



TEXAS A&M UNIVERSITY  
Public Policy  
Research Institute



# Justice Beyond the Cities: The State of Rural Public Defense in Texas



A Report to the Texas  
Indigent Defense  
Commission

June 2024





Texas Indigent Defense Commission (TIDC)  
c/o Scott Ehlers, Executive Director  
209 West 14th Street, Room 202  
Austin, Texas 78701

Dear TIDC and Mr. Ehlers,

On behalf of the Public Policy Research Institute (PPRI) at Texas A&M University, please find enclosed the final report titled, "Justice Beyond the Cities: The State of Rural Public Defense in Texas," reviewing the needs of public defense across rural counties in Texas. The report was requested by TIDC to carry out research required by a budget rider in the General Appropriations Act for the 2024-25 biennium.


As a response to the request, the research team at PPRI conducted a needs assessment of public defense across Texas focusing specifically on rural counties. The study was conducted between September 2023 and May 2024. We utilized both quantitative and qualitative methods to understand the current challenges of providing indigent defense in rural communities in Texas. Data collected comes from an online survey, virtual semi-structured interviews, document review, and descriptive statistics of criminal justice data trends. The research team analyzed more than 500 survey responses, 49 interviews, grant applications to TIDC, and macro data from 2014 to 2022.

The PPRI was established by the Texas Legislature in 1983 to conduct research to inform policymaking in Texas and beyond. The institute currently has about 36 full-time research staff with different levels of expertise, from PhDs in economics, political science, and public health, to other applied research experience in criminal justice, education, and other areas. Since its inception, the PPRI has secured more than \$150 million in externally funded projects averaging between \$4 and \$6 million a year. The PPRI has conducted research on behalf of federal, state, private, and international clients such as the Department of Justice, National Science Foundation, National Institutes of Health, Texas Department of Transportation, Texas Education Agency, Office of Court Administration, Texas Indigent Defense Commission, Arnold Ventures, Robert Wood Johnson Foundation, and the United Nations. Policy reports by PPRI have been featured by national news media outlets and cited by policymakers such as the Attorney General, Secretary of Education, and the President of the United States.

The research team appreciates all the support and feedback from TIDC.

The report highlights the state of rural public defense in Texas. The PPRI deeply appreciates the opportunity to work with TIDC, and we hope you find this report helpful in guiding the state's next steps in improving public defense across Texas.

Sincerely,



George Naufal, PhD  
Public Policy Research Institute – Texas A&M University

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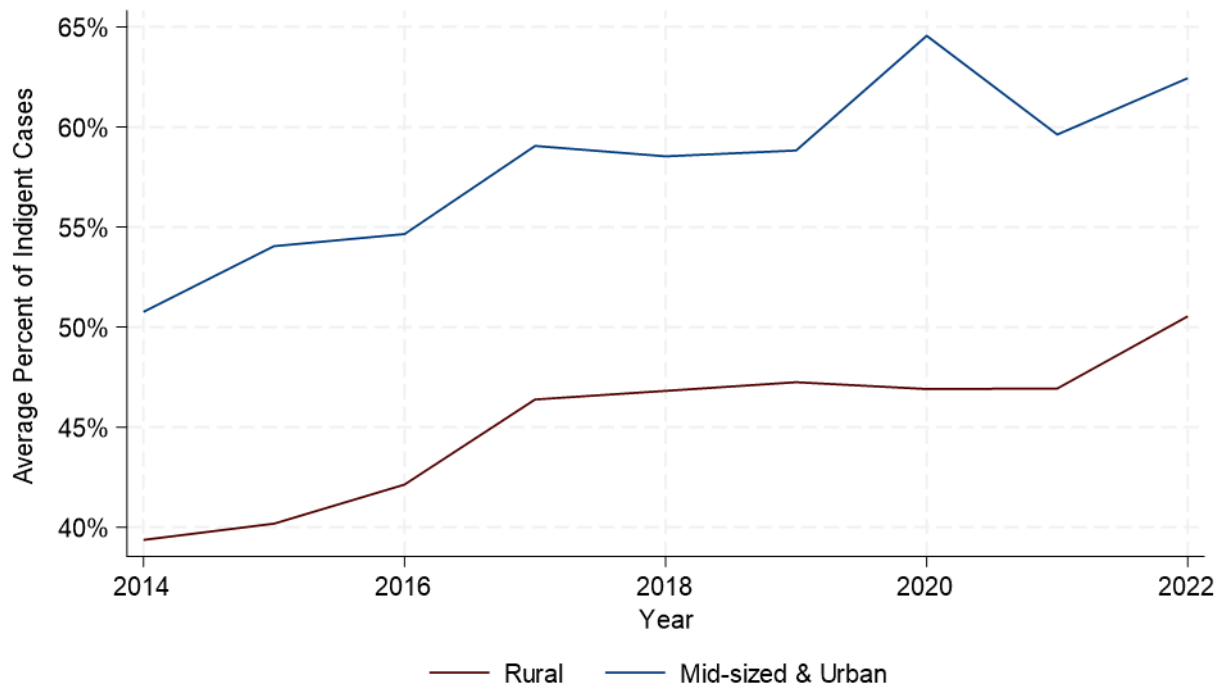
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# Introduction

