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**A Review of Wichita County's Indigent  
Defense System—Findings and  
Recommendations  
Final Report  
February 2004**

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# Review of Wichita County's Indigent Defense System

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## I. Executive Summary

- 1 The Wichita County Office of the Public Defender (OPD) has been in existence since the late 1980s and is the only full time public defender system in any county in Texas that has the original responsibility for providing representation in all indigent defendant cases except for conflict of interest. Last fall, Robert L. Spangenberg and Marea L. Beeman of The Spangenberg Group visited Wichita Falls at the request of the Texas Task Force on Indigent Defense to review the OPD. Mr. Spangenberg visited Wichita Falls a second time with Mr. James Bethke, Director of the Task Force, on February 9, 2004 to make a presentation to the Commissioner's Court on the review.
2. At the time of our 2003 visit, the public defender's office had six attorneys, including the Chief Public Defender, Mr. John Curry. It became clear to us during our visit that there was a great deal of concern among county officials in the criminal justice system about the productivity and administration of the OPD. We were told that there were several reasons for these concerns.
3. Prior to the 2002 implementation of Senate Bill 7 (SB7, or, the Fair Defense Act), the number of cases for which counsel was appointed in Wichita County was considerably less than it is at the present time. This was particularly true of misdemeanor cases, where, prior to SB7, counsel was infrequently appointed.<sup>1</sup> We were told that, generally speaking, prior to SB7, a large number of indigent misdemeanor clients did not ask for a lawyer and instead negotiated directly with the District Attorney's office and plead guilty. While appointment of counsel to misdemeanor defendants was infrequent overall, it was particularly uncommon for those misdemeanor defendants who were able to post bond. At that time, the OPD was handling the large majority of the cases in which indigent defendants received appointed counsel, and the assigned counsel system was handling conflicts and occasionally overload cases.
4. In 1999, a group of private attorneys approached the county suggesting that the county terminate the public defender program and replace it with a contract system involving seven or eight private attorneys who would handle all of the cases. For a variety of reasons, this did not take place and the public defender program continued to exist. However, the concerns that some county officials aired over the need for the public defender office during this period continued, and the chief public defender felt from time to time that the office was under attack and might be eliminated.
5. Shortly after SB7 went into effect, at a time when caseloads began to rise significantly, the OPD suffered a period of extreme instability. In the summer of

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<sup>1</sup> In calendar year 2001, prior to enactment of SB7, the OPD was appointed to 1,337 felonies and 338 misdemeanors. In 2002, after SB7 went into effect, the OPD was appointed to 1,611 felonies and 849 misdemeanors. Felony caseload increased 20% while misdemeanor caseload increased 150%.

2002, some county officials were expressing serious concerns about the cost and efficiency of the public defender system and questioning how well it was being administered. Rumors circulated that the county was going to eliminate the OPD.

6. The uncertainty over the future of the office was a contributing factor to the departure of two of the OPD's more experienced attorneys in late 2002 and a third less experienced attorney in 2003. The departure of three lawyers left a serious gap not only because the office could not properly function with just half of its lawyers but also because, by this time, due to the new requirements of SB7, there were considerably more appointments being made. In particular, defendants who were charged with misdemeanors facing a potential jail sentence were provided counsel as they had not been before. There was also an increase in juvenile cases requiring counsel for some of the same reasons at about the same period of time.
7. For several months in the late summer and fall of 2002, the chief public defender was not certain whether the office would be re-funded and remain in business. The uncertainty over the future of the office impeded its ability to attract qualified attorneys to fill the vacant positions. When all three vacancies were finally filled, well into 2003, they were filled by relatively inexperienced attorneys. At the time of our February 2004 visit, there was again an attorney vacancy in the Public Defender's Office.
8. In conversations with the chief public defender, we feel that he was not aggressive enough recruiting for the vacant positions, and in fact limited the recruiting to ads in the local newspaper and letters to law school placement offices around the state. In retrospect, we feel that much more could and should have been done, notwithstanding the climate in the county at that time. Toward the end of December 2002, it was made clear by the County that the OPD would not be terminated, yet the positions remained vacant for several more months.
9. In the period from late 2002 when the two experienced public defenders left until they were replaced, well into 2003, the office was in very serious condition in terms of workload. Mr. Curry decided to focus primarily on felony cases, and on any misdemeanor cases the staff could handle where it was clear that the defendant was in custody and in danger of receiving a jail sentence.
10. During this period, the office could not handle as many felony and misdemeanor cases as it previously handled, and could not accept any juvenile delinquency cases, thus more appointments were made to private court-appointed counsel. This had the effect of driving up the cost of the county's indigent defense system because of the substantial increase in costs for the appointed counsel, and in part because this was occurring during the implementation period of SB7.
11. The period between late 2002 and 2003 was a real crisis for the OPD and for the county, and it was a time in which much needed to be done in the office in terms of administration, leadership, and development of performance standards,

workload standards, a conflict policy and other written requirements for the public defender office. Virtually none of this was done, in part because there seemed to be no time for it since all of the lawyers, including the chief public defender, were substantially overworked. When we returned to Wichita Falls in February 2004, a strategy was just being developed to address these required standards and guidelines through a proposed written plan.

