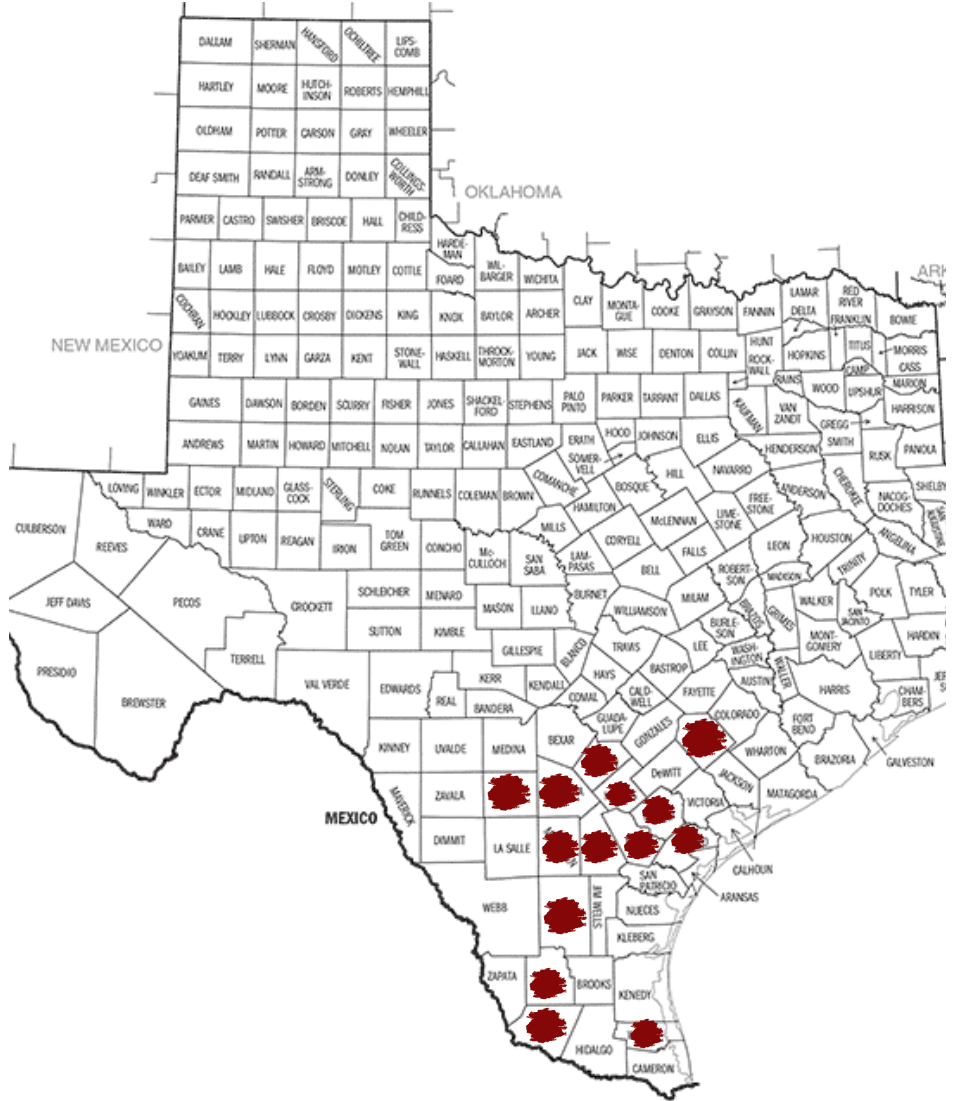


FEBRUARY 2021

NAPD SYSTEMS BUILDERS ASSESSMENT

THE TEXAS RIOGRANDE LEGAL AID PUBLIC DEFENDER DIVISION (TRLAPD)



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**NAPD SYSTEMS BUILDERS ASSESSMENT
OF THE TEXAS RIOGRANDE LEGAL AID PUBLIC DEFENDER DIVISION (TRLA PD)**

February 2021

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EXECUTIVE SUMMARY

Texas has long provided public defense by requiring local judges in 254 counties to choose their own public defender system, while funding for that system is provided at the county level. This changed to some extent with the passage of the Texas Fair Defense Act and the creation of the Texas Indigent Defense Commission. Some public defender offices were created, some Managed Assigned Counsel systems were established, but the great majority of the counties, particularly those in rural areas, maintained assigned counsel systems.

One of those rural places where a public defender office has been created is in South Texas. Texas RioGrande Legal Aid, or TRLA, had been providing civil legal services to that area since 1970, now covering 68 counties. One of the first Executive Directors of TRLA worked on the Fair Defense Act, and had a vision of how TRLA could bring public defense reform to South Texas. For over a decade, TRLA has provided public defense services through a public defender division (TRLA PD) to a growing number of South Texas counties. Four TRLA PD offices have been providing these services while a fifth is in the process of being created.

In 2019, TIDC and the Director of TRLA PD asked the National Association for Public Defense's Systems Builders Committee to assess the progress of this relatively new effort by TRLA. Two consultants from that committee completed that assessment over 2020, identifying strengths and weaknesses and making findings and recommendations. What follows is that assessment. Highlights of the assessment follow below.

Strengths. Several of the strengths were identified as follows:

- More persons accused of crime who are indigent are now being represented by counsel instead of representing themselves *pro se*.
- The public defense system provided by TRLA PD is independent of the judiciary and prosecution.
- Workloads are controlled by compliance with standards set by TIDC.
- TRLA PD is committed to being client centered.
- TRLA and TRLA PD have been hiring committed hardworking people.
- Law school student loan assistance is being provided to staff lawyers.

Weaknesses. Several of the identified weaknesses were as follows:

- The investigative function is being used in an administrative capacity.
- There is excessive turnover in two of the offices.
- There is no method for contracting with private lawyers when a lawyer leaves, resulting in excessive workloads for the remaining lawyers.
- The vision of providing holistic defense has not been achieved.

Recommendations. Several of the recommendations for TRLA and TRLA PD are as follows:

- Leaders in TRLA PD should either have a reduced or no caseload.
- TRLA PD should be intimately involved in the recruiting of attorneys.

- TRLA PD should contract with private attorneys to handle the caseloads of departing attorneys until the attorneys are replaced.
- The job duties of investigators should be redefined to emphasize performing criminal defense investigations.
- A Training Director should be hired to create and implement a comprehensive training program for TRLA attorneys.
- TRLA attorneys should be present at magistrations, and TIDC and the counties should provide funding to make this happen.

Much of this report focuses on how to improve TRLA PD. This should in no way diminish what TRLA and TRLA PD have accomplished in a few short years. They have accomplished nothing short of transforming the provision of public defense services in South Texas, and perhaps for the first time systematically meeting the demands of *Gideon v. Wainwright*.

NAPD Systems Builders Committee. This report was undertaken by the National Association for Public Defense (NAPD) at the request of Geoff Burkhart, Executive Director of the Texas Indigent Defense Commission, and Abner Burnett, Director of the Texas RioGrande Legal Aid Public Defender Division (TRLA PD).

NAPD is a 22,000 plus member association of public defenders and other public defense professionals. NAPD strives to be the voice of public defense in America, seeking to engage “all public defense professionals into a clear and focused voice to address the systemic failure to provide the constitutional right to counsel, and to collaborate with diverse partners for solutions that bring meaningful access to justice for poor people.”

Consultants. Ernie Lewis received his undergraduate degree from Baylor University in 1969, a Master of Divinity from Vanderbilt University in 1973, and a *Juris Doctor* (J.D.) from Washington University in 1977. He was a VISTA Volunteer in Minnesota in 1970. He was with the Department of Public Advocacy from 1976 until 2008 in several different capacities, including appellate lawyer, local assistance branch manager, directing attorney of the Richmond Trial Office, and Regional Manager for the Central Kentucky Region. He was appointed Kentucky Public Advocate in 1996, overseeing the statewide public defender system, and served in that capacity until 2008 when he retired from state government. From 1985 until 2015, he taught at the National College of Criminal Defense located at Mercer Law School in Macon, Georgia. He served for two years as Chair of the American Council of Chief Defenders from 2006-2007. He has worked on indigent defense issues with various groups in Georgia, North Carolina, Minnesota, Texas, Ohio, Indiana, Tennessee, and Louisiana. In 2000, he was named Outstanding Lawyer by the Kentucky Bar Association. In 2007, he was given the Champion of Indigent Defense Award by the National Association of Criminal Defense Lawyers. In 2008, he was given the Chief Justice’s Special Service Award. He received the Department of Public Advocacy’s Professionalism and Excellence Award in 2003 and the Nelson Mandela Award in 2009. He served as Legislative Agent for the Kentucky Association of Criminal Defense Lawyers from 2009-2015. He was one of the founding board members of

KACDL and served as the President of KACDL in 2016. He is active in teaching public defenders and consulting. From January 2014 until January of 2021, he served as the Executive Director of the National Association for Public Defense, an organization with over 22,000 members, including 130+ organizations. He intends to remain in the struggle for justice including public defense reform.

William Ward is the State Public Defender for the State of Minnesota. Previously, Bill served as Chief Public Defender for the Fourth District—Hennepin County, Minnesota (April 2009-June 2014) and as Chief Public Defender, Tenth Judicial District, Minnesota (January 2001-April 2009). Prior to moving to Minnesota, Bill worked in the Law Office of the Cook County Public Defender, Cook County, Illinois (1987-2001). While there, he practiced in Chicago as well as the 6th Municipal District as a Felony Trial Assistant and Trial Supervisor. Bill has served as an adjunct at Hamline University Law School, William Mitchell College of Law (now Mitchell Hamline School of Law) and DePaul University College of Law, instructing on trial advocacy. Bill is on faculty at the National Criminal Defense College, Illinois Extended Trial Advocacy Program, Wisconsin Trial Skills Academy, the Minnesota Public Defender Trial Advocacy Institute and has presented or coached on many topics in numerous jurisdictions. Bill is the past-Chair of the NAPD Systems Builders Committee and is on the NAPD Steering Committee. He received his J.D. from DePaul University College of Law and his B.A. from the University of Illinois. He is admitted to practice in Minnesota and Illinois.

Methodology. This report is the product of interviews conducted with then current employees of TRLA PD as well as some past employees. In addition, interviews were also conducted with top leadership of TRLA, law students at the University of Texas, and law professors. Numerous documents were reviewed provided by TRLA PD leadership, employees, and the Texas Indigent Defense Commission. They are appended at the conclusion of this report.

It should be noted that the entire assessment was conducted remotely, which impeded its completion. All interviews were done by Zoom. There is no replacement for an in-person assessment, driving the roads of an area, going to court, reviewing files, attending staff meetings, and the like. While a remote assessment created difficulties, the consultants feel that the assessment below remains accurate despite being done virtually.

Purpose of the assessment and evaluation. The purpose of this assessment is to examine “the present provision of services by TRLA in a ten (10) county area, and to make a professional judgment regarding the feasibility of expanding those services to additional counties. In performing this assessment, the consultants will review the structure, culture, budget, management, leadership, geographical challenges, recruiting, training, and workloads of TRLA.” (see the contract with NAPD). The underlying purpose is to determine how well TRLA PD is functioning at this moment in time, what can be done to help it improve, and to evaluate the feasibility of further expanding into additional Texas counties.

Unique Challenges of rural public defense. Most organized public defender systems began in urban areas. Statewide public defender systems that developed extended their full-time services beyond urban areas into the rural parts of their states. Rural public defense presents unique challenges to meet the needs of the indigent accused. TRLA PD covers 10 (soon to be 14) counties in South Texas, many with significantly higher poverty levels than the national average (see Demographics, below). With higher poverty levels come an increased need for appointed counsel. Due to falling oil and natural gas prices and the effects of the COVID pandemic, the precipitated lack of property tax revenue and employment opportunities, there will be an increased need for appointment of counsel on criminal charges in the months to come.

In addition to high poverty levels, the counties currently covered by TRLA PD have high Latino/Hispanic populations (as high as 96.4% in Starr County) which often means a language barrier that must be addressed in representation. In addition to interpreters needed during court proceedings, it is necessary to have bi-lingual staff to communicate with clients, family, and witnesses.

In the United States we are continuing to see a demographic shift from rural to more urban or metropolitan areas. Texas is no different. The issues impacting rural communities across the state include broadband access, rural hospital closures, supporting students in rural schools, the economic consequences of the COVID-19 pandemic and employment opportunities (see the Texas Tribune [weeklong virtual symposium on the challenges and opportunities facing rural Texans](#)).

As individuals and families move to more heavily populated areas, job experience and expertise move as well. This is also true for the legal professional. There are few “local” attorneys who will take appointments on criminal matters in the counties that TRLA PD covers. Additionally, due to limited resources in the counties, fees paid to private attorneys willing to take cases is below going fair market rates. Recruitment and retention of staff for TRLA PD to rural parts of the state has proven difficult. While TRLA enjoys an excellent reputation for recruiting highly qualified attorneys, retaining staff in rural communities is a challenge for the reasons described above. Many staff in TRLA PD do not reside in the communities in which they work. As such, it takes longer to know and fully appreciate the local culture and employees will often be perceived as “outsiders” to those individuals they represent and to the criminal justice “stakeholders.” Many TRLA PD employees described feeling they are outsiders to the area and that it makes their jobs more difficult. While they like being considered outsiders somewhat, they recognize that extra steps/hurdles are necessary to effectively represent their clients.

Due to the rural nature of the area and costs associated with maintaining brick and mortar offices, TRLA PD’s four offices must cover 10 counties. An additional office covering 4 counties is in the process of being opened. This is sound economically but necessitates a lot of miles on the road to cover court calendars, client visits in the local jails, scene investigation and meeting with witnesses. While driving is often considered “down time,” TRLA PD staff may use this time to return phone calls. Ideally, the distance could be addressed more efficiently and effectively

by living in the county and working in a professional office space equipped with up-dated MiFi's, laptops, and printers.

In addition to these barriers, rural Texas, like many rural areas, has few resources that are available in urban areas. There are limited opportunities for mental health treatment, alcohol and drug treatment, and similar placements that would be alternatives to incarceration.

What TRLA PD has achieved. As is addressed in more detail below under “Strengths,” TRLA PD provides criminal legal defense services to the indigent accused through an independent, client-centered lens. Prior to TRLA PD, attorney appointments were much too low while clients sat in jail awaiting a meeting with their assigned attorney.

