucher date
- Hours submitted
- Voucher amount submitted
- Voucher amount paid
- Was it an interim or final voucher – *not available*

**The Public Defender Office**

In July 2005, Bexar County began its search for a chief appellate defender. Angela Moore, a former Assistant District Attorney from Kendall County, was hired, and started on August 1, 2005. Prior to working in Kendall County, Ms. Moore was a chief staff attorney at the Texas Court of Criminal Appeals.

By September 1, 2005, the Bexar County Appellate Defender Office (APDO) was fully functional and had been accepting appointments since the Chief began in August. By late October 2005, the office became fully staffed. Created as the primary provider of appellate indigent defense services in Bexar County, APDO reportedly handles between 90-95 percent of all appeals in the county. As discussed above, prior to the establishment of this office, a significant number of appeals in Bexar County were handled by a small group of private assigned counsel.

APDO experienced some resistance from the private bar, especially from those attorneys who received the bulk of the indigent defense appellate work. To ease the transition, the Chief Appellate Defender attended a meeting with the members of the San Antonio Bar Association to discuss the role of the office and reported that the bar association was supportive.

The APDO handles juvenile, misdemeanor, felony and capital appeals, but does not take civil appeals including habeas corpus appeals. The APDO is responsible for filing briefs in the Fourth Court of Appeals and for death penalty cases in which the appeal is filed directly with the Texas Court of Criminal Appeals. The Office has yet to file a federal appeal, but would be responsible for the appeal through the federal appellate process.

The current budget for the APDO is \$468,000, of which approximately 80 percent is paid by the Texas Task Force on Indigent Defense and 20 percent is paid by Bexar County (which includes rental on building, salaries, benefits, etc.). Each year of the four-year grant, Bexar County is expected to cover more of the expenses for the office. Bexar County is required to reapply for continuing grant funding each year with the grant paying for 60 percent of expenses next year, and 20 percent reduction each year thereafter.

The Fourth Court of Appeals has a circuit-wide case management system, available on-line.<sup>3</sup> Internally, the APDO is using an Access database to track cases, which was set up by the County Information Systems Office.

As of February 2006, the APDO had been assigned two capital cases and filed only one *Anders* brief. It is the policy of the Office to file as few *Anders* briefs as possible. All defendants who plead guilty must receive the permission of the trial court to appeal a guilty plea. The APDO has taken on the responsibility of assisting the Fourth Court in determining whether an indigent defendant has a right to appeal from a guilty plea or if the defendant procedurally defaulted on his/her appeal. To do this, an attorney will talk to the client, briefly review the trial court certification of review and the clerk's record to see whether there was a plea bargain, and determine whether the plea has been followed and whether the trial court gave permission to appeal. Prior to the establishment of the office, it varied by court as to who would conduct this review. The Chief Appellate Defender estimated that this process takes approximately 10 percent of their time.

We were told that there were 113 briefs filed last year in the county by appointed counsel before the office was established; however, in a five month period the APDO had already received 128 case assignments. Prior to the establishment of the office, when a notice of appeal was filed pro se and the trial judge felt that there was no right to appeal due to a procedural default or guilty plea, the judge would not forward the case to the Court of Appeals. This practice has changed with the establishment of the APDO, and now any pro se brief is transferred to the public defender, and the office reviews the notice of appeal to determine whether the defendant has the right to appeal.<sup>4</sup> This helps to explain the large discrepancy in the number of briefs filed annually before the office was established and the number of case assignments the office has received in a five month period. When a pro se appeal is reviewed by the APDO, it is counted towards the office's active cases; however, the attorneys are able to determine fairly quickly whether there is a right to appeal and, as discussed below, these cases

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<sup>3</sup> The web address is <http://www.4thcoa.courts.state.tx.us/opinions/casesrch.asp>.

<sup>4</sup> A defendant will not have the right to appeal in two situations: first, where the defendant is appealing from a guilty plea and second, when the individual is filing a notice of appeal five years after conviction, so they have procedurally defaulted their right to appeal.

account for a small percentage of their time. Cases that are only handled for this purpose should be identified by the APDO's case management system.

The Criminal District Courts adopted changes in the local rules and agreed to appoint the APDO to all appellate cases unless there is a conflict, which includes all co-defendants cases or those that the Chief Appellate Defender formerly prosecuted. The office estimates that it takes between 90-95 percent of all appeals. If there is a conflict, a wheel system is used to appoint a private attorney accepting appointments. Most of the judges have appointed the Appellate Public Defender Office on a consistent basis.

In the first five months of the office, attorneys at the APDO requested extensions in only three cases: there have been two extensions filed in two cases, and one extension filed in the death penalty case because of extremely large records. Normally it should be 30 days from receipt of the record to filing of the brief. We were told that it is not unusual for delay in the appellate process due to the untimely preparation of the record by court stenographers, but this is a problem with individual court reporters rather than one within the system.

The APDO is staffed by very experienced attorneys; the most junior level attorney has been licensed for eight years. The other two attorneys have over 15 years and 25 years of experience, and all attorneys had prior appellate experience. Assistant public defenders are paid on the county schedule. Attorneys are not permitted to have a private practice.

The APDO staff underwent training both as to internal office procedures and county procedures and policies. The Chief created a Policies and Procedures manual for the office. See Appendix B for a copy of the policies and procedures manual.<sup>5</sup> Staff meetings are held in the Appellate Public Defender's Office once a week, and there is a constant communication among the attorneys in the interim.

The Chief has put together a detailed case-weighting system based on information gathered by TSG from other appellate defender offices around the country. She has created a system of case weights based on the number of work units an attorney accumulates. Every assistant appellate defender is expected to complete, at minimum, 12 "high-quality" units in a six month period. Each work unit is the equivalent of 75 hours of "billable" work. The number of work units earned on each case depends on a number of factors, including: the length of the brief and the transcript, whether there was an oral argument, if it is *Anders* brief, what level of court the appeal is in, and additional work such as meeting with clients or editing a co-worker's brief.

As part of the formal written office policies, every client must be visited in-person by an appellate defender, and if possible by the attorney of record, to establish an attorney-client relationship. At least two additional lawyers in the office are asked to critique and edit each brief with special attention being paid to proper citations. The brief then goes through a final editing process and preparation by the office assistant. The office has its own brief-bank with a keyword search function. The office also uses the resources of the Texas Criminal Defense Lawyers Association and its listserve.

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<sup>5</sup> The Policy and Procedures Manual appended to this report excludes Section 1: *Quality of Work Standards, Minimum Work Standards and Work Unit Schedule*, as this section is a work-in-progress as discussed in this report.

During our second site visit, we were told by an appellate judge who conferred with the chief justice of the court, other colleagues, and the chief criminal clerk, that the public defender's office writes excellent appeal briefs that are always timely and that the Chief Appellate Defender has assembled a talented group of lawyers.

It was suggested to us that the county might benefit from the establishment of a trial public defender's office in Bexar County. One reason for this suggestion is that motions for a new trial are rarely if ever filed by assigned counsel and it is understood that the appellate public defender office is hampered because issues are not properly preserved at the trial level. We were also told that judges would like the APDO to expand to handle abuse and neglect appeals.

### **Oversight of the APDO**

The Bexar County Public Defender Oversight Committee was created upon receipt of the grant from the Task Force to publish and evaluate Requests for Qualifications (RFQ's), conduct a search for the Chief Defender and oversee APDO. The Committee consists of district, county and appellate judges and members of the Commissioners' Court who oversee the budget. The Committee reviews the number of cases the office has been assigned and the number of briefs the office files; however, the Committee cannot involve itself in any legal aspect of the cases assigned to the APDO. The Committee also deals with any policy considerations or problems the office may have, and works to get the office necessary resources, including equipment and other office infrastructure needs. The Chief Appellate Defender meets with the Oversight Committee at least once every six months.

