



Proposal to Bee County, Texas

In Response to the September 2008 Solicitation Entitled

“RFP No. 07/08-004: Office of Public Defender”

Submitted: September 18, 2008

Texas Rio Grande Legal Aid

David G. Hall, Executive Director

300 South Texas Avenue

Weslaco, Texas 78596

Telephone (956) 793-0766

Fax: (956) 968-8821

Email: dhall@trla.org

Table of Contents

I. Introduction	1
II. Budget	3
III. Personnel Descriptions	4
IV. Workload Management Plan	9
V. Training	12
VI. Overhead Cost Descriptions	13
VII. Investigator And Expert Policy	12
VIII. Ability To Provide Adequate Quality Representation	14
IX. Case Management Technology	14
X. Conclusion	16

Supporting Documents

- A. TRLA Non-Profit Corporation Certificate from the Internal Revenue Service
- B. TRLA Board of Directors
- C. TRLA Articles of Incorporation
- D. TRLA Bylaws
- E. Résumés of David G. Hall, Mary Kay Sicola, and Jerome Wesevich
- F. TRLA Insurance Certificates
- G. Public Defender Press

I. Introduction

Texas RioGrande Legal Aid, Inc. (“TRLA”) is a non-profit corporation that has built a 38-year record of providing quality legal services to indigent people throughout the Texas-Mexico border region. TRLA provides a broad range of civil legal services through 130 lawyers working in fourteen offices and some three dozen specialized “practice areas,” including housing, Social Security and other public benefits, mental health and retardation, family law, wills, employment, and immigration. In 2005, TRLA secured state and county funding to begin operating Texas’s first non-profit public defender office, and Texas’s only regional public defender office, serving indigent people who are charged with misdemeanor and felony offenses in Val Verde, Edwards, Kinney and Terrell counties. *See* Val Verde Press, attached Exhibit H.

TRLA proposes to create and operate a Bee County Regional Public Defender Office (“BRPD”) serving the counties of Bee, Live Oak and McMullen. The BRPD will include the following major features:

- TRLA intends this proposal to conform in every respect to Bee County’s Request for Proposals entitled “RFP No. 07/08-004: Office of Public Defender”;
- TRLA will ensure that the BRPD provides adequate representation at all stages in criminal procedure from a prompt initial interview and case analysis after arrest through trial and direct appeal for all felony, misdemeanor, and juvenile cases brought against indigent defendants in the BRPD service area, subject to exceptions stated next;
- The only cases excluded from BRPD services are those in which (a) a defendant is determined not to be indigent, (b) charges are filed in a court that is outside the BRPD service area, (c) the death penalty is sought, (d) a conflict of interest exists; (e) the defendant is charged with a specific domestic violence offense that presents a high likelihood of conflict considering TRLA’s longstanding relationship with local women’s shelters as described below, or (f) BRPD caseload limits would be exceeded in violation of state bar rules of attorney conduct;
- TRLA intends to structure the BRPD so that it may be expanded if Bee County later chooses to do so. The BRPD will represent indigent criminal defendants in Bee, Live Oak and McMullen Counties initially, and then in adjacent counties only if Bee County and the counties wishing to join the regional defender program execute agreements governing BRPD representation;
- TRLA will provide legal services that comply with all federal and state laws governing representation of the poor in criminal cases (including Texas Code of Criminal Procedure Ch. 26), and will do so at reasonable cost.¹

¹ Unlike most other public functions performed by the County, the provision of counsel for the poor in criminal proceedings is required by the Texas and United States constitutions. No county resident has a constitutional right to a paved road or even to medical care, but every person facing criminal charges has a constitutionally protected right

TRLA proposes to staff the Public Defender Office with an experienced Chief Defender, a First Assistant Public Defender, three Assistant Public Defenders (one of whom is part-time), two Investigators, and one Office Manager on an initial annual operating budget of \$598,180. The BRPD would initially be operated from TRLA's existing office space in Sinton. TRLA could be ready to begin accepting a limited number of case assignments on October 1, 2008, if a contract has been executed prior to that date. The BRPD will reach full operational capacity by December 1, 2008, accepting all qualified felony, misdemeanor, and juvenile cases brought against indigent defendants.

TRLA will work with Bee County's oversight committee to develop appropriate procedures for transitioning from the current "wheel" appointment system to the BRPD. As part of the transition, TRLA will draft language that Bee County officials may consider adopting as a new indigent defense plan. TRLA has drafted model indigent defense plans that have been made available through the Texas Task Force on Indigent Defense, and adopted in many counties.

to counsel. This not only protects the innocent, but it also promotes respect for the law by building public confidence in the results reached by our criminal justice system.