Many Texas indigent defense systems pay private attorneys on a case-by-case basis and offer little or no supervision. With the creation of a public defender division, TIDC and TRLA PD's goals included:

- Independence from the judiciary
- Managing and mentoring staff
- Addressing workload/caseload concerns
- Teams/teamwork
- Training
- Consistent, effective, and efficient administration of services

These goals are briefly discussed below. They are fleshed out in more detail later in the report.

Goal: Independence. TRLA PD defenders make decisions about representation independent of courts. While there are pressures from the court and the prosecutors to resolve cases, TRLA PD recognizes and upholds its duties to clients by ensuring that bail issues are addressed, collateral conditions are discussed, and the matter is resolved through plea or litigation with the client and clients concerns in mind.

Goal: Oversight. TRLA PD is organized around four District offices covering ten counties. Each District office has a Chief Public Defender who supervises all staff for quality representation.

Goal: Workload. Unlike a “wheel” or appointment system, TRLA PD is not paid on a case-by-case basis. Contracts are entered into between TRLA, TIDC and the counties that TRLA covers. The contracts are based on past data and future considerations. Caseloads are at or near the familiar NAC Standards as modified in Texas.

Goal: Teams. TRLA PD is overseen by a Director and staffed with attorneys, investigators, support staff, one social worker in Lavaca County and a Peer Specialist in the Beeville Office. Together, the TRLA PD goal is to provide “Team Defense” to address the needs of the client, brainstorm issues of the case and assist each other in trial and plea preparation. Attorneys, investigators and support staff work together on cases.

Goal: Training. TRLA PD provides funding for training for staff. Additionally, TRLA puts on an annual program for staff for its civil and criminal divisions.

Goal: Administration. TRLA PD instituted a new case management system for client data entry, determining conflicts and ensuring the necessary information is maintained in client files. This new case management system, Legal Server, was instituted organization wide in 2020 by organization management.

Relation to Civil Legal Services. TRLA PD is under the umbrella of Texas RioGrande Legal Aid (TRLA). Established in 1970 to represent Texas farmworkers, TRLA has grown into the largest legal aid provider in Texas. TRLA provides free civil legal services to residents in 68 Southwest Texas counties, and represents migrant and seasonal farm workers throughout the state and in six other southern states. TRLA attorneys specialize in more than 45 practice areas, including family, employment, foreclosure, bankruptcy, subsidized housing, farmworker, civil rights, and environmental law. TRLA is funded principally by Legal Services Corporation, the federal agency that provides financial resources to legal aid organizations throughout the nation, and by the Texas Access to Justice Foundation (see <https://www.trla.org/who-we-are>).

Ostensibly, the goal in establishing the TRLA PD Division was to provide public defense representation and as well as holistic or “wrap around” services. With the exception of providing services to those facing immigration consequences, this has not been accomplished.

While TRLA Civil provides mental health, family, reentry, social service, and housing benefits, the two sides have not put together a cohesive plan for referrals from TRLA PD to help clients charged with criminal matters address their underlying issues. Staff in TRLA PD assert that they are not “holistic” in their representation and feel stymied by the fact that TRLA’s civil resources should be available to their clients but are not.

Concerns raised by staff to the consultants include regarding TRLA:

- TRLA does not pay much attention to TRLA PD and, as a result, TRLA PD and clients fall on the wayside. They (TRLA) “don’t understand what public defenders do.”
- The civil side is siloed too much. They look at their cases and evaluate them in a vacuum. They will advise TRLA PD what to do rather than helping on a case. If assistance is needed, the TRLA PD’s client will need to apply for civil legal services. The civil side evaluate the application like any other case and may decide not to take the case. The civil side establishes their own priorities, due to the demand for civil legal services. Setting priorities makes sense in the civil legal services context, but does not make sense to public defenders, who have no control over the cases that they take. As a result, the message that staff of TRLA PD hears, perhaps unfairly, is that the civil side does not care about them or their clients.

- There is reticence by the civil side to be helpful to the PDs according to TRLA PD staff. When PD's go to a TRLA conference, there is a sense that defenders are separated from the civil staff.
- The civil side represents a number of complainants (*i.e.*, "victims") in domestic matters. That potentially constitutes a conflict wherein TRLA PD represents the person accused of committing domestic violence or sexual assault against a person represented by TRLA civil.
- The original vision was for TRLA PD to be a holistic practice with a team of lawyers behind the public defender. Staff wonders how committed TRLA is to this vision.
- Several PD staff say that it feels like the TRLA PD is the "stepchild," or that they're not part of TRLA. A significant part of TRLA is focused on family and sexual violence. TRLA PD staff believe that the civil lawyers do not want in TRLA public defenders who are defending persons accused of sexual and family violence. Additionally, TRLA associates with domestic violence shelters. There are ongoing conflicts between the teams.
- There is a recognition that most of the funding for the civil side comes from the Legal Services Corporation and that the funding comes with many restrictions -- money cannot be spent to help in the criminal arena. However, staff feels that the limitations should not impede what should be a coordinated approach to represent the indigent accused.

Demographics of the area covered by TRLA PD. TRLA PD covers ten counties in parts of the lower Rio Grande area of Texas. It is also in the process of opening an office to cover four more counties north of the present service area, a significant expansion of the division. TRLA PD is located in parts of the Lower Rio Grande Valley, as well as an area more generally known as South Texas. Its service area moves northward from Starr County at the Mexican border as far north as McMullen County. The four new counties border McMullen, Live Oak, Bee, and Goliad Counties to the north. The southernmost part of TRLA PD is in the lower Rio Grande Valley. The area generally is quite rural, the smallest being McMullen County at 743 people and the largest being Bee County with a population of 32,565. The largest counties the new office will cover are Atascosa County with a population of 51,153 and Wilson County with a population of 51,070.

The culture of South Texas is described as "strong Hispanic, primarily Mexican American and Tejano (Spanish term for 'Texan') influences, due to its proximity to Mexico."

https://en.wikipedia.org/wiki/South_Texas#:~:text=The%20eastern%20portion%20of%20South%20Texas%20is%20often,Mesquite%20trees%20and%20crop%20fields%20dominate%20the%20land.

The South Texas region consists of 28 counties including all of the counties covered by TRLA PD. It is younger, more Hispanic, and poorer than the remainder of Texas.

<https://comptroller.texas.gov/economy/economic-data/regions/south.php>. The primary occupations are of health care services, justice and public safety, and support activities for mining. There are four military installations in the South Texas region.

The ten counties covered by TRLA PD as well as the four new ones are as follows, with some of the counties' data:

County	Population	Hispanic /Latino	White	Black	HS Diploma or Above	BA or Above	No Health Insurance	Poverty Rate
Atascosa	51,153	64.8%	32.8%	1.4%	77.3%	13.3%	20.3%	15.7%
Bee	32,565	59.3%	30.8%	8.9%	73.7%	10.2%	18.3%	26.7%
Duvall	11,157	89.3%	8.8%	1.4%	67.1%	9.3%	20.3%	25.5%
Frio	20,306	79.9%	14.1%	4.1%	66.6%	7.2%	22.2%	27.5%
Goliad	7,201	35.8%	58.1%	5.0%	87.6%	17.6%	15.8%	14.4%
Jim Hogg	5,200	92.0%	5.5%	.8%	74.5%	12.3%	19.2%	25.2%
Karnes	15,602	56.4%	34.2%	9.1%	76.2%	14.4%	18.8%	21.8%
Lavaca	20,154	19.6%	72.8%	6.5%	85.3%	16.7%	17.1%	13.5%
Live Oak	12,207	40.8%	52.9%	4.8%	79.2%	13.2%	21.1%	18.7%
McMullen	743	42.1%	53.8%	2.4%	90.3%	23.3%	14.1%	11.1%
Refugio	6,948	50.6%	4.2%	61.3%	80.7%	11.8%	17.4%	16.3%
Starr	64,633	96.4%	3.3%	.4%	51.5%	10.3%	29.9%	33.2%
Willacy	21,358	88.5%	8.5%	2.7%	65.9%	10.1%	22.6%	35.0%
Wilson	51,077	40.2%	56.5%	1.9%	86.6%	20.5%	16.0%	10.9%
Texas	28.7M	39.7%	41.2%	12.9%	83.2%	29.3%	20.8%	13.6%
U.S.	328.2M	18.5%	60.1%	13.4%	87.7%	31.5%	9.5%	10.5%

The counties that TRLA PD covers have a higher percentage of Hispanic/Latino persons and a lower percentage of Black persons than either Texas or the United States as a whole. The percentage of those who have obtained a high school degree is on par with both Texas and the US. However, the 14 counties covered by TRLA have a significantly lower percentage of individuals who have completed a bachelor's degree or above than either Texas or the US. A

lower percentage of the population of TRLA counties has health insurance than is present in Texas at large. Most significantly, while the poverty rate for Texas and the US is 13.6% and 10.5% respectively, most of the fourteen counties exceed that rate, many significantly. Only Wilson and McMullen Counties have lower poverty rates than Texas and close to the poverty rates of the US.

What is important in this data is that all of these metrics have an impact on the delivery of public defender services. TRLA PD is providing public defender services to some of the poorest places in Texas. The need is great.

Systems problems in which TRLA PD operates. Systems issues in the counties that TRLA PD serves are not unique and are often inherent in operating a public defense system in rural America. The challenge is to change culture by ensuring those without a voice are treated fairly in the criminal court system.

The systems challenges that TRLA PD operates in will be familiar to those practicing public defense in rural America. Bail is often set too high without regard to the ability to pay. Court costs and fines and fees present barriers to successful outcomes. Systemic racism exists in South Texas as it does in most places in America. Arresting individuals without drivers' licenses can present a barrier to future employment. Calendaring is difficult. Sometimes lawyers are expected to be in two different jurisdictions at the same time. There is a lack of resources for mental health, drug, and alcohol rehabilitation as well as other much needed treatment programs. Too often the resources that do exist are in far reaching areas far from urban areas and, therefore, unavailable to those clients who need them. Many clients are undocumented. Too often, by the time a TRLA PD gets to the jail to visit the client, clients are on their way to ICE.

These are some of the systems problems faced by attorneys and other staff in delivering public defense services. Staff is to be congratulated for raising the quality of public defense services amidst these significant challenges.

Strengths of TRLA PD. The following sections address the numerous strengths of TRLA PD.

Strength: Independence. TRLA PD is doing a lot of things right and is building a system that is well positioned to add counties as it matures. Its primary strength is that of independence. The TRLA PD public defense system is for the most part independent from the judiciary and the prosecution. This is a significant improvement over the "wheel system" it replaced, where judges appointed local private attorneys to specific cases. Independence from the judiciary is Principle #1 in the *ABA Ten Principles of a Public Defense Delivery System* (2002) (hereinafter *ABA Ten Principles*). The commentary to that principle states that the "public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel." TRLA PD secures contracts with counties to provide services to qualified persons in the coverage area which operates to

provide a significant level of independence to the local offices. This contractual system has the effect of keeping the judiciary from exercising undue influence on the appointment of counsel.

TRLA itself has a 25-member board which provides oversight to the organization. This oversight board assists in the provision of independence to TRLA PD. The commentary to the *ABA Ten Principles* states that to “safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.” If this board, which oversees TRLA, is viewed as insufficient to guarantee independence of TRLA PD, then consideration should be given to the creation of an additional advisory board devoted solely to TRLA PD. There is one advisory board presently in existence in Bee County. However, having single county advisory boards would not work as well as having an overall TRLA PD Advisory Board.

There is one dynamic inherent in the system that undermines independence. TRLA contracts with counties to provide public defender services. These contracts must be renewed every two years. In some counties, on occasion the specter of not renewing a contract is often raised, often in the context of an attorney providing vigorous defense. The implication is that if the defense would back off a bit, then the future contract would not be in jeopardy.

Strength: Quality of personnel. Another significant strength is the commitment and professionalism of TRLA PD employees. To a person, the employees of TRLA PD have been identified as one of the biggest strengths of the organization. They are resilient, hard-working, and committed, working in some of the most difficult circumstances of any public defender system in the country. Being client-centered is a value they articulate and appear to uphold. They are committed to one another in the cause of providing excellent representation in the TRLA PD region. This level of commitment is apparent among the Chief Defenders and attorneys as well as the investigators, administrators, and other staff. They have worked through numerous struggles during their first two decades of existence and have developed a strong core of public defense professionals.

Strength: Indigency determinations. A third strength is the manner in which indigency of accused persons is decided. Indigency is determined within a short period of time after arrest, often by the investigator. The standard for the indigency determination is that of 120% of the federal poverty guidelines. While elsewhere the authors question having investigators perform this function, the way indigency is determined shortly after arrest results in qualified persons having counsel in a timely manner. This is a major improvement from the past.

Strength: Expert witness determinations. The process for securing an expert witness seems to be working. Generally, a TRLA attorney requests an expert of the Director and he submits it to the TRLA business office for payment. If it is over \$5000, the attorney must go to the court for an order. The Director could not remember a request ever being turned down, although there was one instance where we heard from a staff member that one request had been rejected. Overall, this appears to be a strength.

Strength: Reputation. TRLA PD is building a strong reputation among the most important people in the system, their clients and their families. For the most part, TRLA and TRLA PD are known as being committed to the value of helping the little guy, the poor and the marginalized. This has been a significant change from the previous wheel system that was prevalent in all the counties. Poor people in the coverage area now have a champion to represent them.

Strength: Upper leadership. While TRLA PD has too few experienced felony trial lawyers, they have significant assets in the Director and his Deputy. Being able to brainstorm serious cases with them is a major benefit to working at TRLA PD.

Strength: TRLA. TRLA provides an important structural umbrella for TRLA PD. This gives the Chief Defenders and staff the benefit of being in a large organization with important infrastructure such as human resources, budgeting, union representation, and the like, enabling them to devote themselves to client representation. In addition, given the political pressure that can occur during contract renewal time, being inside TRLA offers some protection for TRLA PD.

An example of when being in the larger organization was beneficial was the good collaboration on a writ when the Texas Governor ordered that personal recognizance bonds would not be allowed in violent offender cases during COVID.

Weaknesses of TRLA PD. The following sections address the weaknesses of TRLA PD.

Weakness: Lack of Identity. TRLA possesses a national reputation for the work provided on civil legal matters. This reputation has been gained through fifty years of strong advocacy. TRLA PD lacks such a reputation or identity, and that affects recruiting and how the staff feels about the organization. Internally and externally, TRLA PD needs to stand as a common and united division with its own unique sense of identity.

