

Bowie County Public Defender’s Office
Indigent Defense Plan
October 20, 2021

This plan is submitted to the Bowie County Commissioners Court under Article 26.044 (b-1), Code of Criminal Procedure. The plan is also made part of the Bowie County Indigent Defense Plan submitted to the Texas Indigent Defense Commission under Section 79.036 of the Government Code.

I. Duties of the Office.

The Bowie County Public Defender’s Office (BPD) was created by the Commissioners Court to provide legal representation for indigent defendants in Bowie County. The BPD represents defendants in felony, misdemeanor, and juvenile cases. The BPD is appointed by authority of Article 26.04(f), Code of Criminal Procedure. The BPD does not represent defendants in death-penalty cases.

II. Oversight Board.

The Bowie County Public Defender Oversight Board, established under Article 26.045, Code of Criminal Procedure, is not presently active. The BPD operates as part of the Judicial Services Department and is a “governmental entity” as defined by Article 26.044(a)(1) and (a)(4)(A)(i), Code of Criminal Procedure. It is unknown at this time if an Oversight Board will be established. The Bowie County Commissioner’s Court oversees the BPD at this time

III. The Budget.

The budget for the APD for the 2020-21 fiscal year is as follows:

Salaries & Benefits:

Salary Regular	\$ 541,572
Taxes FICA	\$ 41,430
Insurance – Group Health	\$78,912
Retirement	\$68,116
Insurance – Supplemental	\$2,275

Subtotal	\$732,305
Other Expenses:	
Office Supplies	\$5,500
Postage	\$1,000
Telephone	\$5,000
Travel in County	\$31,200
Education Expense	\$5,000
Utilities	\$9,000
Repair Building	\$1,000
Repair Equipment	\$1,500
Rent Equipment	\$4,000
Dues of Office	\$2,500
Miscellaneous	\$3,500
Subtotal	\$69,200
GRAND TOTAL	\$801,505

Personnel Positions.

The BPD consists of a Chief Public Defender, First Assistant Public Defender, three Assistant Public Defenders, two Investigators and two Administrative Assistants.

A. Chief Public Defender:

Job Description:

1. Assigns, directs and controls the work activities of staff attorneys and support staff.
2. Develops organizational practices and standard operating procedures.
3. Makes case assignments.
4. Schedules, supervises and reviews assignments of legal assistants and investigator.
5. Instructs, assigns, reviews and plans the work of others.
6. Responsible for employee reassignments, promotions, and salary increases as appropriate.
7. Authorizes, reviews and approves Department payroll.

8. Responsible for planning and pressing mandated continuing legal education (MCLE) training programs in house.
9. Assigns or assists in assigning routine felony or misdemeanor cases to attorneys.
10. Resolves complex legal judgment questions.
11. Acts as lead counsel in the most challenging, high profile cases.
12. Prepares and reviews formal legal opinions.
13. Advises and assists attorneys on methods of approach, tactic, and policies in resolving difficult and complex cases.
14. Review daily the inmate roster in order to identify those inmates that have not been indicted in order to determine if they can be released on bond.
15. Monitors case assignments and provides assistance on complicated or high-visibility appeals.
16. Maintains a reduced caseload and provides backup to attorneys on leave.
17. Is departmental authority on personnel and budget matters.
18. Serves as departmental head in communications with other county entities.
19. Interacts with state and local bar associations and organizations, and serves on committees involved in the justice system.
20. Corresponds with the Texas Indigent Defense Commission.
21. Screens all cases for conflicts of interest.
22. Will answer to the Oversight Board when created, and will implement standards and practices as approved by the board.

Education and Experience:

1. Graduation from accredited law school with a Doctorate of Jurisprudence.
2. At least three years of substantial experience in criminal law, with at least twenty criminal appellate briefs filed.
3. Member in good standing of the State Bar of Texas.
4. Otherwise meet all experience and licensing requirements under Article 26.044(f), Code of Criminal Procedure.