Since the nation's founding, the Constitution has affirmed that a person charged with crime has a right to a lawyer. "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. CONST., Amend. VI. To implement this provision when defendants are unable to afford counsel, the Supreme Court required publicly-funded counsel, first in death penalty cases, *Powell v. Alabama*, 287 U.S. 45 (1932), next in all other felony cases, *Gideon v. Wainwright*, 372 U.S. 335 (1963), and finally in all misdemeanor cases that carry a potential jail sentence, *Argersinger v. Hamlin*, 407 U.S. 24 (1972). The Supreme Court explains why:

The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. A defendant's need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in *Powell v. Alabama*: "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

Gideon, 372 U.S. at 344-345. Similarly, Texas has long recognized the need for "the guiding hand of counsel." Every Texas Constitution since 1836 guarantees the right to counsel. TEX. CONST. Art. I, Sec. 10. At least 106 years before *Gideon*, Texas law required that "When the defendant is brought into Court, for the purpose of being arraigned, if it appears that he has no counsel, and is too poor to employ counsel, the Court shall appoint one or more practicing attorneys to defend him." TEX. CODE CRIM. PROC. (1857). Today, the law remains that every person charged with a criminal offense must be afforded representation through direct appeal if the offense carries incarceration or death as a potential penalty. TEX. CODE CRIM. PROC. Art. 1.051(c).

Case trends in Bee County over the past two years indicate that defendants in 306 felony, 1,013 misdemeanor, 66 juvenile, and 5 appellate cases may be expected to qualify for BRPD services during the BRPD's first twelve months of operation. The BRPD will have the capacity to provide quality representation in these cases for an average of about \$750 per felony case, \$250 per misdemeanor case, \$500 per juvenile case, and \$1,000 per appeal.

II. Budget

TRLA proposes the following budget for operating the BRPD for the 12-month period beginning October 1, 2008:

Personnel	Annualized Salary	Fringe Benefits at 23%	% Time Applied to PD	PD Salary
Chief Defender (20 yrs experience)	\$80,000	\$18,400	100%	\$98,400
First Assistant Public Defender (8 yrs)	\$50,000	\$11,500	100%	\$61,500
Assistant Public Defender (2 yrs)	\$42,000	\$9,660	100%	\$51,660
Assistant Public Defender (1 yr)	\$40,000	\$9,200	100%	\$49,200
Assistant Public Defender (1 yr, part-time)	\$40,000	\$9,200	50%	\$24,600
Investigator (5 yrs experience)	\$32,000	\$7,360	100%	\$39,360
Investigator (2 yrs)	\$30,000	\$6,900	100%	\$36,900
Secretary (10 yrs experience)	\$30,000	\$6,900	100%	\$36,900
Personnel Total	\$344,000	\$79,120		\$398,520

Non-Personnel	Quantity	Months	Cost	Total
Operating Expenses				
Travel Local	2188	12	\$0.58	\$15,228
Space (including utilities)	2300	12	\$1.50	\$41,400
Network printer/copier/scanner (Xerox 55)	1	12	\$436.00	\$5,232
Supplies		12	\$200	\$2,400
Litigation Expense		12	\$4,000	\$48,000
Telephone	8	12	\$100	\$9,600
Internet connection		12	\$100	\$1,200
Training (CLE)	4		\$1,000	\$4,000
Legal research & library	4		\$750	\$3,000
Admin Costs (IT, Accounting, Audit, etc.)	<3%			\$15,000
Subtotal Operating				\$145,060
Capital Expenditures				
Furnishings	8		\$1,000	\$8,000
Computers	7		\$1,500	\$10,500
Software	7		\$700	\$4,900
Network installation	8		\$150	\$1,200
Telephones (VoIP)	8		\$500	\$4,000
Videoconferencing equipment	4		\$6,500	\$26,000
Subtotal Capital				\$54,600
Non-personnel Total				\$199,660
FY2009 Annualized Budget				\$598,180

The budgeted operating costs for the first year assumes that the full complement of staff is needed to carry the anticipated caseload. If the caseload does not materialize or the number of defendants who are eligible is not as great as projected, a savings will result that can be applied to reduce costs to Bee County during subsequent years of operation.

After the first year of operation, the capital expenditure costs will be minimal, if any. There will be a need to adjust the salaries to reflect cost-of-living increases, which have ranged in the 2-3% level for the last several years. Furthermore, in subsequent project years there should be more accurate budget predictability available based upon actual experience in the first year of BRPD operation.