12. When the new public defender attorneys were hired, because of their inexperience, they handled only misdemeanor cases, and they received virtually no training or supervision. At the time of our 2003 visit, the three new attorneys felt they were not faced with an overwhelming caseload and clearly lacked instruction and mentoring. Meanwhile, the other three attorneys were burdened with heavy felony caseloads. By February 2004, two of the new attorneys were beginning to handle felony cases.
13. Our overall assessment of the public defender system following our initial visit was that the county, through its criminal justice system, had responded positively to the increased requirements of SB7. For the most part, the county board recognized what needed to be done and while they were very much concerned about the increased costs of indigent defense, they supported, overall, the new provisions of SB7. This was also true of the judges and, for the most part, the District Attorney's office.
14. Notwithstanding the overall support of the county and court officials regarding indigent defense, the OPD was in need of substantial improvements in both the delivery of defense services and in the area of necessary administrative practices.
15. We have concluded that it is important that the public defender system remain in existence in Wichita County but that it must operate under a new plan and a new set of goals and requirements. These should include the development of a training program, a program of supervision and evaluation, written performance standards, a conflict policy, caseload standards, office practices and some kind of a mentoring program. The office remains in great need of administrative reform and attention. It was clear to us at the time of our first visit that it was unlikely that Mr. Curry had the interest or commitment to develop this plan.
16. Recently, the Commissioner's Court hired Mr. Michael Whalen to serve as a senior administrator for the OPD. His responsibility is to develop a comprehensive written plan for the public defender's office relating to administration, evaluation, training, workload and other necessary standards and guidelines to assure that OPD operates efficiently in the future. Mr. Curry and the other members of the public defender office are to work closely with Mr. Whalen to assist him in these tasks. The written agreement will be prepared in accordance with Article 26.044, as applicable.

17. Mr. Curry has had a long involvement with the public defender system in Wichita County and is truly committed to his clients. In our judgment he has an important role to continue to play in the office, but some system or program needs to be developed to assure that the administrative requirements for the office are developed and implemented over the next several months. Development and execution of the written plan are the keys to success.

## II. Recommendations

The Spangenberg Group believes that Wichita County's indigent defense system will be best served by a strong and independent public defender office with assigned counsel handling conflict of interest and overload cases. The current Office of Public Defender (OPD) has been hobbled for years due to a flawed structure. We believe significant improvements can be achieved by the creation of a nonpartisan board to oversee the OPD, and with the hiring of a chief public defender who will provide the leadership and administrative skills the office has lacked. We believe steps to create an oversight board should be undertaken immediately.

In 2002, the Texas Office of Court Administration (OCA) staff conducted a review of indigent defense in Wichita County. A report, "Public Defender Office Study: Wichita County," was circulated in draft format in December 2002 and in April 2003, but a final report was never officially released. Mr. James Bethke, Director of the Texas Task Force on Indigent Defense, felt his office lacked the in-house resources to properly finalize the overview and obtained approval from the Task Force to seek expert outside assistance from The Spangenberg Group. The OCA's April 2003 draft study contained a series of good recommendations. Rather than reinventing the wheel, we set out those recommendations in boldface type below. In a couple of instances, we provide additional explanation in regular typeface. Following the OCA's recommendations, we provide several additional recommendations.

## III. OCA Key Recommendations

1. **Create a nonpartisan board to oversee the OPD. The board should consist primarily of practicing attorneys, but should not include judges, prosecutors, or law enforcement officials. The members should represent a diversity of interests in order to ensure insulation from partisan politics.**
  - TSG agrees that it is essential that an independent, non-partisan board be created for the Office of the Public Defender. We would not favor including on the board any active judges, prosecutors or law enforcement officials. We also feel all members on the board should have demonstrated a concern and interest in the area of indigent defense in their past work. The primary purpose of the board is to assure the independence of the hiring of the chief public defender and other assistant public defenders in the future. The

Chief Public Defender is currently the only official in Wichita County's criminal justice system who is not publicly elected, which may produce the appearance of an unjustifiable imbalance in authority in the criminal justice system.

- 2. OPD should adopt maximum caseload standards for attorneys, establish a policy to assign cases according to attorney workload, and fill attorney vacancies immediately.**
  - Many state and county public defender programs in this country have developed caseload and workload standards for their public defender attorneys to assure that they are working at maximum capacity but are not exceeding a workload which would run the risk of their inability to provide adequate representation to their clients. We have included in Appendix A a list of caseload standards that now exist in a number of states. In developing new workload standards, reference should be made to this document and other national standards developed by the National Advisory Commission, the American Bar Association and the National Legal Aid and Defender Association.
  - By the time of TSG's first visit to Wichita County, the OPD vacancies had been filled. However, in the future, aggressive recruiting should be done so that attorney positions do not remain vacant for long periods. We emphasize this point because at the time of our February visit, a new attorney vacancy had recently occurred.
- 3. The court administrator and the sheriff's office should work closely together to develop a process to reduce the delay in appointing counsel due to insufficient information on appointment application forms.**
  - The magistrate's office and Wichita Falls police department should also be consulted in this endeavor. Some progress had been made since the OCA made this recommendation, particularly with the county's hiring of an indigent defense coordinator.
- 4. The salaries of attorneys in the OPD should be increased to correspond with salaries of similar positions within the district attorney's office.**
  - The public defender staff should be paid salaries that are consistent with the salaries paid to assistant district attorneys in Wichita County for similar experience and title. The most recent data available to us indicates that as of 2004, the average salary of



assistant district attorneys in Wichita County was \$49,031 while the similar average salary for assistant public defenders was \$43,310. It is important to have parity for attorneys in the public defender office who are doing similar work to that done in the District Attorney's office.

#### **IV. OCA Office of the Public Defender Analysis and Recommendations**

**1. The CPD and county officials should review the OPD workspace, and discuss alternatives if it is determined additional space is needed.**

- At the time of our visit we observed that the OPD workspace was at maximum capacity for the number of staff in the office. However, with the increase in staff that we recommend (see below), it is clear that additional space must be provided, either within the courthouse or in an outside building. Each attorney must have a private office in order to meet clients.

**2. OPD should adopt a written policy to ensure cases are assigned to attorneys with appropriate experience, rather than using current informal practices.**

**3. The OPD should establish policies for the formal review of each staff attorney in accordance with any newly-established county performance measures for defense counsel.**

- These policies should be in accord with new requirements spelled out in the new written plan.

