

**Study to Assess the Impacts
of the Fair Defense Act on Texas Counties**

Final Report

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[NOTE: Errata corrected 3/11/2005. See page vii for details.]

Submitted to:

**The Office of Court Administration
Task Force on Indigent Defense**

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Altogether, over sixty individuals knowledgeable about local indigent defense systems were interviewed for this research study. These professionals deserve our recognition and gratitude for the important service they have provided.

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Errata

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Line 15: “costs per case” changed to “attorney fees per case.”

Line 21: “Cameron and Webb counties” changed to “Cameron and Collin counties.”

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Chapter 1. INTRODUCTION AND METHODOLOGY

INTRODUCTION

The Texas Fair Defense Act (FDA) of 2001 represents landmark legislation designed to set standards of quality and improve the public defense system. Implemented in January, 2002, the FDA sets standards for improving the quality of indigent defense, while leaving counties with a great deal of discretion in determining how these standards will be met.

Specifically, the Act requires that counties adopt procedures allowing for:

- Prompt access to counsel (i.e., within five days of arrest for counties with populations greater than 250,000 and within seven days for smaller counties);
- Neutral criteria for selecting attorneys and assigning indigent case appointments;
- Objective criteria of experience and qualifications for attorneys matched to the level of case they are eligible to represent;
- Attorney compensation based on a standardized fee schedule; and
- Standardized, locally defined criteria of indigence.

For the first time in Texas, counties are required to annually report their procedures, case counts, and costs of legal services for indigent defense. The Task Force on Indigent Defense (TFID) was established, as well, to provide policy guidance regarding the implementation of the FDA.

The FDA provides counties with both accountability and opportunity to craft their own indigent defense systems. By placing responsibility for planning on district and county judges, the legislation anticipates that many different solutions will emerge tailored to the unique needs, resources, and circumstances that characterize each Texas community. As counties have adapted local indigent defense systems to meet the new requirements, policymakers at the state and county levels have had a strong interest in understanding the full impacts of the law.

Questions have centered on how counties have responded to the FDA and how those responses have impacted both the administration of justice and costs to counties. To

begin answering some of these questions, the Task Force on Indigent Defense contracted with the Public Policy Research Institute (PPRI) at Texas A&M University to conduct research documenting the response to and impacts of the FDA in four Texas counties. These include Cameron, Collin, Dallas, and Webb Counties. The research methodology is presented below, and study findings follow in the subsequent chapters.

RESEARCH METHODOLOGY

The Task Force on Indigent Defense approved the study of the impacts of the FDA in November 2003. The research team immediately began the process of finalizing the selection of study sites, making contact with identified county officials to obtain the necessary approvals, and developing interview protocols.

Selection of the Study Sites

Because the project allowed for data to be collected in only four counties, the study sites were carefully selected to represent diverse local contexts. The final sample included Cameron, Collin, Dallas, and Webb Counties. This combination of counties included sites with populations greater than and less than 250,000, high and low poverty rates, border and non-border locations, and a variety of strategies for assigning counsel

Table 1. Overview of Site Selection Criteria

	Cameron	Collin	Dallas	Webb
Population*	335,227	491,675	2,218,899	193,117
Method(s) of Assigning Counsel	Contract	Rotation	PD and Rotation	PD and Rotation
Poverty Rate*	35 %	5%	11%	35%
Border Location	Yes	No	No	Yes
Percent Hispanic*	84%	10%	30%	94%
Percent African American*	>1%	5%	20%	>1%

* Based on 2000 US Census data.

including rotation, public defender (PD) and contract systems. Table 1 presents an overview of selection criteria and demographic information about each county based on data from the 2000 U.S. Census.

Table 2: Individuals Interviewed by County and Type of Position

	Cameron	Collin	Dallas	Webb	Total
District Judges	1	2	2	2	7
County Judges	1	2	2	1	6
Magistrates	1	1	1	1	4
Prosecutors	2	1	1	1	5
Defense Attorneys	2	2	3	4	11
Sheriff /Jail Personnel	1	2	0*	2	5
ID/Court Coordinators	1	1	3	n/a	4
Auditors	2	1	2	1	6
Pre-Trial Services	1	n/a	n/a	2	3
Budget Officers	1	1	2	2	6
Data Systems Staff	1	2	0	2	5
Total	14	15	15	18	62

* Efforts to schedule interviews were unsuccessful.

Recruitment of the Study Sites

As soon as the site selection process was complete, a common recruitment strategy was employed for each of the four counties. Introductory phone calls were made to contact the judge identified as having responsibility for indigent defense issues. Working through the main contact, key stakeholders most knowledgeable about indigent case processing were identified. These individuals were invited to attend an orientation presentation explaining the goals of the research and describing how they were being asked to participate. Detail on the number and type of individuals interviewed in each county are illustrated in Table 2.

Data Collection Approach

After the research project was introduced and approved at each site, between January and August, 2004, PPRI staff scheduled a series of three- to four-day visits to each county. During this time, interviews lasting sixty to ninety minutes were scheduled with key stakeholders involved in FDA implementation. The interviews explored what factors in each county act to facilitate or delay indigent cases as they move from arrest through case disposition. Respondents were also asked to consider how these procedures or other factors impact speed of processing and indigent defense costs.

Three of the sites also agreed to provide access to MIS data that tracked the experience of individual defendants in that county's justice system. Though the research team was unsure of the quality and completeness of the data available, PPRI staff worked closely with MIS staff in Cameron, Collin, and Webb counties to retrieve case-level data from automated county jail and court records.¹ The intention was to use the data to consider whether the FDA had impacted factors such as the number of days to a bond reduction hearing, the number of days indigent defendants remained in detention, and the number of days from arrest to case disposition. As noted in Chapter 1, this defendant data was ultimately found to be unsuitable for research purposes.

Data Analysis and Report Preparation

In order to organize and integrate research findings across the four study sites, extensive interview notes were organized according to theme. While being careful to retain information about the source of each statement, comments from diverse respondents were clustered by topic so that the full range of opinions and points of view could be examined and contrasted side-by-side. These "theme sheets" served as the basis for analysis, and were relied upon heavily as the basis of conclusions presented in this research report. The major observations and conclusions resulting from these site visits are summarized in the following chapters.

¹ Dallas County was unable to provide access to automated case records.

Chapter 2. PLANNING FOR EFFECTIVE INDIGENT DEFENSE SYSTEMS

INTRODUCTION

The Fair Defense Act did not evolve incrementally in Texas. After the legislation passed in 2001, counties faced a short timeline to modify existing criminal case processing systems. At virtually every study site, local officials were fundamentally pleased with indigent defense systems in place before the FDA. Therefore, initial planning largely focused on finding ways to meet the new legal standards while minimizing change. After three years of experience with the law, counties have had time to develop a more permanent response to integrating indigent defense standards into county systems for the long term. Some have been ambitious in their pursuit of innovative solutions to the challenges of the FDA, while others have been cautious in amending pre-existing systems.

Overview of Findings

In some counties, indigent defense planning has been conducted by a cadre of judges visiting the issue at the time annual plan updates must be submitted to the state. Other counties have managed to synthesize indigent defense into routine county-wide planning protocols, institutionalizing ongoing involvement from a diverse array of local actors. The counties with the most institutionalized planning protocols are those that have the most historically active indigent defense programs. Nonetheless, where counties have engaged in formalized, inclusive planning and have taken responsibility for learning about potential policy alternatives, stakeholders feel they have made more thoughtful choices, and tend to voice greater optimism about the future of local indigent defense systems.

Even where local actors have made system improvements a high priority, however, significant deficiencies were observed in the information tools needed for sound long-term planning. Improvements in computer-based information management systems are desperately needed. With the exception of Dallas County, the study sites were found to lack access to basic statistics needed to monitor their own criminal justice systems at the

policy level. Without information to pinpoint where inefficiencies and excess costs are occurring counties may find it difficult to allocate resources and contain costs effectively.

EXPERIENCES OF THE STUDY SITES

Need for Sustained and Inclusive Planning Approaches

Webb County and Dallas County offer examples of proactive indigent defense planning approaches. In Webb County, the Board of County and District Judges has provided assertive leadership from the time of initial FDA plan development. Committees were established involving the public defender's office, the auditor's office, the sheriff's office, jail personnel, and others. Leadership actively sought information about various indigent defense models, and even visited San Antonio to observe the approach that had been developed there. When Webb County's Indigent Defense Plan was finalized, it was viewed as well conceived and consensually accepted. Under stable leadership of the Board of Judges, Webb County officials continue to work together to find innovative ways to improve indigent case processing.

Dallas County also built upon strong and inclusive direction from separate Criminal District and Criminal County Court at Law Judicial Boards. Judges first consulted among themselves. Subsequently they held meetings with staff involved at each stage of defendant processing. Working with these partners, judges were able to field test different approaches for providing counsel to defendants in municipal jails, plan and implement a new system to transport defendants from municipal jurisdictions to the county jail, and modify the flow of paperwork so that counsel could be appointed within the FDA-specified time-frame. Dallas County courts regularly consider input from the defense bar, as well.

In both the Webb and Dallas County experiences, boards of judges served as the hub of leadership. Work groups already organized around the jail overcrowding issue offer a complementary center where indigent defense can be readily incorporated into the county's permanent agenda. Whatever the forum, regular communication among

everyone involved in indigent case processing is essential to pinpointing areas where improvements are needed and finding cost-effective solutions that are compatible with countywide systems. Each of the partners – judges, commissioners, the sheriff, the district attorney, magistrates, pre-trial services units, and law enforcement jurisdictions from throughout the county – bring a different knowledge, resources, and perspectives that enrich the potential for successful problem solving.

Counties can also look outside their borders for inspiration. Professional organizations such as associations for judges, auditors, prosecutors, magistrates, law enforcement agencies, and counties, offer venues for information exchange and cross-fertilization of ideas. As the Fair Defense Act matures, common challenges are being identified and “best practices” are emerging for dissemination – but this can only occur if channels for information exchange are created both within and between county governments.

Need for Improved Data Systems

A key component of this research study was originally intended to include analysis of defendant-level data received from the counties. Programmers in Collin, Cameron, and Webb Counties generously assisted the research team by downloading information related to defendant characteristics including indigent status, and arrest, bond, and release information.² However, in none of the datasets provided was it possible to link all of the separate information components into a complete record for capturing individual defendants’ progression through the justice system. Information available from different sources or in different tables often lacked common identifiers that enabled the records to be joined.

Indigent status was among the most difficult variables to join with other records. Within Collin County, data on indigent status were missing for 55 percent of the sample. In addition, defendants served by the Webb County public defender’s office could only be identified by notes retained in that office. These notes could not be integrated with other

² Though Dallas County was unable to provide a dataset, internal evaluation reports suggest their information systems are relatively advanced.

system components. Where outside counsel was assigned, billing records could theoretically be used to identify individuals with a county-paid defense. However, case numbers linking billing records, jail records, and court records were routinely unavailable. There were a number of other serious data limitations, as well.

The largest problem plaguing the data from all counties was missing information. In Cameron County, arrest data was only entered into the MIS system for defendants booked into county jail by the sheriff's office, leaving information from seven municipal detention facilities uncollected. There was a high rate of missing data examining time elapsed from arrest to release in all counties. In Webb County, data are missing for 70 percent of charges. In Collin County, the number is 36 percent, and in Cameron County data is missing for 11 percent of the subset of defendants booked at county jail.

Among the data that were available, anomalies introduced sufficient uncertainty that it was unclear what conclusions could be drawn with confidence. For instance, in Webb County, 21 percent of charges have a disposition date that precedes the arrest date. Disposition date precedes arrest date in 8 percent of charges in Collin County, and in 1 percent of Cameron County charges.

Although the MIS staff were very willing to assist, they often had only minimal knowledge of how variables were created or the actual meaning of the data. They often did not have information on the source or precise definition of particular variables. This was a problem for a key variable such as indigence, because a designation of indigence assigned by jail staff has a very different meaning from a designation of indigence assigned through the FDA determination of indigence process. Also, MIS staff were often unable to explain why no information was available or was provided sporadically for some variables, or why the data structure did not conform to expected protocol. For instance, a variable supposed to have sixteen digits omitted leading or lagging digits in a seemingly random pattern. Finally, although codebooks were supplied by some counties, the amount of variables in the databases far surpassed codebooks supplied leaving many database elements uninterpretable.

While counties may find their computer systems sufficient for managing day-to-day defendant case flow, they are clearly inadequate for analysis or planning applications. Ideally, counties should be able to routinely track their compliance with each component of the FDA timeline. Information associated with costs should also be readily available. This includes, at a minimum, the proportion and characteristics of defendants being assigned counsel; the number of days defendants are being detained; the proportions of defendants bonding out before or after counsel has been assigned; and whether indigent and non-indigent defendants have comparable outcomes.

Certainly investment in technology upgrades can be costly. In addition to enhanced technical capabilities, staff must also be trained to ensure needed information can be extracted and made available to planning work groups. Nonetheless, if new computer systems can generate information to facilitate improved efficiency county-wide, costs could potentially be off-set many times over.

SUMMARY

Observations from the study sites suggest that active and inclusive leadership by the judiciary is an important first step toward developing a permanent infrastructure for indigent defense system planning. Approaches observed in Webb and Dallas Counties to date have included research of recommended models, networking with other counties, integration of stakeholder feedback, and field experiments to test new approaches. Better information exchange channels between counties, perhaps using professional associations as a medium, could also help in meeting the challenges of delivering indigent defense more efficiently. The study sites able to sustain a proactive, “problem-solving” mindset have been better empowered to address the challenges of developing and fine-tune indigent case processing systems.

In order to plan effectively, however, indigent defense work groups need better information to monitor where inefficiencies are occurring, and where remedies are most urgently needed. The research team observed significant limitations in the information

capabilities of county data systems. While the automated information systems observed may be functional for routine defendant processing, they could not be easily applied for planning applications. Without data to pinpoint and quantify problems, counties are limited in their abilities to refine criminal justice systems.

Chapter 3. IMPACTS OF INTAKE AND BOOKING SYSTEMS

INTRODUCTION

With the passage of the FDA, a new imperative was created for counties to take defendant's requests for counsel within 48 hours of arrest. It was left to counties to determine when during post-arrest processing this function would be integrated, though it typically occurs in conjunction with magistration. Three different approaches to taking requests for counsel were observed at the study sites. Webb County has the significant advantage of a centralized book-in and magistration at county jail. Incorporating the request for counsel into post-arrest processing occurred most seamlessly at that site.

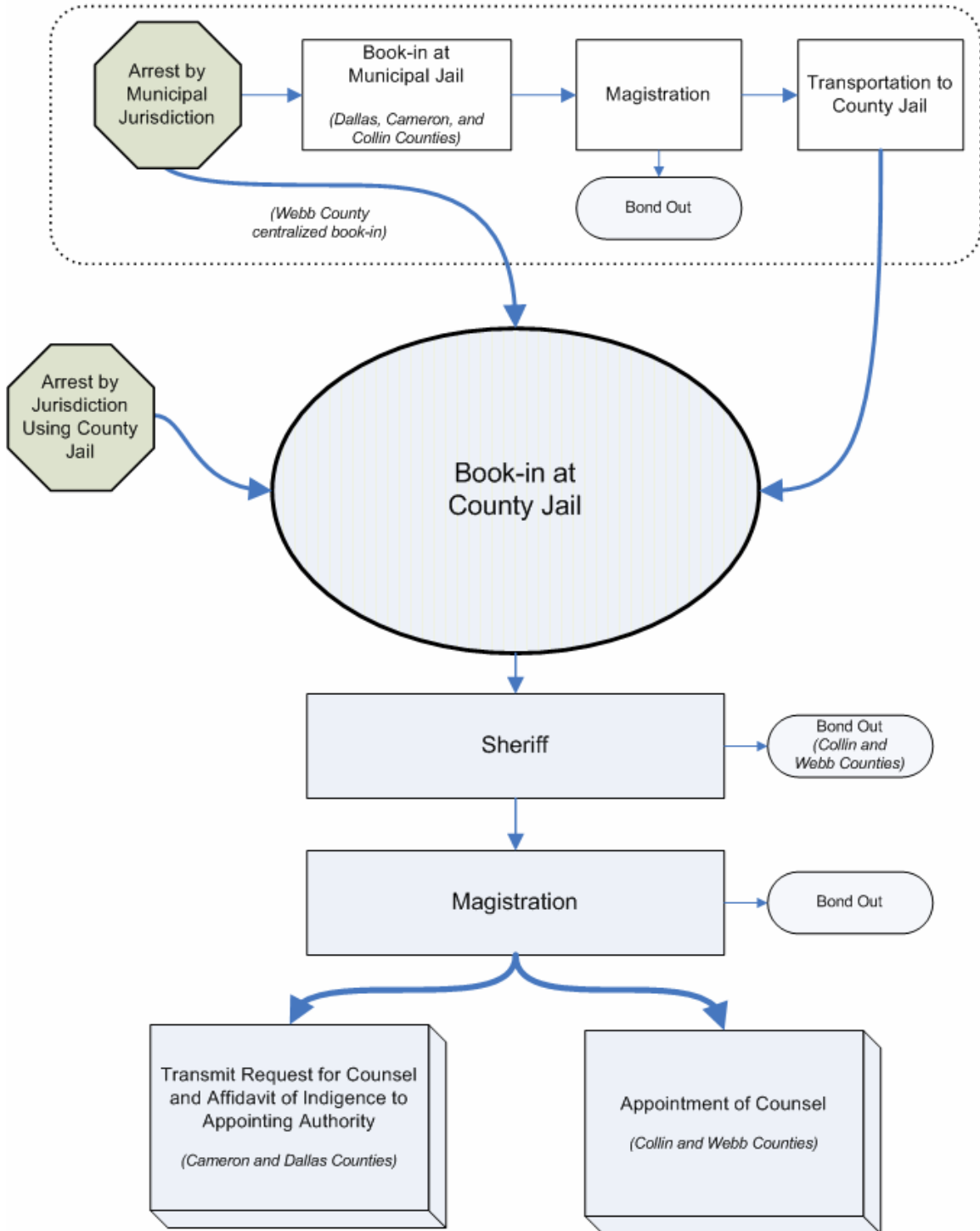
Study sites with multiple book-in locations faced a greater challenge (see Figure 1). Since Cameron, Collin, and Dallas Counties can potentially magistrate defendants at both municipal and county jail sites, a decision was required whether to accept requests for counsel at each municipal jail, to centralize this function at the county jail, or to allow for both options. Choices made by each county have had implications for both the cost and timeliness of indigent processing.

Overview of Findings

Collin and Dallas Counties committed to transport defendants arrested in municipal jurisdictions to the county jail to take requests for counsel within 48-hours of arrest.³ This response has required significant investments in inmate transportation systems and personnel to handle the increased number of central magistrations. Furthermore, because defendants are transported so rapidly, bonding typically occurs after the counties have incurred the costs of transportation, book-in at county jail, magistration, and additional jail days. Cameron County provides a counter-example of a system in which municipal magistrates have been authorized to take requests for counsel. As a result, pressure and

³ Defendants charged with misdemeanors must have probable cause that they committed the offense established by a magistrate within 24 hours of arrest or they should be released from detention (see Article 17.033 of the Texas Code of Criminal Procedure).

Figure 1. Defendant Case Flow from Arrest to Magistration



costs to rapidly transport defendants to county jail to meet the FDA timeline are instantly reduced.

Regardless of potential cost savings, many judges are reluctant to delegate bond-setting authority to municipal magistrates. Local authorities are perceived as being more responsive to political pressures in their own community rather than county-level interests. They are said to set unattainable bonds resulting in inappropriate and costly detention of defendants otherwise appropriate for release. Innovative solutions such as video-conferencing may enable counties to achieve the cost benefits of conducting magistrations and taking requests for counsel closer to the point of arrest, while still maintaining county-level control over standards for indigent processing and setting bond.

EXPERIENCES OF THE STUDY SITES

Centralized Request for Counsel in a Decentralized Intake System: Dallas and Collin Counties

Both Dallas and Collin Counties have demonstrated a strong commitment to expediting all aspects of indigent case processing. Officials in these counties determined to bypass the local magistration process, moving defendants directly to county jail to take requests for counsel within 48 hours of arrest.⁴ By centralizing this process they can ensure both that a fair bond is set quickly, and that defendants are given an opportunity to request counsel within the specified timeframe. A choice was made to invest resources needed to ensure these values are attained.