TRLA has an accounting system in place that has been widely acknowledged by a variety of independent reviewers and auditors to be an exemplary system. TRLA is required to furnish an independent audit each year to its principal funding sources, and copies of that annual audit will be furnished to Bee County to verify the proper expenditure of all funds received for the BRPD. TRLA also has in place strong administrative and other managerial support systems that result from decades of experience in furnishing legal services to poor people.

III. Personnel Descriptions

TRLA will meet all statutory and Bee County grant requirements as to each staff position funded through the BRPD grant. The BRPD staff will operate under the same employment and personnel policies as other TRLA staff. Those policies provide for a complete fringe benefit package, including health and professional liability insurance, pensions, leave, continuing legal education, and bar membership dues, including membership in the criminal justice section. All BRPD attorneys will comply with all attorney qualification provisions of the Bee County Indigent Defense Plan on file with the Texas Task Force on Indigent Defense. Each staff member must agree in writing to not engage in any private practice of law for compensation; and not accept anything of value not authorized by law for services rendered as a public defender. Descriptions of every BRPD personnel position will be as follows.

A. Chief Public Defender

The Chief Defender will be recruited by TRLA and hired only after Bee County's oversight committee (as described on Page 1 of the Solicitation) has determined that the candidate's qualifications are adequate. Qualifications include education, experience, publications, and references. The Chief Public Defender will be supervised by the TRLA Executive Director and its Defender Division Director.

Minimum qualifications of the Chief Public Defender:

- is a member of the State Bar of Texas;
- has at least three years of criminal litigation experience; and
- has completed ten hours of Continuing Legal Education within the past year.

The ideal Chief Public Defender candidate would be someone who:

- has a strong academic background with demonstrated legal skills;
- is committed to zealously and ethically serving the clients being represented;

- knows and has personal ties to the community being served,
- is bilingual,
- has worked in a public defender office;
- has tried to verdict as lead or co-counsel three or more felony cases, two or more of which have been jury trials;
- has briefed or argued two or more cases before a Texas or federal appellate court; and,
- has completed ten or more hours of continuing legal education in criminal law within the past year, including carryover from one previous year only.

The Chief Public Defender's responsibilities will include:

- supervising and directing the work of all BRPD staff;
- ensuring that the quality and quantity of each attorney's work are adequate under the workload management plan stated below;
- serving as lead counsel of record in up to 100 felony cases, 100 misdemeanor cases, and 2 appellate cases;
- coordinating procedures, practices and protocols in the criminal justice system in each of the participating counties with the objective of increasing efficiency, effectiveness and quality of the system
- approving training and travel reimbursement requests;
- attending a legislative update seminar during every calendar year that the Texas Legislature meets;
- training staff in office procedures as described on p. 12 below;
- providing information concerning BRPD operations to Bee County; and,
- responding to attorney, bar, and public inquiries concerning the BRPD's work.

B. First Assistant Public Defender

The First Assistant Public Defender will be recruited, hired and assigned by TRLA's Executive Director, and be subject to discipline or removal according to the standard employment policies applicable to all TRLA attorneys.

Minimum qualifications for each staff public defender include:

- licensed to practice law in Texas or willing to take the next available Texas bar exam;
- two years of criminal litigation experience, or comparable appellate, academic or clinical experience in criminal law;
- proficiency in the Windows operating system, Microsoft Word, Excel and PowerPoint, and legal research software; and
- completion of ten hours of continuing legal education in criminal law during each 12 months of service.

The duties of the First Assistant Public Defender are:

- serve as lead counsel of record in up to 150 felony cases, 20 misdemeanor cases, and 3 appellate cases per year;
- monitor the caseloads of assistant public defenders and mentor them in trial and appellate practice;
- develop practice materials, including motions, briefs, pleadings and training manuals;
- assist the Chief Public Defender in coordinating procedures, practices and protocols in the criminal justice system in each of the participating counties with the objective of increasing efficiency, effectiveness and quality of the system;
- respond to requests for information from the local bar and community; and
- refine BRPD eligibility and pretrial procedures.

B. Assistant Public Defenders

The Assistant Public Defenders will be recruited, hired and assigned by TRLA's Executive Director, and be subject to discipline or removal according to the standard employment policies applicable to all TRLA attorneys. One or more of TRLA's attorneys assigned to other offices may serve as a staff public defender on BRPD cases from time to time, and in doing so will record the amount of time chargeable to these cases.