**4. Increase the number of OPD attorneys and staff to meet adopted caseload standards.**

- The District Attorney's office has twice the number of attorneys handling criminal matters than the OPD. It is recognized that not every criminal case involves an indigent defendant, and thus the District Attorney's office handles more cases than OPD and court-appointed counsel combined. However, the substantial majority of criminal cases does involve indigent defendants. The county should develop a plan consistent with this report and other information available to increase the number of assistant public defenders in such a way that the OPD will have adequate personnel to handle its caseload. Based upon our most recent visit in February 2004, we believe that these additional attorneys should not be hired until the detailed work plan is completed.

- Once the work plan is completed, we believe the public defender office should be increased by two or three full-time attorneys plus additional support staff to permit the office to resume handling non-conflict juvenile

cases as well as additional non-conflict felony cases.<sup>2</sup> We are aware that court-appointed counsel have played a major role in providing counsel to indigent defendants, along with the public defender program. However, with the addition of two to three full-time attorneys, the OPD should be able to substantially reduce the number of cases and cost of the court-appointed counsel program.

**5. Increase the number of investigators for OPD to two full time employees.**

## **V. OCA County Analysis and Recommendations**

### **1. Prompt Access to Counsel**

- **The county should establish a written policy to ensure that appointed counsel meet with their clients as soon as practicable.**
- **The county should adopt performance measures for defense counsel, and consider these performance measures during the annual review of the approved attorney list.**

### **2. Indigent Defense Costs**

- **The OPD should consider providing legal representation to those persons that have the ability to partially pay for services, and institute a policy to recover attorney fees from clients whose financial status changes in the future.**

## **VI. Additional TSG Recommendations**

After review of Wichita County's indigent defense system in fall 2003, The Spangenberg Group suggests the following additional recommendations to those set out by the OCA:

- 1. The chief public defender, with the cooperation of the county, should adopt a number of written standards having to do with qualification and performance of counsel, training, a conflict policy, caseload, compensation, and office practices.** For reference, the chief public defender should review §71.060 of SB7, which outlines the requirements of the Task Force on Indigent

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<sup>2</sup> Due to its extreme case overload situation following departure of its experienced attorneys, since January of 2003, the OPD stopped handling juvenile delinquency cases entirely and only received two of every three non-conflict indigent misdemeanor and felony appointments.

Defense to develop policy and standards for providing legal representation.<sup>3</sup> As of February 2004, it appears that this process has begun.

2. **County officials need to make a concerted effort to address criminal justice system issues as a system, receiving input from all affected agencies, including the OPD.**
3. **One issue that should be addressed is the delay in compiling the District Attorney "Case Packet," which impacts the efficient processing of cases through the criminal justice system.** We urge the District Attorney to screen in-custody defendants as soon as possible after arrest and booking so that the appropriate charging decision can be made to avoid excess jail time for defendants who do not pose a threat to the community. Waiting for completion of the case packet in every case can impede that process. Discussions should be held between the District Attorney's Office and law enforcement agencies about the requirements of the case packet for various case types.
4. **An effort should be made to have all of the county's criminal justice agencies, including the courts, Public Defender, District Attorney, Sheriff and Indigent Defense Coordinator, count cases in the same way in order to provide accurate data from which policy decisions are made.** A good model to adopt is that used by the Texas Task Force on Indigent Defense, which is the same definition of a case used in the OCA/Judicial Council reporting instructions for monthly court activity.
5. **With so few public defender offices in Texas, the staff and chief public defender of the Wichita County OPD should be engaged in making the office an example for the state. The office should actively network with the other public defenders in the state.**

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<sup>3</sup> Although the Task Force has not completed drafting all of the requirements required in § 71.060, it is important for the chief public defender to review the standards that have been developed so far by the Task Force and to conform with them in drafting new standards for Wichita County. It is extremely important that all of the standards be in writing and available for review by county officials, judges and as a guide for public defender attorneys and court-appointed counsel.

## A. INTRODUCTION

- 1 In fall 2002, the Texas Task Force on Indigent Defense arranged for a technical assistance review of the indigent defense program in Wichita County, Texas. The technical assistance was requested by Honorable Woodrow W. Gossom, County Judge of Wichita County and one of the county court at law judges, and focused on the county's Office of the Public Defender (OPD) and the process for appointing counsel to indigent defendants.
2. The Task Force was created as part of the significant reforms to Texas' indigent defense system enacted in the 2001 Fair Defense Act (still commonly referred to as SB7). The Task Force develops minimum standards of quality indigent defense services; monitors and assists counties in meeting those standards; and works to bring consistency, quality control and accountability to indigent defense practices in Texas. It is the Task Force's Director, James Bethke, and his six-member staff who carry out the policy of the Task Force throughout Texas' 254 counties.
3. The Texas Office of Court Administration (OCA) staff assisted Mr. Bethke in conducting the 2002 review of indigent defense in Wichita County. A report, "Public Defender Office Study: Wichita County," was circulated in draft format in December 2002 and in April 2003, but a final report was never officially released. Mr. Bethke felt his office lacked the in-house resources to properly finalize the overview and sought approval from the Task Force to seek expert outside assistance. The Task Force contracted with The Spangenberg Group, a nationally recognized research and consulting firm located in West Newton, Massachusetts that specializes in the improvement of indigent defense systems, to conduct a thorough evaluation of Wichita County's indigent defense system.
4. Wichita County is one of just five counties in Texas with a public defender office. The Task Force hoped that The Spangenberg Group evaluation would not only assist Wichita County with specific recommendations to improve its indigent defense system, but would also provide useful information for other counties that are considering developing a public defender office.
5. On September 30 - October 2, 2003, Robert L. Spangenberg and Marea L. Beeman, President and Vice President of The Spangenberg Group (TSG), met with the county judge and other district and county court judges at law, other representatives from the courts, county commissioners court, district attorney's office, public defender's office, sheriff's office, and county auditor's office, as well as several court-appointed attorneys in Wichita County. James Bethke accompanied Mr. Spangenberg and Ms. Beeman on this site visit. We owe a great deal of gratitude to the county judge's assistant, Lola Helton, who made all of the scheduling arrangements. Mr. Bethke and Mr. Spangenberg visited Wichita Falls again on February 9, 2004.