There is also a Criminal Justice Planning and Resource Department that oversees the entire criminal justice system in Bexar County. While the Director of this department has the authority to direct policy at APDO, we were told such direction would be in reference to personnel management rather than internal legal policy regarding cases. In addition, the Commissioners Court is involved in the budgetary matters of the office. There are two budget reviews annually, and the grant year and county fiscal year end at same time.

### **APDO Caseloads**

Built into its contract with the county, the APDO may file a motion with the presiding judge of the trial courts to halt appointments to the office if the office reaches its case limit capacity. The contract calls for a maximum of 25 open appeals per attorney; however, the APDO's case-weighting system allows attorneys to carry an additional maximum of 25 procedural default cases. After consultation with The Spangenberg Group, the Chief Appellate Defender agrees that the maximum caseload standard per attorney of 25 open appeals and 25 open procedural default cases is too high. She plans to adjust the case-weighting system accordingly.

As of February 2006, the APDO has been assigned 128 cases since opening in October 2005. Of those cases, 43 were closed without briefing, primarily because the client has been precluded from appellate review by the waiver signed at the time of the change of plea. As of February 21, 2006, the office had filed 20 briefs among the four attorneys, including the Chief Appellate Defender, who carries a full caseload, leaving 85 cases still pending and assigned to attorneys for briefing.



## **Part II: Hidalgo County, Texas**

### **Initial Site Visit**

The Spangenberg Group visited McAllen, Texas, the county seat for Hidalgo County, from October 11-13, 2005. TSG staff Robert Spangenberg and Jennifer Saubermann were accompanied by Task Force staff Wesley Shackelford and Bryan Wilson. A second site visit was conducted by TSG staff member Ross Shepard, March 15-16, 2006. During our site work, we met with the newly appointed Chief Public Defender; municipal, district and county judges and a justice of the peace; the statutory County Judge; the Assistant District Attorney in charge of the Misdemeanor Unit; the Director of Information Technology for the County and several of his staff; the County Auditor; 4-5 court-appointed attorneys; a staff member from the Office of Indigent Defense Services; and 4-5 county jail employees including the Captain.

Bob Spangenberg and Jennifer Saubermann met with the newly appointed Chief Public Defender, Jaime Gonzalez, and discussed several issues that the Chief Public Defender should address when setting up the office. First, there should be a written conflict policy for the office that not only reflects standard conflict of interest policies such as not representing co-defendants, but should also include, if applicable, any rules from the Texas Code of Ethics regarding high caseloads affecting attorney performance. This policy should be reviewed by, and discussed with, the district court judges in the county. We also discussed the fact that there is no case management system at the District Attorney's Office, where the Chief Public Defender was formerly employed, and therefore it may be difficult to determine whether he previously worked on a case involving a new public defender client. In addition, we suggested that the conflict policy should explicitly state that the Public Defender's Office take the first defendant that comes in when it is a co-defendant case, and that the Chief Public Defender must approve any possible conflict. TSG also suggested that the Public Defender's Office have, in writing, a policy that the Office of Indigent Defense Services (IDS) will not give the Public Defender Office any cases with concurrent felonies or immigration issues for a specified period of time while the office gets started.

In addition to conflict policies, TSG also discussed several other areas for which the Chief Public Defender would need to create policies including: how the office will count cases (i.e. count one defendant and all charges within an indictment as one case, or count all charges within an indictment as separate cases), assignment of cases, individual attorney caseload limits, general human resources policies (like sick time, vacation time, etc.), visiting clients, and performing outside legal work. We also suggested that TSG's MIS Analyst, David Newhouse, talk with the Chief Public Defender about the best case-management/tracking system to use. TSG also suggested that the Chief Public Defender look at case-weighting studies from Colorado, Minnesota, Tennessee, Wisconsin, King County (Washington), and Maricopa and Pima (Arizona) Counties. Case weighting standards, or policies for assigning cases within an office that look at the seriousness of a case and the potential amount of work required on the case, are used to prevent excess caseloads and to project staffing needs within public defender systems or offices.

Finally, Mr. Spangenberg also suggested that the office not represent defendants with concurrent felonies, as permitted per the contract with the county, for the first couple of months the office is in operation. He emphasized the fact that new public defenders building up a caseload frequently take too many cases initially and then become overwhelmed several months down the road. It would then be more difficult to limit the caseload, as the more cases accepted initially, the more difficult it is to refuse assignments and limit caseloads later on. In addition, Mr. Spangenberg cautioned the Chief Public Defender about accepting appointments directly from the bench in the courtroom, and advised that he adopt an office policy of refusing to accept appointments out of turn, as another way of preventing the Public Defender's Office from becoming overwhelmed with cases early on.

While on site, TSG asked the Auditor's Office, the Office of Indigent Defense Services and the County Jail for data. Specifically, we asked the Auditor's Office for data by cause number for each case to see if more than one attorney billed under the same cause number and for general billing information by court-appointed attorney. We asked that IDS provide all other case specific information, which was obtained from the county database system, and that the County Jail provide information on the number of defendants held pretrial for misdemeanor offenses.

After our site visit, we submitted specific data requests, through the assistance of Bryan Wilson at the Task Force, to the Auditor's Office and IDS, asking for data that included all misdemeanor cases from the prior two calendar years. We asked that the information on payments made on misdemeanor cases include, at a minimum, case number, name or identification of attorney, voucher date, hours submitted, voucher amount and whether it was an interim or final voucher.

### **The System Before the Public Defender**

The system in Hidalgo County, Texas before the new Public Defender Office was established in October 2005 was strictly a court-appointed counsel program. After the passage of the Fair Defense Act ("FDA"), attorneys on the juvenile, misdemeanor and felony panels were appointed on a rotating basis selected off a "wheel", or list of qualified attorneys, pursuant to the requirements of the FDA. All judges in Hidalgo County operate off the same wheel for that county. We were told, however, that judges were not strictly following the wheel and would appoint attorneys waiting in court for cases. There were approximately 10-12 attorneys, typically just out of law school, who would wait in court for appointments and were assigned cases on a first come, first served basis.

Each day a staff member from the Office of Indigent Defense Services interviews all in-custody misdemeanor defendants who have indicated to the arraigning magistrate or justice of the peace that they would like appointed counsel.<sup>6</sup> IDS staff obtain information from defendants such as personal background information, employment information, etc., but will not ask for any information particular to the case. It was reported to us that some defendants apparently do not understand what is being asked of them, and as a result these defendants are not interviewed for

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<sup>6</sup> IDS has continued to perform this function after the establishment of the Public Defender's Office.

court-appointed counsel and appear in court unrepresented. While in court, these unrepresented defendants are asked to speak briefly with a lawyer prior to the entry of a guilty plea; thus the lawyer is compensated at a flat-fee of \$250 for a plea, for only three to five minutes of work. IDS interviews approximately 100 arrested defendants on Mondays, with this number trailing off to 35-40 per day later in the week. We were told that, while it is ultimately the decision of the judge, IDS staff determine whether a defendant is eligible for public defense, and the eligibility guidelines for appointment of counsel are fair and that defendants that are eligible have not been denied counsel.

There were several issues with the court-appointed system that were brought to our attention during the site visit. First, it had been observed that in many cases if a defendant has made bail and is out of custody, the defense attorney will talk with his/her client in the hallway for two minutes before first appearance. Also, if a defendant has a misdemeanor and a felony charge, each charge is heard in a different court and the defendant will be appointed two different attorneys, one for the misdemeanor, and one for the felony charge. In 2005 there was approximately a \$600,000 increase in indigent defense expenditures for the county due in large part to 10 capital murder trials.