Minimum qualifications for each staff public defender include:

- licensed to practice law in Texas or willing to take the next available Texas bar exam;
- one year of criminal litigation experience or comparable academic or clinical experience in criminal law;
- proficiency in the Windows operating system, Microsoft Word, Excel and PowerPoint, and legal research software; and
- completion of ten hours of continuing legal education in criminal law during each 12 months of service.

During each year, staff public defenders will:

- serve as lead counsel of record in up to 50 felony cases, 300 misdemeanor cases, and 30 juvenile cases;
- part-time staff defender(s) will represent defendants in 200 misdemeanor cases;
- respond to requests for information from the local bar and community; and
- refine BRPD eligibility and pretrial procedures.

C. Investigators

The Investigators will be recruited and hired by the Chief Public Defender, and be subject to discipline or removal according to the standard employment policies applicable to all TRLA paralegals.

Minimum qualifications for an Investigator include:

- licensed as a peace officer or a private investigator for two or more years by the Texas Department of Public Safety, or comparable experience as a paralegal in a law office;
- access to a reliable personal vehicle;
- strong writing skills and experience in writing investigation reports;
- proficiency in Microsoft Word, Excel and computer data entry, and proficiency in the use of the Internet;
- proficiency in the use of audio and video recording equipment;
- bilingual in English and Spanish; and
- suitable recommendations.

Responsibilities include:

- interviewing persons admitted to the jails within 24 hours of confinement to determine their eligibility for representation by the BRPD, entering relevant information into the TRLA case management system, and producing written reports, motions, affidavits or pleadings regarding pending charges, information relevant to bail or personal recognizance release, and potential defenses to the matters charged;
- interviewing witnesses and writing comprehensive investigation reports;
- obtaining and analyzing documents, reports, photographs, recordings and other forensic materials, and recording such information in the case management system;
- surveying crime scenes and recording information, including detailed drawings and photographs;
- locating witnesses and other case-relevant information using the Internet and other forensic investigative methods.

D. Legal Secretary

The Legal Secretary will be recruited, hired and assigned by the Chief Public Defender, and be subject to discipline or removal according to the standard employment policies applicable to all TRLA secretaries.

Minimum qualifications of a Legal Secretary include:

- proficiency in the Windows operating system, Microsoft Word and Excel applications, and computer data entry;
- bilingual in English and Spanish;
- at least six months' experience as a legal secretary; and
- capable of passing of TRLA's Legal Secretary examination.

Responsibilities include:

- drafting, editing, formatting and printing legal documents, correspondence and reports in Microsoft Word;
- scanning, faxing and filing documents;

- managing incoming and outgoing mail, faxes and telephone calls;
- managing case file records on the TRLA Client Tracking System, the custom-written case management system, as well as the hard copy files;
- managing and purchasing supplies, office equipment and furnishings; and,
- miscellaneous administrative duties, including time sheets for payroll, travel reimbursement requests, and docket maintenance.

E. Administration

TRLA's management, accounting, and information technology personnel will provide the following services to the BRPD:

- recruiting lawyers and support staff;
- supervision, training and mentoring staff of the BRPD;
- assistance in developing a BRPD policies and procedures manual, using as a model TRLA's existing manual for its Public Defender offices;
- computer applications and development of criminal case modules for TRLA's proprietary case management system, the Client Tracking System ("CTS"), including legal work templates, forms, and content;
- audit, accounting and biweekly payroll management;
- employee benefits management, including health care, pension, leave and professional development;
- grant and contract funds management, including reports to Bee County on BRPD expenditures, operations, and results;
- resource development and fund-raising;
- purchase and maintain office equipment and bulk purchase of office supplies;
- maintain and manage workers' compensation, premises liability, and professional liability insurance;
- establish and maintain suitable office space and physical infrastructure;
- purchase and maintain telephone systems using Voice-over-IP technology;
- Information Technology support, including computer purchase, setup and maintenance, Internet and data transmission services, local area and wide area network systems, email, legal research services, and case management services using the CTS.

F. Law Student Interns

TRLA historically attracts unpaid law students to serve as interns or law clerks in each of its offices during the summer break months, or part-time during law school. TRLA anticipates recruiting unpaid law clerks to perform legal and factual research and to proofread court documents for the BRPD, providing valuable experience for the students while leveraging attorney time for the BRPD. With TRLA's wide-area network and case management system, law clerks can perform valuable services for BRPD clients from remote locations at their law schools, and need not be physically present in the BRPD offices. All work by interns or law clerks will be directly supervised by a BRPD attorney.

TRLA will explore other options for establishing working relationships with law schools, providing both faculty and student support for the staff of the BRPD office. Numerous opportunities exist for TRLA to bring no-cost services to support the efforts of the TRLA/Bee County BRPD project.