B. First Assistant Public Defender:

Job Description:

1. Under the supervision of the Chief Public Defender, provides legal representation to indigent defendants.
2. Obtains and reviews discovery and documents provided by State.
3. Researches and investigates issues and cases.
4. Meets with clients as necessary.
5. Return all telephone calls or other communication.
6. Prepares and files pleadings in the trial.
7. Maintains written correspondence with clients during the trial process.
8. Prioritizes and organizes workload to meet deadlines.
9. Maintains awareness of new court decisions, laws, rules and regulations.
10. Meets with investigator to monitor the progress of investigations.
11. Screen cases for any potential conflicts of interest.
12. Researches, prepares, files, presents and argues motions, and legal research in general.
13. Prepares cases for court and conducts trials as assigned.
14. Provides narrative, descriptive entries in client files of opinions, impressions, and facts collected.
15. Negotiates with the District Attorney and others involved in the court process.
16. Advises clients on plea offers, options and potential for success at trial or other dispositions of cases.
17. Advises clients of the constitutional rights waived by pleading guilty and the potential direct and collateral consequences of a guilty plea.
18. Selects juries, examines and cross examines witnesses, drafts and argues jury instructions and argues cases to the jury.
19. Advises non-citizen clients of the specific immigration consequences of criminal convictions.
20. Attends conferences and stays current on legal updates.
21. Maintains basic ability to use standard word-processing software and perform electronic legal research.
22. All duties falling to Chief revert to First Assistant when Chief unavailable.

Education and Experience:

1. Graduation from accredited law school with a Doctorate of Jurisprudence.
2. One or more years of experience as a criminal defense attorney specializing in criminal matters, or as a prosecutor, or as a clerk for a state or federal judge.
3. Member in good standing of the State Bar of Texas.

Assistant Public Defender

Job Description:

1. Under the supervision of the Chief Public Defender, provides legal representation to indigent defendants.
2. Obtains and reviews discovery and documents provided by State.
3. Researches and investigates issues and cases.
4. Meets with clients as necessary.
5. Return all telephone calls or other communication.
6. Prepares and files pleadings in the trial.
7. Maintains written correspondence with clients during the trial process.
8. Prioritizes and organizes workload to meet deadlines.
9. Maintains awareness of new court decisions, laws, rules and regulations.
10. Meets with investigator to monitor the progress of investigations.
11. Screen cases for any potential conflicts of interest.
12. Researches, prepares, files, presents and argues motions, and legal research in general.
13. Prepares cases for court and conducts trials as assigned.

14. Provides narrative, descriptive entries in client files of opinions, impressions, and facts collected.
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20. Attends conferences and stays current on legal updates.
21. Maintains basic ability to use standard word-processing software and perform electronic legal research.
22. All duties falling to Chief revert to First Assistant when Chief unavailable.

Education and Experience:

1. Graduation from accredited law school with a Doctorate of Jurisprudence.
2. One or more years of experience as a criminal defense attorney specializing in criminal matters, or as a prosecutor, or as a clerk for a state or federal judge.
3. Member in good standing of the State Bar of Texas.

C. Investigator

1. Conduct interview of client and gather background information regarding client.
2. Conduct investigations to support any potential defense of client.
3. Conducts any surveillance as necessary.
4. Monitors the intake of new clients.

5. Gathers information from outside agencies as required.
6. Prepares and obtains the issuance of subpoenas.
7. Establishes and maintains informant contacts to develop information relevant to cases.
7. Appears at trial for investigative purposes.
Operates and maintains a variety of photographic, tape, graphic and projections equipment.
8. Participates in training sessions.
9. Writes and dictates reports of contacts and findings including statements, scene descriptions and analysis of physical evidence.
9. Prepares, presents and maintains records and reports.
10. Assists Chief Public Defender and other attorneys as needed.

Education and Experience

Three years of substantial criminal investigative experience or related education, training and/or investigative experience which provides knowledge and skill requirements

D. Administrative Assistant:

Job Description:

1. Under direct supervision of attorneys, is responsible for general secretarial duties.
2. Provides administrative assistance to staff attorneys.
3. Opens client files and files documents in client files.
4. Drafts legal documents and correspondence for attorneys.
5. Maintains statistics and compiles reports, including caseload information, for BPD.
6. Requests and obtains allowable discovery from District Attorney.
7. Provides general case-status information to clients.
8. Responds to general requests for information from judges, court staff, clients, attorneys, and other members of the public.
9. Maintains calendar for tracking due dates of pleadings and related documents.

- 10.Orders supplies.
- 11.Maintains work and hours information for BPD as required for payroll and human resources purposes.
- 12.Performs additional duties as required.

Education and Experience:

1. High School diploma or GED certificate.
2. Good knowledge of office procedures.
3. Prior office experience in a law office or government legal office.
4. Must have good working knowledge of commonly used word-processing software and common office equipment.

Conduct/Ethical Guidelines

Staff members are bound by the same ethical standards as attorneys. First and foremost, this includes the attorney-client privilege. Anything we learn from a client is confidential and will not be shared with anyone outside this office without the client's written express permission. This includes friends and family members of the client.