There are approximately 1,600-1,800 misdemeanors filed a month and approximately 1,200-1,300 are disposed of per month.<sup>7</sup> In other words, as of October 2005, the courts were falling behind on processing new cases and carried over approximately 25 percent of misdemeanor cases a month. There are approximately 200 people arraigned at each arraignment calendar, which occurs every other week. We were told that of those 200 people on the calendar, approximately 100, or half, will not show up in court. Of the remaining defendants, 80 will plead at arraignment and 20 will request appointed counsel. In addition, one judge estimated that judges are appointing a new defense attorney at arraignment in county court approximately 50 percent of the time because the attorney initially appointed fails to appear.

Compensation in misdemeanor cases is by a flat rate, despite the fact that the Hidalgo County plans sets out an hourly compensation rate; felony cases are compensated on an hourly basis. This compensation structure has not changed since the passage of the FDA. The hourly rate of compensation in misdemeanor cases for court-appointed counsel as set out in the Hidalgo County Plan is \$70 for in-court work and \$40 for out-of-court work; however, judges can each set their own flat fee schedule and most do not follow the hourly rates. One county court judge reported giving \$250-\$350 for a plea in a misdemeanor case; and while he does not use a flat fee for trials, he did report an unofficial cap of \$750-\$1,000 for trials that last a half day. If a payment voucher is submitted by a court-appointed attorney for over \$500, he or she must file a motion detailing why he or she is charging more than \$500.

Below is a table of payments received by attorneys in Hidalgo County for calendar years 2004 and 2005. *See* Table 3. According to this data, received from the County Auditor's Office, in 2004, there were 44 attorneys earning greater than \$10,000 and in 2005 that number was 56 attorneys. In 2004 there were three attorneys earning \$48,900 or more, and in 2005 there were 6

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<sup>7</sup> This was an estimate made by the County Court Administrative Judge. The Assistant District Attorney in charge of misdemeanors estimated that there are approximately 1,100 – 1,400 misdemeanors a month and also estimated that approximately 75 percent are disposed of a month.

attorneys earning \$40,000 or more. This was for 200 or more cause number paid per attorney. The total amount paid from 2004 to 2005 increased by \$223,828, or 18 percent. The number of cause numbers paid increased by 14 percent. The top biller in 2004 earned \$62,528 for 310 cause numbers paid and in 2005 the top biller earned \$63,018 for 286 cause numbers paid.

**Table 3: Payments to Court-Appointed Counsel in Misdemeanor Cases CY 04-05**

	2004			2005		
	# Attys	Amount Paid	Cause Numbers Paid	# Attys	Amount Paid	Cause Numbers Paid
Attorneys Earning:						
>\$60,000	1	\$62,528	310	1	\$63,018	286
>\$50,000 to \$60,000	1	\$51,380	223	1	\$56,241	302
>\$40,000 to \$50,000	1	\$48,900	218	4	\$175,589	885
>\$30,000 to \$40,000	6	\$212,986	1,112	0	\$0	0
>\$20,000 to \$30,000	8	\$185,955	1,005	12	\$302,454	1,449
>\$10,000 to \$20,000	27	\$392,766	2,053	38	\$514,090	2,548
>\$0 to \$10,000	78	\$286,840	1,449	93	\$353,792	1,786
<b>Total Attorneys receiving payments</b>	<b>122</b>	<b>\$1,241,354</b>	<b>6,370</b>	<b>149</b>	<b>\$1,465,182</b>	<b>7,256</b>

There is no county-wide case tracking system; however there is one computer system for the entire criminal justice system in Hidalgo County including the sheriff, District Attorney’s Office, and the courts. The IDS Access database is also on the same system. Each defendant has a personal identification number (PID), which is a unique identifier. It is tied to a defendant’s name, not his/her fingerprint, so on a subsequent arrest if the defendant has a common name, the sheriff may assign a PID to someone who already has one. The public defender can merge the data from the “persons” database into their own system to generate reports, which would include addresses, family members, employment information, etc.

TSG collected data from the County Auditor’s Office on payments made to appointed counsel from January 20, 2004 through January 31, 2006. The data received includes case information and payments made on 12,995 cases or “unique cause numbers.” We were able to match 11,168 of these unique cause numbers to case data provided by the County Court system and have thus analyzed case data such as payments to court-appointed counsel, bond amount, number of hearings, and event dates from arrest to disposition in these 11,168 court-appointed counsel cases.

A considerable amount of time was spent developing and analyzing the data. An enormous amount of this time was spent matching the cause numbers assigned by the County Auditor’s Office with those of the court. It would be helpful in the future if the Auditor’s Office would conform its cause numbers to those maintained by the court, and if there was increased coordination between the two data systems it would allow for a more streamlined data analysis process in the future.

Much of the data analysis is contained in the tables in Appendix C, which break out cases by Class A, Class B and Unclassified misdemeanors. The tables include information such as the average cost-per-case by case type, average bond amount set, and various average timeframes from one event in the case to another, such as the average number of days from arrest to release and the number of days from arrest to the first hearing date. This misdemeanor case data is provided in three separate tables: total misdemeanor cases; misdemeanor cases in which a defendant is held in-custody pre-disposition (“jail cases”); and cases where a defendant is released pre-disposition, either on bond or on his/her own recognizance (“non-jail cases”).

An additional table sets out the total number of case dispositions by type of disposition for jail and non-jail cases. It is significant to note that only 36 of the 11,120 cases – or 0.3 percent – were disposed by trial (jury or bench), while almost 10 percent of the cases were resolved by a formal dismissal, and 78 percent were resolved by a guilty plea.

From our analysis we found that a significant amount of money was spent paying for cases that were transferred to a second court-appointed attorney, and these cases were more likely to experience delay. The total number of cases in which more than one attorney was appointed was 939, or 8.4 percent, 44 percent of which were subsequent proceedings in the same case, including motions to revoke probation and motions to adjudicate guilt. Excluding those cases that had a subsequent proceeding, payments were made to more than one attorney in 524 cases, or 5.3 percent of the total number of cases. *See* Table 4, below.

**Table 4: Misdemeanor Cases Handled by More Than One Attorney**

	<b>1 Attorney</b>	<b>&gt;1 Attorney</b>
Unique Cause Numbers	9,359	524
Average Cost per Case	\$201	\$394
Average Number of Hearing Dates	2.2	3.4
Average days from Arrest to Release	18	22
Average days from Arrest to First Hearing	58	61
Average days from Arrest Date to Filing Date	37	41
Average days from Filing Date to First Hearing	21	20
Average days from First Hearing to Disposition	47	96
Average days from File Date to Disposition	66	114

Cases with more than one attorney cost almost double those with only one attorney, the number of hearing dates required was 50 percent greater, and the total time from the first hearing to disposition more than doubled. These are likely cases in which a conflict of interest was identified and resulted in a transfer to another attorney. The total additional cost to the county for cases in which there was more than one attorney assigned was over \$100,000 during the two-year period analyzed. Additionally, there are a number of cases where the initial attorney assigned failed to appear in court; however, these cases do not appear in this table if the initial attorney did not submit a bill.

The existence of a public defender office may reduce the number of situations where another attorney would be appointed to handle subsequent proceedings; however, the office must

develop a conflict tracking system that can easily identify conflicts at an earlier stage, thereby reducing the extra cost and delay in conflict cases.

In analyzing the data on the number of days between events, we found, among other things, that the average number of days from filing date to disposition was 66 days (*see* Appendix C); however, this number bears further analysis. While 33 percent of cases are disposed of within one week from the filing date, and over half are disposed of within one month, over 10 percent of the cases take more than six months to disposition. *See* Table 5.

**Table 5: Time from Filing to Disposition**

Filing Date to Disposition	Cause Numbers	Percent of Total Cause Numbers
Disposed within 1 week	3,722	33.3%
Disposed within 1 month	5,915	53.0%
One month to 6 months	4,086	36.6%
Six months to one year	844	7.6%
>1year	304	2.7%
>2years	18	0.2%
Total Dispositions	11,168	100.0%

We were encouraged to find that the county’s case tracking system was able to provide this initial data as a baseline for the time, cost and disposition type for the last two years. For the next phase of our project, when we provide a quantitative analysis of the cost-per-case and efficiency of the new public defender system, we will be able to draw a comparison between the assigned counsel and public defender systems.