Costs of County-Run Transportation Systems. Coordinating transfer between municipal and county detention facilities in time to meet the 48-hour FDA deadline has been a large and costly challenge. A significant ongoing investment has been required in county-run inmate transportation systems. In Collin County, busses visit four detention facilities two to three times daily. Dallas County busses provide 24-hour pick-up from

⁴ In Collin County, magistrates at the largest municipal jurisdiction, Plano, have been authorized to take requests for counsel and affidavits of indigence, and to appoint counsel. However, this process is repeated a second time after defendants arrive at county jail.

nineteen detention facilities. This is the only way to ensure that defendants are reliably relocated from each of these municipal jails to the county jail in time to take requests for counsel within 48 hours of arrest.

Increased Investment in Magistration Support Personnel. The decision to centralize both magistration and requests for counsel has required the addition of more jail personnel to support the increased number of magistrations conducted on site. Five jail officers in Collin County now support magistration, up from two before the implementation of the FDA. In Dallas County, five new positions were created to fulfill this function.

Reduced Opportunity to Bond Out of Municipal Facilities. Additional costs are incurred as well because family members often have difficulty locating defendants they wish to bond out. In Dallas County family members may report to the municipal jail with bond money only to learn the defendant has been transferred to county jail. As a result, detention time and costs are increased for inmates otherwise eligible for release.

Dependence upon Municipal Enforcement Authorities. Even with rapid transportation systems in place, if defendants are to make requests for counsel on time, municipal law enforcement agencies must consistently complete post-arrest paperwork promptly and prepare inmates for immediate transfer to the county jail. It is still reportedly “fairly common” for paperwork delays or other obstacles at the arresting agency to prevent transfer to county jail for up to three to four days. When this occurs, requests for counsel cannot be taken within the 48-hour timeframe. County jail staff are not typically aware of arrests until defendants arrive at the county facility, limiting their ability to intervene in these instances.

Decentralized Request for Counsel in a Decentralized Intake System: Cameron County

Cameron County is subject to the same 48-hour timeline for taking requests for counsel that applies in Collin and Dallas Counties. However, in stark contrast to the feverish

pace of defendant processing illustrated in those counties, Cameron County chose to accept requests for counsel at the detention facility where defendants are initially arrested. This could be either the county jail or one of seven municipal detention facilities. The presiding local magistrate forwards defendant requests along with an affidavit of indigence by mail, fax, or transportation officer to the appointing authority located at the courthouse. Pressure to re-locate defendants in time to meet statutory timelines is immediately relieved.

Benefits of Municipal Magistration. Because requests for counsel are taken locally, it has not been necessary for Cameron County to implement a costly “rapid transit” system to move inmates from municipal to county jails. Figure 2 illustrates that once the request for counsel is taken, counties with populations over 250,000 potentially have up to three working days to transfer defendants.⁵ Smaller counties have as many as five working days to deliver inmates to county jail.

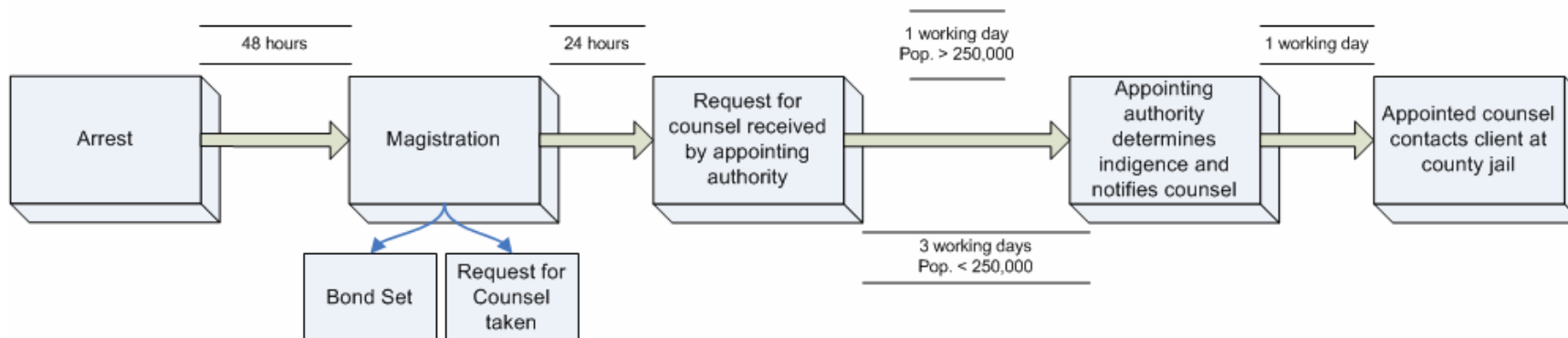
Rather than absorbing the costs of moving each individual defendant to county jail immediately after arrest, law enforcement agencies can transport defendants more efficiently in groups as needed. Even if transit systems remain in operation, the schedule could be reduced, decreasing the number of inmate pick-ups per day and saving costs to the county.

Family members interested in posting bond are also more likely to find defendants at the local detention facility after arrest. Because local bonding is more feasible, counties can potentially see savings in reduced jail days and processing costs. Jail staff in Dallas and Collin Counties, by contrast, spend time and money booking, supervising, and magistrating newly arrived defendants who could have bonded out locally had timelines allowed.

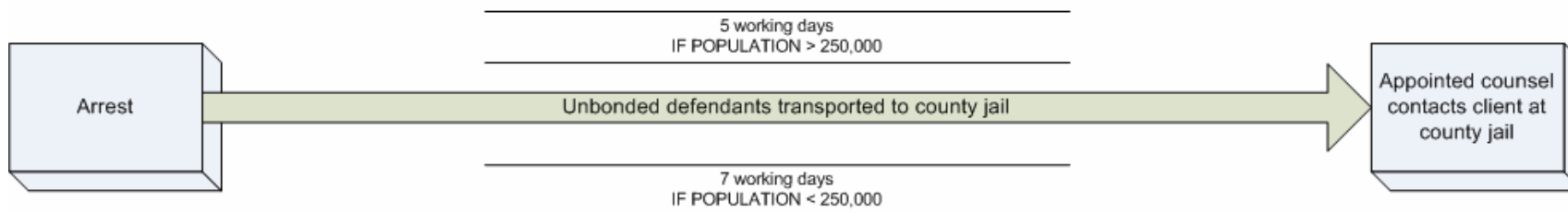
⁵ The actual number of days available for defendant transfer depends on how quickly counties implement subsequent phases of indigent processing. If the appointing authority receives paperwork and assigns counsel more quickly than prescribed by the FDA, the days to transfer defendants are reduced accordingly.

Figure 2. Potential Time Available Under the FDA for Defendant Transfer to County Jail

Paperwork Timeline



Defendant Timeline



Obstacles to Municipal Magistration. While taking requests for counsel in the arresting jurisdiction might save money, results from Cameron County also highlight a significant caveat. At this site eleven magistrates independently process defendants at seven detention facilities. Consistent standards of indigent processing are difficult to set and enforce because local justices of the peace are geographically disbursed and highly autonomous. County and district judges consistently report that it is common for local magistrates to set unreasonably high bonds for political purposes. For instance, arresting officers may pressure municipal judges to “punish” defendants by setting an unattainable bond. Similarly, defendants accused of a crime against a politically influential community member may have a higher bond set.

In addition to bond-setting practices, there was evidence that some municipal magistrates may not consistently transmit requests for counsel to the appointing authority within 24 hours as required by the FDA. In a few cases, requests were held three to five days before being forwarded to the indigent defense coordinator. In one instance the request for counsel was not dated at all, and key information was missing from some forms.

Thus, while local magistrations may offer some advantages in terms of cost and convenience, these may be offset by procedural violations or bond-setting practices which delay or prevent defendants’ release. Video-magistration conducted by magistrates centered at the county jail could offer a technical solution with potential to bridge this gap.

Centralized Request for Counsel in a Centralized Intake System: Webb County
Webb County was fortunate to have a centralized book-in capability at the time the FDA was passed. This has proved to be the easiest system to adapt to accommodate indigent case processing. Regardless of the arresting agency, every defendant enters the justice system through intake at the county jail. Six justices of the peace with consistent bonding standards share responsibility for taking requests for counsel at magistrations conducted on-site within 24 hours of arrest.

Since the Laredo Police Department is the only sizeable county jurisdiction, centralized book-in is more feasible in Webb County than in many other counties. Nonetheless, in counties that can arrange it, a completely centralized approach can remedy a number of coordination issues. Virtually none of the problems that other sites face – transportation, bonding, or inability to monitor case processing – are issues here. A high-quality indigent defense system is relatively easy to maintain when resources can be focused to enhance an efficient system rather than disbursed in efforts to “patch” a less efficient, more widely disbursed one.

SUMMARY

Counties with one-stop centralized intake systems clearly have an advantage in taking defendant requests for counsel. To the extent that all arresting jurisdictions are able to book defendants directly in to county jail, counties can reduce cost, inconvenience, and delay. However, fully centralized intake is not practically or politically feasible in every county. Where defendants enter the justice system through multiple municipal agencies, counties must choose between requiring centralized or decentralized requests for counsel.

Collin and Dallas Counties have established protocols to meet the 48-hour timeline by centralizing all requests for counsel at the county jail. However, transportation systems required to rapidly transport arrestees from municipal jails are costly, and defendants moved too quickly have less opportunity to bond out locally. Personnel supports needed to book in and magistrate the larger volume of defendants at county jail are higher, as well, and if local law enforcement agencies delay paperwork processing, defendants may fail to meet the 48-hour timeline.

By conducting magistrations and taking requests for counsel close to the point of arrest, counties reduce pressures to move defendants so quickly. Large counties can potentially gain up to three days to deliver defendants to jail, and smaller counties up to five days. In addition, with more time available, municipal partners can assume a greater role in transporting their own arrestees for book-in at county jail, potentially allowing central transportation systems to be cut back.

On the other hand, in some instances observed during site visits it was difficult to ascertain when magistration occurred and whether FDA timelines had been met. Local magistrates are also said to commonly set bonds disproportionate to the offense, resulting in the unnecessary detention of bondable defendants. Not surprisingly, a number of judges have expressed reservations about delegating requests for counsel to local magistrates.

Video-magistration technologies could offer a cost-effective medium through which county jail magistrates can retain control over indigent processing without the costs of transporting defendants to county jail against a tight timeline. With a relatively small investment in technology and training, requests for counsel can be taken soon after arrest while defendants are still in custody at the arresting jurisdiction. Yet, standards of quality and consistency can be maintained because county jail magistrates can be more closely supervised by county and district judges. Video-magistration can potentially achieve more consistent bond-setting practices and more reliable indigent processing systems all at a lower cost to counties.

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Chapter 4: CREATING OPPORTUNITIES FOR EARLY ACCESS TO BOND

INTRODUCTION

Bond can potentially be set at many different points between arrest and indictment. Liberal access to bond review helps ensure defendants are not unlawfully detained -- a basic component of justice. Bond procedures also hold practical cost implications for counties.

Overview of Findings

Figure 3 summarizes the multiple venues in which arrestees can potentially have bond set or reviewed. These include:

- Local magistrations conducted by municipal authorities;
- Sheriff's bond review conducted during book-in at county jail;
- Centralized magistrations conducted after book-in at county jail; and
- Bond reduction hearings conducted after indigent defendants still in detention have been appointed counsel.

Multiple reviews help protect defendants against inappropriate detention resulting from an excessive bond. Furthermore, the earlier eligible defendants can be released, the greater the cost savings to counties in terms of:

- Fewer defendants requiring book-in and magistration;
- Fewer jail days; and
- Fewer defendants requiring counsel at the time of arrest.

Not all county justice systems are structured to provide equal access to the full array of bonding opportunities. The following paragraphs describe bond options currently available at the study sites.

EXPERIENCES OF THE STUDY SITES

Single Bond-Setting Authority in a Decentralized Intake System: Cameron County

The most restrictive bond policies are found in Cameron County. At that site, bond eligibility is considered only once during a single magistration following book-in at either the municipal or county jail. Literally every defendant arrested in Cameron County must be brought before a magistrate. Thus, individuals suitable for release immediately after arrest must be booked in and remain in detention potentially 24 hours until a scheduled magistration.

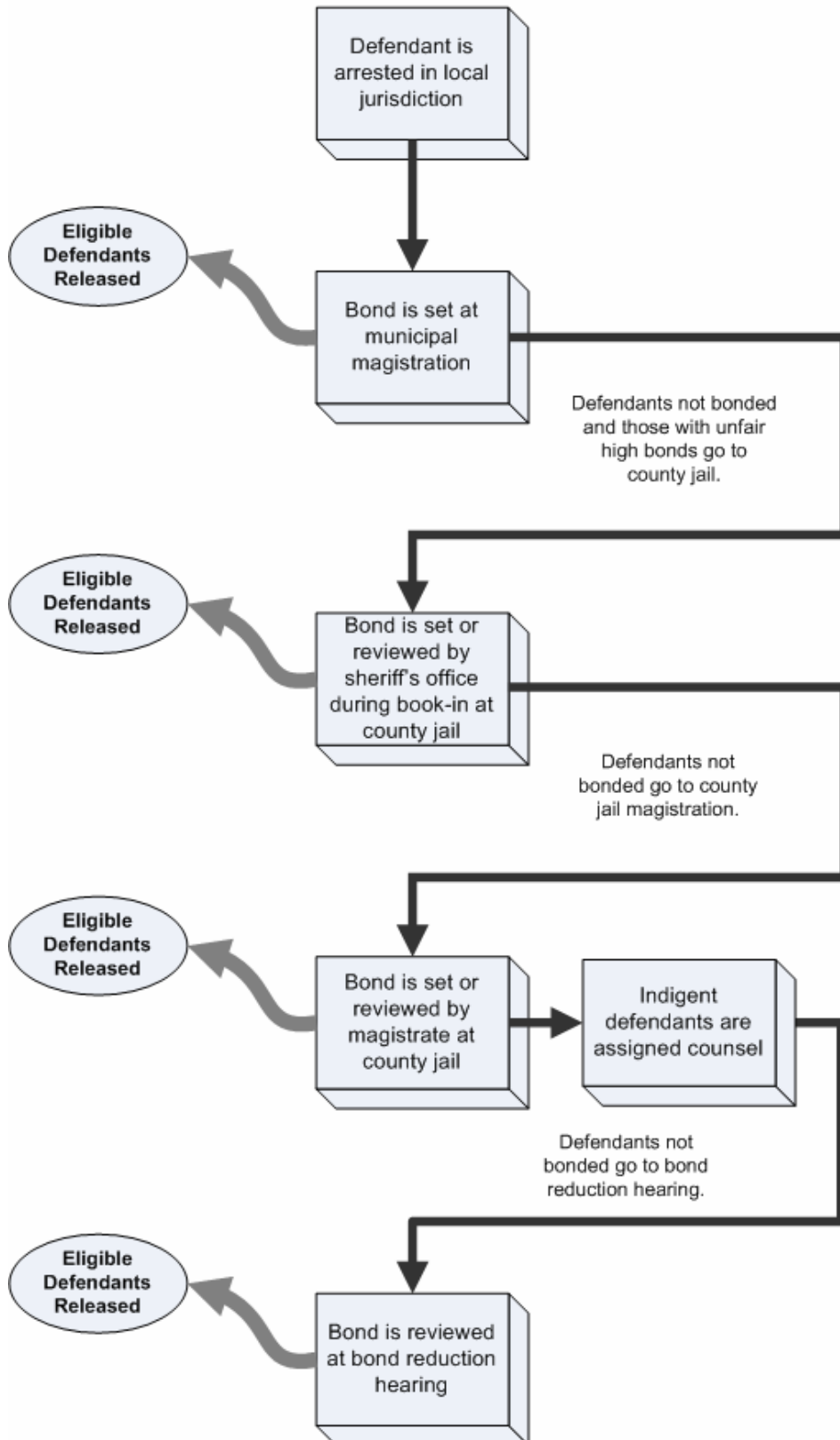
Defendants assigned a high bond by municipal judges⁶ during their one and only magistration are a particularly high-cost group. These individuals have no opportunity to have the bond reconsidered by a sheriff's bond or even a second magistration. Instead, their only recourse to check the bond is to wait until a bond reduction hearing. Before the bond reduction hearing can occur, legal counsel must be provided to indigent defendants. The county thus accrues costs resulting from book-in and longer detention. With the addition of more venues for earlier bond review, the county might be spared both of these costs.

Ironically, if defendants on the financial brink of indigence apply all their assets to obtain release on a high bond, they may then be less likely to have resources remaining to pay a private attorney. In this way, Cameron County's failure to offer multiple bond reviews may actually drive up the number of individuals that qualify for appointed counsel.

Cameron County respondents confirm that since the FDA, indigent defense attorneys conduct an extremely large volume of bond reduction hearings. This suggests that there is, in fact, a significant need for bond adjustments. It would be considerably more

⁶ Interview respondents in Cameron County generally agree that municipal judges commonly set bond based on political rather than offense-related criteria. As an example, a defendant accused of a crime offending a politically influential family may have bond set at a level that is disproportionate to the offense. (See Chapter 3)

Figure 3. Available Bond Opportunities



efficient, to create opportunities for this review and adjustment to occur sooner in defendant processing rather than later.

It is also worth noting that a system based on a single magistrate's review for setting post-arrest bond places considerable control over jail populations in the hands of municipal judges. When judges in Cameron County needed to release more misdemeanor defendants on personal recognizance bonds to relieve jail overcrowding, the only option was an appeal to municipal judges. Other counties in the study have a broader range of bonding authorities able to adjust bonding policies and act as a "release valve" assisting the courts in addressing jail overcrowding.

Multiple Bond-Setting Authorities in a Decentralized Intake System: Dallas and Collin Counties

Dallas and Collin Counties offer somewhat more generous bond review options, in the form dual magistrations at both municipal and county jails. The county jail magistration is helpful for standardizing bonds for similar offenses, particularly if local bonds are disproportionately high. Still, an intermediate sheriff's bond program would allow the release of a number of defendants before that point, saving costs associated with book-in and magistration.

Collin County does offer a pre-magistration sheriff's bond, but only misdemeanor offenses are considered. Starting in October of 2004, the scope of the sheriff's bond-setting authority was expanded from Class C misdemeanants only to include Class A's and B's as well. Under the new procedure, bondable misdemeanor defendants can be released more efficiently, but all felons must be magistrated.

Multiple Bond-Setting Authorities in a Centralized Intake System: Webb County

Webb County has the most well-established and inclusive early bond program of the four counties studied. In a program originally developed to provide relief for jail overcrowding, sheriff's officers review virtually every defendant for bond eligibility within hours of arrest. Officers are authorized to set cash bonds for Class A and B misdemeanors and for non-violent felonies (excluding family violence or egregious assaultive offenses). They also have the option to release qualifying defendants under an innovative surety bond program. To be eligible for a

surety bond, defendants must be classified as low risk based on a point system, and they must have assets that can potentially be seized if they fail to appear at arraignment.

Webb County's proactive use of pre-magistration bond-setting authority achieves fast and efficient release for a large volume of both misdemeanants and felons almost immediately after arrest. In addition, individuals not released under the sheriff's program have a second bond review during magistration held a few hours later. Respondents in Webb County agree that the assertive delegation of bonding authority to the sheriff is a significant contributor to improved efficiency as well as relief of system pressures associated with jail crowding.

SUMMARY

The experience of the study sites shows that system efficiency is greatly increased where defendants have early and repeated opportunities to make bond. Multiple bond-setting opportunities also serve justice by guarding against excessively high bonds.

Though bond has traditionally been set through magistration at municipal jails, county jails, or both, counties should be encouraged to take advantage of laws allowing peace officers to set and take bond. Because the sheriff's staff are responsible for jail intake, they are in a position to release a large number of bondable defendants very soon after arrest before further processing costs are incurred. Counties that fail to offer generous bonding opportunities pay increased costs associated with book-in and magistration, as well as detention costs for eligible individuals who remain stuck in jail.