All members of the BPD should be respectful of witnesses and other parties during the course of our representation of a client. Also, show respect to the victims who agree to speak with us. Finally, you should seek a parent or guardian's permission before speaking to a juvenile witness or victim.

IV. Case Assignment

Cases and Court Assignments are assigned by the Chief Public Defender. Cases are assigned to attorneys who have primary but not exclusive responsibility in a particular court. Attorneys can be assigned to any of the courts as needed. The cases are assigned as follows:

- 1) 102nd District Court (Felony Cases – 1 attorney)
- 2) 202nd District Court (Felony Cases – 2 attorneys)

- 3) 5th District Court (Felony Cases – 1 attorney)
- 4) County Court at Law (Misdemeanor Cases – 1 attorney)
- 5) Juvenile Cases (1 attorney)

V. Maximum Allowable Caseloads.

The Chief Public Defender assigns particular attorneys to the three (3) District Courts of Bowie County, Texas. All District Courts primarily have one (1) attorney assigned to the Court be as a practical matter there is always another attorney assisting in each Court as needed. There is one (1) attorney assigned to handle the misdemeanor cases but there is always additional attorney and the investigator assisting in this management of this caseload. There is one (1) attorney assigned to handle the limited juvenile matters that are assigned to the office.

Caseload Limits

National organizations such as American Bar Association have suggested caseload limits generally as follows:

1. 150 felonies per attorney per year;
2. 300 misdemeanor cases per attorney per year.

The Public Defender is obligated to provide defense services to all clients in a professional, skilled manner, consistent with minimum standards and the Rules of Professional Conduct. It is routine for clients assigned to this office to have multiple counts which on its face would dramatically increase the amount of cases handled by each attorney during the year.

The Chief Public Defender consistently monitors the caseload of each attorney and ensures that adequate and effective legal representation is being provided to each client assigned to this office. If additional staff should be needed in the opinion of the Chief Public Defender then the Commissioner's Court would be petitioned for such assistance. However, in the past two (2) years the current staff has been able to adequately and effectively handle the caseload. A vast majority of the cases are resolved within a few weeks of the BCPDO being appointed to represent the respective client.

Texas has yet to establish a standard for the maximum caseload allowable for public defender attorneys.

The caseload limit is not absolute. The Chief Public Defender will assess the complexity of each case when it is assigned to a staff attorney. An individual staff attorney may be allowed to exceed the annual caseload limit if his or her caseload includes a significant portion of cases with factors such as: 1) relatively simple case; 2) non-novel, frequently recurring legal issues that the attorney has briefed before; or 3) cases with few possible trial issues. The staff attorney's experience and pending deadlines will also be taken into consideration when making the case assignment. The ultimate goal is to ensure that each client receives a high-quality defense.

If the Chief Public Defender does determine that accepting additional appointments would violate the maximum allowable caseload standards, the procedure under Article 26.044(j-1), Code of Criminal Procedure, will be followed. The chief will file a written statement with the trial court stating that the appointment has been refused because the maximum allowable caseload for the BPD is exceeded. The trial court will then determine if the chief "has demonstrated adequate good cause for refusing the appointment." If so, the trial court may reassign the appeal to the next attorney available on the appointment "wheel," or otherwise as the Bowie County local rules may require.

VI. Personnel Training.

The Bowie County Indigent Defense Plan requires attorneys who accept criminal appointments in felony cases to complete at least eight hours a year of continuing legal education (CLE) in criminal law or procedure. The BPD attorneys exceed that minimum requirement.

Training for the BPD attorneys includes either attendance at the Rusty Duncan CLE, presented by the Texas Criminal Defense Lawyers Association or the Advance Criminal Law CLE, presented by the State Bar of Texas. There may be instances of specific areas of CLE that an attorney is allowed to attend pending approval by the Chief Public Defender. Each attorney earned a maximum of 18 CLE hours, including 2 hours of ethics at that seminar in 2013. The fees for that

seminar are included in the office's budget. The attorneys will also attend the free CLE for public defenders presented on the day before the Rusty Duncan seminar.

There are also free or low-cost CLE events available to BPD attorneys through the Texas Criminal Defense Lawyers Association, and the attorneys are encouraged to attend.

The investigator will receive training at the direction of the Chief Public Defender. The investigator will need to become proficient in interviewing skills, with the use of a digital camera and voice recorder, and with scene or location sketches or diagrams. The investigator will also need to review and become familiar with common investigative manuals and procedures utilized by local law enforcement agencies to assist the attorneys in strategy planning before trial.