**Recommended Data Elements to Be Tracked**

The Chief Public Defender is able to access computerized case data from the county’s database, which also includes information from IDS; therefore, much of what should be tracked by the Public Defender is already being tracked by the county. Specifically, the following information is currently tracked by the courts or the Auditor’s Office:

**Data Tracked by the Courts**

- Date of arrest
- Date of magistration
- Filing date
- Date and type of each hearing
- Date of disposition
- Disposition type (i.e. jury, non-jury, etc.)
- Bond amount, if set
- Motions to adjudicate guilt and motions to revoke probation

**Data Tracked by the Auditor’s Office**

- Case number
- Name or ID of attorney

- Voucher date
- Hours submitted
- Voucher amount

Any case management system that the Public Defender uses should make use of this external data to populate the case management system, thereby reducing the need for time-consuming data entry. Additional data elements should be tracked, however the Chief Public Defender, in conjunction with the case management system provider, should determine what elements are appropriate to track. For example, other data elements to track may include the names of any witnesses for the purposes of screening for conflicts of interest, whether a defendant is a citizen of the United States to alert the public defender of any possible immigration consequences, or, if the office is developing a case weighting system, the hours spent on each case. We do know that the Public Defender is currently tracking information, by court, on whether an assignment is off the wheel or directly from the bench, in addition to a number of other fields. *See Appendix C.*

### **Hidalgo County Jail Overcrowding and Case Delay**

Jail overcrowding is a huge problem in Hidalgo County.<sup>8</sup> It was suggested to us that bond is typically set too high and this contributes to the overcrowding. There are no recommended bonds or county policies on setting bond; the discretion is left to the justice of the peace or magistrate setting bond. In addition, court-appointed lawyers are not appointed until after magistration, therefore defendants rarely have assistance of counsel when bond is set. If the client has posted bond, then formal charges may not be filed for one to two months. If the defendant is in jail on a Class B misdemeanor, a bond reduction hearing must be held within 15 days, and the same rule applies within 30 days for a Class A misdemeanor. In all cases, the defendant must see a magistrate to be informed of the nature of the charges, to ask for court-appointed counsel, and to have bond set within 48 hours. Bond reduction hearings must be done before the judge that magistrated the accused. This may present a problem for the public defender attorneys who will have to travel around the county for hearings in front of various justices of the peace; however, if the charge has been submitted by a district attorney, then the public defender can go to the county court for a bond reduction hearing. Despite these problems, we were told that the public defenders are filing bond reduction motions as frequently as possible.

In addition to high bond contributing to jail overcrowding, we were told that police arrest practices may also contribute to the problem. There are approximately 40 police agencies in Hidalgo County, and there seems to be a uniform but unwritten policy of arresting all defendants charged with A and B misdemeanors. Citations to appear in court are not issued. This, coupled with high bonds, increases the likelihood that misdemeanor defendants remain in jail until their first appearance after arraignment to enter a plea, which as stated above can be between 15-30 days depending on the charge.

During our site visit in October, there were 1,106 defendants being held at the Hidalgo County Jail, with 258 or approximately 30 percent being held pretrial on misdemeanors. We

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<sup>8</sup> With that in mind, one judge reported that he will only give jail time on probation violations if there are a number of conditions violated or if it is a subsequent offense.

were told that on average, approximately 30-40 percent of the inmates are pre-trial misdemeanor defendants. We were told that it costs \$40 a day to house an inmate outside of the county, added to which the county must pay transportation costs.

During our site work, we were told of two identifiable periods of time that cause delay in the processing of cases in Hidalgo County. First, there is a delay by the police and sheriff's office in getting their paperwork to the District Attorney in a timely manner for those defendants arrested over the weekend, including Friday. In these cases the DA may not receive the paperwork until Tuesday or Wednesday, which causes a bottleneck in the system. We were then told that there is a delay of up to 10 days from the time the DA receives the paperwork to the time he/she files charges. It was suggested to us that a defendant can wait in jail for up to 10-15 days before having an initial court appearance. This is a systemic problem within the criminal justice system, and this issue should be addressed by the appropriate county officials; however, the public defender office is filing bond reduction motions in an attempt to reduce this jail time.

Second, following the filing of formal charges, there is a delay in bringing the defendant before the assigned judge for the entry of a guilty plea, which occurs in the overwhelming majority of cases. There is not an easy solution to the delay occurring in the District Attorney's office, but if one or two county judges were available at all times to take pleas from defendants when the case is prepared, several days would be eliminated from the time of arrest to final disposition. We were told by the public defender that one of the county courts does set cases for pleas the following morning after the case is ready, and is a model court for eliminating delay in the system.

Magistrates are available 24 hours a day and Hidalgo County employs a video teleconferencing system for magistration. There is a courtroom in the jail where video magistration takes place and the arresting officer is usually present. We were told that not all justices of the peace are on board with the video teleconferencing system.

The video teleconferencing system is also available for use by defense counsel to "meet" with their clients without a jail visit. Jail officials praised the video teleconferencing system and told us that it has cut down considerably on the number of complaints by defendants regarding lack of contact with their court-appointed attorney.

### **The Public Defender's Office**

The main impetus for creating a public defender office was to address the issues of under-appointment of counsel to indigent defendants in misdemeanor cases and the poor quality of court-appointed counsel. The county also hoped that the creation of a public defender office would shorten the amount of time misdemeanor defendants spend in custody. Jail overcrowding in Hidalgo County is a problem that has been exacerbated by the fact that many misdemeanor defendants spend an inordinate amount of time in custody pre-disposition.<sup>9</sup> The County Judge stated that he would like one impact of the Public Defender's Office to be a reduction in pretrial

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<sup>9</sup> See infra, section on "Hidalgo County Jail Overcrowding and Case Delay" for a detailed discussion of these issues. As noted, high bonds also contribute to jail overcrowding and the large number of defendants held pre-trial.



disposition days. Preliminary data collection by the Public Defender's Office indicates that the office has been able to reduce the number of days from arrest to release; however, as discussed below, more time is needed to collect additional data before firm conclusions can be drawn.

We were told during our site visit that the defense bar had been hostile towards the formation of the Public Defender's Office. However, with more knowledge about the office and its estimated caseload, the bar is becoming more accepting of the office. The Chief Public Defender met with a number of criminal defense attorneys and judges and attended a local bar association meeting to discuss the role of the Public Defender's Office. This community outreach has proven helpful in easing the transition into a misdemeanor public defender system. In addition, we were told that all five County Court at Law Judges now support the new public defender system.

The new Public Defender's Office began operation on October 21, 2005, headed by Jaime Gonzalez, a former Assistant District Attorney in Hidalgo County. Through a contract with the county pursuant to a grant from the Task Force, the office will be responsible for representing 25 percent of all in-custody misdemeanor indigent defendants and for interviewing all in-custody defendants who fail to apply for an attorney and thus stall their case.<sup>10</sup> For those defendants who, after speaking with a public defender, decide to seek appointed counsel, either the public defender or assigned counsel will be appointed. There is also a provision in the public defender's contract that allows the public defenders to handle any "tie-in" felony charges that their misdemeanor clients are facing. Representation of tie-in felonies is limited to in-custody misdemeanor clients. Three of the five assistant public defenders are eligible to handle the tie-in felonies; however, as of February 2006 the Office had not begun receiving tie-in felonies. The public defender's office will not handle appeals, nor will they take felony probation revocations. During our site visit, we advised the public defender not to take new cases directly from the bench while sitting in the courtroom as this practice could potentially increase an attorney's caseload to the point where it becomes unmanageable.<sup>11</sup> In addition, we suggest that if privately retained counsel withdraws from a case, the public defender should not accept the appointment.