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Chapter 5. APPOINTMENT OF COUNSEL IN CASES WITH “NO CHARGES” FILED

INTRODUCTION

The FDA requires indigent defendants have contact with an attorney within one- (population > 250,000) to three working days (population < 250,000) after submitting their request for counsel. This requirement must be met even if the prosecutor has not yet determined that charges will be filed. Many county officials strongly oppose this feature of the legislation. If counties could postpone appointment until prosecution status is known, it is argued, they would be spared the costs of attorney fees in cases that are never charged.

Overview of Findings

Site visit results indicate that early appointment of counsel serves a critical function in protecting defendants from unlawful detention. At every study site except Dallas, stakeholders recall that before the FDA, indigent defendants charged with both misdemeanors and felonies were commonly detained for months with no advocate to protect their legal rights and interests. Since the FDA, defendants may still be held in custody while prosecutors review their case. However, it is no longer without access to an attorney. Furthermore, though counties have expressed considerable concern about the costs of providing legal counsel in un-filed cases, data reported by Texas counties to the Task Force on Indigent Defense shows these concerns are generally overstated.

Counties wishing to assign counsel after prosecution status has been determined can conceivably do so and remain in compliance with the FDA. However, this course requires that prosecutors be willing to act quickly to determine whether charges will be filed. Dallas County provides a model. At that site, prosecutors are able to determine whether a case will be filed within 72 hours of arrest in most cases. Counties where prosecutors are able to replicate this efficiency can feasibly appoint indigent counsel after the filing decision has been made and still meet timelines established by the FDA.⁷

⁷ The actual number of days available for determining prosecution status depends on how quickly counties implement indigent processing. If magistration occurs and the appointing authority receives the request for counsel more quickly than prescribed by the FDA, the days to available to make a prosecution determination are reduced accordingly.

EXPERIENCES OF THE STUDY SITES

Pre-FDA Approaches to Assignment of Counsel

Before the FDA, in Collin, Cameron, and Dallas Counties it was standard policy to withhold appointed counsel until it was known whether defendants would be charged. This strategy worked reasonably well in Dallas County where prosecutors are able to make filing decisions within days of arrest. However, few other counties routinely maintain this ambitious pace for case filing. In both Collin and Cameron Counties, defendants unable to make bond can potentially be held in jail for months waiting for the prosecutor to make a filing determination. Before the FDA, these jailed defendants simply did not have access to pre-indictment legal counsel. Rather, indigence was determined and a lawyer was appointed during the same court setting where the case was indicted or a complaint was brought.

Webb County is the only study site where, even before the FDA, justices of the peace appointed counsel as part of the magistration process – well in advance of indictment or complaint. Nonetheless, even though magistrates routinely signed appointment orders within hours of arrest, there was no mechanism to ensure that defendants and their attorneys were ever brought together. As a consequence, even in a system that provided for prompt appointment, in the absence of a legislative imperative for follow-up there were stories of both misdemeanants and felons detained six months or longer with no knowledge of whether charges would be filed, and without having spoken to a lawyer.

While some counties may dislike assigning indigent counsel in advance of prosecution, it is clearly beneficial to incarcerated defendants. Prosecutors in Cameron, Collin, and Webb Counties in the past have reportedly delayed decisions whether to file charges for the maximum time allowed by the law – 30 days for misdemeanants and 90 days for felons. Scenarios illustrating detention practices before the FDA highlight why prompt appointment is a critical standard for protecting defendant rights.

Costs of Attorney Fees in Cases Where Charges are Not Filed

Since the implementation of the FDA's prompt appointment standard, there exists a widespread perception that counties incur significant costs for attorney fees in cases where no charges are

filed. Objective data reported by Texas counties to the Task Force on Indigent Defense in their annual Expenditure Report demonstrates that this concern is greatly exaggerated.

Indigent case and expenditure data for FY 2004 shows that the majority of counties (55 percent, n=140) had not one single instance in which attorney fees were paid but charges were un-filed. Among the counties that did report un-filed cases paid (45 percent, n=114), proportions ranged from low of less than 1 percent in Jefferson County (i.e., 1 of 3086 cases paid) to a high of 33 percent in Kent County (i.e., 5 of 15 cases paid). In only 58 Texas counties (23 percent) do un-filed cases make up more than 3 percent of all indigent defense cases. Looking at the picture statewide, of 371,167 total adult cases in which counsel was appointed in FY 2004, only 7,484 of those cases (2 percent) resulted in no charges being filed.

Among the four study sites, Dallas and Cameron Counties failed to identify any cases where attorney fees were expended but charges were not filed. Collin County identified 27 cases, less than 1 percent of all indigent cases paid. Webb County, by contrast, ranks twentieth in the state for the most appointments in un-filed cases. Ten percent of cases in that county had attorney fees billed in the absence of prosecution. High rates of unpaid appointments have been a pattern in Webb County for the past two years. The causes of this distinction are not clear, though it could be related to reporting practices of the public defender's office.

Indirect Costs in Cases Where Charges are Not Filed. Although the data shows that attorney fees in un-filed cases are not a significant direct cost to counties, other related costs may be incurred that are not overtly visible. Given the speed with which counsel is assigned in some counties, it would seem likely that lawyers would occasionally be named and perhaps some nominal level of service delivered before information about “no charges” is known. Yet, the data suggests that either this is a very rare occurrence, or that there is an administrative process associated with “correcting” attorney fee vouchers and adjusting other related records so payments are disallowed in un-filed cases.

The frequency of these types of administrative adjustments is not documented. As noted below, court coordinators in Dallas County say they routinely assign counsel, then after learning charges were not brought, go through the process of retracting the assignment. In these instances,

attorneys do occasionally invest a small amount of time as well which cannot be compensated. In counties that show no attorney fees were paid to represent defendants, this study cannot assess time invested by county personnel and attorneys or translate that time into costs.

Potential for Prosecution Decision Prior to Appointment of Counsel

Figure 4a illustrates that where counties have implemented high-speed prosecution timelines, it is possible within the constraints of the FDA to decide the case status before assigning counsel. If cases are magistrated 48 hours after arrest, and the determination whether to assign counsel occurs 48 hours later, in a 72-hour filing system, information about charges should be available to inform the appointment decision in a large proportion of cases. For this to work, however, the experience of Dallas County illustrates there are two caveats that must be met.

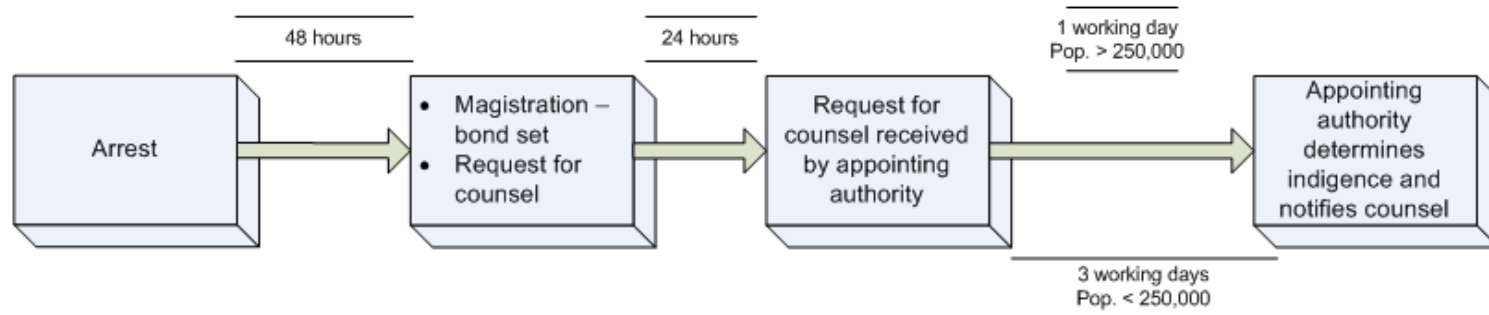
First, county systems must be capable of moving case-related paperwork quickly and efficiently. Offense reports must be submitted by the arresting agency promptly after arrest, and they must be in good order so that key information for determination of charges is available to the prosecutor. Similarly, prosecutors must be prepared to respond to cases as soon as they are received. Prosecutors in Dallas County are able to process charges on the majority of detained defendants within 72 hours of arrest (excluding weekends). Thus, within a three-day timeframe, most Dallas County defendants either know their charges and have legal representation available, or they are released from detention.

Second, the filing decision must be available to the appointing authority before the decision whether to assign representation is made. In Dallas County, this is where the breakdown occurs. Figure 4b illustrates that, because Dallas County has been able to speed up the early phases of defendant processing, counsel is appointed first, and a filing decision typically follows a day or so thereafter. As a result of this inefficiency, misdemeanor court coordinators complain that they spend considerable time each day determining what attorney will represent a case, then contacting counsel to inform them of the appointment, only to later learn that no charges will be brought.

Limitations Imposed by FDA Milestones. This problem could be remedied if the FDA allowed greater flexibility in the time allowed for meeting major milestones. Looking at

Figure 4a. Potential Time Available Under the FDA for Case Filing Prior to Appointment of Counsel

Paperwork Timeline



Prosecutor's Timeline

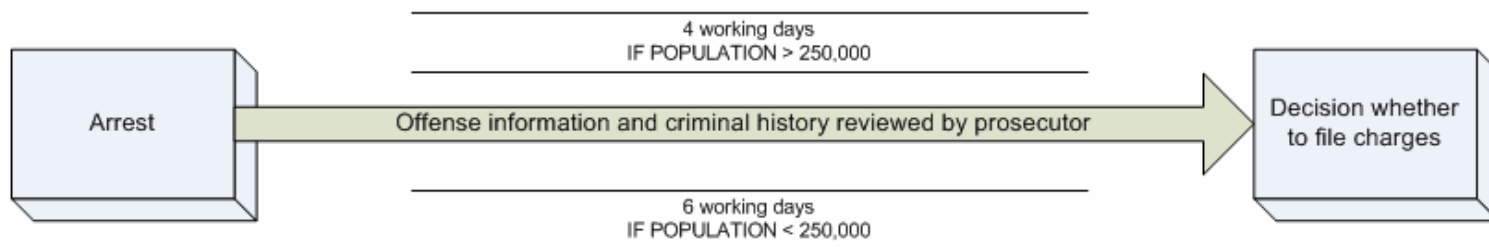
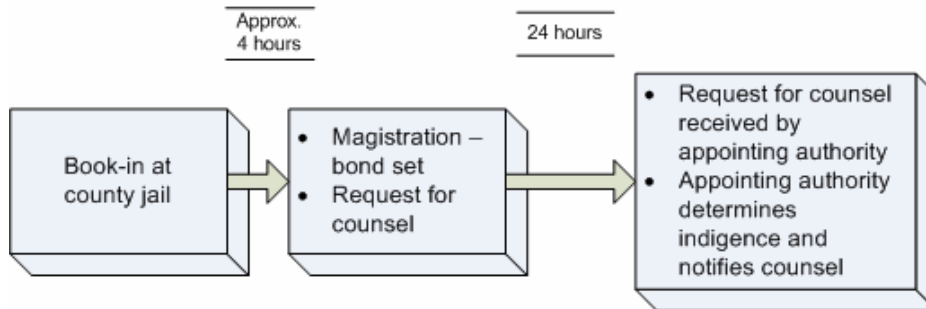


Figure 4b. Actual Schedule for Case Filing and Appointment of Counsel in Dallas County

Dallas County Paperwork Timeline



Dallas County Prosecutor's Timeline

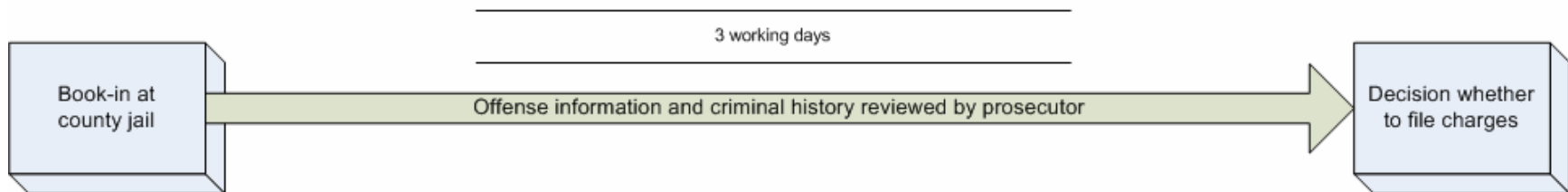


Figure 4a, in its full extension the FDA technically allows four to six days for the appointing authority to determine indigence and notify assigned counsel. However, because Dallas County has chosen to take requests for counsel within four hours of arrest (rather than 48 hours allowed by law), and because the appointing authority receives the request and determines indigence just 24 hours later (rather than 48 combined hours allowed by law), they lose 68 hours (2.8 days) of processing time for the prosecutor's decision.

If the law was more flexible, Dallas County could complete all phases of indigent processing, holding only the formal appointment of counsel until the prosecutor's decision was made. Appointment would still occur within three days of book-in – well short of the total time allowed by the FDA. Dallas County stakeholders believe system stresses and costs associated with counsel being appointed then retracted, would be substantially reduced.

SUMMARY

A number of stakeholders interviewed for this study argue that appointing attorneys for indigent defendants in advance of a filing decision wastes county resources. They contend that attorneys are too often paid in instances where charges are never filed. To place these statements in context, every study site except Dallas County reports that before the FDA uncounseled indigent defendants had little recourse but to remain in jail, often for months, until the prosecutor was prepared to move the case. Without a legal advocate, prosecutors were rarely called upon to justify defendants' continued detention during the pre-indictment phase. The prompt appointment standard of the FDA now ensures that individuals retained in custody have advocates to pursue appropriate legal remedies.

The number of counties experiencing a direct financial impact as a result of the prompt appointment standard appears to be considerably smaller than is generally believed. Based on 2004 Indigent Defense Expenditure Report information reviewed above, only about 2 percent of all indigent defense cases paid in Texas actually go un-prosecuted.

With further investigation, the few counties with high rates of counsel paid in un-prosecuted cases may be able to discover what anomalies account for this finding, and adjust case processing systems to ameliorate the cost.

Interestingly, Dallas County is unable to take advantage of their own capability to assign counsel contingent upon charges being filed. Because they meet other milestones within the FDA so quickly (e.g., requests for counsel and transmission to the appointing authority), the time allowed to appoint counsel is reduced to less than the 72 hours required for the prosecutors' decision. If legislation is changed to give counties more flexibility in meeting indigent processing milestones, Dallas County would be well positioned to increase their efficiency further in the future by assigning counsel only in prosecuted cases.

Chapter 6. SPEED OF APPOINTMENT

INTRODUCTION

When the Fair Defense Act was passed in 2001, three of the four study sites already had high speed post-arrest processing systems in place. In Collin, Dallas, and Webb Counties, well-established routines originally developed to reduce jail populations moved defendants from intake to magistration within hours of arrest. With this established infrastructure to build on, the affidavit of indigence and appointment of counsel were easily integrated into the existing centralized magistration protocol.

Since the FDA, depending on the time of arrest, Collin and Webb County defendants commonly have bond set and counsel appointed as soon as four hours after book-in at county jail. In Dallas County, the request for counsel is transmitted to court coordinators in time for appointment of counsel less than twenty-four hours after magistration.⁸ The net result is that all three counties appoint counsel well in advance of the four-day timeline established by the FDA (see Figure 5).

Overview of Findings

In Dallas and Webb Counties, for several decades every unrepresented defendant detained longer than 72 hours has automatically been assigned an attorney regardless of financial status. The speed of appointment and the proportion of defendants' assigned public counsel have not been dramatically impacted by the FDA.

In Collin and Cameron Counties, by contrast, the number of defendants receiving lawyers at county expense increased significantly as a result of the FDA, jarring county budgets. Respondents in Collin County believe some of the cost increases are attributable to the rapid speed of case processing. While ability to pay is not a primary consideration for assigning counsel in Dallas and Webb Counties, Collin County officials feel more time is needed to allow for a meaningful determination of indigence before counsel is appointed.

⁸ Individuals requesting counsel at Dallas County jail on Fridays and Saturdays are not appointed counsel within twenty-four hours. Requests are transmitted to court coordinators the following Monday morning at 6 am and appointment occurs thereafter.

EXPERIENCES OF THE STUDY SITES

Expedited Appointment of Counsel as a Longstanding Policy: Dallas and Webb Counties

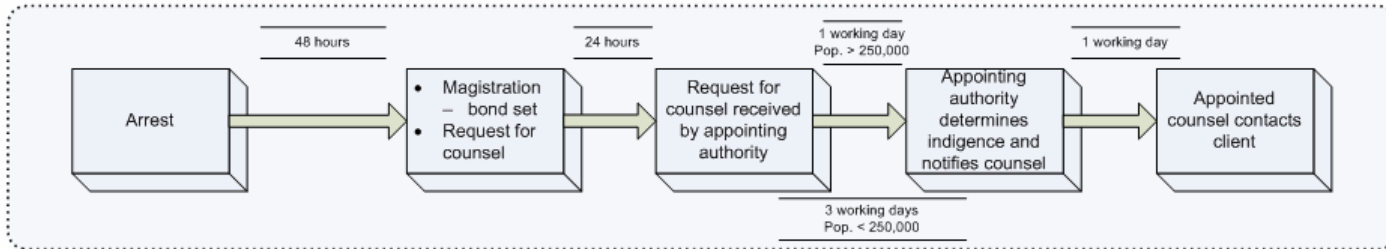
In both Dallas and Webb Counties, local case processing systems and cultures were closely aligned with the objectives of the FDA even before the legislation was passed. For nearly two decades at both sites any defendant who remained in detention 72 hours after arrest has been assigned an attorney irrespective of indigent status. In Webb County, requests for counsel have also traditionally been taken immediately after arrest during the magistration proceeding, with subsequent assignment of counsel by clerical assistants. This decades-long history has created an environment conducive to continued rapid appointment as a response to the FDA.

Though commissioners and budget officers in these counties would like to hold down indigent defense costs, they defer to the leadership of the judiciary. Court officials have a long-established expectation that a large proportion of defendants will be provided with a public defense. Strategies to contain costs by reducing the number of defendants appointed counsel are not being actively considered. Though cost is a concern, in Dallas and Webb Counties expedited appointment is seen by judges and other stakeholders as a useful means of helping detained individuals access public legal services quickly.

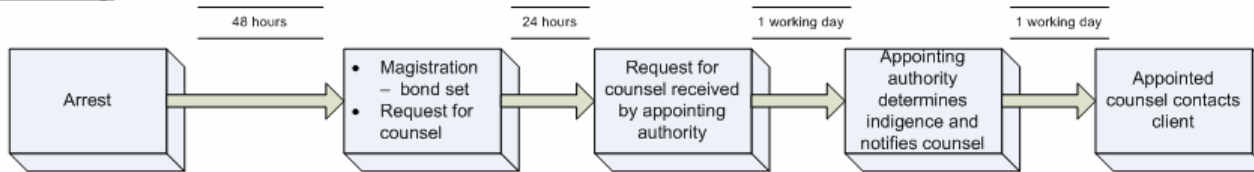
Expedited Appointment of Counsel as a Recent Response to the FDA: Collin County

Like Dallas and Webb Counties, Collin County also found it easy to integrate appointment of counsel into a pre-existing expedited magistration proceeding. In Collin County, however, this was a radical departure from previous practice. Historically, legal representation was ordinarily assigned to detained, indicted defendants only, often weeks or months after arrest. Un-indicted defendants unable to make bail were detained without an advocate, and indicted individuals who could make bail were generally ineligible for assigned counsel. As a result of these conservative policies, compared to the generous

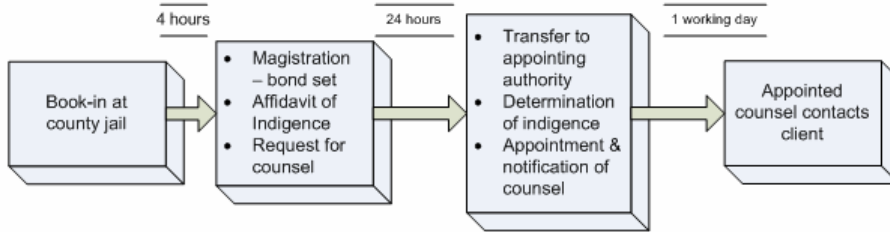
Figure 5. Timelines for Appointment of Counsel Required by FDA vs. Used by Study Sites



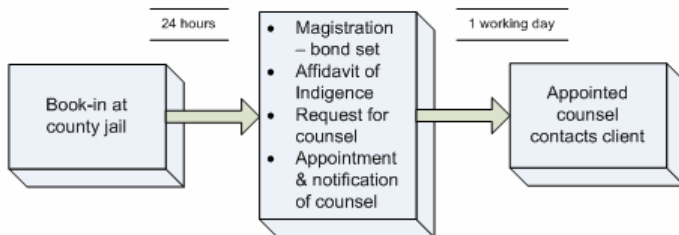
Cameron County



Dallas County



Collin & Webb Counties



appointment standards in Dallas and Webb Counties, rates of assigned counsel have traditionally been low in Collin County.