Weakness: Turnover. While TRLA excels at recruiting, those efforts rely on the organization's national reputation for its work in the civil arena. The individuals being recruited are not staying with the organization. Offices are routinely short staffed because of attrition. With constant turnover and vacancies, existing staff is forced to do more with less.

Weakness: Unfilled Vacancies. There is high turnover throughout TRLA PD. Currently, when there is a vacancy, there is no mechanism in place to temporarily contract with members of the bar to assist with cases until the vacancies are filled. The result is that the remaining staff have more than they can do.

Weakness: Recruiting. Recruiting is not handled by the individual offices; instead, it is conducted by upper management in TRLA. TRLA recruits, interviews, and hires often without input from the Chief Defender of the office in which the individual will be placed. TRLA paints a rosy picture of the geographical area for new recruits. Many lawyers have left TRLA PD after a short stay due to significant others not wanting to reside in the counties they were assigned or

for not “fitting in.” The TRLA focus has been on hiring people from prestigious universities. While valuable, a mix of backgrounds and familiarity with the area would prove more fruitful.

Weakness: Training. Although a budget exists for training, there is no systematic plan for who should go (or be required to go) nor for the type of training that should be attended and when the training needs to take place. This deficiency is true for all positions including management.

Weakness: Budget Transparency. Chief Defenders neither put together a budget proposal nor are provided what the actual budget is for the office once approved. Lack of transparency leads to a feeling of ineptitude by management staff.

Weakness: Technology. Some office computers, laptops, and printers/scanners are outdated and are need of replacement. Data and phone lines in the physical offices need to be updated. The current case management system, while new, is not criminal case/client “friendly.”

Weakness: Lack of Uniformity. TRLA PD as a division lacks uniformity, consistency, and approach across the offices. Examples include management and staff job functions and representation, training, referrals and requests on cases, as well as standard operating procedures on tracking, opening, and closing files. Where one office may keep files open for months or years after a matter has gone to warrant, another may close in six weeks.

Weakness: Lack of Cohesiveness Among Offices. In addition to a lack of uniformity, each office operates independently from the other. With distance comes isolation. While TRLA Civil acts as a cohesive unit/organization across the vast geographical area it serves, the same is not true for TRLA PD.

Structure of TRLA PD. The structure of TRLA PD is simple and reasonable. The Director sits at the top of the organization and provides leadership. He answers to the Executive Director of TRLA. There is also a Deputy Director of TRLA PD who ostensibly shares some of the leadership duties with the Director. There are four, soon to be five, offices that are each headed by a Chief Defender. Where an office covers multiple counties, there are Assistant Chief Defenders. This structure is not overly bureaucratic and should not be an impediment to efficiency.

However, TRLA PD does not have within it the ability to make all decisions necessary for running a public defense organization. Many decisions rest in TRLA, such as budgeting, human resources, recruiting, and general operations. This structure creates a good bit of inefficiency, “red tape,” and frustration with the Chief Defenders, who often feel that they are not being served efficiently by the present structure.

Leadership, management, and supervision. The Leadership Team of TRLA PD consists of the Executive Director, Deputy Director and four Chief Public Defenders. In actuality, the Deputy Director does not supervise; supervision of the four chief public defenders is the responsibility of the Director. As written below, the Director has begun to hold regular

meetings with the Chief Defenders. This development may have been the direct result of the COVID pandemic. Chief Defenders are placed in their positions with little or no management training, experience, or direction from the Director. While performance reviews are required as part of TRLA as an organization, reviews are rarely done in TRLA PD.

Expectations of management staff are not clearly delineated. File reviews are not done routinely, if at all in most offices. Supervision consists of what the individual Chiefs feel is necessary – relying upon the employee learning the duties “on the job”. Although a unionized shop, none of the supervisors have been trained on performance evaluations, progressive discipline, documentation, or performance improvement plans.

The Director and Deputy Director are well respected by staff. As is true with the Chief Public Defenders, the Director defaults to client representation rather than focusing on management responsibilities.

Leadership Team. There has not been historically a formal leadership team that operates as a body that plans strategically or meets regularly to discuss policy and ensure alignment in the organization. That appears to be changing, which is an encouraging sign. The Director has begun to hold regular meetings with his Chief Defenders. These meetings have been described as sporadic, but also as most welcome. Holding at least monthly leadership team meetings with an agenda that has been distributed in advance is to be encouraged. The most important issues of the organization need to be brought to these meetings, decisions need to be made collaboratively, and communication by the Chief Defenders back to their offices needs to be encouraged.

Communication. Communication during COVID has improved. TRLA has been supportive and protective of all staff during this period. Other communication from the Executive Director of TRLA tends to be more oriented toward the civil side. TRLA PD staff receives sporadic communication from the Executive Director. However, the Executive Director is timely in responding if staff reaches out for guidance or assistance on an issue. Although disjointed across TRLA PD, communication within the individual four offices is good.

Funding. The funding story for Texas really begins with the Fair Defense Act of 2001. (For an excellent and thorough explication of the Fair Defense Act and indigent defense generally in Texas, see Sixth Amendment Center Report on Armstrong and Potter Counties (2019) [6AC tx_armstrongpotterreport_2019.pdf \(sixthamendment.org\)](#).) This Act “established statewide standards for indigent defense that have helped insulate Texas and its counties from potential lawsuits.” *Indigent Defense Spending and Cost Containment in Texas* (December 2018). <http://www.tidc.texas.gov/media/58054/cost-containment-report.pdf>. This Act required jurisdictions to adopt procedures allowing for:

- “Prompt magistration proceedings providing for a clear opportunity to request counsel shortly after arrest

- Standardized, locally-defined criteria of indigence
- Minimum qualifications required of court-appointed attorneys
- Prompt appointment of counsel
- Fair, neutral, and non-discriminatory attorney selection process
- Judges must adopt local Indigent Defense Plan, including a schedule of fees and payment procedures for appointed attorneys and detailing procedures for accessing counsel, and
- Creation of TIDC to monitor compliance and promote improvement through technical assistance and funding.” *Id.*

In a report from the Public Policy Research Institute at Texas A&M, it is noted that since 2001, spending on public defense has increased on a “steady upward trajectory.” From 2003 until 2017, spending increased 56% adjusted for inflation. <http://tidc.texas.gov/media/58074/cost-containment-report.pdf>

Despite that, as of 2017 counties still paid \$234.5 million for public defense, with the remainder of \$38.3 million paid by the state in the form of “discretionary grants.” The Texas A&M report describes the two grant programs that fund public defense in Texas. “Formula grants are determined by population and indigent defense spending are awarded annually to all qualifying counties. Formula funds covered a relatively small portion – just 13% of all indigent defense spending in 2017. Discretionary grants require counties to apply and be approved for short-term program funding for the purpose of establishing practices known to improve quality and increase compliance with the FDA.” *Id.*

Funding for public defense in Texas is largely “county-based.” Statewide per capita spending on public defense is approximately \$10 per capita. <http://tidc.tamu.edu/public.net/Reports/ExpenditureReportResults.aspx>

At the present time, TIDC provides funding for 2/3rds of the cost of TRLA PD, while the counties provide the other 1/3rd.

Funding for TRLA PD is determined using a cumbersome process. TIDC contracts with the counties either individually, as in the case of Goliad County and Lavaca County, or collectively, as in the case of the Starr, Bee Office, and Kerrville Offices. The figures used for funding purposes are based upon the case limits established by TIDC and placed into a funding formula put together by the former Executive Director of TRLA. TRLA implements the budget for the individual TRLA PD Offices. TRLA PD leadership is virtually excluded from the budgeting and funding process. The Director of TRLA PD makes his budget needs known both to the county and to TIDC.

To put this process into perspective, it might be helpful to compare this to the funding process for the state sponsored and controlled public defense system in Kentucky. Kentucky has a statewide public defender system. That system resides within the Department of Public

Advocacy, an Executive Branch Agency placed in the Justice and Public Safety Cabinet for administrative purposes. Kentucky Revised Statute 31.010. The Public Advocate presents a budget to the Public Advocacy Commission based upon caseload and workload figures received quarterly. Once the budget is reviewed and adopted, that budget is presented to the Kentucky Governor. The Kentucky Governor uses this figure as part of his or her budget that is presented to the Kentucky General Assembly. The budget proceeds from the House to the Senate. The final budget is then implemented by the Public Advocate for the biennium. Individual offices have their own individual budgets, which can be adjusted by the Public Advocate based upon caseloads and workloads. This process allows for a predictable budget based upon data.

Quality of representation and compliance with performance guidelines. Without doubt, clients are much better served with TRLA PD than before. Prior to the creation of TRLA PD, the counties served had low appointment rates and experienced delays in appointment of counsel. Additionally, there was little to no oversight over the quality of representation, clients languished longer in jail and cases moved slowly towards disposition. TRLA PD has provided independent and professional defense representation by staff who specialize only in criminal defense services. TRLA PD investigators monitor the jail for new arrestees, help facilitate eligibility determinations and conduct intake interviews on behalf of the office. Early involvement has helped reduce the pre-trial jail population (see generally TRLA PD county Sustainability Grant Renewal requests).

The percentage of clients appointed to an attorney has increased since TRLA PD began. This contrasts with other rural counties in Texas. See for example the Sixth Amendment report on Potter and Armstrong Counties, in which it is estimated that 74% of misdemeanor clients in Potter County proceed *pro se* following pressure from judges and prosecutors.

[6AC tx armstrongpotterreport_2019.pdf \(sixthamendment.org\)](#). With the increase in appointments has come increased pre-trial litigation and trials. Additionally, TRLA PD has resisted the prior status quo of pleading clients at the first meeting. Discovery obligations of the prosecutor are fulfilled and the TRLA PD staff reviews the allegations with their respective clients. TRLA PD has reformed several unconscionable and unconstitutional practices such as waivers, prosecutors talking to clients about their cases before appointment or outside the presence of their attorneys, and fewer *pro se* clients representing themselves.

TRLA PD does not have quality performance guidelines that have been formally adopted. The Director is working on guidelines for the division to adhere to. These guidelines would help guide the Chief Defenders and staff as far as what is expected from first appearance through disposition. A possible source of guidelines is the State Bar of Texas Guidelines in Non-Capital cases, based on ABA Defense Function Standards.

https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703.

Caseloads. The most important thing to know about the caseloads for TRLA PD is that at a macro level they are not onerous, certainly not compared to many of the public defense

systems in America. The reason for this is that TIDC has set caseload limits that are relatively reasonable. Grants are tied to those limits. As a result, TRLA PD offices are funded in a way to meet their caseloads. NAPD’s Statement on the necessity of Meaningful Workload Standards for Public Defense Delivery Systems, found here, https://www.publicdefenders.us/files/NAPD_workload_statement.pdf, affirms the importance of developing, adopting, and institutionalizing “meaningful workload standards” in each jurisdiction. TIDC has established a variation on the NAC standards, requiring a maximum caseload of no more than 239 misdemeanors, 138 felonies, or 31 appeals per year per public defender. See generally the *Public Defender Primer*, found here: <http://www.tidc.texas.gov/media/58518/tidc-public-defender-primer-2020.pdf>.

TRLA has a case management system, and during 2020 TRLA was in the process of changing over to a new system, Legal Server. TRLA PD uses the same case management system as TRLA itself. Data entry into the system as well as timekeeping has been called an “uneven commitment” by the attorneys. There is a question regarding the commitment to timekeeping from TRLA itself. This is a situation that both TRLA and TRLA PD should remedy.

TRLA sends out caseload reports that demonstrate cases opened and closed for each county. The report does not indicate how the cases are distributed among individual attorneys. While Chief Defenders have access to the management system, it does not appear from interviews with the Chief Defenders that they use that information in managing their offices.

It is not sufficient for caseload data to simply be collected. First, accuracy of the data is essential. The authors learned that data entry has not been viewed among staff as significant. That undercuts the reliability of the case figures.

Caseloads can be excessive in TRLA PD, however, as was the case during this assessment. The reason is that when there is a vacancy or two, there is no mechanism for covering the departing attorney’s caseload. Instead, the remaining attorneys assume the additional cases until a new attorney is hired. At the time of this assessment, there were vacancies in the Bee Office and there was considerable stress expressed by the remaining attorneys. We learned that new potential attorneys have been hired pending bar results. However, TRLA PD utilized no mechanism such as attorney contracts to alleviate the heavy caseload for those attorneys left behind.

Chief Defenders carry a caseload, as does the Director and his Deputy, both of whom have the most trial experience in TRLA PD.

Below is a chart containing the caseloads from 2019 in the four offices as well as the projected caseloads for the new office in Atascosa County. (See The Texas Primer at pg. 31). A few observations are appropriate from this report. First, the overall caseload appears to be in compliance with the TIDC guidelines. Felonies and misdemeanors are approximately the same, with misdemeanors outnumbering felonies by almost 300. Attorneys are carrying mixed caseloads of felonies and misdemeanors. There are remarkably few juvenile cases in the office.

Caseloads appear to be somewhat reasonable at 173 cases per lawyer for all of TRLA PD. The anomaly is the Willacy Office, which has 258 cases per lawyer. The Bee Office figures are somewhat misleading, since at the time of the assessment, the Bee Office had only 5 lawyers, which would require adjustment to 201 cases per lawyer. Finally, the staffing for the Atascosa Office at 173 cases per lawyer appears to be in line with the remainder of TRLA PD.

Office/County	Population	Costs	Felonies	Misd.	Juv.	Attys	Cases per lawyer
Beeville Office							
Bee	32,565	\$1,121,518	224	247	11	7	
McMullen	743	\$16,272	32	17	0		
Live Oak	12,207	\$118,804	137	147	1		
Goliad	7201	\$132,409	32	41	1		
Refugio	6,948	\$107,183	129	87	3		
Totals	59,664	\$1,479,914	554	439	16	7	144
Starr Office							
Starr	64,633	\$1,013,598	163	278	8	5	
Jim Hogg	5,200	\$38,594	13	36	1		
Duval	11,157	\$112,777	44	98			
Totals	80,990	\$1,164,969	220	412	9	5	128
Willacy Office							
Willacy	21,358	\$810,389	167	327	22	2	
Totals	21,358	\$810,389	167	327	22	2	258
Lavaca Office							
Lavaca	20,154	\$292,309	48	107	8	2	
Totals	20,154	\$292,309	48	107	8	2	58
Current TRLA-PD Totals	182,166	\$3,747,581	989	1285	55	16	143
New Atascosa Office							
Atascosa	51,153	\$562,956	465	664	41		
Frio	20,306	\$134,192	189	123	8		
Wilson	51,077	\$362,102	256	317	65		
Karnes	15,602	\$159,151	92	169	23		
Projected Office Totals	138,138	\$711,741	1002	1273	137	14	173

Salaries and benefits. All individuals employed with TRLA are part of a collective bargaining agreement including TRLA PD employees. Employees can access the collective bargaining agreement on the TRLA intranet website.