G. Other TRLA Staff

TRLA anticipates using some of its existing civil legal services staff to augment the services of the BRPD. A number of TRLA lawyers have criminal trial experience, and still other TRLA lawyers would like to acquire litigation experience. Some of the more experienced TRLA lawyers would be helpful as mentors to the less experienced Defender staff in litigation and case management. These are just a few of the circumstances where it would be advantageous to pursue collaboration with the entire TRLA staff. When representing defender program clients, the civil attorneys employed by TRLA would be paid from BRPD funds or would work on a voluntary basis.

In addition, TRLA intends to explore fully the opportunities for cooperation and synergy between the defender and civil components of TRLA's legal services delivery system. Often when persons are accused of crimes, there is a major negative impact on the family of the accused. Issues involving drug and alcohol abuse, mental illness, public benefits, housing, immigration and family law are common in these cases, and TRLA is uniquely capable of bringing its civil representation resources to bear in addressing these kinds of matters.

IV. Workload Management Plan

TRLA's Workload Management Plan is designed to ensure that BRPD representation is available to all qualified clients who need representation, and to minimize the expenditures that are necessary for assigned counsel outside the BRPD.

The first step in creating a Workload Management Plan is to estimate the number of cases that the Public Defender office may be assigned. The best projections of future caseloads are based on past caseloads. The Task Force on Indigent Defense compiles the data from reports that the counties have filed with the Office of Court Administration, and the table below shows the total number of new cases added in Bee, Live Oak and McMullen Counties over each of the past two years, not just the number of cases in which the counties paid for the representation of someone unable to hire private counsel. Examining this data shows that an average of 409 felony cases were filed each year, 1,351 misdemeanor cases were filed, 89 juvenile cases were filed, and no appeals were filed during these two years.

	2007				2006				Average Cases Added			
	Fel	Misd	Juv	Total	Fel	Misd	Juv	Total	Fel	Misd	Juv	Total
Bee	380	919	75	1,374	332	653	83	1,068	356	786	79	1,221
Live Oak	66	459	17	542	24	598	2	624	45	529	10	583
McMullen	7	28	0	35	8	45	0	53	8	37	0	44
Total Cases Added	453	1,406	92	1,951	364	1,296	85	1,745	409	1,351	89	1,848
Assignment Rate	75%								306	1,013	66	1,386

The next step in the workload determination is to project the annual number of cases in which the defendant may be expected to be indigent, and therefore eligible for representation by the BRPD. TRLA conservatively estimates that 75% of the new cases added will involve a defendant who is indigent, based on Texas and national data, and upon TRLA's experience. Actual appointment rates in Bee County have been reported at less than 40%, which appears extremely low for a rural South Texas county with a poverty rate in excess of 30%. Moreover, Texas data indicates that at least 0.5% of convictions are directly appealed, and Bee County shows no appeals in the last three years. TRLA thus bases its Workload Management Plan on the higher caseload percentages as a means of protecting the county from unforeseen expenditures for outside counsel. Some defendants must be referred to private counsel because of conflict of interest rules. Also, because TRLA has a supervisory role over the legal advocates at regional domestic violence shelters, those cases in which the applicant is charged with certain kinds of domestic-violence-related crimes will have to be excluded as well.² TRLA's proposed budget is based on these estimated caseload figures. **This budget will enable the BRPD to represent indigent clients in 306 felony cases, 1,013 misdemeanor cases, 66 juvenile cases, and 5 appeals.** If the average number of cases over the past two years accurately indicates caseloads to be expected over the next 12 months, and the 75% assignment rate is appropriately conservative, the BRPD should be able to accept all eligible felony, misdemeanor, and juvenile cases that are assigned to the BRPD over the next 12 months, and do so within the budget stated above.

These caseload projections are necessarily imprecise. The actual number of cases assigned vary due to unforeseeable circumstances ranging from law enforcement focus, the performance of the economies in Texas and the United States generally, and the exercise of prosecutorial discretion. The complexity of the cases themselves may also vary depending on the severity of injury to victims, search and seizure practices of law enforcement agencies, the mental health of defendants, and the plea practices of the prosecutors. For all of these reasons, it is impossible to precisely predict what number of cases will be completed by any attorney or the BRPD itself, particularly in its first year of operation. Workload projections will become more definite as BRPD data is generated over time.