6. What follows is a report with observations on the county's indigent defense system, with an emphasis on the OPD, and recommendations for improvement. TSG found agreement with a good deal of the work contained in the initial report conducted by the OCA. The preliminary OCA report served as an impetus and as building blocks for this report.

## **B. WICHITA COUNTY CRIMINAL JUSTICE SYSTEM**

- 1 According to the 2000 census, Wichita County has a population of 131,664 residents. The Wichita County Courthouse building houses most of the entities involved in the county's criminal justice system, including the county court, the members of the commissioners' court, the three district courts, the two county courts at law, two of the five justices of the peace, the district attorney's office, the county sheriff and jail, and the public defender's office. County government officials are also located in the same building. The jails can accommodate 622 inmates, but current staffing levels can properly supervise only 500 inmates. The centrally located criminal justice system is very convenient, but the building is outgrown its intended use.
2. All Wichita County district courts and county courts at law hear both civil and criminal cases. The county court hears primarily adult criminal and juvenile cases.

## **C. PUBLIC DEFENDER OFFICE**

The Wichita County Office of the Public Defender was created in the late 1980s to provide representation to indigent defendants in criminal and juvenile delinquency cases. The office was expected to handle all such cases except those in which it had a conflict of interest, which would be handled by court-appointed counsel. The OPD replaced the county's previous system of providing counsel for indigent defendants, which required all practicing attorneys in Wichita County to accept appointments, whether or not they practiced criminal law.

2. In 2002, some county commissioners' court members indicated they were not pleased with the OPD and wanted to consider replacing it with some other type of indigent defense system: an all-appointed counsel system or a contract system. That level of uncertainty about the OPD precipitated the county judge's request for a technical assistance review from the Task Force. A period of instability at the OPD ensued, as the office lost half of its attorney staff. The threat of disbandment of the OPD seems to have passed, but a sense that the office needs to make certain changes lingers.
3. When fully staffed, the public defender office staff consists of six attorneys, including the chief public defender, one full-time investigator, one part-time (35 hours per week) investigator, one case administrator, one clerk, two legal

secretaries and a receptionist. The chief public defender has been with the office for 15 years.

4. For roughly one year, from August 2002 to August 2003, the public defender office struggled with three of its six attorney positions unfilled for various stretches of time; the longest for nine months. The office filled the first attorney vacancy (created in August 2002) in May 2003 and filled the second vacancy (created in December 2002) in July 2003. A third attorney position was vacant from May to August 2003. As of February 2004, the office again had a vacant staff attorney position.
5. Various measures were taken during this period to ease the workload pressures on the office. Starting in September 2002, the OPD was no longer appointed in civil matters, including child support enforcement cases. In 2002, the office was also relieved of appointments in juvenile delinquency cases. Most significantly, since January 2003, the public defender office has only been appointed to two out of every three non-conflict indigent defendant misdemeanor and felony cases. Court-appointed attorneys are being appointed to the additional cases.
6. This arrangement is expected to remain in place for the near future, as the three new attorneys who joined the office were all relatively inexperienced, and thus only qualified to handle misdemeanors and state jail and third degree felonies under the county's standards for attorney appointments for indigent defendants. The three most recently hired assistant public defenders are handling primarily misdemeanors, leaving the three veteran attorneys to shoulder the more complicated and time consuming felony cases. This stretches the office to its limits, as the three veteran attorneys are each assigned to one of the county's three district court courtrooms, while the three newest attorneys cover the two county court at law courtrooms.
7. When we first visited, we were told the two assistant public defenders who, in addition to the chief public defender, cover district court, had over 150 cases open apiece; most of which were felonies. The chief public defender had 203 open cases and had not had a trial all year. These caseload levels are excessive by any measure and raise a substantial risk that lawyers are unable to provide adequate and meaningful representation to all of their clients. Indeed, the chief public defender said he had not asked for experts to be appointed in cases where he felt they might be appropriate as he did not have time to work with them.
8. In contrast, the District Attorney's Office's staffing for criminal cases includes nine attorneys in district court, including two who are assigned to each of the three courts, two who specialize in drug cases and one who specializes in gun cases. Two additional assistant district attorneys are assigned to misdemeanor cases. Numerous interviewees noted that the public defender office is not staffed adequately in comparison to the district attorney's office.

9. Hiring for the OPD was delayed in the fall of 2002 in part because the County Commissioners Court indicated it was considering eliminating the office. After the draft preliminary report was issued by the Office of Court Administration in December 2002, it became apparent that the office was not going to close. However, response to the OPD's job openings, which were posted with law school career centers, was slim and the recruiting plan for new attorneys was ineffective.
10. Low response to the public defender openings was no doubt in part due to the lack of uncertainty over the office's future. However, it is also probably attributable to the pay offered by the office. The starting salary for a new attorney is \$3,491 per month, or \$41,892 per year. While the starting pay for public defenders is not bad for Wichita Falls, salaries do not keep pace with experience if attorneys stay with the office. The two assistant public defenders handling felony cases earn \$45,780 a year, which inadequately reflects their experience or longevity with the office. After 15 years with the office, the chief public defender earns \$60,540 per year.