Overall, throughout the counties that TRLA PD covers, there is relative parity with prosecutor's offices due to the benefits that are offered TRLA PD employees.

Employee benefits include: Leave Benefits (Annual Leave, Holidays, Health Leave, Health Leave Bank, Catastrophic Illness Leave, Sabbatical, Election Day Leave, Jury Duty Leave, Bereavement Leave, Professional Examination Leave, Military Leave, Unpaid Leave of Absence, Overtime and Compensatory Time); Employee Insurance Benefits (Health Insurance, Dental Insurance, Life Insurance, Short-Term Disability Insurance, Long-Term Disability Insurance, Voluntary Life Insurance, Workers' Compensation, Unemployment Insurance); Retirement (ABA/State Street Bank 2. 401(k) Plan D); Professional Liability Insurance; Bar Fees repayment; Law School Loan Repayment Assistance (see *TRLA Employee Handbook*)

Starting salary for a new law school graduate who has not yet passed the Texas bar is \$47,000.00. Upon passing the bar and being licensed in Texas, the salary increases to step one of the salary scale. For attorney staff, there are ten steps in the scale. The scale ranges from \$52,000.00 to \$74,000.00 (step ten). Attorneys receive a step increase each year on the licensing anniversary date until reaching ten (10) years licensed. TRLA traditionally negotiates with the union for a COLA increase each year for those that have been on Step 10 for greater than twelve months.

The jewel of the benefit package for TRLA lawyers is Law School Loan Repayment Assistance. This has been described as the most important benefit to the greatest number of attorneys employed by TRLA PD. TRLA administers its own law school loan repayment assistance program for bargaining unit law graduates and attorneys employed in full-time, permanent positions, and managing attorneys employed in full-or part-time positions. The TRLA LRAP is a program of "last resort," paying for the law school debt that remains after all other loan repayment assistance programs have been exhausted (*TRLA Employee Handbook*).

Culture. Culture is informally thought of as the "way we do things around here." It is about the formal and informal norms and protocols known and followed by all. It is how an office is laid out physically, what signs are on the wall, how welcoming it is to clients, whether there is a space for children to play while waiting, whether phone calls are returned timely to clients, what the policies and procedures are, what the informal protocols are that govern how people treat each other and who makes decisions. When a new employee joins an office, they soon pick up the culture and begin to emulate it. Culture is neither positive nor negative, but it is powerful in an organization. It takes time to establish organizational culture, but once established it is difficult to change.

We did not speak with anyone from the central office of TRLA except for the present and past Executive Director. Otherwise, our interviews were with TRLA PD staff as well as individuals outside of TRLA. However, from afar, it appears that the culture of TRLA is that of being vigorous champions of the underdog. They had their origins in the farm worker struggles of decades ago, and that has carried over to this day. TRLA now covers 68 counties, approximately 1/4th of the state. There is pride in having helped pass the Fair Defense Act and being a significant part of public defense reform in Texas. The vision from top TRLA leadership is that of helping all poor people whether they have a civil or criminal problem, in all aspects of their lives. TRLA is full of true believers.

Being relatively new, TRLA PD is still developing its culture. One response we heard was “what culture?” Another person described TRLA PD as having a “warrior mentality.” There is a strong desire to have a unified vision, a purpose that will bring everyone in the four offices together.

TRLA PD is much smaller than the parent organization, covering only ten counties, soon to be fourteen. The best thing about TRLA PD is the quality of the people who work there. There is growing camaraderie among the Chief Defenders in TRLA PD. TRLA PD has a culture of wanting to improve the quality of services that predominated before TRLA PD was created, and they are proud of that fact. They endorse being client centered. They want to provide holistic defense and there is a frustration that because of the rules at present with the civil side of TRLA that they cannot achieve that goal.

TRLA PD staff feel embattled partly because they are in rural offices in poor counties away from the “bright lights.” In addition, because of the short-term contracts with the counties, many have a feeling of vulnerability and impermanence. There is also a feeling of isolation in some of the offices, away from the other offices, something that could be addressed partially with annual or biennial meetings or other methods of communication.

There is also a shared sense that there is little accountability in TRLA PD, that one can perform well or poorly with few ramifications. Examples were given of instances of poor behavior that were not addressed with appropriate levels of discipline or coaching.

There is an impression that TRLA PD is viewed in a negative light by people on the civil side of TRLA, a predictable conflict that arises because of the nature of family law. Many in TRLA PD do not feel part of the overall TRLA culture as a result.

Perhaps the best way to describe the overall “culture” of TRLA PD is that there is not yet a particular culture applicable to all of the separate offices. Each office is unique.

The Starr Office has a culture that has been described as a being like a family. Interpersonal relationships appear to be good. People feel supported by the Chief Defender and by one another. There is pride in the office. New employees are met with a five-course meal prepared by the Deputy Director, which typifies this office. They eat Thanksgiving dinner together and have developed friendships out of the office. New ideas are welcomed, and communication

appears to be excellent. Communication is good. There is a lot of turnover, but unlike Bee, this has not seemed to create similar issues to that in the Bee Office. There is a sense that turnover could be reduced if the Starr Office had more control over hiring for their office.

The Bee Office is the office with the longest history in TRLA PD. It is the biggest office. The office has a mixed culture. They do take pride in how they fight for clients. They are working exceptionally hard due to having to cover for attorneys who have left. Some have questioned whether they are client centered as an office. The office has had a history of interpersonal tension and leadership changes. This has resulted in a significant level of turnover, and some attribute the culture of the office to the turnover. Bee lost three attorneys in a six-month period earlier in 2020. We have heard that staff vents about clients rather than showing them respect. Some younger attorneys have felt like they could not grow in the Bee Office, complaining they were under too much scrutiny, and have left as a result. There are reports of conflict between attorneys and investigators and with support staff generally. There are reports that there are no standards in the office, and that some people “slack off.” Most recently, there has been a new Chief Defender appointed in the office, which appears to have been received enthusiastically and to have started the path on the way to improvement.

The Lavaca Office is a small office with two lawyers. There is a family atmosphere in this office, with much appreciation of the Chief Defender. Communication is excellent in the office. They support one another in their work and personal lives. Like the Starr Office, this office, too, has been described as a family. This office feels isolated from the rest of TRLA PD, which was exacerbated by logistical issues such as flooding in the office that they had to deal with by themselves, or by having to use their own cell phones rather than having a land line, or by having poor wi-fi reception.

The Willacy Office is a small office with two lawyers. The newest of the lawyers started when COVID-19 hit, so the development of that office culture has been delayed.

It is difficult to describe the culture of TRLA PD inside of TRLA itself. It is safe to say that many in TRLA PD feel like they are set apart from the larger organization. Many in TRLA PD feel like they are second-class to the civil side. At the same time, many also express appreciation for being in a much larger organization that supports them, provides excellent benefits, and handles most of the logistical issues.

Policies and Procedures. TRLA has policies and procedures clearly delineated in the TRLA *Employee Handbook*. The TRLA *Employee Handbook* is over eighty pages in length and is divided into the following sections: Background and History of TRLA, Organization and Structure, Orientation and Training, Employee Benefits, Employee Policies, Employment Policies, Regulatory Policies and Volunteers.

The *Employee Handbook* is thorough and encompassing for what is expected for TRLA all employees in administrative functions and as employees with TRLA. In some respects, the *Employee Handbook* is geared towards civil practitioners. As of this report, TRLA PD does not

have a best practice policy for quality client representation in the criminal arena from first appearance through disposition.

Physical Plant/Office Facilities. Space for professional public defender offices is important. “Meaningful representation of public defense clients requires proper professional space, adequate supporting equipment, ability to conduct confidential communications, and adequate services. These factors directly affect the number of clients an attorney can ethically and competently represent and the effectiveness of the work that the attorney can do for the clients... Public defense office space should be professional, comparable to that of other justice authorities, and located in a place that advances efficient accessibility to courthouses and jails as long as clients can practically and economically visit the office but never in a location that conflates the public defense function with judicial, prosecution, probation, law enforcement or other entities which present conflicts of interest.” NAPD Policy Statement on Proper Professional Space, Equipment, Confidential Communications with Clients, Supporting Services for Public Defense (2020), [Space FINAL \(publicdefenders.us\)](https://publicdefenders.us).

Part of culture is the physical space that house public defender offices. One can tell a lot about the values of a public defender organization by walking around the office, seeing what is up on the walls, whether a reception area is walled off from clients, whether there is a sense of professionalism that does not treat poor clients like second class citizens. Unfortunately, we were not able to visit the offices, unlike in past Systems Builders assessments, due to COVID. From the interviews we conducted, it is apparent that the offices are modest, perhaps even somewhat rundown in some instances. The Starr Office is in an old house close to the courthouse in Rio Grande City, where maintenance is described as difficult. There is a satellite office in Duvall County where internet is poor and provided by the county. Bee has been described as a windowless office space that is a bit decrepit. Internet is good there. One employee in Bee said that his laptop is 6-7 years old. Another said that it is not an office that he wants a client to come to. Lavaca began in a basement in the courthouse, which was not acceptable. They are now in a better office close to the courthouse. There is no reception area. They have half of the office and would like to be in the other half as well, particularly if expansion occurs. Willacy is also described as being in a rundown office in Harlingen. One staff member wondered why the office wasn’t located in Raymondville in Willacy County where the jail and courts are, rather than Harlingen which is in Cameron County.

Conflicts. Conflicts (multiple co-defendants cases, et. al.) are addressed consistently throughout the TRLA PD offices. Typically, a potential conflict will be first brought to the attention of the investigator while conducting the first interviews at the jail. While the case management system does not weed out potential conflict cases, if it is determined that there may be a potential conflict, it is brought to the attention to the supervising attorney. The supervising attorney discusses the conflict issue with the attorney. If determined that a conflict exists, the court is then notified and an attorney from the private bar is appointed directly or assigned by a “wheel” assignment system. There is no supervision of attorneys appointed off the wheel.

Training. Training is vital to a public defender organization. Principle #9 of the *ABA Ten Principles of a Public Defense Delivery System* (2002) states: “Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.”

There is broad dissatisfaction with the training in TRLA PD. That is not because of a lack of funding. There is training made available such as Rusty Duncan provided by TCDLA (Texas Criminal Defense Lawyers Association) and Gideon’s Promise; employees can choose a particular training and are often funded to attend. Rather, it is in the “systematic and comprehensive training appropriate to their areas of practice” where the deficit lies.

There is no just-in-time training made available for new lawyers whereby attorneys are provided training specific for their experience levels. It is in new attorney training where essential skills are taught prior to first going into court. It is also in new attorney training where the values of the organization, such as being client-centered, are first imparted. This type of training is not routinely taught in law school. It is not good practice simply to allow new attorneys to go to court with senior attorneys and then to instruct the new attorney to emulate the senior attorney. New TRLA PD attorneys are not provided with comprehensive new attorney training teaching them how to handle the various kinds of cases to which they will be assigned.

Just as there is little new attorney training, training for the more experienced attorneys is also lacking. Once an attorney has been representing clients for a year or two, for them to grow it is essential to continue to train them on the more complex areas of the law such as forensics, search and seizure, handling sex offender cases, and the like.

There was an expressed desire from more than one investigator for investigator training. The investigators want stand-alone training specifically for them that includes training with attorneys.

We did hear from one Chief Defender that he had been working on providing additional virtual training with CLE provided. This is a promising development.

Investigators. While titled “Investigator”, the title is, with minimal exception, in name only. The investigator position essentially developed from the civil side alongside paralegal functions. TRLA civil transferred the responsibility of eligibility determination from civil lawyer staff to unlicensed paralegals. When TRLA PD was established, counties were concerned about how the division would initiate the screening for eligibility. TRLA PD decided that having an investigator make the initial contact within 24 hours of arrest and determine eligibility was a much more efficient and less costly process than using attorney time. Without doubt, having an investigator meet with a client within 24 hours is important in developing a relationship with the client.

However, the position soon morphed into a para/admin/clerical position of screening, “intake” and data entry.

Investigators in TRLA PD are highly valued members of the organization, often described as the “eyes and ears” of the office who provide assistance in innumerable ways. Unfortunately, they are rarely asked to perform what are normally described as job duties of an investigator for a public defender office, namely: to consult with staff attorneys in preparation of defense for criminal cases; to gather and analyze facts and evidence; to contact, interview, and coordinate court appearances of prospective witnesses and other sources of information; to record statements and testimony as well as photographs crime scenes; to prepare material evidence for court room presentation; to evaluate the credibility, relevancy and admissibility of investigative findings; to serve subpoenas; to maintain files and records on cases under investigation; and to aid in the development and implementation of guidelines and policies for investigators.

TRLA PD investigators are not trained for actual investigator duties, although they highly want to receive that training. The investigators opined that for them to be job competent they would need to receive training to have comprehensive knowledge of investigative techniques and procedures as well as knowledge of criminal statutes, rules of evidence, and court procedures. Additionally, training should include how to compile and analyze facts and evidence and make sound recommendations; how to obtain information through interview and interrogation; how to prepare clear, concise, and comprehensive reports; how to establish and maintain effective working relationships; how to work independently; how to effectively deal with hostile, resistant witnesses or clients; how to work effectively with the public, courts, attorneys, law enforcement agencies, and clients; and finally how to communicate clearly, both orally and in writing.

Development of future leaders. The sign of a maturing public defender system is the development of future leaders. At present, there is little identification and development of future leaders in TRLA PD. Like many defender organizations around the country, the leader of an office is the person who is the best trial attorney. Not all excellent litigators are suited to be leaders of organizations. Many trial skills gained by excellent litigators are ill suited for leadership. Yet most Chief Defenders assume their position without having received any leadership or management training. That is a deficit that needs to be remedied.