When Collin County determined to meet the requirements of the FDA by integrating magistration and appointment of counsel into a single proceeding held just hours after arrest, the impact was dramatic. Large numbers of defendants who would not have been considered for public counsel under the old system began receiving representation provided at county expense. The increased number of appointments elevated indigent defense costs. Since Collin County is one of the most affluent areas of the state, many study respondents believe a large proportion of defendants, given the chance, could afford to retain their own attorney. As a result, Collin County stakeholders are assertively exploring solutions that might reduce indigent expenditures without compromising defendant rights.

One of the most widely articulated ideas is to restructure the defendant processing timeline to more closely follow that required by the FDA. By separating magistration and appointment of counsel, it is argued, county officials will have more time to scrutinize objective evidence of assets before a public lawyer is appointed. Indeed, Collin County is actively developing and testing a number of objective indicators of financial status (see Chapter 7). With better evidence available, scarce public resources can be targeted toward defendants who truly qualify.

SUMMARY

The site visits show that counties vary in the speed with which they have appointed counsel both historically and since the implementation of the FDA. Three of the four study sites now provide appointed counsel well in advance of the statutory timeframe (see Figure 5). This has not been a significant concern where indigent representation has traditionally been assigned at the time of arrest (i.e., Dallas and Webb Counties). However, where counsel has traditionally been assigned after indictment (i.e., Collin and Cameron Counties), counties have seen dramatic increases in both indigent cases and costs.

Collin County officials have expressed the greatest concern about the impact of high-speed appointment on the costs of public defense. Respondents at that site generally agree the county could save money without compromising fairness by separating the processes of setting bond and assigning counsel. With more time for a careful determination of indigence, judges and other county officials can be certain resources are being targeted toward the defendants who are truly unable to afford a private attorney.

At a minimum, the experience of Collin County suggests rapid appointment protocols may not be the best-fitting solution for every Texas community. Counties that are particularly concerned about balancing cost with defendant rights may wish to explore the fiscal and legal impacts of separating magistration and appointment of counsel to allow time for accurately assessing financial status. The efficacy of separating these events may be impacted by considerations such as historical policies for appointing indigent representation, the proportion of the local population that is indigent, and the financial resources available to the county.

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Chapter 7. DETERMINATION OF INDIGENCE AT ARREST

INTRODUCTION

The Fair Defense Act states that counties must specify procedures and standards for determining indigence that apply to all defendants equally. Standardizing eligibility for assigned counsel is a prime objective of the law. Each of the four study sites collects financial information through the affidavit of indigence (see Appendix A). However, counties vary in the extent to which they apply this information to rigorously screen applicants for appointed counsel.

Overview of Findings

Dallas and Webb Counties have open appointment policies, assigning counsel to virtually anyone who applies. Collin and Cameron Counties, on the other hand, are seeking ways to more clearly discriminate between individuals who need an assigned advocate versus those that are capable of supporting their own defense. Several strategies were suggested to help counties more effectively identify individuals eligible for a public defense. Affidavits of indigence could require a more detailed accounting of assets, possibly including documentation verifying statements to the court. Motor vehicle registration, property tax records, and credit reports are currently used in Collin County to acquire objective information about defendant assets. Some stakeholders also recommended clearer notice that the affidavit is a sworn statement, with consequences to defendants who lie about financial status.

EXPERIENCES OF THE STUDY SITES

Less Restrictive Approach: Dallas and Webb Counties

Dallas and Webb Counties both have a longstanding policy of appointing counsel to all defendants after 72 hours in detention regardless of whether they are indigent or not. Since the FDA was passed, this generous appointment standard remains unchanged. In Dallas County, criminal court coordinators only collect financial detail from individuals who fail to request a lawyer at magistration, and then only to confirm that the defendant

can actually afford their own defense. The expectation is that a publicly appointed advocate will be provided to anyone making a request.

In part because of their high poverty rates, Webb County courts also assume that most defendants will qualify for assigned counsel. At that site, pre-trial services staff review information on income and assets and make a discretionary evaluation of each defendant's eligibility. The vast majority of those requesting counsel are either found to qualify at magistration, or are appointed counsel after 72 hours in detention. In both Dallas and Webb Counties, an initial determination of indigence stays with defendants all the way through to case disposition.

Blended Approach: Cameron County

Cameron County utilizes a two-phase system of assigned counsel. At the time of arrest, literally everyone who asks is assigned to one of two contract attorneys who represent defendants during the pre-indictment phase. Once it is determined that charges will be filed, Cameron County is the only study site to completely re-assess indigence and assign new counsel. In order to qualify for post-indictment representation, defendants already appointed pre-trial counsel are required to submit a notarized sworn statement of assets. In this way, Cameron County shares features of both less restrictive and more restrictive appointment systems. High poverty rates create the need to provide counsel to a large proportion of arrestees. At the same time, historical and budgetary considerations have resulted in a system in which defendants financial status is carefully scrutinized before appointing counsel in prosecuted cases.

More Restrictive Approach: Collin County

In Collin County, one of the most affluent counties in Texas, local stakeholders generally assert that taxpayers have a right to an accurate accounting of defendants' financial status before being asked to pay for their legal defense. This is the only study site where the appointing authorities, magistrates at the county jail, assumed a leadership role gathering information from human service agencies in the area in order to establish the current

criteria for indigence. Magistrates personally review defendants' income and assets to evaluate their ability to pay.

Collin County defendants are generally considered indigent if they qualify for means-tested public benefits programs or if their annual income is \$15,000 or less. This is not strictly a "bright line" standard because magistrates still exercise some discretion. For instance, individuals earning less than \$15,000 but who have no family obligations, live at home, and are supported by parents are generally not found to qualify. In contrast to the minimal emphasis on eligibility requirements observed at the other study sites, Collin County's approach to determining indigence is notably more systematic.

Strategies for More Objective Measures of Indigence

Regardless of whether they have adopted more or less restrictive standards of indigence, the counties included in this study share an interest in containing costs. At present, each of the four study sites determines eligibility for counsel based largely on unverified financial information reported by defendants. Stakeholders at sites concerned with cost containment identified several strategies they felt might improve the quality of information used to determine indigence.

Examine Available Evidence. Collin County recently began to utilize information about defendant assets available in county records. Motor vehicle registration and property tax records give the courts a clearer picture of assets defendants might be able to apply toward paying for their defense. Though it is currently too costly to manually retrieve this information for every indigent defendant, the courts find it useful when defendants are on the margin of qualifying for appointed counsel or when self-reported assets seem questionable. Though Collin County has considered the possibility of checking credit reports as well, staff are not presently available to perform this function.

As counties explore upgrades to computer systems as recommended in Chapter 2, they may consider incorporating mechanisms for automated "batch processing" of credit reports, property tax, or vehicle registration checks by matching computerized records.

Programs could be set to flag only indigent defendants showing assets above threshold amounts, allowing closer review to be focused only on the most apparently ineligible cases.

Collect More Financial Detail from Defendants. Several respondents felt their county's affidavit of indigence form does not create the expectation that a full accounting of personal resources should be reported. The forms, illustrated in Appendix A, ask from five to fifteen questions about income and assets. Some study participants felt this simplified request format encourages defendants to give cursory responses about their financial status or makes it easy to omit important details. A more comprehensive assessment form might encourage defendants to prepare a more thoughtful and complete response.

Require Documentation. When additional detail or clarification regarding assets is required, the courts rarely ask defendants for further information. Several respondents recommended that a greater burden of proof could be placed upon defendants. As one example, defendants appointed counsel then subsequently released on bond could be given ten days to produce evidence requested by the court. This might include tax returns, pay stubs, or documentation of child support payments. At present the study sites do not require defendants to provide any backup documentation beyond the affidavit of indigence.

Hold Defendants Accountable for Honest Reporting. Though affidavits of indigence at every study site contain language explaining that the document represents a sworn statement submitted under penalty of perjury, these warnings are uniformly presented in a subtle format that could easily go unnoticed. Some county officials believe the information should be reformatted to visibly emphasize the importance of a statement submitted under oath.

It was further recommended that the form include bold notice of the specific ways in which perjury might be punished. One respondent felt a Class C fine was appropriate,

with the consequence of driver's license suspension or blocked motor vehicle registration until defense costs were re-paid to the county. None of the study sites currently have standard penalties associated with falsification of financial information. If consequences of perjury were stated more emphatically at the time the affidavit of indigence was being completed, the proportion of defendants reporting honestly might be likely to increase.

SUMMARY

Counties appear to fall into two categories with regard to practices for determining indigence. Dallas and Webb Counties philosophically accept that a large proportion of defendants will be assigned counsel and do not expend resources on close eligibility screenings. Cameron and Collin Counties seek to assertively guard against over-generous public defense provided at taxpayer expense. These counties are interested in establishing objective screening criteria capable of identifying individuals who are demonstrably unable to retain private counsel.

This study is unable to determine whether the use of systematic screening criteria such as those adopted in Collin County have any impact on the volume of defendants appointed or the costs of indigent defense. It is possible that the proportion of indigent individuals in the criminal justice system is so large that even stringent eligibility standards do not reduce appointment rates substantially. Alternatively, strict screening criteria may be beneficial in affluent communities where a larger proportion of the population can afford retained counsel, but of little use in impoverished areas where virtually every defendant qualifies. Further investigation is needed to answer these questions.

It is worth noting that the private defense bar generally support more precise methods of determining indigence. When ineligible cases are assigned public counsel, the number of clients paying the market price for representation declines. It is argued that policies appointing public counsel to defendants who can afford to pay will drive defense attorneys into other more lucrative areas of law, ultimately reducing the overall variety and quality of defense representation available.

Study participants did point the way toward some low-cost or no-cost measures with which counties can experiment to improve the quality of financial information available. Affidavit of indigence forms could be re-designed to require a more detailed accounting of financial status. Furthermore, the courts can ask defendants to back up their statements with documentation submitted to the courts or county officials can retrieve relevant records directly (e.g., motor vehicle registrations, property tax records, and credit reports). Respondents also recommended that affidavit of indigence forms more clearly convey that the statement is submitted under oath, and that penalties be imposed for defendants found to have committed perjury.

Model strategies need to be developed and tested to identify appropriate candidates for public counsel while screening out those who can afford their own defense. Counties seeking to balance fairness with cost containment are encouraged to continue exploring alternative methods of eligibility determination and assessing impacts of changes both in terms of defendant justice and budgetary impacts.

Chapter 8: OVERVIEW OF STATEWIDE TRENDS

INTRODUCTION

Since the FDA legislation passed, Texas counties have had to find new ways to assign legal counsel to indigent defendants. The three primary approaches for appointing counsel currently include rotation systems, public defender systems, and contract counsel systems. As counties actively seek strategies to contain indigent defense costs, attorney selection methods are a focus of increasing attention. This section provides an overview of trends in costs of counsel statewide and at the study sites. The following chapters consider the ways each of the three major attorney selection methods are seen as impacting the cost and quality of indigent counsel.

Data Sources and Interpretation of Statistics

Since 2002, the Task Force on Indigent Defense has collected an annual indigent defense expenditure report from all Texas counties. This report is the source of the case count and expenditure data reported below. County population and poverty rate figures were derived from the 2000 US Census.

Most data describing indigent defense indicators is summarized in terms of means and medians. The mean is a simple average summing all scores in a group and dividing by the number in the group. However, a single extreme score can potentially exert excessive influence on the mean, disproportionately shifting the value up or down. Thus, it is also useful to consider the median as a measure of central tendency. The median reflects the mid-point of all scores such that 50 percent of all cases fall above the median and 50 percent fall below. It is a more stable indicator of values for “most” counties and less susceptible to influence by outliers. Because these two statistics contribute complementary information useful for interpretation, both are presented in the analyses that follow.

STATEWIDE TRENDS IN COSTS OF INDIGENT COUNSEL

Number of Indigent Cases Represented Statewide

Since the first year of the FDA, the number of adult indigent defense cases has increased nearly 40 percent. In FY 2002, Texas counties averaged 1,096 indigent defense cases (median = 119). In FY 2004 that figure rose to an average of 1,515 cases per county (median = 201). Figures 6a and 6b illustrate changes by county size. Increases are attributable in part to an overall rise in the number of criminal cases. Data maintained by the Office of Court Administration shows adult cases added to court dockets rose 4 percent per year between 2002 and 2004. FDA requirements for standardized criteria of indigence and early access to counsel have also contributed to rising appointment rates.

Attorney Fees Paid in Adult Criminal Cases Statewide

Overall costs to counties for the legal defense of indigent individuals have risen 20 percent over the past three years, increasing from \$114 million in 2002 to \$136 million in 2004. Adult attorney fees are the single largest cost component, comprising 85 percent of all (adult, juvenile, direct, and indirect) indigent defense costs. In FY 2004, Texas counties spent over \$107 million in adult attorney fees alone, a 56 percent escalation since 2002 (\$69 million). Changes in spending by county size are shown in Figures 7a and 7b. Because such a large proportion of costs are centered on attorney fees, relatively small increases in efficiency in this key area can potentially save counties large amounts of money.

Attorney Fees per Adult Case Statewide

Although the greater volume of indigent defendants is a major driver increasing overall indigent defense costs, the average cost of attorneys per case has risen a modest 3.3 percent per year – just enough to keep pace with inflation. In 2002, Texas counties paid an average of \$396 to counsel representing adult indigent defendants (median = \$282). Following a fairly sharp 10 percent increase from baseline in 2003 (mean = \$434, median = \$368), attorney fees adjusted downward in 2004 to the current \$421 per case average (median = \$375). Costs per case by county size are presented in Figure 8.

Figure 6. Number of Adult Indigent Cases by County Size

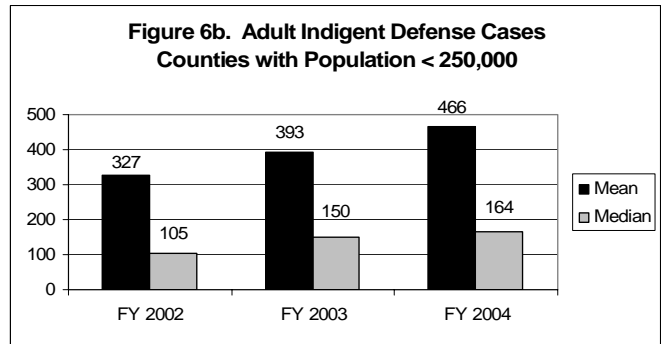
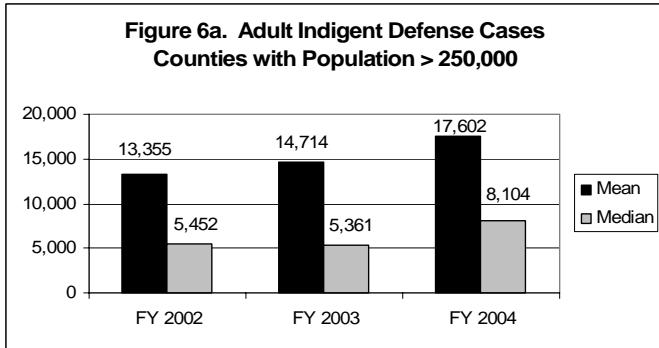


Figure 7. Adult Attorney Fees by County Size

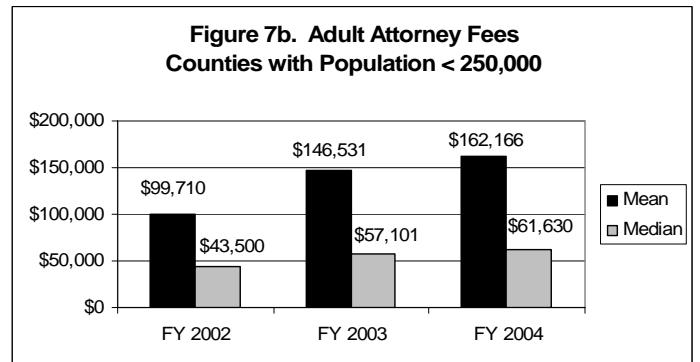
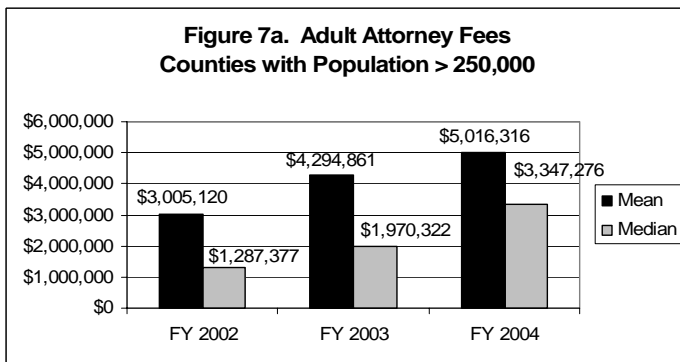
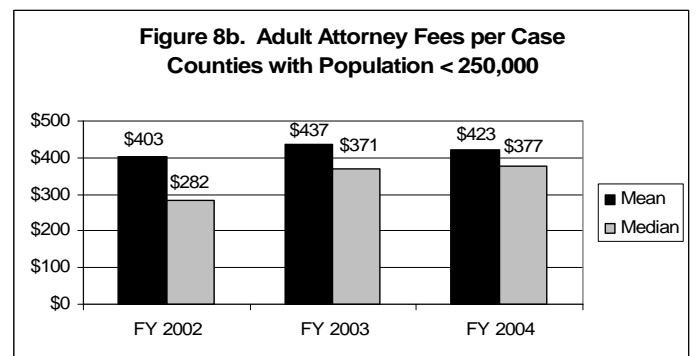
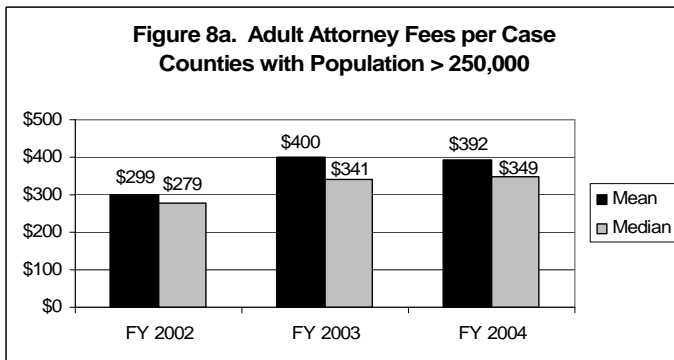


Figure 8. Average Attorney Fees per Adult Case by County Size



TRENDS IN COSTS OF INDIGENT COUNSEL AT THE STUDY SITES

Number of Indigent Cases Represented, Study Sites

Not surprisingly, the most urban study site, Dallas County, has by far the largest number of indigent cases with over 55,000 defendants represented in FY 2004. The remaining mid-sized urban communities have substantially smaller criminal caseloads (see Table 3). In FY 2001, Cameron County provided public counsel in 8,104 cases, Collin County did so in 4,893 cases, and Webb County served only 2,832 indigent defendants, the fewest of any of the study sites.

Table 3. Adult Indigent Defense Cases among the Study Sites

Adult Indigent Defense Cases*				
County	FY 2002	FY 2003	FY 2004	Avg. Annual % Change
Collin	3,704	4,873	4,893	16%
Dallas	67,768	48,813	55,003	-8%
Webb**	3,807	3,464	2,832	-14%

* Cameron County is not shown due to reporting anomalies.

** Webb County may count multiple indictments as a single case more frequently than most other counties.

Interestingly, though the average volume of indigent cases per county has increased statewide, among two of the three study sites, cases have declined since FY 2002. The reason for this contrarian pattern is not clear. Only Collin County represented more cases in FY 2004 than in FY 2002, and even that site has seen no increase in indigent cases over the past two years.