Pay for assistant district attorneys who handle criminal cases and assistant public defenders, it was reported to us, is not on par. One assistant district attorney in 2003 earned slightly less (\$44,196 per year) than the two experienced felony assistant public defenders. The other assistant district attorneys earn more than these assistant public defenders earn, with three earning over \$14,000 per year more.<sup>4</sup> A growing trend around the country is for staff of public defender offices and district attorney offices to be paid comparable salaries. Indeed, attorneys with the Dallas Public Defender Office and the Dallas District Attorney's office have salary parity.

#### **D. PUBLIC DEFENDER CASELOAD TRENDS**

- 1 From 2001 to 2002, public defender office case appointments increased 38% from 1,880 cases received in 2001 to 2,585 received in 2002. Much of the increase was in misdemeanor appointments (a 150% increase in new cases received), and is attributed to the improved magistration practices resulting from SB7. However, the office also received a sizeable 20% increase in felony cases in 2002. In 2003, the period in which the office reduced its intake due to staff shortage, the number of new case appointments dropped by 38 percent to 1,845 appointments.

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<sup>4</sup> The salary data set out in this paragraph was accurate as of October 2003.

**PUBLIC DEFENDER OFFICE APPOINTMENTS, 2001 - 2003**

<b>Case Type</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
<b>Felony</b>	1,337	1,611	1151
<b>Misdemeanor</b>	338	849	693
<b>Juvenile</b>	96	13	0
<b>Appeals</b>	4	0	1
<b>Contempt</b>	105	112	0
<b>TOTALS</b>	1,880	2,585	1,845

2. The Public Defender Office's caseload numbers includes cases that it is originally appointed to but from which it must eventually withdraw due to a conflict, estimated at 10% of the total caseload. Cases are counted by the number of charges per defendant. This is the same counting method used by the District Attorney's Office. In contrast, the Indigent Defense Coordinator tracks caseload by the number of defendants, who, of course, may face multiple charges. This discrepancy in case counting methods makes it impossible to accurately analyze case appointments or compare cost per case between OPD and court-appointed counsel.
  
3. The Texas Task Force on Indigent Defense has adopted the definition of a case used in the OCA/Judicial Council reporting instructions for monthly court activity reports.<sup>5</sup> This case counting method is based on the method recommended for judicial agencies by the National Center for State Courts. Ideally, all criminal justice agencies in Wichita County should use the same method for counting cases.
  
4. The county does not currently have the ability to break out the number of indigent defendant cases from the overall number of criminal cases. The indigent defense coordinator, who was hired with a Task Force grant and has been in her position since May 2003, will eventually be able to provide this information. TSG met with the indigent defense coordinator and was impressed with her work. She is playing an integral role in assisting with the intake process and maintaining a new electronic system for recording court appointments. She is, however, handicapped because of the inability to prepare monthly reports, which is a

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<sup>5</sup> The Task Force definition reads: "For the purpose of these reports, the number of criminal cases reported on this monthly reporting form should be based on the number of defendants named in an indictment or information. That is:

1. If a single indictment or information names more than one defendant, there is more than one case: as an example, if three defendants are named in one indictment, count this as three cases.
2. If the same defendant is charged in more than one indictment or information, there is more than one case: as an example, if the same person is named in four separate indictments, count this as four cases.
3. Finally, if an indictment or information contains more than one count (Article 21.24, CCP), report this as one case and report the case under the category for the most serious offense alleged."



problem that should be addressed as soon as possible. The county should be praised for seeking Task Force discretionary funds to fill this position and should fully fund it when the grant ends.

5. Indigent defendants who are represented by the OPD or assigned counsel can be assessed attorney costs at sentencing. There is no formal system for enforcing collection of court costs, and collections are relatively low. This is another issue that needs to be addressed. To begin with, all judges who hear criminal cases should review the question of issuing an order requiring reimbursement by the indigent defendant for all or a portion of the cost of counsel at the time of sentencing, if the defendant has the ability to pay the cost. The county then needs to develop a system for the collection of these costs.
6. The OPD has no formal training program for new attorneys. The three attorneys recently hired were all relatively inexperienced lawyers. Upon joining the office they were assigned misdemeanor cases and followed other attorneys in the office. One told us she currently had 102 cases pending yet, as a group, these attorneys felt underworked compared to the felony attorneys. They explained that misdemeanor trials are exceedingly rare in Wichita County; most cases are resolved with a guilty plea and a sentence of time served.<sup>6</sup> This places inexperienced attorneys in a difficult position because, under the county's standards for attorney appointments, in order to gain qualification to handle more serious cases, attorneys must have some trial experience.
7. Prosecutors and public defenders both described the other as not aggressive, and not likely to press for trials. The district attorney's office was described by public defenders as having a reasonable plea policy.
8. The chief public defender told us he does not feel that the county's annual review forms are useful, so he does not use them. Coupled with the office's relatively hands-off supervision style, a failure to do periodic evaluations can ingrain poor practices in both new and seasoned employees. Hopefully, adoption of the new written plan will take care of this problem.

## **E. OVERALL INDIGENT DEFENSE EXPENDITURES**

1. According to data provided to the Task Force on Indigent Defense, Wichita County spent \$871,285 on indigent defense services in FY 2003. This was up from \$763,154 spent in FY 2001, the first year for which the Task Force collected expenditure information.
2. TSG obtained data from the Wichita County's Auditor's Department on overall indigent defense expenditure information for calendar year 2003 that, naturally, is

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<sup>6</sup> Attorneys told us another "relatively common" outcome (which if accurate, is improper) is to dismiss cases with court costs.

slightly different from the fiscal year data reported by the Task Force. The data we were provided on all indigent defense costs, including those costs relating to SB7-mandated services as well as those indigent defense costs relating to services mandated by other Texas law, for 2003 totaled \$972,913.76, as shown in the following table.