The fiscal year 2005 Discretionary Grant Award for the Public Defender's Office from the Task Force is for \$395,490, with Hidalgo County agreeing to assume a larger proportion of the office's expenses during the four-year term of the grant. Hidalgo County is required to reapply for continuing grant funding each year with the grant paying for 80 percent of expenses within the first year and a 20 percent reduction each year thereafter. We were told that the county budget is approximately \$120 million, of which at least \$60 million was dedicated to criminal justice.

On the morning we arrived in Hidalgo County in early October 2005, the Chief Public Defender went before the County Commissioners Court and was able to secure salary parity for his staff with the District Attorney's Office. Assistant public defenders will make an annual salary of \$42,000-\$43,000.

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<sup>10</sup> Level A and B misdemeanors are jailable offenses, while C level misdemeanors are not. The public defender's office will handle only jailable offenses. Few traffic misdemeanors are A or B misdemeanors and result in a summons only. Therefore, it is unlikely that the public defender will handle many traffic cases.

<sup>11</sup> Public defenders are currently accepting appointments directly from the bench. *See* Appendix C.

The office is staffed by four full-time assistant public defenders, an assistant director, the chief defender and two support staff. One public defender will be assigned to each of the four county courts in Hidalgo County. Four attorneys will be rotated on a periodic basis, possibly every six months, so that they may practice in front of each judge. The fifth attorney in the office will be a “rover,” assisting the staff attorney in a particular court on busy days. The Chief Public Defender will also rove but will have a reduced caseload. Four of the five attorneys are Spanish-speaking. Attorneys in the Public Defender’s Office are not permitted to handle privately retained criminal cases, but may handle a few private non-contested civil cases.<sup>12</sup> Support staff is responsible for maintaining the daily paper flow, opening and closing files, and preparing reports. One of the paralegals also has investigative skills and has been used in that regard in cases, both for negotiations with the district attorney’s office and for trial preparation.

Since opening, the attorneys have attended a one-day Criminal Trial Law Advocacy continuing legal education (CLE) program sponsored by the Hidalgo County Bar Association. In March, the attorneys attended a driving while intoxicated seminar sponsored by Texas Criminal Defense Lawyers Association in Dallas. According to the Hidalgo County Bar Association rules, all lawyers accepting indigent defense appointments must receive at least ten hours of CLE credits per year. It is noted that the training seminars put on by the Texas District Attorney’s Association are open to members of the defense bar. The Chief Defender sees a need for further education on the topics of drugs, domestic violence, immigration, and mental health.

The office is located on the second floor of the county administration building, which is a convenient walking distance to the courthouse. The office area itself is quite cramped with two attorneys sharing an office, one attorney using a carrel, and the support staff sitting side by side near the front door of the office. There appears to be little room for expansion of the office within its present facility. A small waiting area is available for clients and family; however, this space is rarely utilized as essentially all clients are housed at the Hidalgo County Jail.

Case assignments to the public defender’s office are electronically transmitted and received daily. Upon receipt of an assigned case, the support staff assembles the documentation provided by the court and other information available concerning the client from local intranet data, and it is given to the chief defender for assignment. The first attorney assigned to a case is the jail duty lawyer for the day. This attorney interviews all clients that have been assigned to the office on a given day. Following receipt of information from the court concerning which individual county judge the case will be assigned to, the file is then transferred to the attorney that has the responsibility for appearing on a daily basis before that county judge. Routinely, the next time the client is seen by a public defender lawyer is at the first scheduled court appearance before a county judge in which the vast majority of cases are resolved by a guilty plea or some other final disposition. IDS staff try to track defendants without attorneys, and will informally notify the public defender’s office of those clients who appear to be candidates for release on personal recognizance.

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<sup>12</sup> Permissible cases could include such matters as the preparation of wills, uncontested dissolutions, and personal injury cases that lead to settlement. Three of the six public defender attorneys are currently engaged in this limited practice. Any time spent on such cases during the workday must be deducted from that attorney’s accrued vacation time.

The Public Defender's Office does not have a systemic method of checking for conflicts of interest, although the Chief Defender is reportedly making a daily effort to avoid representation of co-defendants. The small number of files thus far received by the defender's office probably allows this informal system to be effective. The Chief Defender, however, does recognize that a more systematized, computerized conflicts check process should be incorporated soon into the file-opening process.

A new court with responsibility for criminal cases will start operation on January 1, 2007, and the Public Defender's Office will clearly need at least one new lawyer to staff that courtroom. While there is no mental health court in Hidalgo County, it is evident to the attorneys that many clients would benefit from this type of specialty court. There is a fledgling drug court for felony drug offenses and the Public Defender's Office might be ideally situated to provide legal counsel to both of these courts.

### **Oversight of the Public Defender's Office**

As part of the contract establishing the public defender office, a public defender oversight board was established. Included on this board are the county and district court administrative judges, a local defense attorney who takes court-appointments, the County Judge and a County Commissioner. The board is responsible for selecting and removing the chief public defender. If the Chief Public Defender can be removed at the will of the oversight board, it raises serious questions about the independence of the Chief Public Defender. The oversight board should only be able to remove the Chief Public Defender for cause, as stated in the American Bar Association's standards.<sup>13</sup> Any administrative role of the board in supervising the Chief Public Defender, including fiscal authority, must be decided by the Commissioners Court.

### **Public Defender's Office Caseloads**

During a follow-up conversation with the Chief Public Defender in February 2006, we were told that he has been monitoring cases on a monthly basis and that the office is moving quickly through cases because most defendants seem to want to plead guilty, despite the public defenders' willingness to try cases. He thinks that individual public defender attorneys will exceed the National Advisory Commission recommended standard of 400 misdemeanor cases per attorney annually;<sup>14</sup> however, none of the attorneys report being overwhelmed, and so far

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<sup>13</sup> ABA STANDARDS FOR CRIMINAL JUSTICE, PROVIDING DEFENSE SERVICES (3d ed. 1992), Standard 5-4.1 ("Neither the chief defender nor staff should be removed except upon a showing of good cause.").

<sup>14</sup> The only national source that has attempted to quantify a maximum annual public defender caseload is the National Advisory Commission (NAC) on Criminal Justice Standards and Goals, which published its standards in 1973. In its report, NAC set the following maximum annual caseload standards per *full-time* public defender attorney: 150 felonies; 400 misdemeanors (excluding traffic); 200 juvenile court cases; 200 Mental Health Act cases; and 25 appeals. National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts* at 186 (Washington, D.C. 1973), Standard 13.12 on courts. These standards refer to the maximum number of cases an attorney should handle if handling only that one case type. If, as is often the case, an attorney is handling a combined caseload, the percentage of the maximum caseload for each category should be assessed and

caseloads have been manageable. While at present time it may be that the attorneys are not feeling overwhelmed, caseloads should be monitored closely by the Chief Public Defender as cases assigned to the office will likely become more complex as time goes on. Based on our professional experience, we have heard from a number of jurisdictions that when a public defender office first opens, caseloads appear manageable; however, over time, attorneys can easily take on too many cases and become overwhelmed. Also, in accordance with its contract, the office is not receiving more than 25 percent of cases from the wheel; however, some attorneys have been receiving a number of appointments from the bench, including 6-10 in-court appointments per month in most courts and in one court they are receiving approximately 40 appointments from the bench per month. According to data provided by the Chief Public Defender, these bench appointments account for 26 percent of all cases assigned to the office. See Appendix B.