Recruiting. TRLA, as an organization, maintains an excellent reputation. Recruiting for attorneys has always been “centralized” and was previously facilitated by the former Executive Director of TRLA. TRLA uses different methods for recruiting, including ad-hoc interviews with experienced attorneys, on-campus interviews of third-year law students for entry-level positions, and internships and fellowships. TRLA publishes job announcements broadly. TRLA maintains relationships with career placement offices at many law schools and specifically recruits at regional consortiums for public interest employers. TRLA’s recruiting efforts include top-tier law schools in the Northeast. As a centralized process, the Executive Director visits law

schools, conduct interviews, vets the candidates and then ultimately hires the individual. The Executive Director would subsequently place the attorney in an office without as much input from the Chief Defender of the office as they desire.

As TRLA and TRLA PD have grown, a recruiter position was created to take on the duties of the prior Executive Director. Individual candidates can now apply on-line. The recruiter will vet the candidates and set up interviews. It is reported that if a candidate is “fantastic,” the individual may be hired without input from the local TRLA PD office. It remains difficult to recruit “felony qualified” attorneys to work at TRLA PD.

Recruiting has focused on new or soon to be law school graduates. A successful candidate is extended an offer and, if accepted, is then placed in an office where the need is most acute. New hires begin after taking the bar but before being admitted to practice in Texas. This process often leads to vacant positions remaining unfilled until the law graduate can start – often in August of a given calendar year.

Non-attorney staff positions are often filled by the local offices without the process being centralized.

Turnover and burnout. One of the most significant problems in TRLA PD is that of turnover. Most of the TRLA PD offices are small, where turnover can be particularly insidious. In a small office of perhaps three or four attorneys, the loss of one or two attorneys means that one-third or one-half of the caseload in the office must be reassigned. There are several reasons identified for the turnover that is bedeviling TRLA PD during its early existence.

It is important to note that turnover is not uniform throughout TRLA PD. There has been little turnover in the Willacy or Lavaca Offices. Turnover has been a problem in the past in the Starr Office. Where the turnover has been the most problematic has been in the Bee Office.

The turnover in the Bee Office has been longstanding and has a variety of reasons for it. The work atmosphere in the Bee Office combined with a high caseload have been the primary drivers of the excessive turnover in that office. It has been characterized as “perpetually teetering on the edge.” The lack of solid leadership has also been identified by more than one person as the reason for the turnover. Hopefully, the newly Chief Defender is expected to provide new leadership that can be effective at reducing turnover.

One reason for turnover is the way people are replaced. Essentially, when an attorney leaves TRLA PD, the remaining public defenders are required to assume the caseload of the departing attorney. While that works in some of the lower caseload offices, it does not work elsewhere. There is at present no system for local attorneys to be hired on contract while the hiring process is taking place. However, TRLA informs the consultants that this may be in the process of change, which will be quite positive. Chief Defenders should be cultivating local lawyers who can step in when turnover has occurred while the office is waiting for new hires to join the office. Those local lawyers can not only fulfill this role but can also handle conflict cases.

Another reason identified by staff for turnover is the fact that many of those who are recruited from elite law schools are unprepared for the conditions they find in South Texas. Many of the staff indicated that they believed turnover could be reduced if recruiting focused more on Texas law schools. A sentiment expressed more than once was that if Chief Defenders had more say in the hiring process, turnover could be reduced.

Lifestyle has been identified as another reason for turnover. Some stated that when new lawyers arrived in South Texas there was “culture shock.” This is partly the result of recruiting from elite law schools far from South Texas. Recruiting from Texas law schools should result in a more common understanding of what conditions would be like in mostly rural South Texas.

When turnover is high, at least for TRLA PD, the result is few attorneys with experience remain in the offices. TRLA PD has had difficulty historically finding experienced trial attorneys willing to come to work for TRLA PD. A concerted effort needs to be made to hire for experience until the turnover has been reduced.

A final reason for turnover in TRLA PD is the increasing level of burnout. Attention should be paid in TRLA to the level of burnout in TRLA PD. A plan should be developed by senior management with input from TRLA PD staff into why the burnout is occurring and what can be done about it.

Performance management, evaluations, discipline. The TRLA *Employee Handbook* delineates how and when evaluations are to be completed:

Periodic evaluations, not to exceed one per year, except for newly hired probationary employees, are conducted of staff. Evaluations are to be used to chart the growth and skills of the employee, to project areas of future responsibility, development and expertise, and identify areas needing improvement. Employees are evaluated by their primary supervisors, in consultation with applicable team or branch managers. See the current Collective Bargaining Agreement (CBA) for more details.

Additionally, the *Handbook* defines the core supervisory functions of the program:

Managers. Branch and Team Managers are management employees with the authority to hire, discipline and terminate employees under their supervision. While Branch Managers and Team Managers have different responsibilities, they work in tandem on certain duties such as staff evaluations. Attorneys and paralegals are subject to some “multiple” levels of oversight, but every advocate has a “primary supervisor” who is primarily responsible for that employee’s legal and administrative supervision (job performance, travel, timesheets, leave, training, etc.).

Team Managers supervise the legal work of members of their practice area teams. Practice areas are established around critical legal problems encountered by clients, and members of the practice area teams are called upon to review each case that has legal issues falling within that

team's area of expertise, without regard to the location of the client or where the original intake occurred. All attorneys and paralegals are members of at least one such team. Their primary team determines who their primary supervisor is. A team member wishing to change primary teams must have the approval of both the current Team Manager/primary supervisor as well as the proposed Team Manager. Branch Managers are primary supervisors of clerical staff and of paralegals who conduct intake and who are not primarily responsible to a team.

TRLA PD does not have a separate handbook outlining leadership responsibilities and duties.

Performance evaluation forms are the same for both the civil and defender divisions. There are separate forms for evaluation of line staff versus management staff. The forms are described as "TRLA civil" centric according to staff in TRLA PD.

TRLA PD management staff has not received training or guidance on the goals, expectations, or purpose of the annual evaluations. If an evaluation is done, it is sporadic at best. Neither chiefs nor assistant chiefs have received an evaluation from the Director. One office reports embarking on file reviews with the attorneys; otherwise, supervision is performed in an ad hoc manner.

TRLA PD management has not been trained on management/bargaining unit concerns including file documentation, performance evaluations, goal settings, personal improvement plans, or progressive discipline.

Indigence determinations. The *ABA Standards for Criminal Justice Providing Defense Services* Third Edition (1992) emphasizes that counsel "should be provided to persons who are financially unable to obtain adequate representation without substantial hardship. Counsel should not be denied because of a person's ability to pay part of the cost of representation..." The *ABA Ten Principles of a Public Defense Delivery System* (2002) likewise states in principle #3 that clients should be "screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel."

We heard of no complaints by any of the TRLA PD staff that the indigency determination was a problem. We did not hear that eligible persons were being denied counsel nor that ineligible persons were being needlessly appointed.

Some systems such as Kentucky utilize pretrial release officers to fill out affidavits of indigency with clients prior to appointment of counsel, followed by a judicial appointment of counsel. Other systems utilize public defender staff to perform that function. TRLA PD is one of the latter. In TRLA PD, staff determine indigency using a standard of 120% of the federal poverty level. Some persons who earn in excess of poverty guidelines are provided counsel where they are appointed by the judge. In many of the offices, investigators are the ones who are filling out the affidavits. One former TRLA PD attorney stated that "one of the great things about TRLA PD is that you can walk into an office and walk out with a lawyer." The result of the way

TRLA PD handles indigency determinations is that there is little delay from arrest until notification of counsel.

In a state where misdemeanor appointments are low and *pro se* representation is high, the fact that TRLA PD has brought about meaningful indigence determinations is a major success.

Community defending/holistic defense and social workers and peer specialists.

The goal in establishing a public defender division as part of TRLA was to create a delivery system with “wrap-around” or “holistic” services for the clients they serve. “Holistic representation” (sometimes called “comprehensive representation”) complements client-centered representation because it is the most effective approach in seeking the full range of best outcomes desired by and on behalf of clients. By addressing underlying criminogenic factors through broad based representation more favorable outcomes are achieved, thereby enhancing the lives of clients, reducing recidivism, and improving public safety.” *NAPD Foundational Principles. Principle 8: Public Defense Representation Should Be Client Centered and Holistic.*

Although the infrastructure for this to happen is in place (TRLA represents clients in a wide range of civil matters), it has not come to fruition. While a defender client can be referred to TRLA civil for services, no priority is given to the client. Instead, the client must apply for services from the civil side and is often denied representation services for a variety of reasons. The decision rests with the civil side. Often, the interaction with clients is not much more than providing a pamphlet of what TRLA civil does and how to contact them. TRLA PD staff reports that they wish more can be done, but, in effect, two separate divisions are operating under the TRLA umbrella.

The blunt truth is that the demand for legal services for the poor outstrips the supply. The result for TRLA PD is that the vision of holistic representation for public defender clients is reliant upon the availability of TRLA resources and priorities.

TRLA civil provides excellent representation for clients with immigration/*Padilla* issues. This service is not defined as “holistic” as it is an ethical responsibility that must be fulfilled to provide effective assistance of counsel.

TRLA PD has only one social worker on staff, located in its Lavaca Office. This position exists due to separate grant funding rather than coming from TRLA. TRLA PD understands the importance of having a social worker on staff to help with underlying issues the client may be facing including housing, alcohol and drug abuse/addiction, and mental health issues. Obviously, the goal is to address the underlying concerns to help an individual personally as well to prevent recidivism. Of concern is although TRLA PD may be able to discern underlying issues, few resources exist to address the issues in the counties that TRLA PD serves. Chiefs in all the offices are encouraged to seek grant money for additional social worker positions. A worthy goal would be to have a social worker in each of the TRLA PD offices.

In the Bee office, a “Peer Specialist” position was obtained through a mental health program grant. Peer support is defined as: “... when someone with lived experience gives encouragement and assistance to help someone with mental illness or a substance use disorder achieve long-term recovery. Peers offer emotional support, share knowledge, teach skills, provide practical assistance, and connect people with resources, opportunities and communities of support” (see, generally, Texas Health and Human Services website: <https://hhs.texas.gov/doing-business-hhs/provider-portals/behavioral-health-services-providers/peer-support-services>). There are currently approximately 180 peer specialists in the state of Texas.

In Bee, the peer specialist obtains referrals from the investigator or attorney for individuals who appear to be suffering from some form of mental illness. The peer specialist will frequently meet with the individual in the jail to assess how he/she is progressing. Although the role in the Beeville Office is basically undefined, the peer specialist has helped change the culture in the way the system addresses those suffering from mental illness and by finding needed resources to help the individual succeed. Expanding the peer specialist program to other offices if funding becomes available would be worthwhile.

Staff morale. Turnover above was identified as a significant problem in TRLA PD. Having said that, from our interviews staff morale appears to be high. Those who remain with TRLA PD for the most part are proud of being part of this important effort to provide counsel in South Texas and to reform the criminal justice system there. In many ways, they know they are pioneers and they are rightfully proud of that.

How does TRLA PD Comply with the ABA Ten Principles of a Public Defense Delivery System (2002)?

Principle #1. The public defense function, including the selection, funding, and payment of defense counsel, is independent. The commentary to this principle states that the “public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.” The commentary goes on to say that to “safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.” TRLA PD complies with this principle. TRLA is governed by a board that oversees both the criminal and the civil sides of the organization. This board in turn hires staff. Judges no longer determine which attorney is appointed to a particular case. There is little to no interference by the judiciary with the right to counsel in TRLA PD.

There is some indirect political interference with the public defense function in the TRLA PD counties. This is primarily the result of the counties contracting on a biennial basis with TRLA. There is an implicit thought that is sometimes voiced that if a TRLA PD office is too zealous in their representation, the contract might be in jeopardy.

Principle #2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar. TRLA meets Principle #2. The four soon to be five offices have full-time attorneys to meet their caseloads. Where there are conflicts of interest, the private bar is involved. One of the recommendations in this report is to utilize private lawyers to mitigate the effects of turnover, which would also be consistent with this principle. Another recommendation below is the creation of a managed assigned counsel system (MAC) overseen by TRLA PD to ensure the active participation of the private bar as well as adequate supervision for quality. TRLA PD has a great deal to gain by involving the private bar as conflict lawyers and contract lawyers covering vacancies during the hiring process as the private bar would become increasingly invested in TRLA PD's future. Training provided by TRLA PD to those private attorneys potentially could increase the quality of services provided to those indigent clients.

Principle #3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. TRLA PD meets Principle #3. Screening is done by investigators for the most part and that screening is accomplished soon after arrest. Thereafter, an attorney is assigned and notified of the appointment.

Principle #4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client. This principle is met in the Lavaca Office. There, the office and the jails have rooms in which to communicate with clients. In the Beeville Office, the time in which to meet with clients is said to be "extremely compressed." Trials are set in the Beeville Office often weeks after the discovery is complete. It is reported that this is "a virtually impossible timeline to handle effectively." The jail situation is better, with video technology being used in secure rooms so that clients can be interviewed on a confidential basis. In the Willacy Office, clients are met either in the Harlingen Office or the Raymondville Office.

Principle #5. Defense counsel's workload is controlled to permit the rendering of quality representation. One of the most significant features of the public defense system provided by TRLA PD in collaboration with the counties and TIDC is the controlling of workloads. This meets Principle #5. This also makes TRLA PD one of the shining examples in the nation for how to control workloads. The exceptions to this occur when turnover results in reassigning caseloads to the remaining attorneys, resulting in a violation of this principle.

Principle #6. Defense counsel's ability, training, and experience match the complexity of the case. Principle #6 is met somewhat. Because of the turnover issue, TRLA PD does not have enough experienced felony trial attorneys to always be able to meet the requirement to assign cases based upon ability, training, and experience.

Principle #7. The same attorney continuously represents the client until completion of the case. TRLA PD meets this principle in both the Lavaca and Beeville Offices. The only time this principle is not met occurs when there is turnover, and the cases must be reassigned. In

Willacy, the two attorneys are working together until the newer attorney receives her own cases.

Principle #8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

Compliance with this principle is mixed. There is not salary parity with the prosecutors in the area. Nor is there resource parity in that prosecutors have disproportionate staffing compared to TRLA PD. However, in terms of benefits, TRLA provides loan repayment assistance which is not only appreciated but also is a benefit that prosecutors do not have. TRLA PD is not yet viewed as an equal partner in the justice system, although this is expected to change the longer TRLA PD is in existence.