**2003 INDIGENT DEFENSE EXPENDITURE**

<b>ASSIGNED COUNSEL</b>	
SB7 Case Court-Appointed Counsel Fees	\$213,155.00
Non-SB7 Case Court-Appointed Counsel Fees	\$243,726.56
Litigation Costs	\$37,134.46
Assigned Counsel Sub-Total	\$494,016.02
<b>PUBLIC DEFENDER</b>	
Office	\$461,036.75
Litigation Costs	\$17,860.65
Public Defender Sub-Total	\$478,897.74
<b>TOTAL EXPENDITURES</b>	<b>\$972,913.76</b>

3. We obtained from the Wichita County’s Auditor’s Department several print-outs on overall indigent defense expenditure information for 2003. The print-outs entitled “Budgetary Accounting Systems: Statement of Expenditures for the 12 Months Ending December 31, 2003,” contain information on OPD expenditures as well as private court-appointed counsel fees and expenses. A separate print-out lists all appointments to private counsel detailing individual attorney name, type of case and total fee paid. Yet another print-out contains information on litigation expenses related to these cases, such as the cost of expert witnesses, investigators, interpreter’s fees and other expenses.
4. According to the Wichita County’s Auditor’s Department, the 2003 budget appropriation for the Office of the Public Defender was \$533,301. The actual expenditures for 2003 were \$461,036.75, or approximately \$72,000 less than the appropriation. Approximately \$62,000 of the unexpended funds came from the salaries and benefits line item, which appears to be unexpended funds due to the savings resulting from the failure to fill the staff attorney vacancies for the first half of 2003.
5. In addition to its annual appropriation, the OPD is allowed other costs of litigation from the court’s budget. In 2003, public defender expenditures included:

- Expert Witnesses: \$6,764.15
  - Investigative Services: \$1,000.00
  - Trial Witness Travel Expenditures: \$3,978.00
  - Psychiatric Testing: \$6,118.58
- Total Expenses: \$17,860.65

Thus, the total expenditure for public defenders in 2003 was \$478,897.74.

6. In 2003, private counsel were appointed in 2,941 cases, which includes both appointments mandated under SB7 and for other provisions of Texas law. Under SB7, court-appointed counsel must be provided to eligible persons in adult felony and misdemeanor cases, juvenile delinquency cases, and in appeals from both criminal and delinquency cases. Other Texas laws require appointment of counsel to indigent persons in a number of other civil and quasi-civil cases, such as juvenile dependency cases, guardian ad litem matters and mental health commitments.
7. The following table sets out court-appointed counsel caseload and expenditures for SB7 requirements (felonies, juvenile delinquencies, misdemeanors and capital trials). In 2003, court appointments for SB7 cases numbered 1,140. Attorneys fees paid for these cases totaled \$213,155, with an average case cost of \$186.97.

**Wichita County SB7 Court Appointed Caseload and Expenditures, 2003**

Type of Representation	Number of Cases	Total Cost	Average Cost per Case
Felonies	389	\$128,289	\$331
Misdemeanors	121	\$19,790	\$180
Juvenile Delinquency	629	\$55,981	\$156
Capital Trial	1	\$9,095	\$9,095
<b>Total</b>	<b>1,140</b>	<b>\$213,155</b>	<b>\$186.97</b>

8. In addition to the 1,140 court appointments made for SB7 cases, another 1,801 court appointments were made to private counsel in non-SB7 cases in 2003. The total fees in these non-SB7 cases amounted to \$243,726.56, with an average cost per case of \$135.32.
9. Litigation costs incurred by court-appointed counsel, including court reporter fees, interpreter fees, expert witnesses, investigators, witness travel and other costs, in 2003 amounted to \$37,134.46. The data provided to us did not break out these costs separately for SB7 cases from non-SB7 court appointments.

**F. ASSIGNED COUNSEL**

1. SB7 requires the criminal district and county court at law judges in each county to

adopt and publish procedures for appointing defense counsel, to set out minimum counsel qualification standards that are graduated according to the seriousness of the offense, and to adopt a fee schedule that takes into consideration reasonable and necessary overhead costs and the availability of qualified attorneys to accept appointed cases. In Wichita County, the qualification standards apply both to court-appointed attorneys and attorneys working at the public defender's office.

2. The Wichita County schedule of fees for compensating court-appointed counsel is as follows:

Fixed rate for guilty pleas	\$150.00
CPS review hearings, detention hearings, and agreed orders	\$100.00
Second and subsequent CPS review hearings, detention hearings and agreed orders	\$ 50.00- \$75.00
Fixed rate for juvenile adjudication and disposition hearings	\$150.00
Minimum hourly rate	\$ 50.00
Maximum hourly rate	\$100.00
Daily rate for actual trial in court	\$350.00

3. In reviewing the County Auditor's records on assigned counsel expenditures, we discovered that about 15 private attorneys handle the majority of the court-appointed cases in Wichita County. Some of these attorneys handled more than 300 individual cases in 2003. These data tend to validate the comments we heard from a number of individuals in Wichita County that it would be almost impossible to increase the number of qualified attorneys willing to take these cases, and the importance of maintaining a quality public defender system in Wichita County.

## G. CITY/COUNTY JAIL ISSUES

As previously mentioned, the city/county jail in Wichita Falls has a capacity of 622, but staffing limitations make it difficult to manage more than 450-500 inmates. County commissioners strive for a 1:48 guard: inmate ratio. There are currently no alternatives to pre-trial or post-conviction incarceration being used, such as a Global Positioning System or electronic bracelets.