It is estimated that 50 percent of the clients assigned to the public defender's office have an immigration and naturalization service hold on them for illegal entry into the United States. These clients are not eligible for release on bond, and following disposition of their case are transferred out of the Hidalgo County jail to federal custody. We were told that the public defender attorneys do not have expertise in immigration matters and are only able to inform clients that a conviction may have adverse consequences on either the client's ability to remain in this country or on the possibility of federal prosecution for illegal reentry. If public defender attorneys are not able to fully inform clients of the collateral consequences of a criminal conviction, it raises ethical concerns for the attorneys. Public defender attorneys who have not had sufficient training or understanding of immigration law should not be appointed to cases involving serious immigration issues. It should be a priority of the Chief Public Defender to provide training for the attorneys in the office regarding immigration consequences of a misdemeanor conviction.

At the time of our site visit, the public defender was in the process of developing an Access database to use as a case management system with someone from the Indigent Defense Services office. There was a meeting to discuss which case tracking system the public defender office should utilize. This meeting was attended by the Chief Public Defender, the Director of Information Technology for Hidalgo County, one of his staff, the staff member from the Indigent Defense Services Office working on the Access database, and members of the Task Force and TSG, including David Newhouse, TSG's MIS Analyst. After discussing all of the options, it was determined that using the existing Access database, which was, at that time, a work in progress, would be the best option for tracking the public defender case information, rather than buying an off-the-shelf case-tracking system. Although there was some concern that the database would get too big and become bogged down with information, this will take several years.

The Chief Public Defender was able to provide us with the number of appointments received from each of the four county courts during the first five months of the office's operation, including whether the appointment was from the wheel or the bench, and whether the case is pending, disposed or transferred. This information is included in Appendix C. While the initial data received from the Public Defender's Office has not yet been validated, it appears that 26

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the combined total should not exceed 100 percent. Open caseloads per attorney should be far fewer than these annual standards.

percent of the assignments to the Public Defender's Office are from the bench. This is in addition to the requirement that the office take 25 percent of total misdemeanor jail cases in the county from the wheel. There should be some cause for concern if this rate of assignment from the bench continues. Based on the available data it appears that the office will far exceed 25 percent of misdemeanor jail cases in the county if intake continues at the same level over the next seven months.

## **Conclusion**

In this initial report, we have provided a summary of the indigent defense systems in Bexar and Hidalgo Counties prior to the establishment of the public defender offices, including the systemic problems that led to the creation of the offices. We have also looked at the beginning stages of the formation of the offices. In addition, since the time of our site visits in early fall 2005, TSG has provided technical assistance to the two new chief defenders in such areas as creating a case weighting system, creating a policy and procedure manual, and determining the data elements that should be collected by each office.

Preliminary reports from the offices show that both made considerable progress in addressing the problems that existed in their counties before the offices were created. In Bexar County, the appellate delay that had existed is reportedly being addressed by the APDO. In Hidalgo County, preliminary data shows that the arrest to release date for in-custody misdemeanor defendants has decreased. However, because the offices have only been in operation for short periods of time, additional analysis will be needed in the future. Accordingly, in the second phase of this study, we will not only create an evaluation model for the defender offices, but we will also evaluate the progress of the programs using that model and analyze the findings and their implications.

## Appendix A: Data For Bexar County Assignments

<b>Total Paid to Attorneys For CY 2004 &amp; 2005</b>		
<b>Attorney</b>	<b>Amount Paid</b>	<b>Count of Defendants</b>
A	\$71,356	28
B	\$70,595	21
C	\$50,162	12
D	\$44,923	8
E	\$41,425	3
F	\$41,199	1
G	\$26,546	6
H	\$24,063	12
I	\$23,581	4
J	\$20,727	18
K	\$20,000	3
L	\$16,313	2
M	\$13,440	1
N	\$12,328	6
O	\$10,350	5
P	\$9,936	5
Q	\$9,126	3
R	\$8,131	3
S	\$7,771	3
T	\$7,654	2
U	\$6,570	2
V	\$6,500	1
W	\$6,500	1
X	\$5,946	3
Y	\$5,875	2
Z	\$5,538	1
AA	\$5,213	4
BB	\$5,163	2
CC	\$5,133	2
DD	\$4,813	1
EE	\$4,549	1
FF	\$4,344	1
GG	\$3,984	1
HH	\$3,969	1
II	\$3,750	1
JJ	\$3,663	1
KK	\$3,438	4
LL	\$3,250	1
MM	\$2,944	1
NN	\$2,848	2

<b>Attorney</b>	<b>Amount Paid</b>	<b>Count of Defendants</b>
OO	\$2,563	2
PP	\$2,547	2
QQ	\$2,031	1
RR	\$2,031	1
SS	\$2,000	2
TT	\$1,813	1
UU	\$1,796	2
VV	\$1,738	2
WW	\$1,700	2
XX	\$1,650	3
YY	\$1,381	1
ZZ	\$1,313	1
AAA	\$1,219	2
BBB	\$1,100	1
CCC	\$1,063	1
DDD	\$1,000	1
EEE	\$750	1
FFF	\$750	1
GGG	\$731	1
HHH	\$675	1
III	\$600	2
JJJ	\$556	1
KKK	\$500	1
LLL	\$500	1
MMM	\$500	1
NNN	\$250	1
OOO	\$225	1
Grand Total	\$656,591	216

The above table of attorney payments includes all vouchers paid in 2004 or 2005, regardless of the type of case or when it was disposed. The table below shows the number of attorneys involved during the pendency of each appellate action, including retained, appointed and pro se representation.

<b>Data</b>	<b>Total</b>
Average of Total Paid	\$2,654.38
Count of Case Number	162
Count of Atty1	162
Count of Atty2	99
Count of Atty3	25
Count of Atty4	4
Average of # Attys	1.8
Count of Appointed Attys	162



## Appendix B: Bexar County Appellate Public Public Defender's Policy and Procedures Manual<sup>15</sup>

### II. A. Procedure for *Anders* Cases

1. The office of the Appellate Public Defender shall handle cases which fall under the criteria of *Anders v. California*, 386 U.S. 738 (1967)<sup>16</sup>, carefully and with supervision of the chief APD.
2. *Anders* briefs shall be filed sparingly, and such decision should be made only after consideration of the ramifications of such decision, and consultation with the other members of the attorney staff. Filing merit briefs in every case may undermine the credibility of the appellate defender with the appellate courts. On the other hand, appellate defenders should consider that the filing of *Anders* briefs may compromise the office's reputation within the client community.
3. This office has adopted an extremely strict standard in determining what cases have "no arguable merit." Such cases should be genuinely frivolous, and not simply cases which the appellate defender believes will not prevail on appeal.
4. *Anders* briefs shall not be filed in cases in which the death penalty or life imprisonment has been imposed.
5. The APDO will have internal review of all cases in which it has been decided by the attorney handling the case that an *Anders* brief will be filed. Such internal review shall include, at the minimum, a plenary review of the case by another member of the legal staff and the chief.
6. In each case in which a determination has been made that an *Anders* brief shall be filed, the attorney shall communicate that decision to the client prior to the filing of such brief, and shall give the client the opportunity to withdraw his request for the appointment of counsel or to withdraw the appeal. Such option should be given in a non-coercive manner, with the attorney making clear that an *Anders* brief will be filed as an alternative.
7. The APD shall send a copy of the *Anders* brief to the defendant with instructions for responding thereto, and will provide the defendant the necessary information to secure a copy of the record, and pursue a pro se appeal if the defendant chooses to exercise his appellate rights.
8. In any case in which the appellate court has rejected an *Anders* brief, the chief APD shall review the handling of the case, the merits of the case, and discuss the matter with the attorney handling the case to determine whether the office procedures for screening the case were adequate, and whether it is appropriate for that attorney or the office to continue representation.
9. In dealing with clients who desire to raise individual issues in cases in which the attorney believes to be without arguable merit, the APDO shall proceed ethically. However, after discussing said issue with the other legal staff, and the attorney determines the issue may have some arguable merit, the attorney's brief should be sufficient to ensure that the issue desired by the client is presented to the appellate court in an appropriate manner so as to

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<sup>15</sup> Excluding Section 1: *Quality of Work Standards, Minimum Work Standards and Work Unit Schedule*, as this section is a work-in-progress as discussed in this report

<sup>16</sup> A brief wherein defense counsel reviews the record and determines the appeal is frivolous.

receive the serious attention of the court. It is preferable to have counsel include the issue in the brief submitted, if at all possible.