Accordingly, TRLA's proposed Workload Management Plan responds to caseload uncertainty with flexible and efficient distribution of legal resources, as follows:

² The most common types of crimes that TRLA proposes to exclude from representation are: (1) family violence assault under Tex. Penal Code sec. 22.01, (2) aggravated sexual assault under sec. 22.021 if the offense is alleged against a spouse or domestic partner, (3) interference with child custody under sec. 25.03 if the complaining witness is a spouse or domestic partner, and (4) violation of a protective order under sec. 25.07.

- (1) Within 24 hours of booking into jail, or by appointment for defendants who are not pre-trial detainees, a BRPD staff member will interview each detainee and investigate (a) financial eligibility for representation, (b) whether a conflict of interest precludes BRPD representation, (c) if apparently eligible for BRPD representation, a case analysis, and (d) assessment of suitability and amount of bond, or release on personal recognizance.
- (2a) **Alternative A³**. Upon conclusion of each interview, BRPD staff will immediately transmit a report to the judge designated under the county indigent defense plans to make assignments of counsel, and to the defendant. The report will state: (a) whether BRPD's investigation indicates that the defendant is indigent and qualifies for appointed counsel under the appropriate indigent defense plan; and (b) whether a conflict of interest or other professional responsibility prevents BRPD from serving the defendant. The report will also recommend one of the following orders for the judge's consideration: (a) that the BRPD be appointed to represent the defendant; (b) that private counsel be appointed to represent the defendant (e.g., conflict of interest); (c) that appointed counsel be denied due to insufficient evidence of indigence; or (d) that the court hold a hearing to determine indigence. Based upon an objective scoring of factors relating to the defendant's ties to the community, the BRPD may also submit a report and recommendation on whether the defendant is a suitable candidate for release on personal recognizance or other bond.
- (2b) **Alternative B**. To minimize costs, TRLA recommends that the BRPD adopt the procedure used in Willacy County, where TRLA operates a single-county public defender program. By local rule, Willacy County judges directed the defender office to self-assign cases. After initial eligibility screening by an Investigator, the Chief Public Defender determines whether the defendant is financially eligible, subject to review by the presiding judge of each court. If the accused is eligible, TRLA and the client execute a representation agreement, and the PD may then immediately commence representation, including factual investigation, magistration and bond setting. This system permits more expeditious processing of cases, particularly where disposition is reached via plea agreement, and it relieves the judges of time spent in making eligibility determinations in a large majority of cases. If the accused is not eligible, if eligibility is in doubt, or if a conflict of interest exists, the case is referred to the designated appointing judge for determination and, if the defendant is eligible, for assignment of private counsel in conflict situations.
- (3) The BRPD may decline to represent a defendant if: (a) the BRPD learns that the defendant is not indigent, (b) the charges for which representation is sought are prosecuted in a court that is outside the BRPD service area; (c) a conflict of interest becomes apparent among indigent defendants, or between a defendant and the BRPD; (d) the defendant is charged with a family violence offense as specified herein; or (e) the BRPD lacks the personnel to adequately represent the client under Texas Rule of Professional Responsibility 1.01. Under any of these circumstances, the BRPD may decline appointment or withdraw from appointment, as appropriate.

³³ The Workload Management Plan contemplates that the judges and the counties will choose between Alternatives A (traditional court assignment) and B (self-assignment by TRLA). Of course, that determination could be made after the interested parties have acquired some experience in operating with a public defender office.

- (4) While the BRPD is appointed, it will provide all criminal defense services necessary to each defendant through judgment and direct appeal, and do so in accord with all federal, state, and local laws and standards governing indigent defense services.
- (5) The Chief Public Defender will periodically monitor and adjust caseload distribution among BRPD attorneys, and adjust staffing levels within the budget described in this proposal, to ensure that the most efficient and effective representation is available to as many eligible clients as possible at all times. The Chief Public Defender will provide periodic reports to Bee County on how well the BRPD has succeeded in completing the work assigned to it, on its capacity to accept additional cases, and on its adherence to the caseload policies stated above.

The bottom line is that even with the unavoidable uncertainty in caseloads, TRLA's Workload Management Plan protects the counties from spending indigent defense money for outside representation unless the number of cases in which counsel is appointed for indigent defendants greatly exceeds its historical average, an unlikely event in the coming year. The employee position descriptions stated above allow for flexibility in accepting the entire anticipated caseload, based on existing national caseload standards for public defenders.⁴

It is TRLA's intention to hire staff and increase project capacity only as the caseload and circumstances indicate the need to do so. TRLA has many years of experience in adjusting operations as budgets and caseloads demand or allow. That experience will be brought to bear on the unique circumstances surrounding this effort to create the BRPD serving defendants in Bee, Live Oak and McMullen Counties.