2. The reforms of SB7 should help reduce the number of inmates who remain detained for lengthy periods pre-trial who could otherwise bond out on their own or with assistance of a court-appointed attorney who secures a bond reduction. Inmates detained for lengthy periods pre-trial can, in some cases, exert avoidable costs on the jail. The average daily cost per inmate in Wichita County is approximately \$40. In addition, while incarcerated, indigent inmates are entitled to free medical care at the jail, which can become costly. Even if a defendant cannot bond out of jail pre-trial, there are advantages to resolving the case as quickly as possible. Reducing inmate population can result in significant savings

to the county. For example, if the daily inmate population was reduced by 25 inmates, the county could save \$1,000 a day on daily housing costs (25 x \$40 = \$1,000).

3. Public defenders and court-appointed attorneys felt that it was difficult to visit with clients at the jail due to limited attorney visiting hours. We were told the jail annex, which we did not visit, lacks attorney-client meeting rooms. Public defenders send investigators to do much of the client interviewing at the jail, however, detained clients have easy access to the public defender office by telephone. Additionally, the office may be getting technology to do video meetings with clients. Prosecutors and court-appointed attorneys criticized public defenders for not meeting enough with clients and not taking enough of their calls.
4. We were told that some defendants await disposition while detained pre-trial for lengthy periods. There are various factors relating to delay in processing cases in Wichita County. Results from state drug tests can take four weeks to four months. Also, there can be issues getting into a courtroom since all courts in Wichita County hear both civil and criminal cases. Still, that is a relatively minor concern as criminal cases must be given priority over civil matters. The most frequently mentioned factor was delay in the police department's ability to get the district attorney's office a completed case packet. It appears from our recent visit that progress has been made on this issue, but it is by no means solved and needs much more attention.

## **H. THE CASE PACKET**

1. The case packet is something that was developed by the District Attorney, and includes an array of information that must be collected by the police department for the district attorney's office in each case. No charges will be filed in a case until the case packet has been delivered to the district attorney's office, something we were told that can take 10, 30, 60 or up to 90 days. The packet includes an intake sheet, a cover sheet with the officer's synopsis of the charges, the officer's report, arrest warrant, probable cause affidavit, list of any property seized, relevant medical and lab reports, and the defendant's criminal history. Many of these various reports require duplicate information, such as biographical data (name, address, height, weight, etc.) and charge data (place and time of arrest). With current technology, this duplicate information must be re-entered for each report.
2. The end result was described as a mini-trial notebook for the district attorney's office, complete with a description of what information the arresting officer and various witnesses can testify to. Sometimes the district attorney's office does not need all of the things in the packet for a particular case, but the pro forma process requires the police department to gather it before an assistant district attorney will

consider whether to file charges in the case. During this period, defendants detained pre-trial will sit in jail with no charges filed. A public defender or court-appointed attorney will have little to do to assist a client until charges are filed. SB7 has little impact on delay if the police packets are not received by the district attorney's office for 30-60 days. This is a problem that requires immediate attention.

3. In summer 2004, the Wichita Falls police department plans to bring on-line a new record management system (RMS) that will eliminate some of the need to manually re-enter all of the duplicate data. However, there is a limit to efficiencies that can be achieved, as the police department's new system will not be accessible electronically by the district attorney's office unless an interface is developed. Development of such an interface could prove beneficial to both the city and county.

## **I. STRIDES WICHITA COUNTY'S INDIGENT DEFENSE SYSTEM HAS MADE SINCE PASSAGE OF SB7**

1. Wichita County's indigent defense system has made clear strides to comply with the letter and spirit of SB7. For example, the system for conducting magistration will soon be upgraded to allow all magistration to be viewed by the public and to be recorded, in compliance with Article 15.17 of the Code of Criminal Procedure and SB7.<sup>7</sup> Currently, magistration, or the reading of rights and charges to defendants upon arrest, is performed in the intake area of the jail. The room barely accommodates 12 arrestees at once, all standing. At magistration, the justice of the peace or magistrate informs each defendant of the charges against him, his right to remain silent, his right to retain counsel or his right to request appointed counsel. If a defendant wishes to seek appointed counsel, the magistrate is required to perform any reasonable assistance in completing the application forms. The magistration area is very cramped, making it challenging for defendants to simply find a spot to fill out the form. We were informed that some application forms must be returned to the defendants because they are not completed correctly. In order to reduce the delay this causes in processing cases, magistrates should pay greater attention to see that the applications are completed correctly at the time of magistration.
2. The current magistration area is not equipped to record the proceedings electronically. Soon magistration will be conducted via video, and broadcast in a public viewing area at the courthouse. The jail is anticipating using a new room where arrestees will be seated at tables facing the justice of the peace or magistrate on a TV screen. The tables should make it easier to fill out the forms and the magistration will be preserved on videotape. Justices of the peace and

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<sup>7</sup> SB 7 requires that a recording be made of the magistration and preserved for three months in misdemeanor cases and four months in felony cases.

magistrates will no longer go to the jail, which can be a time consuming process, but will perform their duties from their offices.

3. As mentioned previously, another significant change in Wichita County's indigent defense system is that as of May 2003, the county now has a full-time indigent defense coordinator. The coordinator receives and reviews all of the applications for counsel in misdemeanor and felony cases. On occasion she must return the forms for additional information, but most forms can go before a judge for a final decision. The coordinator appoints counsel for all defendants who qualify. Two of every three non-conflict criminal cases is assigned to the public defender office. Assigned counsel are appointed off of the public appointment lists developed by the county court, the county court at law and district court judges.
4. The indigent defense coordinator position was initially grant-funded by the state Task Force on Indigent Defense. The coordinator prepares all of the reports required by the Task Force. Eventually, the indigent defense coordinator will be able to produce reports on various things, such as the average time from appointment to disposition for both assigned counsel and public defender cases. The working relationship between the Court Administrator and the Indigent Defense Coordinator is excellent. Their joint efforts will continue to improve the intake process. As stated earlier, the county is to be commended for seeking grant funds for this position and chose wisely in filling it.
5. Many interviewees said they felt that there are fewer defendants – particularly lower-level misdemeanor offenders and individuals with mental health problems - who get lost in the jail now that the systems for magistration and applying for assigned counsel have been improved.