Principle #9. Defense counsel is provided with and required to attend continuing legal education. Principle #9 is met to some extent. Elsewhere we have described the deficiencies in the training provided by TRLA PD. However, financial assistance is provided to attorneys to attend the trainings of their choice, partially meeting this principle. As recommended, significant attention needs to be paid to the training provided to all TRLA PD staff.

Principle #10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. TRLA PD does not meet this principle. There are forms that are available for performance evaluations. However, there is no systematic program in place for setting expectations, entering into a performance agreement, or the conducting of regular performance reviews. Nor is training being conducted on effective performance management.

Does TRLA PD comply with the NAPD Foundational Principles? The National Association for Public Defense (NAPD) published its *Foundational Principles* in March 2017. The document sets forth what NAPD recommends is necessary to advance the cause of equal justice for the indigent accused:

“We firmly believe that the following foundational principles are essential to help guide all of us in the public defense community as we move forward together not only to address systemic failures of our criminal and juvenile justice systems but also to ensure that lawyers, with the help of vital support staff, deliver effective, competent and diligent representation in accordance with the Constitution and rules of professional conduct.”

The principles are organized into three sections: (1) the structure and organization of public defense services; (2) the quality of public defense services; and the (3) treatment of accused persons in criminal and juvenile justice systems.

Principle 1: Competent and Effective Public Defense Lawyers Must Be Provided for the Fair Administration of Justice. “The fair administration of juvenile and criminal justice requires competent and effective ‘public defense lawyers’ for all juveniles charged with delinquency and

adults in criminal cases unable to afford a reasonable attorney's fee." TRLA PD is in compliance with Principle #1. The number of individuals who appear before the court *pro se* or provide "waivers" of counsel has been reduced substantially since the inception of TRLA PD. An investigator from TRLA PD meets with all in-custody clients within 24 hours, is screened for eligibility and the data is inputted for the attorney. Bail is addressed at the time of appointment and later if still in custody. The first effort is to obtain an agreed bond, and if that is unsuccessful, TRLA PD lawyers file a motion in magistrate court or a writ in district court requesting conditions of bond that will gain the client's release.

Principle 2: Public Defense Must Be Independent of Judicial and Political Control. "The fair administration of justice requires that representation by lawyers be free from real or perceived inappropriate influence. Representation should be without political influence and subject to judicial supervision only in the same manner and to the same extent as are prosecutors and attorneys in private practice." TRLA PD is in substantial compliance to the extent that the judiciary does not appoint TRLA attorneys nor dictate how the bench wants a case to proceed. As discussed above, there is still some influence exerted at contract renewal from time to time seemingly as indirect pressure in response to zealous representation. TRLA PD hires attorneys for its offices completely independently of judiciary influence.

Principle 3: The Public Defense Function Must be Administered and Overseen Statewide.

Compliance with this principle is mixed. TRLA PD covers only 10 of the 240 counties in the State of Texas. Some oversight and administration are provided by TIDC. TIDC has a commission whose guiding principles are "protecting the right to counsel, improving public defense," providing "excellent representation for all," and deferring "to counties when possible and try to reduce burdens on counties..." It provides funding to all 254 counties through its improvement and formula grants. It provides some oversight by monitoring the systems in all 254 counties "through data collection and in-person audits." It also "helps counties, judges, attorneys, public defender offices, and managed assigned counsel programs improve their public defense systems and programs through system building, training, mentoring, model forms, and publications." TIDC has an excellent website with robust data. TIDC has "helped plan and fund public defender offices covering 53 Texas counties, managed assigned counsel systems covering 4 counties, and a death penalty defender covering over 180 counties." As mentioned elsewhere, TIDC has established excellent workload standards. For more about TIDC, see generally: <http://tidc.texas.gov/about-us/who-we-are/>

However, Texas does not have a "public defense provider...with responsibility for all components of public defense services..." Although TIDC is responsible for "establishing qualifications of counsel, determining eligibility standards for appointment of counsel, setting workload and caseload standards . . . and representing the public defense function to policy makers and stakeholders," (see Texas Govt. Code § 79.034), it has not exercised that authority. Nor does TIDC "have responsibility for establishing qualifications of counsel,

determining eligibility standards for appointment of counsel, setting workload and caseload standards, providing for training and other administrative support, and representing the public defense function to policy makers and stakeholders.” As result, TIDC is not able to “ensure that services are consistent in quality, efficiency, effectiveness, and that the same standards are applied in all subdivisions throughout the state.” As result, the predictions in NAPD’s Principle #3 are unfortunately extant. “Where local delivery of public defense services is prevalent without oversight and centralized administration there is significant risk of unjustified variations in the quality of services in the state’s various jurisdictions.”

Principle 4: The Expense of the Criminal Justice System Is a Government Obligation That Must Not Be Imposed on Defendants. “The duty to fund the criminal justice system is a fundamental government obligation. Accordingly, the criminal justice system must end its pervasive use of predatory costs, fines, and user fees that are disproportionately borne by those who can least afford it.” TRLA PD understands and acknowledges the unfair inequities of fines, fees and costs and has worked diligently towards changing this culture. As described above, the practice in some counties is that the accused must often “pre-pay” these costs before the case can be resolved. The draconian practices were in effect long before TRLA PD came into existence and it will be some time before TRLA PD can change the culture.

Principle 5: Workloads of Defense Attorneys Must Always Be Reasonable. “Lawyers who defend adults in criminal cases and juveniles in delinquency proceedings must have reasonable workloads, which enable them to provide conflict-free representation of their clients consistent with their duty to furnish competent and effective assistance of counsel pursuant to rules of professional conduct and prevailing professional norms.” TRLA PD in conjunction with TIDC recognizes that keeping control of caseloads is vital in its representation of the indigent accused. As is written above, the caseloads are not as excessive as they are in many of the public defense systems in America. TIDC has set caseload limits and grants that are tied to those limits. As a result, TRLA PD offices are funded in a way to meet their caseloads for the most part. TIDC has established a variation on the NAC standards, requiring a maximum caseload of no more than 239 misdemeanors, 138 felonies, or 31 appeals per year per public defender. See generally the *Public Defender Primer*, found here: <http://www.tidc.texas.gov/media/58518/tidc-public-defender-primer-2020.pdf>.

Caseloads can become and are excessive due to the attrition of lawyers at TRLA PD. When these vacancies occur, they are often left open for long periods of time before a quality candidate comes on board.

Principle 6: Training and Continuing Education Are Essential for Providing Competent and Effective Defense Representation. “To be competent and effective, lawyers and other public defense professionals must be well trained and providers must make available quality training and education as required.” While TRLA PD provides funding for training of its staff, the actual training is ad hoc at best and not systematic. Staff typically learns “on the job” from office peers or managers. Leadership is not given the appropriate tools on how to manage and the nuances that follow from being a “line-attorney to being a boss.” The sink or swim mentality has

resulted in newer staff feeling pressure about what is the correct course to follow on a given issue. In addition to a robust training program, TRLA PD should institute some form of shadowing and orientation to staff prior to assigning cases.

Principle 7: Appropriate Supervision of All Public Defense Lawyers and Other Public Defense Professionals Is Essential. “Public defense providers must provide regular and timely supervision as needed of all lawyers and other professionals.” TRLA PD has wonderful and dedicated staff. All staff believe in the mission of zealously representing the indigent accused. The importance of supervision and management is not lost on TRLA PD; however, the leadership has not been provided the tools to effectuate their duties to ensure that all staff and defense services provided by lawyers are competent within the meaning of rules of professional conduct and effective pursuant to prevailing professional standards.

Principle 8: Public Defense Representation Should Be Client Centered and Holistic. “Client-centered representation should be practiced by public defense staff in satisfying the constitutional right to counsel. Client-centered representation means that the lawyers and other defense professionals recognize and respect the client’s authority, ability, and right to decide the direction that the client’s case should take after being fully advised of all available options.” Without doubt, TRLA PD recognizes and adheres to the concept of client-centered representation. When fully staffed, caseloads are manageable which allows the attorneys and non-attorney staff to fully advise their clients of the allegations, case concerns, underlying individual issues, status of the case and goals for short and long term.

While the components are in place throughout the entire TRLA organization to practice in a “holistic” manner, other than addressing immigration concerns, this is not being accomplished in a systematic way.

Principle 9: The Duty of Public Defense Lawyers Is to Provide Clients Quality Legal Representation Consistent with Rules of Professional Conduct and Prevailing Professional Norms. “Public Defense lawyers must always provide their clients competent and diligent representation, as well as representation that is reasonably effective assistance pursuant to prevailing professional norms.” After the initial meeting with the investigator, the TRLA attorney engages the client, explains the charges, possible penalties, the court process, rights of the client and lets the client know that s/he gets to direct how the matter moves forward. They research the cases, investigate, maintain confidences, and communicate with the client. They communicate that there are rules in-place regarding conflicts and file access. TRLA PD attorneys recognize the importance of pre-trial litigation, investigation, trial preparation and disposition. TRLA PD attorneys know that it is their client’s decision on whether to take a matter to trial or plea and assist them without pressure to make that decision.

Principle 10: Public Defense Providers Must Seek to Change the Pervasive Cultural Prejudice that Stigmatizes and Marginalizes Poor People. There exists “pervasive cultural prejudice against the poor in our justice systems, which is particularly acute towards persons of color. In response, public defense service providers must seek to destigmatize poverty with every client

they represent.” TRLA PD recognizes this and has taken appropriate steps including challenging the imposition of fines and fees, using their investigators to engage in comprehensive intake interviews, pre-trial advocacy, and sentencing advocacy. TRLA PD is focusing on fines and fees litigation, pre-trial programs, diversion and treatment courts, alternative sentencing opportunities, increased access to needed social service programs, and advocacy to eliminate collateral consequences that attach to arrests and convictions.

Principle 11: Competent and Effective Defense Representation is necessary to Eliminate Mass Incarceration. As discussed elsewhere, TIDC and TRLA have created a public defense system in TRLA PD that is relatively well-resourced resulting in caseloads that operate within standards. This should go a long way toward enabling TRLA PD to do its part to reduce mass incarceration in their area of South Texas. The need is great. For the state of mass incarceration in Texas, see the Vera Institute report found here: [Incarceration Trends in Texas \(vera.org\)](https://vera.org)

Principle 12: Public Defense Providers Must Address Disparate Treatment of Racial and Ethnic Minorities in the Justice Systems. “Racial and ethnic bias persists in our criminal justice systems and leads to disparate outcomes at every stage of the process, impacting persons who are stopped, arrested, released pretrial, sentenced to probation, paroled, and who receive the death penalty or life without parole.” TRLA PD clients are majority individuals of color who are treated disparately on the streets and in court than are Caucasians. Through the assistance of TIDC, data is being collected on the population that TRLA PD serves that will be useful in order to address unfair treatment. TRLA PD will need to use their case management system in conjunction with collected data to brainstorm potential responses.

Principle 13: The Use of Punitive Measures Against Persons Who Have Mental Disorders or Other Types of Cognitive Impairments Must End. “The criminalization and punishment of persons with mental disorders, cognitive disabilities or trauma is never justified. The appropriate space for the protection of people with mental disorders is a facility intended and equipped for mental health treatment.” TRLA PD embraces this principle. TRLA PD has hired a Peer Specialist and Social Worker to assist in better addressing the needs of those faced with mental health issues. Through the work of the Peer Specialist and Social Worker, community-based resources are being sought to assist with the clients. More community-based resources are acutely needed in the counties that TRLA PD serves.

Principle 14: Public Defense Lawyers and Public Defense Professionals Are Essential Participants in Achieving Justice Reforms. TRLA PD’s voice is “being heard” in the counties it serves. Previously unrepresented clients now have the service of TRLA PD. TRLA PD is improving the public defense culture in the counties by meeting clients within 24 hours of taken into custody, filing and arguing bail motions, filing and arguing habeas petitions seeking release of clients, pre-trial litigation and trial litigation. TRLA PD’s zealous representation is acknowledged by the bench and the local bar. The culture is changing for the better for the indigent accused. While culture changes, progress and reform are glacial at times, TRLA PD is and will be an essential voice behind the changes.

Principle 15: Unity and Collaboration of Public Defenders and Public Defense Professionals Are Essential in Achieving Defense Reforms. TRLA PD has joined a growing group of public defenders in Texas and the nation. Their leaders have attended NAPD and Gideon’s Promise training. They also have joined with TIDC in working as a group with other chief defenders.

FINDINGS

The Impact of TRLA

- Public defense reform in Texas and TRLA are connected. TRLA played an important role in the passing of the Fair Defense Act and in creating a funding mechanism for public defense. They pioneered public defender offices in rural Texas. Their role in improving public defense has continued until today.
- TRLA created TRLA PD out of the vision of the now retired TRLA Executive Director. It occurred at the same time that LSC required that Texas have only 3 legal services organizations and TRLA became one of the three. As a result, TRLA’s larger infrastructure has provided an umbrella appropriate for housing a public defender division that has grown since its inception.
- TRLA PD is providing public defense in some of the poorest, least educated counties in the State of Texas. In addition, most of the 10 soon to be 14 counties covered by TRLA have a higher rate of persons without health insurance. These factors make providing public defense both more difficult and necessary.
- TRLA PD has improved the public defense system in the counties it covers compared to the appointment system that preceded it. People spend less time in jail. Now attorneys from TRLA PD go to the jail, which was not being done before. Cases are being vigorously investigated, defended, and tried when necessary.
- There appear to have been far too few misdemeanor appointments in the covered counties prior to the beginning of TRLA PD. That meant that persons charged with crime were being denied the assistance of counsel as required by the Constitution. Establishing the TRLA PD has increased the misdemeanor appointments significantly. This has occurred because of TRLA PD reviewing eligibility and assigning lawyers based upon that review. It is also due to TRLA’s having a commitment to improving public defense in Texas.

Leadership and Management

- There is significant appreciation among TRLA PD staff for the leadership of TRLA as they provide oversight to TRLA PD. The former TRLA Executive Director continues to play an important role in the continued functioning of TRLA PD despite his having retired. In addition, staff has appreciated TRLA’s support for their staying out of court during COVID and being allowed to work remotely.
- The leadership function in TRLA PD has not developed as the organization has grown. This is recognized by the TRLA PD Director, who has attended NAPD’s Executive Leadership Institute on two occasions and has been taking steps to rectify these deficits.