Attorney Fees Paid in Adult Criminal Cases, Study Sites

Despite the fact that indigent case counts have been trending downward, each of the study sites have seen substantial rises in expenditures for attorney fees (see Table 4). Though the greatest percentage decline in total number of cases occurred in Webb County, that site experienced the largest percentage increase in attorney fees, escalating an average 59 percent per year since FY 2002. Other sites have seen sizeable increases, as well. Dallas County has achieved the greatest

overall stability in expenditures with only a 7 percent average rate of growth in attorney costs over the past three years.

Table 4. Total Adult Attorney Fees among the Study Sites

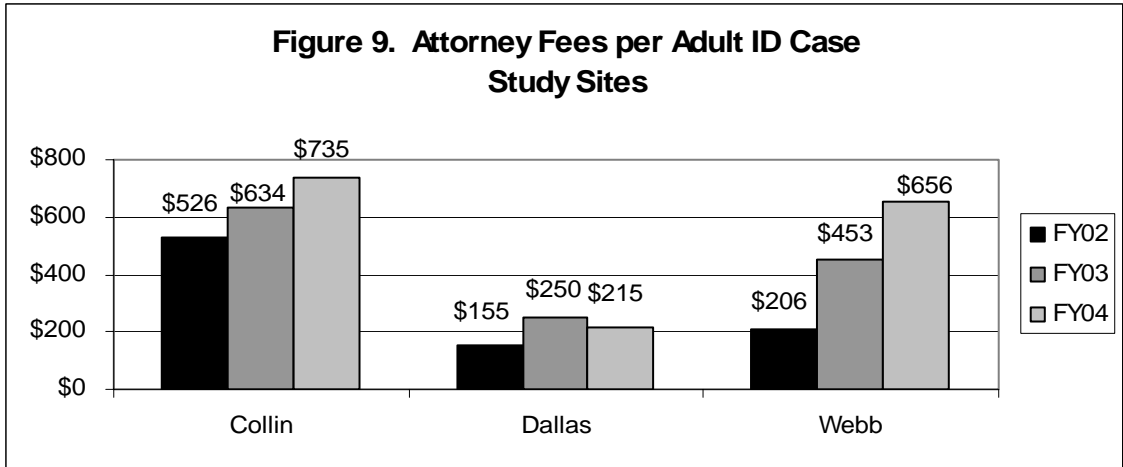
Total Adult Attorney Fees				
County	FY 2002	FY 2003	FY 2004	Avg. Annual % Change
Cameron	\$593,095	\$707,753	missing	*19%
Collin	\$1,949,190	\$3,090,954	\$3,598,274	37%
Dallas	\$10,509,805	\$12,191,401	\$11,852,752	7%
Webb	\$782,361	\$1,568,753	\$1,856,769	59%

* Percent change from FY 2002 to FY 2003.

Attorney Fees per Adult Case, Study Sites

A declining number of indigent defendants, combined with increasing expenditures, have produced steady annual increases in attorney fees paid per case at every study site except Dallas County (see Figure 9). Among the sites with available data, the most dramatic growth in attorney costs per case has occurred in Webb County. After increases averaging 80 percent per year from FY 2002 to FY 2004, Webb County now pays over \$130 per case more than the statewide average for comparably sized communities. This finding could at least partially be accounted for by the case counting methods employed at that site. According to the Webb County prosecutor’s office, multiple indictments on the same charge are commonly counted as a single case. This case-counting method would inflate cost per case compared to counties that consider multiple indictments to be separate cases.

Collin County’s attorney costs per case have been considerably higher than similarly sized counties every year since the inception of the FDA. Dallas County has managed to sustain attorney costs per case at the lowest level of all the study sites, and at a rate well below statewide averages for counties in their size strata (see Figures 8a and 9).



Note: Cameron County is not shown due to reporting anomalies.

** Webb County may count multiple indictments as a single case more frequently than most other counties.

SUMMARY

Statewide, both the number of indigent defendants requiring representation, and the overall costs associated with attorney fees have increased steadily since the inception of the FDA.

Nonetheless, Texas counties have successfully contained increases in attorney fees per case to only 3.2 percent per year. Since attorney fees comprise 85 percent of all indigent defense costs, small increases in efficiency could potentially yield sizeable payoffs to counties.

Though the number of indigent cases has increased statewide, it has declined or held steady at the study sites. Nonetheless, total expenditures in attorney fees have continued to climb, as have costs per case. Two of the study sites, Collin and Webb Counties, pay considerably higher attorney fees per case compared to statewide averages for similarly-sized counties. Dallas, by contrast, has some of the lowest attorney fees per case statewide.

Chapter 9: ROTATION SYSTEMS

INTRODUCTION

Rotation systems are by far the most widely used method of appointing indigent counsel in Texas. Though rotation appointment models may be used in combination with public defender or contract counsel assignment systems, they stand as the only means of selecting representation for indigent defendants in the overwhelming majority of counties. All but nine of the state's 254 counties report some expenditures for assigned counsel. Rotation systems meet the FDA's standard for neutral appointment by selecting names in sequence from a list of approved attorneys meeting uniform qualifications.

Rotation systems are used at three of the study sites. In Collin County, rotation is the sole method for appointing counsel. In Webb County, the public defender system is primary with about a third of cases going to attorneys in private practice. In Dallas County, private attorneys have historically received most indigent cases, with the public defender system as a secondary resource. More recently, however reliance on public defender services has grown substantially. Even where public defender systems represent the majority of indigent cases, some type of rotation system is ordinarily required to handle overloads and to represent conflicted cases.⁹

Indigent Case Assignment Methods Prior to the FDA

Though Collin, Dallas, and Webb Counties have assigned private attorneys to indigent cases for many years, the FDA required a change of procedures. The law specified that attorney qualifications must be matched with the level of cases they represent, and that the method of assignment cannot favor some attorneys over others, assuming equal qualifications.

The Laredo Plan: Webb County. Prior to SB7, Webb County used a standardized appointment system called the Laredo Plan. This appointment system required that every attorney registered with the local bar either serve on the public defender list or pay a fee to buy out of service. Attorneys choosing to provide public defense services were compensated at a

⁹ Conflicted cases include instances in which defendants accused of the same crime are potential adversaries in court, or instances in which a witness in a current case has been represented by the public defender's office in a previous case.

nominal hourly rate from funds paid in by non-participating counsel. A disadvantage of this approach was that not all attorneys providing public defense were experienced in criminal law. For this reason the Laredo Plan was unable to consistently match attorney qualifications with the requirements of the case.

Judicial Appointment of Counsel: Collin and Dallas Counties. Prior to the FDA, Collin and Dallas Counties assigned indigent representation based entirely on judicial discretion. Attorneys made application to each court separately, with selection standards determined by individual judges. Judges would then personally identify a pool of trusted indigent defense lawyers to serve their courtroom. To enforce compliance among defense counsel, judges commonly discussed their performance informally. Attorneys that judges deemed to have handled cases poorly or to have overcharged would be temporarily blackballed until they came by to discuss the problem and learn the judge's expectations.

Judges argue their discretionary oversight was an effective means of ensuring indigent defendants get the best representation available at a price the county can afford. On the other hand, advocates maintain that placing appointment decisions entirely in the hands of individual judges has the potential to create a quid pro quo or patronage system. Attorneys could easily be pressured to make campaign contributions or otherwise pay homage to the judges whose courts they serve. Furthermore, judges may be more inclined to reward defense attorneys who are most effective at docket reduction rather than those that most doggedly pursue the interests of their clients. Thus, counselors who took fewest cases to trial may receive more frequent appointments from the court. Though anecdotally these abuses were not common, they nonetheless had the potential to occur.

Neutral Case Assignment Methods Adopted Since the FDA

To remedy these concerns, the FDA required counties to implement a fair and neutral method of selecting qualified indigent representation. In response, Collin, Dallas, and Webb Counties now require private attorneys wishing to represent indigent defendants to submit an application for review by a panel of judges. The judges as a group evaluate each applicant against objective standards of experience and qualifications. They then vote to determine who is approved for

appointment and what level of cases they can represent. Approved defense attorneys are added to the pool serving all courts, and are assigned cases for which they qualify as their names come up in turn.

QUALITY OF COUNSEL IN A ROTATION SYSTEM

Perceived Impacts of Neutral Appointment on Quality of Counsel

As a result of new neutral appointment methods, the number of defense attorneys eligible to represent indigent cases has increased substantially from pre-FDA levels in both Collin and Dallas Counties. This suggests that the rotation systems have had the intended effect of opening opportunities for more lawyers to serve as appointed counsel. Nonetheless, judges and defense counsel in both Collin and Dallas Counties disagree on the impacts of the legislation on the overall quality of indigent counsel.

Judges argue that when selection criteria are reduced to a list of formal credentials such as years of experience or types of cases tried, less quantifiable attributes that define competent counsel cannot be adequately considered. In the past, for instance, if a judge felt an attorney attempted to “bully” pleas from clients, let clients push them into frivolous trials, or otherwise used poor judgment in the courtroom, that individual simply would not be appointed cases. Since the FDA, these types of subjective performance measures cannot be considered when choosing the list of approved counsel.

Defense counsel have a different perspective. They hold that judges cannot determine what is in the best interest of their client. A judge is in no position to say, for instance, if a defense attorney is “bullying” pleas. The defense bar believes judges should not intervene in the attorney-client relationship, and legislation limiting their ability to influence these matters is a positive development. Furthermore, defense counsel are now free to handle cases without fear of consequences if they should displease the judge. As a result, they contend that their ability to provide a sound defense has significantly improved.

Options for Quality Improvement

It is beyond the scope of this study to objectively assess whether the quality of defense has improved or declined since the FDA was passed. It is certain, however, that common standards must be established that apply to all appointed attorneys equally. There are several mechanisms through which quality standards can be established and enforced. These include the selection process, feedback to active counsel, and the sanctioning process. At the selection phase, for instance, where there are recurrent areas of concern, it may be helpful to require specific types of training as a condition of entering the defense pool. In Dallas County, as an example, court coordinators complain that a sizeable proportion of assigned counsel do not understand the workings of the local court system. Their ignorance creates delay for the courts and inconveniences clients. Written orientation materials or a county-approved training might alleviate some of the frustration engendered by novice defense attorneys. To save costs, approved trainings could be delivered by independent for-profit vendors and paid at attorney expense.

Counties may also consider providing active defense counsel with feedback on key performance measures. While it is not likely there will ever be an objective method to determine the correct course of action on a case by case basis, it may be useful to share feedback on the overall proportion of cases plead or taken to trial. Over time attorneys representing similar types of cases should have similar proportions that are appropriate for trial. Defense counsel with trial rates significantly above or below those of their professional peers might at least be encouraged to self-examine their case-related decision criteria. Similar feedback could be provided to attorneys in the defense pool regarding number of cases in which billing exceeded the basic fee schedule.

Finally, judges must be prepared to provide consistent oversight and enforcement of sanctions for attorneys violating standards of quality. Graduated sanctions might communicate the need for defense counsel to change poor behavior early on without inciting lengthy formal proceedings or appeals. In short, while judges are no longer able to exercise subjective discretion to control the behavior of defense counsel, both formal and informal approaches can be developed to promote quality and efficiency of defense in a rotation system.

COSTS OF COUNSEL IN A ROTATION SYSTEM

Judges do not only feel frustrated by their limited ability to influence the quality of defense representation since the FDA. Many are equally disturbed that the law constrains their control over indigent defense costs. Prior to the FDA, judges could simply refuse to appoint indigent cases to defense counsel they felt took advantage in their billing. Now, all qualifying attorneys are eligible to take cases and can bill for their work according to uniform guidelines.

Current Attorney Fee Structures

Each of the study sites using rotation systems now base attorney compensation on flat fees for specific services. In direct response to the FDA, Collin County judges increased the fee schedule from a base rate of \$75 per hour for standard court motions to \$125 per hour in district courts and \$175 per hour in county courts (see Appendix B). Despite this relatively high compensation rate, work outside of the courtroom not reflected in the existing fee schedule is commonly marked down by judges to a rate of \$100/hr. Defense lawyers feel they are unable to complain about the reductions since lawyers from neighboring Dallas County, attracted by the higher fees, stand ready to fill their place.

Dallas and Webb Counties base their fee schedule on a more modest \$75/hr. reimbursement rate, essentially unchanged from before SB7. It is not clear from this study whether Collin County's higher compensation rate helps attract a more qualified pool of defense counsel. All three counties using rotation systems do, however, have an ample number of attorneys meeting requirements to represent the full array of indigent cases.

Perceived Impacts of Rotation Systems on Cost of Counsel

While judges complain that they have lost the ability to control costs since the FDA, defense counsel are pleased that more of their time spent can now be compensated.

Uncontrolled Billing. In addition to the basic flat fee payment structure, attorneys are also able to request reimbursement of additional hours spent preparing each case. Before the FDA, costs associated with extra hours were easily contained because individual judges could reject further

fees. Attorneys had little recourse but to accept if they wanted to continue to work in that courtroom. Now that judges no longer control which attorneys will be appointed cases, they argue there is no way to enforce responsible billing.

Without any penalties for billing extra hours, judges believe defense attorneys have gained new incentives to spend excessive time on indigent cases outside the courtroom, or to push a larger proportion of cases into costly and time-consuming trials. While judges still have authority to mark down what they perceive as unwarranted charges, such decisions are potentially subject to appeal. Since they can neither prove the actual time spent in a case nor confirm its necessity, judges say they generally reimburse the hours even when they seem excessive.

Defense counsel, by contrast, maintain that the loss of judicial discretion in determining attorney payment is long overdue. Before SB7, they say, judicial control of appointments depressed payment so attorneys were not compensated in proportion to their effort. Since the passage of the FDA, defense counsel are now able to bill for hours not covered in the standard fee schedule that often went unpaid in the past. If judges feel costs of indigent defense are excessive, the defense bar argues that budget cuts should be distributed evenly across the courts, the prosecutor's office, and other system components. It is not fair, they say, to balance the budget on the backs of the defense bar. In the interest of justice, the county should be prepared to pay the costs of a solid defense.

Interestingly, alarm about uncontrollable attorney fees is greatest in Collin County, the only study site using the rotation appointment model with no competing form of defense. In counties like Dallas and Webb, attorneys may be more reluctant to bill outside the fee structure for fear higher costs may increase judge's use of the public defender's office. Indeed, this appears to be occurring in Dallas. The proportion of cases assigned to the public defender in that county has increased from 57 percent in FY 2003 to 64 percent in FY 2004, and twelve new public defender positions have been added to serve criminal courts since the implementation of the FDA. At the same time, Dallas County judges say they receive few complaints from defense attorneys about compensation rates.

Unpredictable Costs. Compared to public defender or contract systems, the rotation model also offers the least ability to predict or stabilize costs. The total number of cases or the proportion of high-cost cases in a year cannot easily be anticipated, and similar cases may be billed at substantially different amounts. As a result, it is difficult for county budget officers to anticipate total costs of attorney fees from one year to the next. With public defender and contract counsel systems, county officials can negotiate in advance for a given level of service at a pre-determined price.

JUDICIAL ADMINISTRATION IN A ROTATION SYSTEM

In addition to potential impacts on the quality and cost of indigent defense, rotation systems also appear to increase administrative burden on the courts. Compared to public defender or contract counsel systems which were also observed in this study, rotation systems place the greatest managerial demands directly upon judges and court personnel. The administrative responsibilities are specifically focused in the following areas.

Approval of Counsel. The process of qualifying counsel eligible for indigent appointments is ongoing. Though they may be assisted by an indigent defense coordinator or pre-trial services units, ultimate responsibility for this function falls upon the judiciary. In addition to the ongoing review process, records must be maintained for each active attorney documenting that they are up to date on continuing legal education credits and other locally required qualifications.

Assignment and Notification of Counsel. Courts using rotation systems have responsibility to ensure indigent cases are allocated fairly among eligible attorneys according to neutral appointment standards. In response, Collin, Dallas, and Webb Counties have developed formal and transparent protocols for determining which attorneys will be appointed to cases at arrest. In the interest of accountability, Dallas County criminal district judges went so far as to have their system audited to confirm that computer-generated appointments are being assigned properly and that attorney qualifications are matched with the requirements of the case.

Once an attorney has been selected, rotation systems also require more complex and costly efforts to locate and notify counsel. A different lawyer must be contacted for every indigent

defendant. If the first attorney contacted is in trial or unavailable for other reasons, court personnel must make subsequent contacts with the next named attorneys in time for them to contact defendants within 24 hours. Where public defender or contract systems are available, by contrast, attorney selection and notification are simpler processes involving coordination with a single point of contact. In Webb County, for instance, a single contact with the public defender is all that is required to ensure all defendants assigned to that office are contacted within the statutory timeframe.

Review of Allowable Expenses. Whenever defense counsel bill hours above the fee schedule, responsibility for deciding which costs will be paid and at what rate falls directly on the judiciary. In rotation appointment systems judges routinely find themselves fulfilling the role of accountants, making determinations about allowable defense costs and appropriate rates of reimbursement. Neither the public defender nor contract counsel systems observed in this study required judges to be as directly involved in scrutinizing these details on a case-by-case basis.

Grievance and Discipline Review. Unlike public defender systems, rotation systems also make judges responsible for removing incompetent counsel from the approved list. As an example, when Dallas County criminal district court judges voted to exclude a group of attorneys from the rotation list, questions of due process were raised. As a result, a new layer of administration has been added to the county's Indigent Defense Plan in the form of a neutral grievance review committee. Now, in order to remove poorly performing defense counsel from the rotation list, judges must be prepared for a formal appeals process. Webb and Collin Counties have thus far accomplished attorney sanctioning through simple votes by the judges. Rotation models nonetheless make attorney discipline the exclusive duty of judges, while public defender programs professionalize this function in a separate office.

SUMMARY

In order to meet the neutral appointment standards prescribed by the FDA, procedural changes have been required at all three of the study sites using rotation systems of assigned counsel. Judges in Dallas and Collin Counties, the most substantial users of rotation for attorney appointment, clearly lament the era when they could set standards for indigent defense in their

own court rooms. On the other hand, it is not certain whether the standards enforced before the FDA were fundamentally intended to promote the interests of the defendant in a full hearing or the interests of the court to move cases efficiently. Neutral appointment protocols allay concerns among advocates that some judges rewarded defense counsel who cleared cases quickly and at low cost irrespective of defendant outcomes.

Impacts on Quality of Defense

Since counties are no longer able to use judicial discretion to select indigent counsel, concerns about quality in rotation systems must be addressed through neutral screening and sanctioning protocols. Counties must give careful consideration to the criteria required for attorneys to enter the indigent defense pool. It may be beneficial in some instances to prescribe specific areas of training applicants must receive. Active defense counsel may also find it useful to receive feedback regarding their standing on key performance indicators. Attorneys who are well above or below peer norms on measures such as proportion of cases plead vs. tried, or number of hours billed in excess of the basic fee schedule might be encouraged to evaluate potential causes for the discrepancy.

Impacts on Attorney Fees

Judges administering rotation systems are concerned about their limited ability to control billing by defense attorneys for hours spent in excess of the standard fee schedule. Judges are routinely asked to approve supplemental payments without any way to confirm that the work was actually done or that it was necessary for a sound defense. In the absence of this key information it is difficult to deny excessive payments or control costs.

Rotation appointment systems are also less amenable to predicting and stabilizing costs of indigent counsel year-to-year. Public defender and contract counsel systems may help insulate counties from dramatic cost shifts year to year because judges know in advance the approximate level of defense representation that will be provided at a fixed cost. Concern about spiraling attorney fees has been greatest in Collin County where rotation is the only system of indigent defense available. Webb and Dallas Counties are working to contain attorney fees by increasing their reliance on available public defender systems.

Impacts on Judicial Administration

Rotation appointment systems also place a greater burden for administration directly on judges and court personnel than do either public defender systems or contract counsel. Among all three study sites choosing rotation systems, the duties of the court have been expanded to include review and selection of qualified attorneys, tracking compliance with continuing legal education requirements, assigning cases fairly across eligible counsel, notifying appointed attorneys in time to contact the client within 24 hours, approving attorney billing exceeding the fee schedule, and addressing grievances or sanctions on behalf of defense counsel. Administrative pressures have made judges in Dallas and Webb Counties increasingly willing to delegate these responsibilities to professionals in the existing public defender's office.