## **J. WHAT STILL NEEDS TO BE IMPROVED**

In general, we found that the Wichita County criminal justice community appreciates the chief public defender's legal abilities, but doubts his management abilities. As we see in public defender offices throughout the country, a good trial lawyer does not always make the best manager.

2. To motivate staff and to win confidence from the community, a chief public defender must lead by example. Internally, the chief must see that written policies are developed and followed, performance evaluations are conducted, and that initial and ongoing training is provided. Externally, the chief needs to communicate effectively with county officials and other players in the criminal justice system. It is clear that not all of the county commissioners fully understand or appreciate the role of a public defender office, which is to uphold constitutional and statutory guarantees to due process and effective representation for its indigent clients. The position is not always well-understood by the public or by government officials. It is the responsibility of the chief public defender to

effectively advocate for the tools his staff need to do their jobs effectively. He or she must also confront criticism, to either dispel misunderstandings about the office or to implement measures to correct problems. Unfortunately, it did not appear that much progress has occurred on this issue over the seven months between our visits. Hopefully, the addition of the administrator and the requirement of the written plan will help. However, success will only be possible with full cooperation from the Chief Public Defender.

## **K. CONCLUSION**

1. Wichita County has the framework for an effective indigent defense system. The county has responded in earnest to the requirements of SB7. However, many months and even years have passed without making needed changes to the Office of the Public Defender. We believe that county's current plan stands a real possibility of success and urge the county to set it in motion immediately to avoid unnecessary additional costs and the potential danger of a costly lawsuit.
2. With a concerted effort to address the problems affecting the public defender office, as well as several other systemwide criminal justice concerns, Wichita County has the opportunity to create a model plan for a public defender program in Texas that can provide a blueprint for other counties to follow in the future.



## APPENDIX A

<b>Public Defender Workload Standards</b>					
State	Felony	Misdemeanor	Juvenile	Appeals	Author/Authority
Arizona	150	300	200	25	<i>State of Arizona v. Joe U. Smith</i> , 681 P. 2 <sup>nd</sup> 1374 (1984)
Colorado*	33-386 <sup>8</sup>	196-430	249	--	The Spangenberg Group. "Updated Weighted Caseload Study for the Colorado State Public Defender." December 2002.
Florida*	200	400	250	50	Florida Public Defender Association. "Comparison of Caseload Standards." July 1986
Georgia	150	400	200	25	Georgia Indigent Defense Council. "Guidelines of the Georgia Indigent Defense Council for the Operation of Local Indigent Defense Programs." October 1989.
Indiana	120-200 <sup>9</sup>	400	250	25	Indiana Public Defender Commission. "Standards for Indigent Defense Services in Non-Capital Cases: With Commentary." January 1995.
Louisiana	200	450	250	50	Louisiana Indigent Defense Board. "Louisiana Standards on Indigent Defense." 1995.
Massachusetts	200	400	300	--	Committee for Public Counsel Services. "Manual for Counsel Assigned through the Committee for Public Counsel Services: Policies and Procedures." June 1995.
Minnesota*	120	400	175	--	The Spangenberg Group/Minnesota State Public Defender. "Caseload Standards for District Public Defenders in Minnesota." October 1991
Missouri	40-180 <sup>10</sup>	450	280	28	Missouri State Public Defender System. "Caseload Committee Report." September 1992.
Nebraska	50 <sup>11</sup>	--	--	40	Nebraska Commission on Public Advocacy. "Standards for Indigent Defense Services in Capital and Non-Capital Cases." May 1996.
New York* (City)	150	400	--	25	Indigent Defense Organization Oversight Committee. "General Requirements for All Organized Providers of Defense Services to Indigent Defendants." July 1996.
Oregon	240	400	480	--	Oregon State Bar. "Indigent Defense Task Force Report: Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases." September 1996.
Vermont	150	400	200	25	Office of the Defender General. "Policy of the Defender General Concerning Excessive Workloads for Public Defenders." October 1987.

<sup>8</sup> Colorado's caseload standards vary by severity of case handled. Specific statewide felony caseload standards are 32.6 Class 2 & Felony Sex Assault, 105.5 Class 3, 200.2 Class 4-5 and 386.2 Class 6 cases per year per attorney. Specific misdemeanor caseload standards are 196.4 Class 1 Misdemeanor and Sex Assault and 429.8 Class 2-3 Misdemeanor and Traffic/Other cases per year per attorney.

<sup>9</sup> Indiana's felony caseload standards vary by severity of case handled. The specific standards are: 150 non-capital murder and all felonies; 120 non-capital murder, Class A, B, C felonies only; 200 Class D felonies only; and 300 Class D felonies and misdemeanors.

<sup>10</sup> Missouri's felony caseload standards vary based on the severity of the felony charge. For Felony A and B cases, the public defender caseload standard is 40 cases per year. For Felony C and D cases, the public defender caseload standard is 180.

<sup>11</sup> The Nebraska Commission on Public Advocacy has established a felony caseload standard for only the most serious category of felonies. The standard represents the number of violent crime cases (rape, manslaughter, 2<sup>nd</sup> degree murder, sexual assault) that a single attorney could handle during a year if those cases were the only case she handled during the year.

Washington	150	300	250	25	Washington Defender Association. "Standards for Public Defender Services: Objectives and minimum Requirements for Providing Legal Representation to Poor Persons Accused of Crime in Washington State." October 1989.
Wisconsin*	145	323	207	--	The Spangenberg Group. "Caseload/Workload Study for the State Public Defender of Wisconsin." September 1990.
* = Jurisdictions where caseload standards were developed through case-weighting studies.					