10. If the client cannot appeal due to a plea bargain agreement or some other legal bar, it is unethical for the APDO to attempt to create jurisdiction where none exists. The APDO will follow the procedure set out by the appropriate appellate court, e.g., In the Fourth Court of Appeals, by filing the docketing statement and filing a modified “Anders” response to the court’s 30 day “show cause” letter.

### **III. Brief Preparation**

1. Timeliness of Briefs
  - a. At least 75 percent of all briefs filed by the APDO should be filed within the time limit set by statute or court rule without extension.
  - b. In cases in which briefs are not filed within the time limitation set by court rule or statute, the APDO shall have established procedures for requesting extensions of time in a timely and efficient manner.
2. All opinions and orders submitted by the courts are circulated to staff members for their information and feedback and are cataloged for further reference by the staff. Additionally, each attorney shall be expected to review the website of the court of appeals and the Court of the Criminal Appeals for new case hand downs.
3. All material filed in each case shall be sent to the client involved, as should prosecution briefs and substantive pleadings.
4. Reply Briefs
  - a) A reply brief should be filed if the State’s Brief, misstates the law, or it is helpful to the Court. The attorney shall use his or her discretion in filing a reply brief.
  - b) Priority of briefs
    - i. Reply briefs shall be limited to responding to issues raised by the prosecution, not theretofore identified or adequately argued in the brief-in-chief.
    - ii. New materials should not generally be raised for the first time in a reply brief. A supplemental brief should be filed in the event of additional new authority.

### **IV. Legal Community Relations**

1. With Appellate Courts
  - a. The appellate defender and his or her staff shall establish regular lines of communication with judges on the appellate court and with appellate court staff to determine whether the office is providing representation in a manner acceptable and appropriate to the court.
  - b. The appellate defender shall confer with the Clerk of the Court, for the appellate courts, for the disposition of administrative matters which arise on an emergency basis.
2. The appellate defender should establish a cordial, and professional, relationship with the appellate court prosecutors so that mutual problems can be solved administratively or with a coordinated effort.
3. The appellate defender should have on-going contact with the criminal defense bar in the jurisdiction.

4. The appellate defender should have contact with the private bar generally within the jurisdiction.

## **V. Client Contact**

1. All appellate defender clients that possess the right to appeal, that are interviewed, shall be personally interviewed by the attorney who will actually be handling the case, where possible.
  - a. Each client that is to be seen by the attorney actually providing representation that case, where possible. Such policy shall include at least one visit, and such additional visits as are required by the particular facts and circumstances of the case. If an appointed client does not have the right to appeal, the APDO shall make every effort to explain by correspondence to the client the situation.
  - b. Each appellate defender office shall work out, in advance, procedures with those correctional institutions which will be visited by appellate defender staff to insure the least possible delay and misunderstanding.
  - c. The appellate defender shall work with institutional officials to ensure that each correctional institution makes arrangements for a private interview room for attorney/client visits. An attorney shall not be expected to interview a client in a general visiting room, or a room in which a listening device is installed. An attorney shall not be expected to interview a client while the client is wearing handcuffs, leg irons, or chains unless in the courtroom or other substantial public safety concern. The appellate defender should work with the department of corrections and the superintendents of each institution to ensure an advance understanding of the facilities needed for private interview space.
2. Mail Contact
  - a. The appellate defender shall take all necessary steps to ensure that the attorney/client privilege is protected in all correspondence to and from an incarcerated individual. The appellate defender shall work with the prison administration and the attorney general in the state to ensure that the appropriate law in that jurisdiction is followed in relation to the opening and or censoring of attorney/client mail.
  - b. The appellate defender shall inform his or her client of the status of the case at each step in the appellate process, shall explain any delays in the case, and shall provide general information to every client regarding the process and procedures which will be taken in the matter, and the anticipated timeframe for such processing.
  - c. The appellate defender shall provide the client with each substantive document filed in the case by both the prosecution and the defense.
  - d. The appellate defender shall respond in a timely manner to all correspondence from clients, provided that the client correspondence is of a reasonable number and at a reasonable interval.
3. Telephone contact
  - a. The appellate defender should inquire as to the possibility of gaining telephone contact with clients who are incarcerated when such a brief telephonic contact can further the client's interest.
4. Family contact

The APDO shall not communicate with the family or friends of the accused unless the client specifically consents.

5. Juvenile Cases

- a. The APD shall contact the client and communicate with the child's parents for the purpose of obtaining an affidavit of indigency.
- b. The APD shall follow the child's best interest in the case, even if such interest may conflict with the wishes of the parents.

**VI. Contact With Trial Counsel**

1. Each appellate defender shall attempt contact with trial counsel which shall include, at a minimum, notifying trial counsel that the appellate defender unit has been assigned to provide appellate representation to the defendant and should include such other general procedures as appear necessary within that jurisdiction.
2. In any case in which appellate counsel argues that trial counsel provided ineffective representation, appellate counsel should give notice to the trial attorney of such asserted claim.
3. Each office shall carefully screen cases in which claims of ineffectiveness may be raised, so as to avoid conflicts of interest or frivolous claims.
4. The appellate defender should encourage cooperation with trial counsel, including the trial attorney providing assistance on appeal, provided, however, that appellate counsel is primarily responsible for the handling of such a case.

**VII. Procedures for Handling Conflict of Interest Cases**

1. The following situations constitute a conflict of interest, requiring the appointment of private counsel by the trial court, and withdrawal by the APDO or non-acceptance of the appointment. Those situations shall include but are not limited to:
  - a. When the appellate defender is appointed to provide representation to co-defendants, absent extraordinary circumstances warranting joint representation and the consent of all clients involved;
  - b. When the defendant was represented at the trial level by an individual within the same defender agency and it is asserted by the client or appears arguable to the appellate attorney that trial counsel provided ineffective representation;
  - c. When two or more clients have entered pleas of guilty or have advanced defenses at trial which were not inconsistent, but assert for the first time after conviction that one or more of the clients were more culpable than others;
  - d. When it is necessary for the appellate attorney to interview or examine in a post-conviction evidentiary hearing another client of that office in an effort to substantiate information provided by the first client; or
  - e. When, in the pursuit of an appeal or post-conviction hearing it is necessary to assert for the first time that another client of the office committed perjury at trial.
2. If a conflict of interest exists, it exists for the entire office, and assigning the case to another attorney within that entire agency will not cure the conflict.
3. As soon as a case is identified as meeting the definition of "conflict of interest case" the case shall be immediately identified and assigned to counsel outside the defender office. The assigned APD shall conduct a prompt review of each case to make a timely decision as to whether a conflict of interest is probable.
4. If a conflict of interest is found to exist or is probable, the APDO shall contact the trial court immediately and ask that a member of the private bar represent the client.