This has been longstanding, and it will take perseverance to rectify. In the meantime, the Director is encouraged to have more confidence in having what it takes to lead TRLA PD into the future.

- The Deputy Director of TRLA PD has not been assigned sufficient management functions at a time when TRLA needs more leadership. Instead, he carries a significant caseload and mentors younger attorneys. This is part of the insufficient attention to leadership and management currently existing in TRLA PD.
- The TRLA PD leadership, including the Director, the Deputy, and Chief Defenders has met only sporadically. Overall, each individual office operates semi-autonomously. Since COVID began, more meetings have been held via zoom.
- TRLA PD has talented and committed Chief Defenders. Most of them have attended recent leadership training and are committed to providing excellent representation to clients.

Recruiting and Hiring

- TRLA recruits and hires committed and client centered staff. TRLA has an excellent reputation nationwide and is able to tap into topnotch recruits. With the addition of a recruiter in TRLA, the recruiting function should be enhanced.
- TRLA has never supported hiring a warm body, insisting on hiring high quality lawyers. For the most part, this has worked well for the TRLA PD.
- TRLA recruits from the central office. TRLA does not recruit strongly for attorneys who understand the region to which they are moving, nor are they evaluated sufficiently for their ability to adapt to the difficult environment of South Texas. As a result, this is one of the causes of significant turnover in TRLA PD.
- Texas law students are interested in working for TRLA PD, and want to hear more about TRLA PD, particularly the provision of law school student loan forgiveness as well as mentoring and training. One Chief Defender presented at the University of Texas Law School and that was helpful to the students. This effort should be expanded.
- In recruiting Texas students, there is the misperception that Texas is not a good place for public defense. As a result, many of the students interested in public defense go to Colorado, Alaska, and elsewhere. What is needed is a narrative that advertises Texas as a place where reform is occurring and where opportunities exist to get in on that reform.
- The internships that have been made available by TRLA PD have been helpful to the law students. It would be helpful if the law students involved in the internships could do more meaningful work by handling their own cases.
- There is a good bit of dissatisfaction with the way some of the hiring is done for attorneys in TRLA PD. Chief Defenders are not involved sufficiently, and hiring is mostly top down. Many Chief Defenders feel like they have little say in who is hired. Many believe “top down” recruiting and hiring leads to too much turnover.
- TRLA needs to be more receptive to hiring experienced attorneys in TRLA PD in some offices rather than what appears to be the practice of hiring only newly “minted”

lawyers. Half of the caseload consists of felonies, requiring staffing by experienced attorneys. This necessitates being able to hire experienced attorneys on occasion whenever turnover occurs.

- Recruiting at national job fairs and from prestigious law firms is laudable. However, there does not appear to be sufficient in-state recruiting and hiring. TRLA PD does not have a sufficient presence at the Texas law schools, through job fairs, forums, and the like.
- TRLA's website does not sufficiently feature the Public Defender Division.
- The salary and benefits do not appear to be a problem for recruiting. A law graduate earns \$47,000 before licensing. Once licensed, the salary increases to \$52,000. Salaries for an attorney licensed 4 years are \$61,000 for a staff attorney, \$64,000 for an Assistant Chief, and \$67,000 for a Chief Defender. A "Step 10" under the collective bargaining agreement pays \$74,000. Attorneys receive a step increase each year on the licensing anniversary date until reaching ten (10) years. TRLA traditionally negotiates with the union a CPI increase each year for those that have been on Step 10 for 12+ months. Health care and particularly law school student loan repayment are major recruiting benefits.

Investigators

- The investigative function has been subsumed by administrative work. Those need to be separated and funded. At present, investigators interview the client, which is important with current practice as they are often the first person to meet with the client. Investigators also determine indigency, enter information into the case tracking system, go to court, arraignments, fill out affidavits, and the like. It has been estimated that 90% of investigator time is in intake and data entry.
- Investigators in some instances are the first person to see a client, and some of the investigators ask the client for an account of what happened. There are problems with this practice, as some attorneys want to wait until discovery has been provided before receiving an account from the client. This occurs often when no attorney-client relationship has yet formed.
- Investigators are requesting discovery. The discovery request and its specificity should be an attorney task. Depending upon the court practice, discovery is something to be litigated by the attorney in an adversarial setting.
- In some instances, investigators are negotiating directly with prosecutors, bypassing the attorney. Again, this is not a best practice. On those occasions when investigators are given a plea offer by a prosecutor, that needs to be communicated to the defending attorney who should handle it from that point.
- Where investigators are experienced and found to be competent, it appears that they are overworked. Investigators who do not know how to investigate are given administrative tasks, resulting in the competent investigators being overloaded.
- Investigators have not been sufficiently trained in conducting criminal investigations.

Workloads

- The TIDC/Texas A&AM method for determining caseloads and workloads has worked well for the most part to ensure workable caseloads in TRLA PD. Caseloads are lower than in many other public defender offices nationwide. Other circumstances cause the workload issues that exist in TRLA PD. Caseloads for TRLA PD compared to other public defender offices in Texas can be found here:
<http://www.tidc.texas.gov/media/58518/tidc-public-defender-primer-2020.pdf>
- Workloads have become excessive when layoffs occur. The policy in TRLA has been for the civil side and the PD side to share equally in the layoffs.
- Workload issues occur most acutely when there is turnover. There is no mechanism for workloads to be contracted out to private attorneys until a new attorney can be hired. As a result, the remaining attorneys must assume all the departing attorney's cases. In many instances, the vacancies have gone unfilled for months. At the time of this assessment, workloads are not a significant problem in the Starr or Lavaca Offices, but they are in Willacy and Bee. For example, in Willacy, the 2 attorneys there face off against 4 prosecutors while handling 85% of the caseloads. In most public defender systems, there is a mechanism for filling in the gap while a replacement is found.
- A significant omission is an internal caseload report issued on an annual or better yet a quarterly basis that has reliable data for each office broken down by attorney. This is a necessary management tool to ensure reasonable caseloads among the attorney staff. This would be used by the Director as well as the Chief Defenders.

Strengths—what is working

- The TRLA public defense system is for the most part independent from the judiciary and the prosecution. However, political pressure can potentially compromise independence during contract renewal.
- To a person, the people in TRLA PD were identified as one of the biggest strengths. They are resilient, hard-working, and committed.
- Indigency determinations appear to be working well. TRLA PD screens for indigency. This avoids the situation in many public defense offices nationwide where judges make the indigency determination; those determinations can be arbitrary and reflect negative judicial attitudes toward the poor.
- TRLA PD has, for the most part, professional office space.
- TRLA has the reputation of being committed to the value of helping the little guy, the poor, the marginalized. This has been a significant change from the previous wheel systems prevalent in the counties. Poor people in the coverage area now have a champion to represent them.
- While TRLA PD has too few experienced felony trial lawyers, they have significant assets in the Director and Deputy Director. Being able to brainstorm major cases with them is a major benefit to working at TRLA PD.

- TRLA provides an important structural umbrella for the TRLA PD. This gives the Chief Defenders and staff the benefit of being in a large organization with important infrastructure such as human resources, budgeting, union representation, and the like. In addition, given the potential political pressure that can occur during contract renewal time, being inside TRLA offers some protection for TRLA PD.
- A library of resources has been developed by the Director. This will be the beginning of an excellent library of resources for TRLA PD and should be built upon by the other attorneys in the organization.
- There was a good collaboration between TRLA's civil and criminal sides on a writ when the Governor ordered that personal recognizance bonds would not be allowed in violent offender cases. This collaboration should be built upon.
- The process for securing an expert witness seems to be working. An attorney requests an expert of the Director and he submits it to the TRLA business office. If it is over \$5000, the attorney must go to the court for an order.

Weaknesses

- Chief Defenders are being hired into leadership positions before they are ready to assume leadership. This has been caused mostly by turnover and by the growing pains of TRLA PD.
- As mentioned elsewhere, the holistic defense model is not working in TRLA. Civil cases referred by public defenders are simply placed in the priority line with other cases; if a case is not a priority it does not get done despite coming from the defender side. The tension between the civil and criminal side has not been dealt with effectively.
- Investigators are not being used as investigators but rather primarily in an administrative capacity.
- Chief Defenders do not seem to have the authority to discipline staff.

Business practices

- TRLA provides good salary and benefits, particularly student loan forgiveness.
- Significant work is needed to establish regular performance evaluations. There are evaluation forms in existence, but they are not used regularly. Evaluations are sporadic. File and case review are not regularly occurring. There is a reluctance among Chief Defenders to engage in progressive discipline.
- There have been and are growing pains regarding regular logistical issues. For example, there is not a functioning printer in the Lavaca Office. There are no land lines there, requiring staff to use their own personal cell phones. Staff had to find their own building following a flood.
- The funding mechanism that TRLA uses is a blunt tool for figuring out proper funding for each office. The beneficial part of this tool is that it results in mostly adequate funding for the offices tied to the caseloads. However, it does not take into account the unique

characteristics of each office. Chief Defenders need to be much more involved in the development and implementation of their budgets.

- There is a potential conflict within Legal Server in that a civil attorney can log into a PD case and get into the files. In addition, it is said that Legal Server is not appropriate for TRLA PD in that you cannot enter multiple charges. TRLA should seek changes from Legal Server to enable this to occur.
- There needs to be clarity from upper management on whether timekeeping is to occur or not.
- TRLA PD does not, as a matter of course, collect data and rely upon that data for decision-making.

Fines and Fees

- Fines and fees appear to be a systemic problem in the 10-county area. For example, In the Lavaca Office, fees are \$60 per month for misdemeanor probation and \$100 for felony probation. In another example, in Starr County, poor people have a difficult time obtaining pretrial diversion because payment up front is required.

Turnover

- There is a major turnover problem in several of the offices. For the most part, this can be traced to the hiring of persons who do not have a good understanding of the environment of the office to which they have been hired. In addition, it is suspected that some are hired with the intention of leaving when an opening in a more populous office is available.
- There is a history of personal conflict in one office that continues to cause problems internally. The turnover has been linked to office morale. The culture there is said not to be as client-centered as hoped by some. The recent hiring of a new Chief Defender promises to resolve many of the issues. In another office, the Chief Defender stepped down due to burnout.

Culture

- There has not developed an overall TRLA PD culture. Rather, each of the trial offices has its own culture. For example, the culture in the Starr Office is said to be family-like, and the personnel there feel supported. The same cannot be said in the Beeville Office. Beeville is an older office and there appears to be a gulf between older and young staff that needs to be dealt with by leadership.
- Leadership needs to be thinking about what kind of culture TRLA PD should have and take steps to become the culture envisioned.

TRLA

- There is a benefit of TRLA PD being in TRLA in that they have the capacity to protect the TRLA PD with representation in civil matters. In addition, TRLA provides a great deal of necessary infrastructure to TRLA.
- TRLA has, for the most part, established good working relationships with the stakeholders in the various counties and provide an invaluable service to TRLA PD in working to ensure contract renewals are done seamlessly.
- Counties are getting a tremendous financial benefit from being part of TRLA.
- There is a potential problem created over the renewal of contracts. It creates tension for the Chief Defenders. Vigorous representation in court can also lead to certain people asserting that other alternatives should be explored.
- TIDC's moving to a 66% funding model has been of great benefit to the future of TRLA PD.
- There is some tension between TRLA PD and TRLA Civil, particularly in the family law/domestic violence/sexual abuse and neglect areas.
- There is a perception that the TRLA PD Director needs to have a bigger voice in TRLA.
- There is a question regarding whether each office is required to have an oversight committee or not.
- TRLA has done a good job dealing with COVID generally. The present and former TRLA Executive Directors as well as the TRLA PD Director have focused on the safety of the staff, which has been much appreciated by staff.
- It is said that there are 4 layers of approval for certain bureaucratic issues. For example, it was difficult at one point to get approval for the office to get a mailbox. TRLA PD as well as the Chief Defenders should be given more autonomy to solve problems with a budget to match.

TRLA PD Division

- Creating the TRLA PD has been a good development that has improved the quality of services being delivered in the South Texas area. TIDC has found recently that a public defender office improves the quality of representation. See generally <http://www.tidc.texas.gov/media/58518/tidc-public-defender-primer-2020.pdf>. TRLA PD is no exception.
- Being client-centered is a value that TRLA PD has adopted and remains devoted to.
- TRLA PD has reformed many bad and unconstitutional practices, such as waivers, prosecutors talking to defendants, and far too many pro se defendants.
- Given the distance geographically between the offices and some of the counties, the offices have been creative and adaptive in creating workarounds. For example, an investigator lives in Duvall County, where there is no office, and he handles a lot of the administrative work, filing motions, delivering service, doing intake. That enables the lawyer to drive the two hours to Duvall from Starr one time per week.
- TRLA PD is on the cusp of a significant expansion. This expansion will include four counties, fourteen lawyers, five of whom are felony qualified, and four investigators.

TIDC

- TIDC's method of creating planning studies is a solid method for advancing public defense reform in Texas. TIDC is to be applauded for their work in reforming public defense particularly in South and rural Texas.
- While TRLA is required to follow TIDC's caseload guidelines as a grant condition, it appears that TRLA attorneys are exceeding the caseload guidelines, particularly when an attorney quits and cases are reassigned to other attorneys. TIDC needs to put systems in place to better monitor its grantees to ensure that they are abiding by its caseload guidelines and other grant conditions.

Conflicts

- There is a significant question about the quality of conflict services being provided.
- There is a feeling among some that TRLA does not appreciate the caseload issue or the conflict issue inherent in having a PD Division.

Holistic defense and Immigration

- TRLA PD is unable to provide holistic representation. Immigration advice is the exception. Often, when there is a client who has a civil need, the PD lawyer is told to have the client call a hotline number, and then the potential civil case is rejected due to not being a priority or due to a conflict with the civil division.
- The peer specialist model is working well in Beeville. Whether this should be extended to other offices should be explored. However, the hiring of a peer specialist occurred when TRLA obtained a mental health grant. There was not sufficient money, however, for a social worker, and a peer specialist was hired instead. The peer specialist in Bee Office adds a great deal of value to the office.
- The Lavaca Office has expressed that it has a huge client population with mental illness. From the Bee County Sustainability Grant, it is estimated that thirty percent of inmates in county jails have a mental illness and 15 percent have a serious mental illness.
- There is a big systemic problem with the lack of resources for clients who need mental health or substance abuse treatment in the area covered by TRLA PD.