Chapter 10: PUBLIC DEFENDER SYSTEMS

INTRODUCTION

Five Texas Counties including Colorado, Dallas, El Paso, Webb, and Wichita Counties currently support public defender’s (PD) offices representing adult indigent defendants.¹⁰ In each instance, the public defender is backed by a complementary rotation appointment system. The backup is needed to provide outside counsel in the event of case conflict or where special factors such as the defendant’s language need to be accommodated. Webb and Dallas Counties have well established public defender programs built over the past 15 and 20 years respectively. In both counties, the public defender has traditionally been secondary in a system based primarily on appointed counsel. However, both counties have expanded their public defender offices as a result of the FDA.

Table 5. Adult Indigent Defense Cases Assigned to Adult Public Defenders

County	FY 2003			FY 2004		
	Total Adult Cases	Adult PD Cases	% Assigned to PD	Total Adult Cases	Adult PD Cases	% Assigned to PD
Colorado	155	142	92%	203	193	95%
Dallas	48,813	27,693	57%	55,003	35,272	64%
El Paso	12,858	6,827	53%	14,203	7,666	54%
Webb	3,464	2,834	82%	2,832	1,907	67%
Wichita	1,901	1,542	81%	2,108	1,207	57%

The number of indigent individuals represented by public defenders’ offices statewide has risen nearly 20 percent from 39,038 in FY 2003 to 46,245 in FY 2004. Table 5 illustrates the number and percentage of cases assigned to each of the adult public defender offices currently operating in Texas counties. Case counts are only available for FY 2003 and FY 2004. During that two-year timeframe, the proportion of indigent defense cases assigned to public defenders offices has

¹⁰ See also, “A Review of Wichita County’s Indigent Defense System – Findings and Recommendations, Final Report,” (February 2004), and “A Review of Dallas County’s Indigent Defense System,” (August, 2004). These reports, authored by The Spangenberg Group under sponsorship of the Task Force on Indigent Defense, are available for download at <http://www.courts.state.tx.us/tfid/Resources.htm>.

risen in Dallas County and stayed roughly the same in Colorado and El Paso Counties. Public defender offices in Webb and Wichita Counties made downward adjustments in public defender caseloads.

Webb County Public Defender's Office

Prior to the FDA, Webb County's Laredo Plan (described in Chapter 9) provided plentiful access outside counsel at very little expense to the county. Costs of assigned counsel were covered by attorneys who paid into the system in lieu of representing indigent defendants. When the Laredo Plan was dismantled, these expenses were shifted to the county budget. In response, judges advocated for commissioners to expand the size of the PDs office. Two new attorneys and an investigator were added with the idea that increasing PD resources would be the most cost-effective way to provide indigent defense. A staff of fifteen public defenders now serves three district courts, two county courts, and a drug impact court. One attorney is assigned exclusively to visit defendants in jail within 24 hours of appointment as required by the FDA.

In Webb County, all misdemeanants and three-fourths of adult felony defendants are assigned to the public defender's office at the time of arrest. After removing conflicted cases, the office is intended to represent about 70 percent of defendants in each category. Table 5 shows that, although an excessive 82 percent of cases were assigned to the public defender in FY 2003, caseloads were re-aligned in FY 2004. During that year, the public defender served 67 percent of indigent defendants, a figure more in line with the planned use of the office. Because counsel is ordinarily appointed by pre-trial services staff at magistration, public defenders represent a cross-section of cases in every court.

Dallas County Public Defender's Office

In Dallas County, judges have complete discretion to determine how much of their court budget they wish to spend on public defenders versus appointed counsel, as well as the ways in which public defenders will be used. Some courts use PDs only to represent routine motions (e.g., motions to revoke parole or probation) or low-difficulty cases likely to be resolved by a plea. Other courts use public defenders for virtually all indigent cases except in instances of conflict or where special issues such as language require an attorney be selected from the rotation list.

Dallas County judges almost universally prefer the system that was in place prior to the FDA (see Chapter 9). At that time, most district courts had only a single public defender to handle routine pleas and more complicated cases were appointed to outside counsel chosen by the judge. Since discretionary case assignment has been replaced by neutral appointment, judges dislike complaints from members of the private bar that they are not getting their share of cases. Furthermore, if judges are displeased with the performance of individual attorneys in the courtroom, a complex and time consuming review process is required. These factors, combined with a study from the Dallas County Budget and Planning Office indicating public defenders are more cost effective, have encouraged judges to delegate more and more responsibility for indigent representation to the PD. Most courts now have at least two and sometimes three public defenders. Twelve new defenders have been added to meet new demand, bringing the total number of attorneys representing adult criminal defendants to thirty-six.

QUALITY OF COUNSEL IN A PUBLIC DEFENDER SYSTEM

Perceived Impacts of Public Defender Systems on Quality of Counsel

Opinions regarding whether overall quality of public defense is improved by the use of a public defender system vary between the study sites, and even among judges at each site. As with the rotation counsel system, judges name case evaluation skills as one of the most important aspects of a quality public defender. Highly skilled attorneys know when to advise a client to plea, and when it is appropriate to request a trial. Judges' perceptions of quality are therefore closely tied to factors influencing speed and cost of docket reduction. Some judges are convinced that the public defender model is the most efficient and effective solution to public defense, while others express grave concerns about the service PDs offer. Stakeholders in Dallas County held greater reservation about the public defender model than those in Webb County, though objective justification for this difference in opinion was not identified during the site visits. Some of the factors impacting the ability of public defenders to deliver quality counsel include the following.

Low Pay and High Turnover. Although Dallas County judges tend to see a public defender as an expensive component of their court budget, low pay is characteristic of the office. Public

defenders in neither Webb nor Dallas Counties have pay equity with the prosecutor's office. According to an August, 2004 report by the Spangenberg Group, supervising attorneys with fifteen years experience in the Dallas County public defender's office earn \$71,540 compared to an annual salary of \$99,750 for a comparably qualified prosecutor with only thirteen years experience – a difference of more than \$28,000 per year.¹¹

Low compensation relative to the prosecutor's office and the private sector not only makes it difficult to hire the most competent counsel, but also to retain them. The problem is made worse in Dallas County because the growing demand for PD counsel creates opportunity for rapid upward mobility. Misdemeanor judges say when public defenders are first assigned to their court, they typically meet only the minimum requirement of one year's experience. Yet, just as they begin to become more skilled they are re-assigned to felony courts. As a result, county criminal judges seldom have the luxury of working with experienced public defenders. By contrast, many lawyers available through the rotation system have extensive experience. This problem accounts for some of the dissatisfaction criminal county judges report with the public defender model.

Excessive Workloads. Public defenders' workload is another key factor in determining the quality of defense services. Defenders assigned to felony courts represent an average of 35 new cases per month, and those assigned to misdemeanor courts represent 95 new cases per month on average. As a result of budget pressures, in Dallas County judges are often reluctant to engage additional public defenders until those already on staff are well beyond maximum capacity. In that situation, public defenders able to keep up with excess workloads are actually penalized for doing a good job.

Quality of defense is also impacted by the number of public defenders judges are willing to accept. In courts that will take only a single defender, it is problematic to re-distribute the workload of active cases in the event a case goes to trial or if backup is needed for other reasons.

¹¹ See "A Review of Dallas County's Indigent Defense System," (August, 2004), The Spangenberg Group, cited above.

When all PD cases are the responsibility of a single individual, even a moderate volume of cases can be more difficult to manage.

Public defenders' workloads are increased, as well because, in Dallas County at least, they are often asked to perform duties that would not be expected of outside assigned counsel. For instance, in the misdemeanor courts public defenders are asked to collect financial statements from defendants in order to establish indigence. Not only is this a questionable use of their legal talents, but public defenders say their clients feel confused and betrayed if their defense attorney raises questions with the judge about their eligibility for counsel. Public defenders believe some judges are more willing to provide a defense for ineligible defendants, as well, because they know the public defender will take the case at no additional cost to the court.

Finally, attorneys get little assistance from support personnel because these positions in the PD's office are dramatically understaffed. Public defenders often give out their phone number and receive direct calls from clients. They also commonly perform their own investigative work because staff hired to perform these functions are already at full capacity.

High-Speed Case Processing. Some of the Dallas County courts' negative perceptions of the PD's office center on the belief that public defenders are not adequately focused on clearing dockets. Rather, because beginning public defenders need trial experience to advance their career, some judges believe there is a perverse incentive to actually set more cases for trial. As in rotation systems, judges argue public defenders may also be susceptible to pressure from clients to contest their case as far as possible, even without strong grounds to do so, since no costs are incurred by the defendant. If this is true, it would have the effect of increasing the number of trials. Still, since the right to a trial is guaranteed by the US Constitution, the public defender's office maintains that it is not within their power to deny defendants.

Though controlling caseload size is a priority for the courts, public defenders share the same concern expressed by the private bar that defendant rights cannot be set aside in the interest of efficiency. Caseloads are clearly a source of tension, with judges and court personnel motivated to expedite the administration of justice, while public defenders and assigned counsel alike re-

emphasize the need to slow down and evaluate cases with care. The volume of cases assigned to individual attorneys sometimes makes this a challenging task.

Options for Quality Improvement

Even the most stellar legal talent might find it challenging to provide high-quality counsel in a context of low pay, high turnover, and chronic work overloads. Public defenders report that they battle against becoming a “plea mill” given the pressures to move a large volume of cases quickly. If counties have concerns about quality of representation, an investment in more competitive salaries and lower caseloads might be returned in the form of reduced turnover and increased professionalism among public defender attorneys and support staff.

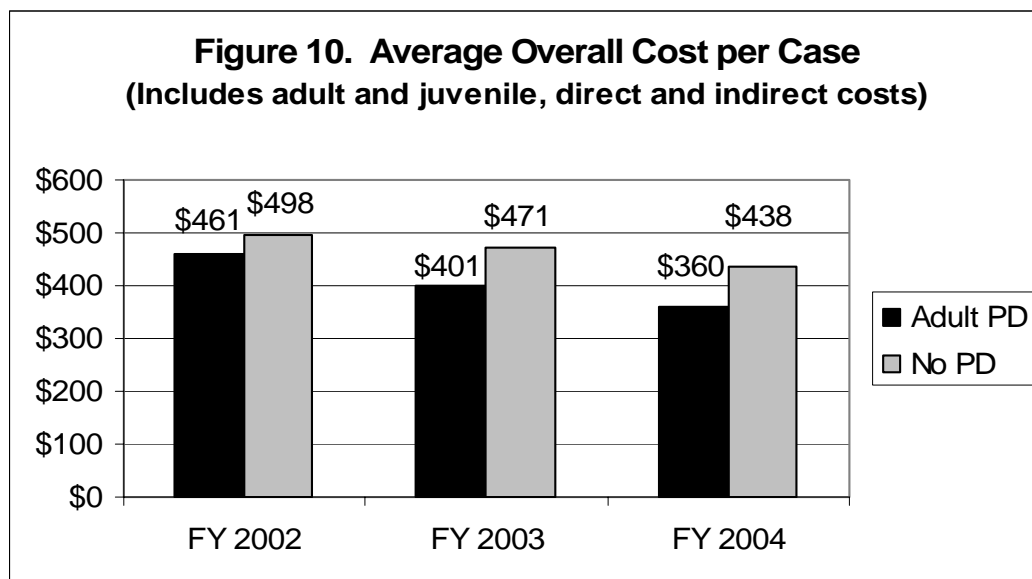
Where there are legitimate concerns about the performance of defense counsel in the courtroom, the public defender model offers judges administrative supports not available in rotation systems. In rotation systems judges are left to address problems related to performance and discipline largely without assistance, either by tolerating problem behavior or by initiating a formal movement to impose sanctions. Whenever this process is undertaken, judges also risk a protracted review process if the attorney chooses to appeal the decision.

In public defender systems, by contrast, judges have the support of the PD’s office to deal with these types of administrative issues. Public defenders in Dallas and Webb Counties say they make an effort to match compatible attorneys and judges and most significant discrepancies in assignment can ordinarily be resolved. There are some limitations since staff may not be immediately available for reassignment. Still, the public defender’s office has direct authority over staff attorneys, enabling them to oversee and manage job-related behavior in a way that is not possible with private indigent counsel.

COSTS OF COUNSEL IN A PUBLIC DEFENDER SYSTEM

Perceived Impacts of Public Defender Systems on Costs of Counsel

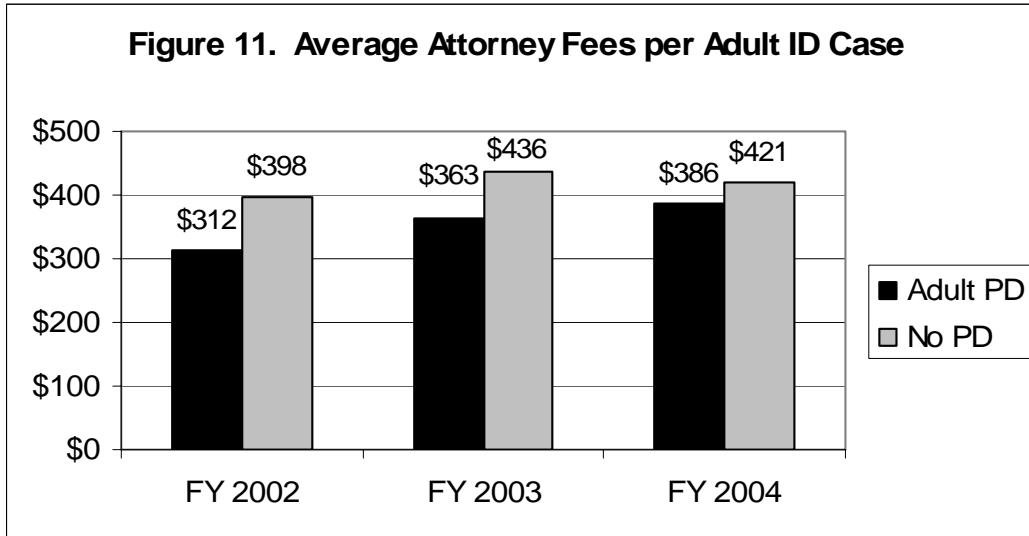
Public defender offices are perceived as being more cost effective than rotation appointment systems. Centralizing defense services in a single office is expected to create an infrastructure and procedural routines suitable for processing a large volume of cases in a highly efficient manner.



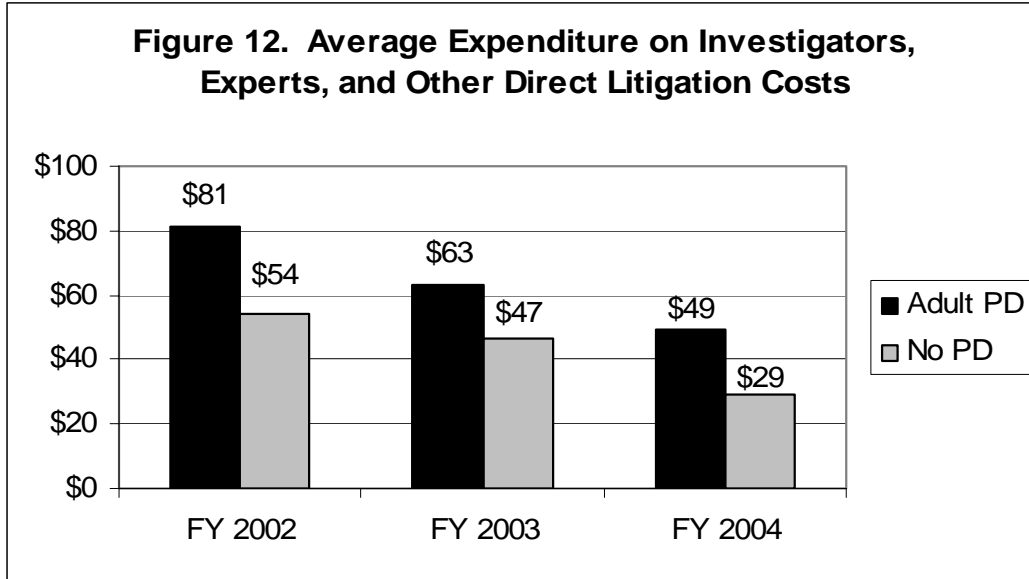
Comparisons between PD and Non-PD Counties. Analysis of TFID expenditure data in fact confirms that overall indigent defense costs per case are lower in counties that have adult public defender offices. Figure 10 shows this pattern has been consistent over the three years for which data is available. In FY 2004, overall costs in counties with adult public defenders came to \$360 per case (median = \$358), over 20 percent lower than in counties without PD services (average = \$438, median = \$381).

Part of these savings are achieved as a result of lower costs of counsel in PD offices (see Figure 11). In FY 2004, counties using public defenders saved \$78 per case on average over counties using alternative appointment methods (median savings = \$39 per case). It is worth noting that differences in attorney compensation have been shrinking over the past three years. Whereas in

FY 2002 public defender offices realized 27 percent lower average attorney fees per case, in FY 2004 the difference was only 9 percent. This could indicate a trend toward reductions in PD caseloads or possibly improving PD compensation.



Furthermore, though resources expended on litigation costs other than attorney fees have been declining since FY 2002, counties with public defender offices have been able to sustain these services at a higher level. Figure 12 shows that in FY 2004 when most Texas counties spent an average of \$29 per case in investigators, expert witnesses, and other direct litigation expenses (median = \$12), counties with public defenders devoted an average of 71 percent more resources to these supports (average = \$49, median = \$34).



Comparisons within PD Counties. Another way to explore the cost impacts of the public defender model is to look exclusively within counties that are utilizing both PD and rotation methods of assigning counsel. Table 6 compares FY 2004 direct litigation costs for cases represented by public defenders versus those assigned to outside counsel. Direct litigation costs include attorney fees, investigation, expert witnesses, and other direct costs of representing indigent defendants.

Table 6. FY 2004 Direct Litigation Costs per Case at Public Defender Counties

County	Total Adult PD Cases	Direct Litigation Cost per PD Case	Total Adult Non-PD Cases	Direct Litigation Cost per Non-PD Case
Colorado	193	\$473	10	\$240
Dallas	35,272	\$125	19,731	\$466
El Paso	7,666	\$369	6,537	\$358
Webb	1,907	\$767	925	\$605
Wichita	1,207	\$438	901	\$327

Results show that in four of the five adult public defender counties, direct costs per case are actually higher for cases served by the public defender. In light of other evidence (reported above) that PD offices tend to generate cost savings, this result was unexpected. The finding

suggests that where public defenders are available, they may be used more frequently for simple cases that can be processed without complication and at relatively low cost. More difficult and time consuming cases may be assigned to outside counsel, accounting for the higher cost per case. This explanation, if correct, would be consistent with practices reported by Dallas County stakeholders during site visit interviews.

Evidence from Dallas County’s Annual Performance Report. One of the study sites, Dallas County, has done a systematic internal evaluation comparing cost per case for public defenders vs. outside assigned counsel. Their findings, presented in “Judicial System Workload and Efficiency Measures,” Volume II of Dallas County’s annual performance report.¹²

The study found that in FY2004, the average cost per case assigned to a public defender in the county criminal courts was only \$47, down from \$62 per case in FY2003. Compared to the minimum \$100 reimbursement paid to private appointed attorneys, the study concludes the PD’s office is cost effective. The gains in efficiency over the past year were attributed to a 50% increase in cases assigned to the public defender’s office, up from 3,849 cases in FY2003 to 5,817 in 2004. Among district criminal courts, the lowest cost per case, \$114, was achieved in a court that assigned 191 felony cases to a single public defender over a three-month period (i.e., 64 cases/month on average). The highest cost per case, \$310, was from a court that assigned only 70 cases to their sole PD in the same timeframe (i.e., 23 cases/month on average).

Balancing Cost Efficiency and PD Workload

It would seem from the above data from multiple sources that the public defender model is considerably less expensive compared to rotation appointment. Cost savings appear to result from the fact that public defenders are positioned to take a large volume of indigent defense cases. This capacity is perhaps the chief advantage of the PD model. In the pursuit of cost savings, however, workloads can potentially become excessive. As evidence of this point, the Dallas County report concludes, “The number of public defenders in a court does not appear to be the primary cause of lower overall indigent defense cost. The greater cost factor appears to be

¹² The full 2004 Annual Performance Report for Dallas County is available for download at http://www.dallascounty.org/html/citizen-serv/budget/perf_report.html.

the number of cases assigned to each Public Defender.”¹³ This suggests that workload is a key factor in helping keep costs low under the public defender model.