V. Training

The Chief Public Defender's first responsibility will be to train each staff member on TRLA procedures concerning client correspondence, docketing, pre-trial practice, motion practice, trial practice, and appeals. Part of that training will come through periodic in-house trainings conducted by the TRLA Public Defender Division for the staff in the three defender offices. Peer review of each major court presentation within the BRPD office will afford each attorney important additional training opportunities.

Each attorney will also have a training budget of \$1,000 per year to cover travel and tuition expenses necessary to attend continuing legal education (CLE) courses in substantive and procedural criminal law. The Chief Public Defender must approve each training expenditure in

⁴ The most comprehensive study of public defender caseloads was done by the National Advisory Commission on Criminal Justice Standards and Goals in 1973. The Commission recommended that public defender caseloads be limited to the equivalent of: 150 felony cases, 400 misdemeanor cases, or 25 direct appeals per attorney per year. These figures have withstood the test of time, and are currently used in Arizona, Georgia, Indiana, Missouri, New York, Vermont, and Washington. See Texas Task Force on Indigent Defense, *Blueprint for Creating a Public Defender Office in Texas*, p. 14 (2d ed. 2008) (available at <http://www.courts.state.tx.us/tfid/pdf/2008revisedblueprintfinal.pdf>).

advance. TRLA has successfully used this policy to ensure that all CLE requirements are met for its staff, and that each staff member is trained in current developments in his or her areas of practice.

TRLA Information Technology staff will provide each BRPD staff member in-house training on TRLA's Client Tracking System software, on its Voice-over-Internet-Protocol telephone system, and on standard software packages as needed.

As time and circumstances permit, TRLA will make training on its criminal defense practices available to the local bar, and will also respond to specific questions presented by bar members. TRLA will share its brief bank, research, and forms with the local bar as requested.

VI. Overhead Cost Descriptions

With 67% of the proposed BRPD budget directed to staff salaries and benefits, overhead costs that are necessary to operate the BRPD are limited to 24% of the budget. Each specific overhead cost figure stated in the budget above is based on TRLA's extensive experience in meeting these overhead costs in its existing operations. The budget's overhead costs cover all of the following items:

- existing TRLA office space in Sinton will be used until suitable space can be located in Beeville and remodeled as necessary; the Sinton office includes space for two attorneys, one investigator and a secretary, conference rooms, a reception area, and restrooms, in addition to space for the civil legal services staff that will be paid from TRLA's funds for civil legal services;
- office space for 4 attorneys and 3 support staff will be rented or purchased in Beeville, and the \$1.50 per square foot budget item includes such utilities as electricity, gas, water, and janitorial services;
- litigation costs including medical and other forensic experts, consultants, investigators, and court reporter fees for trial transcripts;
- library and electronic legal research materials;
- postage and consumable office supplies;
- workers' compensation and premises liability insurance coverage for each employee and client;
- personal use of automobile at \$0.58 per mile, the current IRS rate;
- training costs at \$1,000 per lawyer per year; and
- administration costs (accounting, payroll, audit, management support, information technology support, software customization, etc.) at about 3% of total budget costs, which is almost half of the 5% administrative expense rate that applies to most government contracts.

Capital and other start-up costs will include the following:

- office furnishings for each staff member that include desk, chairs, filing cabinets, and shelving

- VoIP telephone system
- Videoconferencing equipment for office and Adult Detention Centers
- 5 desktop and 2 laptop computers
- software for computers, including Microsoft Office Suite
- rental of Xerox 55 Workcentre, or comparable, high-speed printer/scanner/copier/fax machine, networked to TRLA wide-area network

VII. Investigators and Expert Policy

The budget above includes \$48,000 for litigation expenses that may include trial transcripts for appeals, fees charged for consulting and expert witnesses, and consultant and technical assistance costs. The BRPD will spend this money in accord with the following rules:

- (1) the Chief Public Defender will approve each expenditure as necessary before it is incurred, and information concerning each approval will be provided to Bee County;
- (2) evaluation of the need for and amount of any expert or investigator expenditure will be made as of the time that the expenditure is requested, based on the information that is reasonably available at that time;
- (3) TRLA anticipates that absent unusual circumstances, the BRPD's staff investigators will perform all investigative work for all BRPD clients, and that litigation expenses will not need to be used to hire outside investigators; and
- (4) each time the BRPD contract is renewed, TRLA will discuss with Bee County the previous year's actual need for litigation expenses to predict future need for these resources.