Training

- There is no set training regimen set up for new TRLA PD attorneys.
- TRLA provides staff opportunities to attend training by allocating funding, but this is not done in a systematic way determined by the training needs of the individual attorneys. One of the most valuable of these opportunities is Gideon's Promise.

- Leadership training is not being provided on a regular basis to the Chief Defenders. Several attended the most recent ELI in Austin.

RECOMMENDATIONS

It is recognized that many of the recommendations made below carry with them fiscal impact. One of the purposes of this assessment was to identify areas where best practices can be attained, often with the infusion of additional resources. It is hoped that this report will assist in obtaining additional resources.

Leadership and Management

- The Director of TRLA PD should not carry a caseload. Lawyer leaders tend to “default” to trial work rather than focus on the necessary management skills needed to address office operations. This recommendation is even more important since office expansion is occurring in four new counties north of the present coverage area. TRLA needs to make certain that the leadership and management functions increase in TRLA PD as growth occurs, and that the infrastructure exists to support growth.
- Chief Defenders should have reduced caseloads. The reduction should be tailored to the size and caseloads of the office. In smaller offices such as Willacy and Lavaca, the Chief Defender could have a smaller reduction, while in Bee, Starr, and the new office the Chief Defender should have a larger reduction in caseload. This will enable the Chief Defenders to coach his or her attorneys, recruit, work with stakeholders, and ensure the efficient management of the office.
- Monthly meetings between the Director of TRLA PD and Chief Defenders should be established on days and times certain. The Director should create and distribute an agenda of those meetings ahead of time. Everyone should commit to reserving those dates and times so that these meetings could become the norm.
- TRLA PD needs to have its own budget for which they are responsible for creating, monitoring and implementing. The budget process needs to be one of the results of strategic planning. Each office needs to present a proposed budget to the Director who in turn should present and advocate for the proposed budget for TRLA PD to the TRLA Executive Director. Once a budget is passed, the TRLA PD Director and his Chief Defenders then should be charged with implementing that budget. They should be given some discretion in managing their budget. Admittedly this would alter a longstanding practice in TRLA. However, making this change would truly allow TRLA PD to come into its own and become a stronger and more efficient part of TRLA. It would make TRLA PD and its offices more accountable.
- TRLA PD should adopt a collaborative process for putting a budget together, including the Chief Defenders, who should then be charged with implementing the budget.
- Senior leadership, including Chief Defenders, need to prioritize working with stakeholders, including those in county governments. This work has previously been

done ably by TRLA Executive Directors. However, TRLA PD is in a much better position to work with its local stakeholders. This should be done not only by the Director and Deputy Director but also by the Chief Defenders. This will pay off when contracts are renewed and should result in some increased funding from the counties.

- It is recommended that TRLA PD have an Operations Manager who would provide direction for the overall administrative details in the four soon to be five offices. The Operations Manager position should be separate from TRLA Operations.
- A TRLA PD strategic planning process should be created. This should be held as a prelude to creating the Division budget. Time should be invested in strategic planning with the intent to truly bring the offices of TRLA together. If funding is available, an independent facilitator should be hired to come in and work with staff and leadership to create a 5-year plan that could be updated on an annual basis.
- TRLA PD should require regular leadership, management, and supervision training for all Chief Defenders as well as future leaders. TRLA PD should identify and groom future leaders.
- Each office should hold regular staff meetings. Chief Defenders should create an agenda and provide that to all staff prior to the meeting. Additionally, Chief Defenders should seek input from staff on agenda items. Minutes from the meetings should be provided to the TRLA PD Director.
- TRLA should upgrade its website to feature TRLA PD more significantly.
- There should be land lines in all the offices rather than relying on personal cell phones.
- There needs to be a commitment to a regularized performance management system with evaluations, file reviews, and performance agreements. Chief Defenders should be trained on how to coach, write performance agreements, conduct evaluations, and create performance improvement plans. The performance evaluation forms should be defender specific and applicable to each job type.
- TRLA PD needs to assign administrative duties to the Deputy Director. The Deputy should receive leadership and management training. His mentoring duties should be continued and formalized.
- Consideration should be given to creating an appellate unit in the TRLA PD Division. Trial attorneys should not be doing their own appeals, although they should be consulted by the attorney handling the appeal. The size of the appellate unit should be commensurate with the number of appeals arising from TRLA PD. Having a larger appellate unit that could cover appeals from the Far West Texas Regional Public Defender's Office as well as other offices should be explored by TRLA PD and TIDC. This could provide for economy of scale and could also develop significant expertise and collaboration in such a unit.
- Over the long-term, TRLA, TIDC, and TRLA PD should strive to stabilize the coverage area, while at the same time expanding where appropriate.
- Counties should be encouraged to make more of a financial commitment, particularly in the provision of office space as well as increasing funding for social workers.
- Planning needs to occur to pick up the function now performed by the former TRLA Executive Director.

- Expansion of TRLA PD into the newest four counties should be done carefully so that they are integrated into the Division and procedures are established consistent with the remainder of the office.
- TRLA PD should consider the creation of an advisory board to guarantee its independence and provide further local support.

Recruiting, Hiring, and Turnover

- Hiring should be done with significant involvement of the Chief Defenders. The persons doing the recruiting need to set out an accurate picture of the demographics of the area. Those doing the hiring should factor in the adaptability of the recruit to the area. Spanish speakers should be recruited. Offices need to have the ability to hire more experienced attorney staff to meet the needs of the offices.
- TRLA PD should recruit from all the Texas law schools and educate law students on what TRLA PD has to offer, particularly law school loan forgiveness, mentoring, and training. This recruiting should include TRLA PD attending all Texas job fairs as well as forums. Opportunities for law school presence should be sought out from placement offices and student groups.
- TRLA PD should offer internship programs over the summer for in-state law students. These internships should include the opportunity to represent clients.
- When hiring a new lawyer, a moral commitment of 2 years should be required.
- When there is an attorney vacancy, TRLA PD should seek to hire an experienced felony lawyer.
- Because of the discretion TRLA civil has over whether to take a case or not, discretion that TRLA PD does not have, the layoff policy should be altered so that TRLA PD does not suffer layoffs without a concomitant reduction in workload.
- Considerable effort needs to be expended to beef up the information available on the TRLA website about the public defense side of TRLA.
- Building up the holistic defense side of TRLA PD will assist in recruiting and retention.
- Offering free Spanish lessons to new hires should be considered. Law students expressed enthusiasm for this idea.

Investigators

- The investigative function needs to be changed substantially. Investigators should spend most of their time performing as true criminal defense investigators, going to crime scenes, finding and interviewing witnesses, analyzing forensic evidence, subpoenaing witnesses, and helping brainstorm cases.
- Investigators should not be the first person to see the client, nor should they be the first person to ask for the client's account of the incident. Whether or not to ask for the client's account of the incident should be a decision made by an attorney.
- Investigators should not be requesting discovery from the prosecutor's office.

- Investigators should never be negotiating with the prosecutor over a resolution of the case, nor should they be communicating to the client the meaning or consequences of pleading guilty.
- Those investigators with substantial experience should not be overloaded due to inexperience of other investigators. This reduces the effectiveness of the overloaded investigators.
- TRLA should invest in training for investigators.
- There should be an investigative request form filled out by the attorney representing the client based upon the attorney's good judgment. Investigative requests should vary as the case develops, and multiple requests need to be made in each case.

Culture

- Efforts should be made to develop a division-wide culture. At present, there is no division-wide culture; rather, each office has its own culture. Exploring how to do this could be one of the topics explored at strategic planning.
- Give TRLA PD a unique name with an advisory board overseeing the defender operation. A name such as Texas Rio Grande Regional Public Defenders Office, or South Texas Public Defender's office, or Rio Grande Defenders, or something similar could be used to start the creation of a unique brand that captures the division culture.
- An annual or bi-annual TRLA PD Division Conference should be held for training purposes and to bind TRLA PD together.
- A TRLA PD online newsletter should be encouraged. News regarding each office could be shared, along with accomplishments and personal information, which could assist in developing the office culture.

Holistic Defense

- TRLA PD should affirm the holistic model; the TRLA Civil Division should supply the staff to make it a reality. The conflict of interest that exists between civil and criminal should be resolved by senior leadership. A civil intake worker should be established in each office whose responsibility would be to seamlessly ensure that the office was being holistic and had access to TRLA Civil. TRLA Civil needs to make cases a priority that are referred from TRLA PD.
- Social workers should be hired for each of the offices in TRLA PD. These social workers would be tasked with supplying information to the attorneys for pretrial release and diversion advocacy, developing sentencing plans, assisting with juvenile cases, and finding appropriate placements for treatment.

Training

- A TRLA PD Training Director should be hired who would develop new attorney training as well as a trial school. Training needs to be planned to meet the needs of new attorneys and developing attorneys, rather than giving attorneys money to plan their own training. The Training Director should create a set curriculum for new and more experienced attorneys. The Training Director could also create manuals, brief and motion banks, and other resources for different practice areas. The Training Director could coordinate training from places outside of Texas and could identify specific training for specific attorneys. There are two possible options for the Training Director. One would be for the person to have a reduced caseload and handle training functions just for TRLA PD. Another possible option would be for the training director to serve both TRLA PD and the Far West Texas Regional Public Defender’s Office and perhaps other offices with expenses shared between them.

Workloads

- The Chief Defenders and the Director of TRLA PD need to monitor on a regular basis current individual open and closed caseloads for all attorneys. Closing files consistently appears to be an issue. Without regularly closing files there will be inflated case counts. Appropriate caseload reports need to be generated by the case management system and reviewed by TRLA PD leaders. There needs to be a commitment coming from the top of TRLA and TRLA PD for case data being entered and monitored. This data needs to be accurate and reliable and used in supervision and leadership. This commitment needs to be extended to stressing the importance of timekeeping. Timekeeping is a vital mechanism for making the case for sufficient resources based upon reliable data and metrics. See generally the NAPD Statement on the Necessity of Meaningful Workload Standards for Public Defense Delivery Systems, found at https://www.publicdefenders.us/files/NAPD_workload_statement.pdf.
- There should be an annual caseload report broken down by office with attorney caseloads, dispositions, and the like.

Conflicts

- Contracts should be used with local attorneys to cover courts when there are vacancies that cannot be filled. Private attorneys who are now receiving conflict cases should be evaluated for receiving these contracts to ensure they have the experience and commitment to excellence required in TRLA PD generally.
- TRLA PD needs to change the conflict system to a managed assigned counsel (MAC) system with standards for private counsel. Appropriate experience and standards should be set for this system. This MAC would be charged with supervision of the private bar. It is recommended that TRLA learn from the MAC in nearby Houston. For more on the importance of supervision, see generally NAPD Policy on Active Supervision of the Representation of Clients [NAPD Policy on Active Supervision \(publicdefenders.us\)](#) (2020).

- TRLA needs to take steps to ensure that attorneys cannot access files from elsewhere in TRLA. A tweak to Legal Server needs to be explored.

Practice

- Lawyers should be required to interview their clients within 48 hours of arrest. Investigators should not be used as a replacement for client interviews.
- Attorneys should be present at magistration so that they can argue for bond and begin to establish the attorney client relationship. This would comply with *Rothgery v. Gillespie*, 554 U.S. 191 (2008). A recent report by the Right to Counsel Campaign noted the value of attorneys at magistration, based on a TIDC funded project out of Bexar County.
https://static1.squarespace.com/static/55f72cc9e4b0af7449da1543/t/5f85ad74782896613099b439/1602596217665/AU_WhitePaperReport_FINAL.pdf
- There needs to be sufficient staffing to do bond advocacy at magistration.
- Performance measures and quality of representation guidelines should be established, distributed, and trained upon.
- TRLA and TRLA PD should explore systemic impact litigation regarding the egregious practices regarding fines and fees being assessed against poor people.

Office Physical Plants

- TRLA PD should pay attention to the physical plants in each office to ensure the staff have what they need, such as printers, land lines, laptops, MiFi's, and a professional office.
- TRLA PD should develop a protocol to replace computers every 3-4 years.
- There should be an office in Raymondville for the Willacy Office.
- The Lavaca Office needs to have an administrator to handle clerical and administrative functions.

MATERIALS USED

1. Willacy District Court and County Court Plan: Prompt Magistration
2. Bee, Live Oak, and McMullen County Courts Indigent Defense Plan
3. Regional Public Defender Contract between Starr County and TRLA. Includes Starr, Jim Hogg, and Duval Counties.
4. Regional Public Defender Contract between Bee County and TRLA. Includes Bee, Live Oak, McMullen, Willacy, and Refugio Counties.
5. Intergovernmental Agreement between Bee County and Willacy County.
6. Interlocal agreement between Starr County and Duvall County.
7. TRLA Employee Handbook
8. Bee County Grant
9. Goliad County Grants

10. Lavaca County Grants
11. Starr County Grants
12. TRLA Regional Public Defender Program Caseloads 5/14/2020
13. TIDC Planning Study for Hays County Public Defender Office 4/16/2020
14. TIDC Planning Study for Victoria/Calhoun/Dewitt/Jackson Public Defender Office
15. TRLA Victoria Regional Public Defender Office, 2020, spreadsheet
16. 5 Quarterly Reports
17. Guidelines for Indigent Defense Caseloads (Texas A&M 2015)
18. WaPo article on the virus:
<https://www.washingtonpost.com/nation/2020/08/24/coronavirus-texas-rio-grande-valley/?arc404=true>
19. TRLA PUBLIC DEFENDER DIVISION Handling Your Cases: Pretrial and MTR/MTA
20. TRLA Policies and Procedures Manual
21. Spreadsheet prepared by David Hall on the 81st and 218th FY 2021
22. 2021 Atacosa County Improvement Grant Application Narrative
23. Bexar County Indigent Defense System Evaluation
24. Sixth Amendment Center Report on Armstrong and Potter Counties (2019)
[6AC tx armstrongpotterreport 2019.pdf \(sixthamendment.org\)](#)
25. NAPD Policy Statement on Proper Professional Space, Equipment, Confidential Communications with Clients, Supporting Services for Public Defense (2020)
[Space FINAL \(publicdefenders.us\)](#)
26. NAPD Policy on Active Supervision of the Representation of Clients [NAPD Policy on Active Supervision \(publicdefenders.us\)](#) (2020).

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