In rotation models judges cannot easily limit the amount of time counsel devote to a case because private attorneys manage their own time and workload. Time available for public defenders to spend on individual cases, by contrast, is greatly constrained by the total number of cases they have been assigned. Perversely, if caseloads are high, public defenders are only able to spend the minimum time per case. It is therefore not surprising that they also accrue the minimum cost per case. They do not always have the ability of outside assigned counsel to spend the time deemed appropriate based on the demands of the case, then to bill accordingly. Public defender offices in both Dallas and Webb Counties are very much aware of this limitation. The sometimes competing values of moving dockets versus taking time to fully evaluate each defendant’s needs are perhaps the greatest source of tension between PD offices and the judiciary.

OTHER EFFICIENCIES IN A PUBLIC DEFENDER SYSTEM

In addition to potential efficiencies in the provision of direct defense services, study respondents mentioned a number of other ways in which public defender offices appear to smooth case processing. Many of these benefits occur because public defenders offer a single point of contact, simplifying and centralizing the conduct of routine business with other county offices. Areas where specific efficiencies were identified include the following.

Judicial Administration

Chapter 9 highlights a number of ways in which rotation models place an increased administrative burden upon judicial officials. Where public defender offices are available, they can assume a substantial portion of this responsibility on behalf of the judiciary. Once a case has been delegated to the PD, they assume duties associated with selecting and notifying an attorney, supervising and evaluating counselors’ job performance, processing any disciplinary matters or grievances, and managing the financial aspects of attorney compensation. In rotation models, these time-consuming tasks are the duty of the court. Furthermore, they are typically performed

¹³ See page 2.0a.

by judges and/or staff members in addition to other routine court management functions. Public defender models offer relief by delegating these responsibilities to indigent defense specialists.

Initial Contact with Defendants in Jail

In Webb County, the public defender's office has developed a functional and effective relationship with jail personnel. Because the PD offers a single point of contact for a large number of cases, efficient "batch processing" routines for indigent defendants have developed. Every morning the sheriff's office receives a list of defendants to be visited the sheriff's office and assembles them in the booking area. Jail personnel enjoy this relationship with the public defenders because they can move a large proportion of defendants at one time rather than running back and forth to retrieve inmates whenever separate attorneys visit each individual. The larger volume of defendants presented to the public defender are more feasible to accommodate in an expedited fashion.

Assignment of Defense Counsel to Individual Courts

Judges, public defenders, and assigned counsel alike generally agree that it is advantageous for defense counsel to work consistently with individual courts. Before the FDA, long-term relationships developed between individual defense attorneys and the courts they served. By working in a limited number of courts, defense attorneys could gain economies of scale and use their time more efficiently. Several defense attorneys observed that during the pre-FDA period they could conduct business on a number of cases during a single trip to court.

Since the FDA, the same defense attorneys report that they seldom have two cases assigned in the same court at the same time. One attorney said he must sometimes visit ten courts to deal with as many different cases. Not only is this more costly and time-consuming for advocates, but judges must routinely evaluate requests for resources such as investigators or expert witnesses from defense counsel they do not know. They must either take a risk in granting the request or hold a costly hearing to gather more information.

While most assigned counsel no longer enjoy the advantage of exclusive assignment to a single court, public defenders are usually assigned in this fashion. PDs do not have to balance

responsibilities in multiple venues, including federal court or other district or county courts. Neither is their attention divided between the demands of private practice and indigent defense. The public defender model continues to offer judges the opportunity to develop a one-on-one relationship with individual defense attorneys. Efficiencies gained through this close linkage between defense counsel and their court is likely a contributing factor in the apparent cost benefits of the PD model.

Improved Access to Investigators

The larger volume of cases seen by the public defender's office creates economies of scale that give defendants access to a larger array of services including investigators (see Figure 12, above). Individuals represented by assigned attorneys ordinarily do not have access to investigator's services unless the case goes to trial. Attorneys assigned from the rotation wheel must have investigator expenditures above a minimum approved by the court. However, because the public defender has investigators on staff, their skills can be brought to bear in a larger number of cases. The Webb County public defender's office reports that their attorneys are frequently able to use information gathered by staff investigators to structure pleas and make better deals for their clients.

SUMMARY

Dallas and Webb Counties are the two study sites using adult public defender systems. Webb County assigns about two-thirds of cases to the PD at magistration and they handle all types of cases. Dallas County judges determine how much of their docket they want the PD to handle, as well as what types of cases they will be assigned. Since the FDA, both counties have expanded their public defender offices.

Factors Impacting on Quality in a Public Defender System

Some judges, particularly in Dallas County, have been reluctant to endorse the public defender model. Because turnover is high, public defenders are generally less experienced compared to outside assigned counsel. Furthermore, rapid upward mobility as vacated positions are filled makes it difficult for misdemeanor judges to retain defenders in their court.

Workload is also a significant concern for public defenders. A Dallas County study found that cost efficiency increases as caseload sizes grow. On the one hand the capability of the PDs office to handle a large volume of cases is a primary benefit of the model. On the other hand, rising caseloads make it ever more challenging for attorneys to provide a high quality defense to every defendant. Ironically, costs may be lowest where caseloads are increased to the point that public defenders have little time available for close case evaluation. Cost savings achieved by overloading PD attorneys is a danger counties must be vigilant to avoid.

Factors Impacting Cost in a Public Defender Model

The PD model appears to contribute to reducing costs of indigent defense. Not only are cost of counsel per case generally lower than in rotation systems, but resources devoted to peripheral services such as investigators and expert witnesses are higher. Public defenders also seem to enhance efficiency in other parts of the case processing system.

When the public defender's office is assigned a case, for instance, court personnel are relieved of administrative responsibilities associated with assigning and monitoring counsel. Because the PD is institutionalized, they tend to develop cost- and time-saving routines with other county offices. As a result of their one-on-one relationship with the court they are assigned to, public defenders in Webb and Dallas Counties learn the procedures and preferences of individual judges, further enhancing efficiency. Courts do not have to repeatedly instruct individual attorneys assigned under the rotation model. Overall, the public defender system of assigning counsel holds considerable promise as a cost-saving approach if pay scales and workloads can be set at reasonable levels.

Chapter 11: CONTRACT COUNSEL SYSTEMS

INTRODUCTION

Of the three methods of attorney assignment, contract counsel appears to be interpreted in the largest variety of ways. In FY 2004, 22 Texas counties reported expending some attorney fees through contract mechanisms. Twenty counties spend more than half of their attorney fees via contracts. Seven counties report that over 90 percent of their attorney fees are expended through contracts. This research focuses on the experience of only one county. Counties using or considering contract systems might find it useful to reference standards and guidelines available from the US Department of Justice and the Texas State Bar.¹⁴

Indigent Case Assignment Methods in Cameron County

Cameron County is the only study site to employ a contract counsel system for providing indigent defense. Separate attorneys are contracted to represent indigent defendants in two phases of processing (see Chapter 7). All indigent defendants appointed counsel at arrest are assigned to one of two attorneys under contract to provide pre-indictment counsel. If defendants are indicted, they are then assigned a new attorney contracted to the court where the case is assigned. In instances of case conflict defendants are assigned to a different attorney serving the same court or to a different court.

In Cameron County, as at the other study sites, each court is given a budget which judges can spend as they see fit. Before the FDA different judges chose contract counsel, assigned counsel, or a combination of the two. Since the FDA, however, all courts have adopted the contract model. Attorneys are hired at the discretion of the court they serve. All aspects of the relationship – who will provide indigent defense services for the court, what they will be paid, and the size of their workload – are negotiated between the judge and the lawyer. They draw up their arrangement in a contract, and it is approved by the commissioners' court. All defense

¹⁴ “Contracting for Indigent Defense Services: A Special Report,” US Department of Justice, Bureau of Justice Assistance, April 2000 (<http://www.ncjrs.org/pdffiles1/bja/181160.pdf>). “Standards for the Provision of Legal Services to the Poor in Criminal Matters,” Developed by the State Bar of Texas Committee on Legal Services to the Poor in Criminal Matters, Adopted by the State Bar Board of Directors April, 2001 (<http://www.uta.edu/pols/moore/indigent/standards.htm>).

attorneys are paid a flat fee to take all or a portion of either pretrial cases or indicted cases in their assigned court.

QUALITY OF COUNSEL IN A CONTRACT DEFENDER SYSTEM

Cameron County judges were the most satisfied with the quality of indigent counsel since the FDA, possibly because the contract model applied at this site retains judges' discretion to assign counsel in their court. Judges at the other study sites have relinquished discretion in lieu of objective, uniform selection methods with counsel approved by majority vote. Contracts awarded through an open and competitive selection process would be more in keeping with the neutral appointment standard specified by the law.

Though judges and other stakeholders did not identify any specific problems, there is reason to suspect that the quality of indigent counsel could be impacted by the selection method that is used. Because Cameron County defense counsel serve at the judge's discretion, attorneys may be reluctant to take action on behalf of their client that they believe might displease the judge, even if it is in the best interest of the defendant. It is important to note, however, that this discretionary approach to attorney selection is not inherent in a contract counsel model. More objective methods such as a formal request for qualifications (RFQ) could be employed to choose the attorneys to be contracted.

COSTS OF COUNSEL IN A CONTRACT DEFENDER SYSTEM

Anecdotally, Cameron County officials believe that prior to the FDA indigent defense costs were lower in courts contracting for indigent defense services than in courts assigning cases to outside counsel. Though no formal analysis is currently available, the low pay rate for contracted counsel appears to be key factor in conserving costs. Contracts range from \$1,500 for a shared workload up to \$6,000/month for a single advocate serving an entire court. A number of contracted defense counsel have requested that judges consider an across-the-board salary increase. One defense attorney observed he would be glad to compete for the job and be forced to defend his qualifications in exchange for higher compensation.

A number of stakeholders confirmed that support resources available to contract defenders in Cameron County are quite limited, as well. Requests to the court for investigators or expert witnesses are rarely made and rarely granted. It is not clear whether the lack of requests results from little need for these services, or whether contract counsel are reluctant to request additional court expenditures. Contract defense counsel interviewed say they perform their own investigative work. Incidental expenses such as travel costs, phone calls, and administrative costs for copies and office administration are not reimbursed. Only recently did the county provide defense counsel with access to WestLaw legal research service.

Like the public defender model, contract counsel does appear to help counties stabilize funding. The county auditor's office observed that even though indigent defense costs have increased, changes are gradual from year to year. As an example, since legislation was passed adding stiff administrative penalties for "Driving while Intoxicated" offenders, the number of accused defendants taking their cases to trial has risen. The contract system buffers the county from an immediate cost impact, however, because contract attorneys have agreed to serve all cases in a court for the same amount of money regardless of the proportion that go to trial. Additional trials reduce the number of cases that are able to move through the courts.

As with the public defender model, this study suggests counties should be careful to balance cost savings against attorney workloads. In both the PD and the contract models, counties clearly do save money if attorneys can be assigned more cases at a fixed price. However, over-burdened defense attorneys are less able to provide high quality representation to individual defendants. Under either system, pursuit of cost savings without attention to caseloads will ultimately degrade the overall quality of defense.

SUMMARY

Cameron County is the only study site to employ contract methods of assigning counsel. It is not clear that the experience of this study site is typical of other Texas counties using contract appointment methods. Cameron County establishes separate contracts with attorneys representing defendants during the pre-complaint or -indictment phase, and those providing counsel to defendants against whom charges are brought. Judges also continue to retain a great

deal of discretion in selecting which attorneys will receive contracts to represent their court, as well as what their caseloads and compensation will be. As a result, defense counsel may have incentives to make decisions based on what they believe to be the judges' preferences. Like the public defender model, contract attorneys agree in advance to provide services for a fixed price. This helps stabilize costs for the county over time, but can potentially result in case overloads that ultimately impact the quality of defense.

To the extent that contracts are used to assign indigent counsel, counties must make sure that application process is open and that qualification and selection procedures are neutral. Attorneys must be free to represent the interests of their clients without concern for whether their job might be jeopardized if the court is displeased. Guidelines available from the US Department of Justice and the Texas State Bar Association provide guidelines regarding how to structure contract systems that meet these criteria (see footnote 13).

Chapter 12: CONCLUSIONS

The purpose of this research study has been to gather information about how a sample of Texas counties have adapted indigent case processing systems to meet the requirements of the Fair Defense Act. The study sites included Cameron, Collin, Dallas, and Webb Counties. This combination of counties included sites with populations greater than and less than 250,000, high and low poverty rates, border and non-border locations, and a variety of strategies for assigning counsel including rotation, public defender (PD) and contract systems.

The project examined the amount and type of change introduced to local indigent case processing systems. It also considered the impacts of those changes on indigent defense costs. Three major findings have emerged.

1. Texas is providing more defendants with indigent defense since the FDA was adopted.

Since the Fair Defense Act was implemented, the number of individuals receiving appointed counsel has increased nearly 40 percent. In FY 2004, 371,167 adult defendants were served, up from 278,479 during the first year of the Act. Overall costs increased 20 percent during the same timeframe, rising from \$114 million in 2002 to \$136 million in 2004. Despite these overall increases, however, attorney fees per case have risen a modest 3.3 percent per year – just enough to keep pace with inflation.

2. The counties studied are all complying with the “prompt appointment” provisions of the FDA.

Wide variation was observed in the strategies and timelines adopted by the study sites to comply with the FDA. Two counties (Dallas and Webb) have had nearly two decades of experience appointing counsel to indigent defendants within days of arrest. Cameron and Collin Counties, by contrast, had to implement entirely new indigent case processing procedures to meet the FDA timeline. Though local procedures vary, the study sites have all found ways to successfully appoint counsel within two to five days (see Figure 5).

3. Counties have flexibility in how they implement FDA requirements, and their choices may impact costs.

The FDA provides counties with both opportunity and responsibility to craft their own response to the law. It provides flexibility to implement indigent defense processes matched to the unique values, needs, and resources of each Texas community. This research confirms that the study sites have each met the new indigent defense standards in different ways, and the particular strategies adopted have implications for cost. Furthermore, local values held by the judiciary and other stakeholders determine the extent to which cost is a core consideration in the design of indigent defense systems.

Examples of instances in which county choices impact costs are highlighted throughout this report. Some key decision points where costs are affected include the following:

Chapter 2: Planning for Effective Indigent Defense Systems

- Judges should provide strong leadership for a “problem-solving” mindset and collaboration among all key stakeholders.
- County officials need to actively seek solutions to improve efficiency, contain costs, and strengthen the quality of indigent defense services.
- Counties must develop data systems capable of providing information and feedback to support ongoing monitoring and improvement of indigent defense systems.

Chapter 3: Impacts of Intake and Booking Systems

- Counties need to evaluate systems to ensure the quality and timeliness of indigent case processing for defendants arrested and detained in municipal jurisdictions.
- Counties should consider innovative approaches such as video magistration to ensure FDA standards are met without the costs of high-speed transportation of defendants from municipal jurisdictions to county jail.

Chapter 4: Creating Opportunities for Early Access to Bond

- Counties should provide ample opportunities for arrestees to have bond set or reviewed before detaining defendants. These potentially include:
 - Local magistrations conducted by municipal authorities;
 - Sheriff’s bond review conducted during book-in at county jail;
 - Centralized magistrations conducted after book-in at county jail; and finally
 - Bond reduction hearings conducted after indigent defendants still in detention have been appointed counsel.

Chapter 5: Appointment of Counsel in Cases with “No Charges” Filed

- In FY 2004, only two percent of indigent cases statewide had attorney fees paid when charges were un-filed.

Chapter 6: Speed of Appointment

- Counties may need to allow more time for a meaningful determination of indigence before appointing a public lawyer.

Chapter 7: Determination of Indigence at Arrest

- Counties should continue to develop new strategies to accurately discriminate between defendants who need assigned counsel versus those that are capable of paying for their own defense.
- Possible strategies suggested during site visits include:
 - Examine objective evidence from motor vehicle registration records, property tax records, or credit reports. Develop computer systems to allow for automated record matching and flagging of records meeting set criteria.
 - Require documentation from defendants such as tax returns, pay stubs, or evidence of child support payments.
 - Re-design affidavits of indigence to encourage defendants to prepare a more thoughtful and complete response.

- Provide clear notice on the affidavit of indigence that the document represents a sworn statement submitted under penalty of perjury.
- Clearly state penalties associated with falsification of financial information.

Chapters 8 through 11: Rotation, Public Defender, and Contract Methods of Assigning Counsel

- Adult attorney fees account for 85 percent all (adult, juvenile, direct, and indirect) indigent defense costs. When selecting methods of assigning counsel, officials should meaningfully balance cost and quality.
- Public defender offices appear to offer advantages in terms of both cost and quality when compared to rotation appointment systems.
 - Attorney fees per case are lower in public defender systems (see Figure 11).
 - Expenditures on supports such as investigators, expert witnesses, and other direct litigation costs are higher in public defender systems (see Figure 12).
 - Indigent defense costs are more predictable year-to-year.
 - Public defenders reduce administrative burden on the judiciary.

CONCLUSION

This research finds that, since the FDA, more indigent defendants in Texas are being provided access to a public defense than ever before. For the most part, the counties studied have successfully adapted local case processing systems to meet the requirements of the FDA.

As counties gain more experience with the law, opportunities to improve the quality, efficiency, and timeliness of indigent case processing continue to be identified. Counties where local criminal justice officials (county officials, judges, police officers, defense lawyers, and prosecutors) are able to work cooperatively to identify problems and solutions, and seek out and test innovative approaches, are most likely to find feasible and affordable ways to deliver high quality indigent defense service.

Appendix A
Affidavits of Indigence

**ORDER FINDING PROBABLE CAUSE
SETTING BAIL AND INFORMING DEFENDANT OF RIGHT TO COUNSEL
WARNING BY MAGISTRATE**

THE STATE OF TEXAS
COUNTY OF CAMERON

CAUSE NUMBER _____

This is to certify that I, _____ acting as and in the capacity of a
magistrate did, on the _____ M., did in clear language
inform:

NAME OF ACCUSED _____
CASE NUMBER (S) _____

who appeared before me in the _____ Court in Cameron
County, Texas as follows:

1. You are accused of the criminal offense(s) of

Which charge is (is not) based on an affidavit.
2. You have the right to remain silent and are not to make any statement. Any
statement made by you can be used as evidence against you in a court of
law.
3. You have the right to hire a lawyer. You have the right to talk to a lawyer
before being questioned or interviewed by any peace officer or attorney
representing the state and you have the right to have a lawyer present with
you during any such questioning or interview. You have the right to end any
such questioning or interview at any time.
4. You have a right to have an examining trial if you so desire.

I, the magistrate in this case, have further in clear language understood by the accused
person informed said accused person that:

1. You have the right to request appointment of counsel if you cannot afford
counsel.
2. The procedure for requesting appointment of counsel consists only of you,
the accused person, completing the "Affidavit of Indigence" and signing and
swearing to the truthfulness of the statements contained in said Affidavit.

THE STATE OF TEXAS
COUNTY OF CAMERON

CAUSE NUMBER _____

3. I am providing you at this time a copy of the "Affidavit of Indigence and Request for Appointing of Counsel" in a language which you can understand and I will make available, at your request, an individual to provide reasonable assistance in completing said affidavit at this time.
4. If you request court appointed counsel, I will not later than 24 hours from the time of your request for appointment of counsel forward your Affidavit and Request to the appropriate judge for consideration of your Affidavit and Request.
5. If the judge finds you are entitled to court appointed counsel, that judge will appoint counsel within one (1) working day after receiving your request for court appointed counsel and will notify your appointed attorney of such assignment.
6. Said attorney will make every reasonable effort to contact you not later than the end of the first working day after appointment and to interview you as soon as practicable.

The Affidavit Submitted for Probable Cause Determination as to the above named accused in the above referenced case number has been presented to me and upon consideration of the facts and circumstances contained therein, it is hereby determined that:

probable cause exists for the purposes of Texas and Federal Law for the purposes set out in Section 5 of the Texas Code of Criminal Procedure, Article 17.033 and the accused is ordered to remain in custody of the Cameron County Sheriffs Department. I have informed the accused of his Miranda warnings and Magistrate warnings as provided by law and I have set the bail in this case number at: \$ _____

with conditions as set out on the attached conditions of bail form

probable cause does not exist and the accused is ordered released from custody in this case/charge.