VIII. Ability to Provide Adequate Quality Representation

TRLA's capacity to provide adequate quality representation in its proposed BRPD office is proved by the track record of accomplishments that it has established in its existing Val Verde Regional Public Defender and Willacy County PD projects, its thorough understanding of Texas's indigent defense laws and practices, and the experience of the team that it has assembled to manage the start-up of the BRPD office.

TRLA's website, www.trla.org, provides ample detail on the broad range of quality legal services that its 130 attorneys and active board of directors have provided to indigent clients throughout Central, South, and West Texas for over 35 years. Scores of court decisions, press reports, and public awards document the concrete results that TRLA has achieved on behalf of clients in virtually every substantive area of law, from housing to employment to children's health to public benefits to domestic violence.

Equal access to justice for the poor through quality legal representation has always been TRLA's core mission. By the early 1990's, TRLA recognized indigent criminal defense as a critical issue affecting the families of indigent defendants as well as the defendants themselves.⁵ TRLA conducted litigation in Hidalgo and Cameron counties to address prolonged pre-trial incarceration without access to counsel. Since passage of the Fair Defense Act in 2001, TRLA's Criminal Justice Team has assisted the Task Force on Indigent Defense, the El Paso and Webb County public defender offices, numerous judges, and numerous counties in implementing the law. TRLA provided the Task Force with substantial assistance in writing its *Blueprint for Creating a Public Defender Office in Texas* (2d ed. 2008).

The TRLA employees who would manage recruitment and start-up of the BRPD office are TRLA Executive Director David Hall, Public Defender Division Director Mary Kay Sicola, and Criminal Justice Team Manager Jerome Wesevich. With some 100 years of combined legal experience including a vast array of representation before all Texas and federal courts, and consistent application of skills on behalf of indigent clients, these individuals are well suited to establish the BRPD and ensure that it provides quality and committed representation in accord with the highest ethical standards.⁶

IX. Case Management Technology

TRLA has written and refined its own case management application called the "Client Tracking System" (CTS) to make all information pertaining to each case readily accessible to management and staff. This includes docketing, contact and witness information, potential conflicts, documents, time logs, correspondence, and ticklers. The CTS is remotely available on a Citrix-enabled wide area network, and is maintained and fully supported by TRLA's Information Technology staff. Case reviews, acquisition of management information, and reporting can readily be accomplished from any location with Internet access. The CTS is among the finest examples of client service software available anywhere, and has been successfully integrated into TRLA's daily operations by hundreds of staff members working in dozens of

⁵ Over the years TRLA has developed a range of strategies to respond to client concerns about indigent defense adequacy. It has developed a detailed telephone intake to gauge client concerns, offer standard advice on indigent defense matters, and identify where systemic deficiencies merit closer attention. Before the Fair Defense Act, it used litigation to correct systemic deficiencies in indigent defense systems. Since the FDA, it has worked with judges to identify procedures needed to ensure that competent counsel were appointed to represent criminal defendants who suffer from major mental illness. It has accepted appointments from judges to replace deficient counsel in criminal cases, and won both acquittals and convictions on lesser included offenses. It has also worked with Texas's Task Force on Indigent Defense on a wide range of FDA education and implementation efforts.

⁶ For example, Mr. Hall had extensive trial and appellate experience in criminal matters, including a successful appeal of a burglary conviction to the United States Supreme Court. The Court held that the method of selecting grand juries in Hidalgo County in the early 1970's discriminated against Mexican-Americans. *Castañeda, Sheriff v. Partida*, 430 U.S. 482 (1977). For many years Mr. Hall has been a member of the State Bar of Texas Committee for the Provision of Legal Services to the Indigent in Criminal Matters. Ms. Sicola has more than twenty years in active criminal practice in Austin, including successful appellate representation of death penalty defendants in the Court of Criminal Appeals. Mr. Wesevich helped craft the Texas Fair Defense Act of 2001, and then helped counties implement the law. He also has extensive complex litigation and appellate experience.

teams across Texas. Thoroughly tried and tested, CTS will readily meet all case management needs of the BRPD.

One of the major advantages of the CTS is that it can be customized for various types of cases encountered by staff. Case-specific modules will be written to address the specific types of issues in various kinds of criminal prosecutions. The modules will allow staff to assemble documents useful in all kinds of cases, as well as to track unique data and procedural needs.

X. Conclusion

TRLA's Regional Public Defender proposal offers Bee County and its participating partner counties, McMullen and Live Oak, the benefit of an existing infrastructure with a proven track record of success, which TRLA respectfully submits would provide a smoother start-up and better quality representation for less money than anyone else could approach. With experienced staff already in place, TRLA can commence operations within days of executing a contract.