### **VIII. Scope of Representation**

1. The appellate defenders shall discuss the merits, strategy, and ramifications of the proposed appeal with each client prior to the filing of the brief. Such policies shall include discussing any possible adverse consequences or strategic problems when pursuing such appeal, even when there is an arguable issue to appeal. It is the obligation of the appellate counsel to provide the client with his/her best professional judgment as to whether the appeal should be pursued in view of the and strategic considerations.
2. As a general policy, the APDO will not provide for the application for an appellate bond, nor provide a copy of the record to the client.
3. Counsel may file a notice of appeal, when evident that appellant has the right to appeal and counsel has been contacted by the client to do so, although an order appointing has not been filed.
4. The appellate defender shall provide the client with the most complete and effective representation in the appellate court through the appropriate motion practice, including the judicious use of appellate motions.
5. The appellate defender shall be assigned appeals taken by the prosecution in the same manner in which appeals are assigned when taken by the defendant.
6. The appellate defender shall have discretion to seek appropriate relief in the trial courts following conviction.
  - a. In juvenile cases, since in Texas, a Motion for New Trial is a condition precedent for raising certain claims, if trial counsel has failed to do so, the APDO will file a MNT where appropriate.
7. The appellate defender shall have the authority to seek discretionary review in any state appellate court, consistent with the appellate defender's professional judgment.
8. The appellate defender shall have the discretion to seek review of any state court conviction in both the United States Supreme Court by writ of certiorari or appeal and in federal courts when such relief appears to be warranted in the attorney's best judgment.
9. The appellate defender shall file *amicus curiae* briefs in state appellate courts when issues are raised in cases litigated by other counsel when such cases will have a significant impact on a large number of defender clients and the briefs filed by counsel can be effectively augmented by such *amicus* briefs; in all other cases the appellate defender shall have the discretion to file *amicus* briefs.
10. The APDO shall seek oral argument in the courts of appeals only where the case is a novel issue or where argument is clearly justified.

## Appendix C: Data for Hidalgo County Assignments

### Misdemeanor Appointments and Payments to Assigned Counsel in Hidalgo County

(Cases for which payments were made from 1/20/2004 - 1/31/2006)

<b>All Cases</b>	<b>Class A</b>	<b>Class B</b>	<b>Unclassified</b>	<b>Total</b>
Unique Cause Numbers	3,729	7,407	32	11,168
Subsequent Motions to Revoke Probation	458	703	1	1,162
Subsequent Motions to Adjudicate Guilt	46	85		131
Average Cost-per-Case	\$215	\$217	\$187	\$216
Average Bond Amount (if set)	\$3,259	\$1,660	\$1,092	\$2,126
Average Number of Hearing Dates	2.7	2.3	2.3	2.5
Average days from Arrest to Release	20.4	17.8	5.7	18.5
Average days from Arrest to First Hearing	56	59	104	58
Average days from Arrest Date to Filing Date	36	37	84	37
Average days from Filing Date to First Hearing	19	22	20	21
Average days from First Hearing to Disposition	51	45	41	47
Average days from File Date to Disposition	68	66	61	66

<b>Jail Cases</b>	<b>Class A</b>	<b>Class B</b>	<b>Unclassified</b>	<b>Total</b>
Unique Cause Numbers	2,510	4,429	16	6,955
Subsequent Motions to Revoke Probation	350	388		738
Subsequent Motions to Adjudicate Guilt	26	38		64
Average Cost-per-Case	\$202	\$204	\$173	\$203
Average Bond Amount (if set)	\$3,211	\$1,672	\$833	\$2,172
Average Number of Hearing Dates	2.5	2.1	2.0	2.3
Average days from Arrest to Release	35.4	31.5	15.3	32.6
Average days from Arrest to First Hearing	34	37	35	36
Average days from Arrest Date to Filing Date	23	25	26	24
Average days from Filing Date to First Hearing	11	11	9	11
Average days from First Hearing to Disposition	33	35	17	34
Average days from File Date to Disposition	43	45	26	45

<b>Non - Jail Cases</b>	<b>Class A</b>	<b>Class B</b>	<b>Unclassified</b>	<b>Total</b>
Unique Cause Numbers	1,219	2,978	16	4,213
Subsequent Motions to Revoke Probation	108	315	1	424
Subsequent Motions to Adjudicate Guilt	20	47		67
Average Cost-per-Case	\$242	\$236	\$200	\$237
Average Bond Amount (if set)	\$3,277	\$1,657	\$1,141	\$2,112
Average Number of Hearing Dates	3.3	2.6	2.5	2.8
Average days from Arrest to Release	3.7	3.1	0.8	3.3
Average days from Arrest to First Hearing	104	93	173	96
Average days from Arrest Date to Filing Date	65	54	142	57
Average days from Filing Date to First Hearing	37	38	31	38
Average days from First Hearing to Disposition	90	63	65	70
Average days from File Date to Disposition	119	96	97	102

It is notable that jail cases cost significantly less than non-jail cases. This may be explained by the fact that only 62 percent of non-jail cases result in guilty plea, while 87 percent of jail cases do.

<b>Disposition</b>	<b>Non-Jail Cases</b>	<b>Jail Cases</b>	<b>Total</b>
Jury Verdict	6		6
Non-Jury Trial		1	1
Guilty – Jury Verdict	14	6	20
Not Guilty – Jury Verdict	7	2	9
Guilty Plea or N/C – No Jury	2,586	6,004	8,590
All Other Dismissals	688	443	1,131
Insufficient Evidence	18	6	24
Deferred Adjudication	842	332	1,174
Order Barring Offense	29	136	165
<b>TOTAL</b>	<b>4,190</b>	<b>6,930</b>	<b>11,120</b>

### Arrest to Disposition

	<b>Jail Cases</b>		<b>Non-Jail Cases</b>		<b>Total</b>	
	<b>Count</b>	<b>Percent</b>	<b>Count</b>	<b>Percent</b>	<b>Count</b>	<b>Percent</b>
< 1 week	29	0.4%	8	0.2%	37	0.3%
1-2 weeks	1593	22.9%	31	0.7%	1624	14.5%
2-3 weeks	1765	25.4%	41	1.0%	1806	16.2%
3 weeks - 30 days	826	11.9%	21	0.5%	847	7.6%
1- 2 months	811	11.7%	383	9.1%	1194	10.7%
2 - 3 months	529	7.6%	1042	24.8%	1571	14.1%
3 - 4 months	368	5.3%	691	16.4%	1059	9.5%
4 - 5 months	228	3.3%	447	10.6%	675	6.0%
5 - 6 months	149	2.1%	300	7.1%	449	4.0%
6 - 7 months	113	1.6%	245	5.8%	358	3.2%
7 - 8 months	75	1.1%	216	5.1%	291	2.6%
8 - 9 months	70	1.0%	174	4.1%	244	2.2%
9 - 10 months	49	0.7%	135	3.2%	184	1.6%
10 - 11 months	66	0.9%	97	2.3%	163	1.5%
11 - 12 months	61	0.9%	82	1.9%	143	1.3%
>=1year	190	2.7%	276	6.6%	466	4.2%
>=2years	34	0.5%	21	0.5%	55	0.5%
<b>Total Dispositions</b>	<b>6956</b>	<b>100.0%</b>	<b>4210</b>	<b>100.0%</b>	<b>11166</b>	<b>100.0%</b>

**HIDALGO COUNTY PUBLIC DEFENDER'S OFFICE  
SUMMARY REPORT<sup>17</sup>**

**OCTOBER 21, 2005 - MARCH 31, 2006**

<b>Disposition :</b>	<b>Un-Filed</b>	<b>CC # 1</b>	<b>CC # 2</b>	<b>CC # 4</b>	<b>CC # 5</b>	<b>TOTAL</b>
Pending	127	66	38	95	44	370
Disposed	0	130	168	305	201	804
Transferred	43	9	9	15	22	98
<b>TOTAL</b>	170	205	215	415	267	1272
<b>Appointed :</b>	<b>Un-Filed</b>	<b>CC # 1</b>	<b>CC # 2</b>	<b>CC # 4</b>	<b>CC # 5</b>	<b>TOTAL</b>
Wheel	170	169	170	177	203	889
Bench	0	32	44	207	51	334
Bench-Sub	0	4	1	31	13	49
<b>TOTAL</b>	170	205	215	415	267	1272

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<sup>17</sup> Information provided by the Hidalgo County Public Defender's Office