I, the magistrate in this case, hereby certify that:

1. The law enforcement agency having custody of the accused has brought the accused before this magistrate not later than 48 hours after arrest.
2. have informed the accused of this right to request appointment of counsel, if indigent, and the procedures for requesting appointment of counsel.

THE STATE OF TEXAS
COUNTY OF CAMERON

CAUSE NUMBER _____

3. If the accused does not speak and/or understand the English language or is deaf, I have informed the accused in a manner consistent with the Texas Code of Criminal Procedure Articles 38.30 and 38.31.
4. I have ensured that all reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided.
5. A record (written forms, electronic recordings, or other documentation as authorized, of the magistrate's advising the accused of right to appointed counsel has been prepared in accordance with law and such record consists of this document signed by me as Magistrate, a copy of which was provided to the accused person.

I, the magistrate in this case, do certify that I am the duly elected or appointed by the _____ of Cameron County, Texas and that I have reviewed the accused's Affidavit of Indigence and Request for Counsel/Declaration of Non-Indigence Status, which is attached hereto, and I hereby further certify that:

- The accused has announced he/she intends to waive his right to counsel and to proceeding representing himself/herself in any proceedings in this case.
- The accused has announced he/she is not indigent and intends to hire an attorney to represent him/her in any proceedings in this case.
- The accused is being held on a misdemeanor accusation and has claimed he /she is indigent and has requested court appointed counsel. This request is referred to the appropriate judge of the Courts for Cameron County, Texas for determination of indigence and, if appropriate, appointment of counsel in accordance with the alternative plan approved in accordance with law.
- The accused is being held on a felony accusation and has claimed he/she is indigent and has requested court appointed counsel. This request is referred to the appropriate judge of the Courts of Cameron County, Texas for determination of indigence and, if appropriate, appointment of counsel in accordance with the alternative plan approved in accordance with law.
- SIGNATURE OF ACCUSED _____

Magistrate, Cameron County, Texas
Date _____ Time _____

FINANCIAL INFORMATION

EMPLOYER: _____ PHONE: _____

HOW LONG: _____ SALARY: _____ UNEMPLOYED: _____ STUDENT/WHERE: _____

MARRIED: _____ SINGLE: _____ SEP: _____ DIVORCED: _____ SPOUSE'S NAME: _____

HOME ADDRESS: _____ PHONE: _____

NO OF CHILDREN: _____ AGES: _____ LIVING W/YOU: _____ IF NOT, WHERE

ASSETS

CAR: NO CAR: _____ OWNS CAR: _____ PAYMENTS: _____ MAKE: _____ MODEL: _____

HOME: OWNS HOME: _____ LIVING WITH: _____ RENT PAID: _____ BUY/PMT: _____

OTHER ASSETS: _____

LIABILITIES (MONTHLY PAYMENTS)

HEALTH

LIST ANY HANDICAPS AND/OR SPECIAL HEALTH CONDITIONS: _____

DURING THE PAST FIVE (5) YEARS, HAVE YOU BEEN TREATED FOR ANY OF THE FOLLOWING

MENTAL CONDITION: _____ DRUG ABUSE/ADDICTION: _____ ALCOHOLISM: _____

(IF SO, WHERE AND WHEN AND FOR HOW LONG: _____

PRE-TRIAL RELEASE RECOMMENDATION

REQUEST FOR COURT APPOINTED ATTORNEY

My name is _____, I am being held in
Cameron County Jail on a charge(s) of _____
_____, having been charged in the following and
numbered causes(s): _____

do solemnly swear that I am wholly destitute of means to provide counsel. I request that
an attorney be appointed to represent me in any hearing to be held in connection with
charge(s). I have filled out the information on the reverse side and swear to the
truthfulness thereof as well.

Signature of Defendant

SUBSCRIBED AND SWORN to before me by the above named Defendant,
on this _____ day of _____, 200____, to Certify which, witness
my hand and seal of office in Cameron County, Texas.

L.H.

- ____ Notary Public
- ____ Judge, Municipal Court
- ____ Clerk, Municipal Court
- ____ Justice of the Peace
- ____ Clerk, Justice Court
- ____ (check one)

I DO DON'T UNDERSTAND THE ENGLISH LANGUAGE.

AFFIDAVIT OF INDIGENCY

STATE OF TEXAS

IN THE DISTRICT / COUNTY

VS.

COURT OF

COLLIN COUNTY, TEXAS

Upon my oath under penalty of perjury, I affirm the following to be true:

I AM THE ACCUSED IN THE ABOVE CASE. I AM INDIGENT AND HAVE NO MONEY OR ASSETS WITH WHICH TO HIRE AN ATTORNEY. I REQUEST THE APPOINTMENT OF AN ATTORNEY.

My Full Name is _____ Race _____ Sex _____

My Date of Birth is _____ D/ L or ID Number _____

My home address is _____ City _____ Zip Code _____

My home telephone number is _____, work _____

I am employed by _____, located at _____

My **take home** pay per week is \$ _____. **OR I have not** been working since _____

Other household income is \$ _____ per week earned by _____

I am (single) (married) (separated). I have _____ dependants, ages _____

I (do) (do not) (pay) receive court ordered child support monthly. (Amount): \$ _____

I have \$ _____ in checking/savings. I receive \$ _____ in other income.

I own or partially own interest in the following property:

Car(s) Make/Year _____ Value(s) _____

Any Real Estate (including home) _____ Value _____

Business _____ Value _____

Other _____ Value _____

I receive the following government assistance each month:

Food stamps Amount \$ _____ Welfare Amount \$ _____

Disability Amount \$ _____ Public Housing Amount \$ _____

Medicaid Amount \$ _____ Supplemental Soc. Sec. Amount \$ _____

I have the following debts:

Creditor	Balance Owed
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

I have the following monthly expenses:

Bill / Expense	Monthly amount
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

I have special expenses or money problems or other situations that I want the court to know about that helps explain why I cannot afford to hire a lawyer, as follows:

I verify under oath that the statements in this Affidavit are true and complete.

Signature

Subscribed and sworn to before me, the undersigned authority, on this the _____ day of

_____ 200____.

Magistrate/Clerk/Peace Officer, Collin County, Texas

COURT: _____

DATE: _____

DEFENDANT _____

DOB: _____

CASE NO(s)and LEVEL: _____

A B PV
A B PV
A B PV
A B PV

CUSTODY STATUS: JAIL BOND

ATTORNEY APPOINTED? YES NO

ATTORNEY NAME

APPLICATION FOR COURT-APPOINTED COUNSEL

_____ I am without means to employ counsel and hereby request the Court to appoint counsel for me.

Total Monthly Income:
(Including spouse's income, SSI, child support, disability, etc.)

- _____ \$0
- _____ Less than \$500
- _____ \$500 - \$1000
- _____ \$1000 - \$1500
- _____ \$1500 - \$2000
- _____ \$2000 - \$2500
- _____ \$2500 - \$3000
- _____ Over \$3000

Total Assets: \$ _____
(Including house, cars, cash, stocks, bonds)

Total Monthly Expenses: \$ _____
(Including rent, utilities, credit cards, loans, child support)

Are You Married? Yes No

Number of Children **that You Support**: _____

I certify under penalty of perjury the above financial information to be correct.

Defendant's Signature

SWORN AND SUBSCRIBED BEFORE ME, CYNTHIA CALHOUN, COUNTY CLERK, DALLAS COUNTY, TEXAS

DATE: _____ BY: _____
DEPUTY COUNTY CLERK

WAIVER OF COURT-APPOINTED COUNSEL

_____ I do not wish to apply for Court-appointed counsel at this time.

Defendant's Signature

DEFENDANT'S FINANCIAL AFFIDAVIT

CASE NO.	OFFENSE
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I am fully competent to make this affidavit.

DEFENDANT	NAME		AGE	DATE OF BIRTH	PHONE NO.	
	ADDRESS <small>Last First M.I.</small>		S. S. NO.	TEXAS DRIVER'S LIC.		
	CITY		<input type="checkbox"/> Unemployed <input type="checkbox"/> Employed	<input type="checkbox"/> Student <input type="checkbox"/> Retired	<input type="checkbox"/> Welfare With whom do you live?	
	<input type="checkbox"/> Married <input type="checkbox"/> Divorced	<input type="checkbox"/> Separated <input type="checkbox"/> Single	Children How many?	Employed At	Can return after arrest	<input type="checkbox"/> Yes <input type="checkbox"/> No
FINANCIAL	Salary \$ Per		Pay or Receive Child Support <input type="checkbox"/> Yes <input type="checkbox"/> No	Address		
	Other \$ Income		How Much \$	Supervisor Name & Phone No.		
	Spouse \$ Income		Home \$ Mortgage	Per Month	Home \$ Rent	Per Month
	Total \$ Income Per		Total \$ Expenses	Per Month	Do you own Real Property?	If Yes \$ Value
				Do you or Spouse Own a vehicle?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, Make & Year
SPOUSE	NAME		EMPLOYER		EMPLOYER PHONE	
	ADDRESS					
	CITY					

In an emergency, contact: Nearest relative or friend

<i>I am currently:</i> <input type="checkbox"/> In Jail <input type="checkbox"/> On Bond	Type of Bond: <input type="checkbox"/> Cash <input type="checkbox"/> Personal <input type="checkbox"/> Surety	NAME	NAME
		ADDRESS	ADDRESS
Do you have an Attorney? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, Attorney Name Below:	CITY	CITY	
	PHONE	PHONE	

ATTORNEY REQUEST:

Are you requesting that an attorney (counsel) be appointed to represent you? Yes or No _____ Place Initials Here: _____

**STATE OF TEXAS
COUNTY OF WEBB**

AFFIDAVIT

On this _____ day of _____, _____, I have been advised by the _____ Court of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the Court to appoint counsel for me. I hereby, having been sworn upon oath, depose, state, and certify that the above information is true and correct.

Witness my signature on this the _____ Day of _____
Accused Signature _____
 Print Name _____

Subscribed and sworn To before me this the _____ Day Of _____, 200__

Magistrate or Notary Public _____
 Print Name _____

Appendix B

Attorney Fee Schedule

SECTION SEVEN

Payments to Court Appointed Attorneys

6.01 Hourly Or Fixed Rates

a. Once appointed, and until all legal processes are exhausted or counsel's responsibility otherwise ends, counsel shall be paid within a range of \$75 to \$175 per hour, or a fixed rate of:

- \$250 for habeas corpus related to pre-trial release,
- \$750 for appointment when prosecution is thereafter declined,
- \$100 for a court-appearance,
- \$250 for pre-trial processes,
- \$750 a day for a dispositive motion or plea,
- \$750 a day for a plea of not guilty,
- \$250 a day for post-verdict trial-court processes, and
- \$1,500 for habeas appeals; and
- \$ 3,500 for direct appeals;

or by a combination of an hourly-rate and a fixed rate.

The foregoing plan becomes effective December 31, 2003.



Judge Corinne Mason

Judge Jerry Lewis

Judge John O. Barry

Judge Ray Wheless

Judge Greg Brewer

3.06 Payment by Defendant.

If a court finds that a criminal defendant has sufficient financial resources to offset the costs of legal services provided under this Plan it may order the defendant to pay the county all or a portion of the costs of legal services.

PART FOUR PROCEDURES FOR ATTORNEY COMPENSATION

4.01 Attorney Fee Schedule

The district judges adopt (pursuant to Article 26.05 Tex. Code of Crim. Proc.) the following fee schedule for appointed attorneys:

A minimum of \$75 an hour and a maximum of \$125 an hour, or a total fixed fee as set forth below:

1. Pretrial Habeas Corpus motions: \$200
2. SJF or 3rd degree case which results in a plea of guilty: \$400
3. 1st or 2nd degree case which results in a plea of guilty: \$750
4. Case which results in a trial: \$500 a day, plus up to \$1,000 pretrial
5. Appeals: \$3,500, except for Anders briefs and complicated appeals, as determined by the judge.

Judges can vary from these guidelines in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

4.02 Payment Request Form

Counsel shall submit their requests for payment on the auditor's approved Payment Request Form.

PART FIVE CONCLUSION

5.01 Amendments

This plan is subject to amendment.

5.02 Availability of Forms

Forms provided for in this plan are available on the Internet at the following URL address: www.texasjudge.com.

COURT APPOINTED ATTORNEY FEE SCHEDULE

COUNTY CRIMINAL COURTS

Effective January 1, 2002

Fixed Daily Rate

	<u>Minimum</u>	<u>Maximum</u>
<u>Non-Jury Disposition</u>	\$ 75.00	\$750.00
<u>Jury Trial</u>	\$200.00	\$1,000.00
<u>Dismissals</u> including 12.45 dismissals	\$ 25.00	\$500.00
<u>Appeals</u>	\$500.00	\$2,500.00

Hourly Rates

<u>Non-Appeals</u>	\$75.00/hr	\$100.00/hr
<u>Appeals</u>	\$60.00/hr	\$120.00/hr

**SCHEDULE OF FEES
FOR THE COMPENSATION OF APPOINTED COUNSEL**

The Criminal District Court Judges of Dallas County and the Judges of the District Courts giving preference to criminal cases in Dallas County, in accordance with the requirements of TEX. CODE CRIM. PROC. § 26.05, formally adopt the following fee schedule for the compensation of appointed counsel in all felony cases other than capital cases in which the state seeks the death penalty:

I. PLEA OF GUILTY OR NOLO CONTENDERE

Mini-Cap/1st Degree	\$500.00 based on 6 hours of work
2 nd Degree	\$400.00 based on 5 hours of work
3 rd Degree/State Jail	\$300.00 based on 4 hours of work

If the attorney documents more time spent than the schedule allows, the judge may approve additional time at \$75.00 per hour.

II. REVOCATIONS

\$200 based on 3 hours of work

If the attorney documents more time spent than the schedule allows, the judge may approve additional time at \$75.00 per hour.

III. TRIALS BEFORE THE COURT

\$500.00 based on 6 hours of work

If the attorney documents more time spent than the schedule allows, the judge may approve additional time at \$75.00 per hour.

IV. JURY TRIALS

\$750.00 per trial day with a jury

The judge may approve additional time at \$75.00 per hour for all other reasonable, documented legal activity.

V. MTS, EXAMINING TRIALS, WRIT HEARINGS, COMPETENCY HEARINGS, ETC.

The judge may approve time at \$75.00 per hour for all reasonable, documented legal activity.

VI. APPEALS

Hourly rate: \$100.00

Jury trial range: \$1800.00 - \$3500.00

Anders brief: \$400.00 - \$1000.00

Standard approved expenses: reading record, research, writing the brief

Discretionary pay: letters, phone calls, meetings with family

Appellate argument: will pay for time to prepare, argument, travel, hotel

VII. EXPERT AND INVESTIGATIVE FEES

Attorneys should receive prior court approval for all investigator and expert witness expenses. Counsel may incur expenses not to exceed \$750.00 without prior court approval. Expenses incurred without prior court approval, including expert and investigator fees, will be reimbursed up to a maximum of \$750.00 if the court finds them to be reasonably necessary and reasonably incurred. Any fees or expenses in excess of \$750.00 must receive prior court approval.

Expenses for investigators will be reimbursed at a rate of \$40.00 per hour plus mileage at a rate of 34 ½ cents per mile, not to exceed a maximum of \$750.00 without prior court approval.

Expert witnesses will be reimbursed at the expert's actual hourly rate, not to exceed a maximum of \$750.00 without prior court approval.

VIII. EXPENSES

Attorneys will be reimbursed for actual expenses incurred in accordance with the rates and procedures set forth in this schedule. To receive reimbursement, the attorney must submit an itemized accounting of the expenses incurred along with the attorney pay sheet. No payment shall be made until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment.

IX. TIME DOCUMENTATION

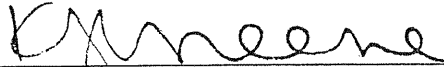
To be compensated for time not accounted for in the flat rates in paragraphs I through VI, an attorney must submit a separate hourly billing statement. The billing statement must reflect the date an itemized legal activity occurred and each itemized activity must be rounded to the nearest ¼ hour. Payment for court appearances to pass a case shall be limited to ½ hour per pass. The billing statement must be signed by the attorney. The signature of the attorney is an attestation as to the billing statement's accuracy.

X. DISPUTES

If an attorney is not satisfied with the amount of compensation for a pay sheet and/or billing statement submitted under this schedule, the attorney should personally approach the approving judge and request that the judge review the pay sheet and/or billing statement in dispute. Upon a request of an attorney, the judge must review that pay sheet and/or billing statement. The judge must either pay the amount requested or issue a written findings stating the amount of payment the judge approves and each reason for approving an amount different from the requested amount. If, after review and alteration, if any, an attorney is still not satisfied with the amount of compensation, the attorney may appeal the judge's decision by following the procedure set forth in TEX. CODE CRIM. PROC. § 26.05.

I certify that the foregoing fee schedule was adopted by a unanimous vote of the Judges of the Criminal District Courts of Dallas County and of the Judges of the District Courts giving preference to criminal cases in Dallas County on November 5, 2003. The schedule is to be effective immediately. Work performed on or after the effective date shall be paid according to this schedule regardless of the date of appointment. Work performed prior to the effective date shall be paid in accordance with the previous fee schedule.

SIGNED this 11 day of November, 2003.



KAREN J. GREENE, PRESIDING JUDGE
CRIMINAL DISTRICT COURTS
DALLAS COUNTY, TEXAS

Exhibit G

WEBB COUNTY FEE SCHEDULE -Adopted 12/03/03

Vouchers should be itemized on 1/4 hour basis

	<u>Juveniles/ Child Protective Cases</u>		<u>Misdemeanors</u>				<u>Felonies</u>	
	<u>Misd/Felonies</u>	<u>Cert/Discret</u>	<u>Regular</u>	<u>DWI's</u>	<u>SJF/3rd</u>	<u>2nd</u>	<u>1st</u>	<u>Capital</u>
Initial Jail Visit	\$75	\$75	100	100	100	100	100	100
Court Appearance (Hourly Rate)	75/appearance	\$75/appear	75	75	75	85	100	100
Evid. Hearing & MTR's (Hourly Rate)	75/hour cap \$150	85/hour	75/hour	85/hour	85/hour	85/hour	100/hour	100/hour * *cap/600@day 1st ch *cap/300 2nd chair
Trial (Hourly Rate) <u>See cap</u>	75/hour cap \$400/day	85/hour 600/day	75/hour \$400/day	75/hour \$400/day	85/hour \$500	100/hour \$600	125/hour \$750	150/hour-1st ch 120/hour-2nd ch cap/25,000 - 1st ch cap/15,000 - 1st ch
Out-of-Court Time (Hourly Rate) <u>*Need prior approval to exceed hours on regular</u>	50/hour 10 hours	60/hour 10 hours	50/hour 10 hours	60/hour 10 hours	50/hour 10 hours	60/hour 15 hours	75/hour 30 hours	\$100/hour-1st chair \$80/hour-2nd chair Capped @ 120 hours
Flat Fee for Pleas	100	500	500	500	500	750	1000	1st ch - 3500 2nd ch - 2500
Investigator Fees-Capped at (Approval required)	\$100	\$750	\$300	\$300	\$500	\$750	\$1,500	Approval Required

APPEALS AND P.D.R.'s

<u>Non-Capital</u>	<u>Hourly Rate</u>	<u>Total</u>	
Appeal	\$75/hour	\$2,250	
Appeal-Trial>5 days	\$75/hour	\$4,500	
PDR	\$75/hour	\$750	
New Brief after PDR granted	\$75/hour	\$1,500	
Oral Argument-Ct. Crim. Appeal	\$75/hour	\$300	
Travel expenses for Oral Argu	receipts req		
Other: Prior approval required			
<u>Capital</u>	<u>Out of Court</u>	<u>In Court</u>	<u>Pres. Max</u>
Appeal-Death Penalty not sought	\$100	\$150	\$4,500
Appeal-Death Penalty sought	\$150	\$200	\$15,000
Travel expenses			
Other:			
<u>Prior approval required</u>	receipts req		