VII. Case Procedure

Pre-Indictment/Information

In order to provide the most efficient use of resources and facilitate the speedy representation of the client, cases should be processed in the following manner. These guidelines are subject to ongoing review and change when necessary to insure that service to the client is accomplished in a timely and cost effective manner.

Initial Intake

Under the Bowie County Standards and Procedures for appointment of counsel for indigent defendants, the Justices of the peace of Bowie County are designated and granted authority to appoint the BPD to represent indigent defendants in Bowie County who are arrested for or charged with a misdemeanor punishable by confinement or a felony, except death penalty cases.

The magistrates make a determination of indigency at the time that a Defendant is informed of his/her rights. If found to be indigent, and a request for a court appointed attorney is made, the magistrates appoint the BPD. After appointment, the BPD office is notified of the appointment.

Bowie County utilized a procedure known as the "Direct File" System for felony offenses. After each defendant goes before a magistrate and the BPD is

appointed, the District Attorney provides a plea bargain offer and limited discovery to the BPD.

The attorney assigned to the respective felony case has received discovery and an offer they will go to the jail for a consultation with the defendant and proceed to begin representation. If the defendant desires to accept the plea bargain offer then the Court is so notified and the case is usually set on the next available docket.

If the cases are not resolved in the “Direct File” stage of the proceedings then the case is referred to the grand jury for possible indictment.

All misdemeanor cases are delivered to the attorney assigned to misdemeanor court. Because of the difference in the range of punishment these cases move through the judicial system much faster than felony cases. If misdemeanor cases are not set on the docket within a very short period of time, they are reviewed for pre-trial motions.

After the cases go through the “Direct File” system and are not resolved they are closely monitored until grand jury indictment or other resolution. The cases are reviewed for pre-trial pleadings such as: Application for Writs of Habeas Corpus, Motions for Examining Trials, Motions for Bond Reduction and any other motion that the case may dictate.

If not disposed of by waiver of indictment or otherwise, after indictment these cases will be assigned to the attorney representing Defendants in the Court in which the case is pending.

VIII. Anticipated Overhead Costs.

The overall budget for the 2021-22 fiscal year is presented above. The amounts allocated to overhead include West Law legal research services and for Defender Data case-management software and off-site, secure data storage.

IX. Investigators and Expert Witnesses.

The BPD handles trial cases only, and does not handle death-penalty cases. The office has a two full-time investigators on staff. The BPD will also seek

appointment of an expert witness by motion to the trial court in the event that the assistance of an expert witness is needed.

X. Policy Regarding Conflict of Interest.

Under Article 26.044(j)(1), Code of Criminal Procedure, the BPD may not accept an appointment if a conflict of interest exists that has not been waived by the client.

The administrative assistants, staff attorney and/or Investigators use the BPD's database software to conduct an initial check for conflicts arising from the representation of co-defendants. The Chief Public Defender will also screen each new appointment for a potential conflict of interest.

If a potential conflict of interest is identified, it will be brought to the client's attention by the BPD attorney. If the client does not wish to waive the potential conflict in writing, or if the conflict is of a nature that it cannot be effectively waived, the procedure under Article 26.044(j-1) of the Code of Criminal Procedure will be followed: The Chief Public Defender or respective assigned attorney will file with the trial court a written statement that the appointment must be refused because a conflict of interest exists. The conflict will be identified in the motion if permissible under the ethical rules applicable to Texas-licensed attorneys. The trial court will then determine if the Chief Public Defender "has demonstrated adequate good cause for refusing the appointment." If good cause is found for refusing the appointment, the trial court may then reassign the appeal to the next attorney available on the appointment "wheel," or otherwise as the Bowie County local rules may require.

XI. Procedure for Appointing the BPD.

The BPD will be appointed to represent indigent defendants in the Bowie County District Courts in accordance with the procedure set forth in Bowie County Criminal District Court Rule and Indigent Defense Plan. The BPD is appointed in all felony, misdemeanor and juvenile cases under the same procedure.

The BPD may refuse to accept appointment to a case, if 1) a conflict of interest exists, 2) the office has insufficient resources to provide adequate representation, 3) the office is incapable of providing representation in accordance with the rules

of professional conduct, 4) the acceptance of the appointment would violate the maximum allowable caseloads established at the public defender's office, or 5) the office shows other good cause for refusing appointment under Article 26.044(j), Code of Criminal Procedure. The procedure set forth in Article 26.044(j-1), Code of Criminal Procedure, will be followed in the event the BPD identifies a reason for refusing the appointment.