Half of criminal defendants in Texas are deemed indigent and this number is growing<sup>1</sup>. Texas, like all states in the U.S., must provide indigent defendants an attorney paid for by the state. Figure 1 displays the average percentage of indigent criminal cases in Texas over time, by both rural and mid-sized and urban counties<sup>2</sup>. Each state has devised its own system, rules, and funding mechanisms for indigent defense counsel.<sup>3</sup> Texas is unique in its size, large number of counties, and the fact that many criminal justice decisions are made at the local and county levels.

Figure 1. Average Percentage of Indigent Criminal Cases in Texas Over Time



In Texas, a county-based system determines how counsel is appointed for indigent defendants (representing roughly 400,000 cases<sup>4</sup>) across the state’s 254 counties. This approach, historically, has resulted in “a lack of uniformity in standards and quality of representation among those many indigent defense systems.”<sup>5</sup> Texas legislators consequently passed the Texas Fair Defense Act in 2001, which requires counties to adopt formal procedures for the appointment of counsel to indigent defendants.<sup>6</sup> Following its passing, more focus has been given to “improving the quality of indigent defense services while also containing costs.”<sup>7</sup>

County decision-makers choose from the following four methods of counsel assignment, each with pros and cons. Counties may also combine methods of assignment. These methods of assignment include:

- *Public Defender Office (PDO)*, which employs full-time counsel and staff who serve indigent defendants of that county (or cluster of counties, called a *Regional PDO*) under the supervision of a Chief Public Defender;

- *Managed Assigned Counsel (MAC) Program*, in which the judges designate a county department, nonprofit organization, or bar association, to appoint, pay, and monitor private counsel who represent indigent defendants;<sup>8</sup>
- *Contract Counsel*, through which the government contracts with a private attorney or law firm for a specified amount of money, time, and/or number of cases; and
- *Private Assigned Counsel*, which involves the judicial assignment of a private attorney to represent an indigent defendant. The attorney is chosen from a pre-approved list via a system of rotation, often referred to as “the wheel.” This method of attorney assignment is the most prevalent around the state.<sup>9</sup>

In recent years, increasing attention has been paid to rural counties’ indigent defense needs as concern for attorney shortages grows.<sup>10</sup> Rural counties make up most Texas counties but are diverse in their geography, population, and financial resources. While all counties face the same directive to provide indigent defense counsel, what works in one rural area may not work in all.

In a quest to better understand the needs of rural counties and what challenges they face in providing legal services, the 88<sup>th</sup> Legislature tasked the Texas Indigent Defense Commission (TIDC) with examining the issue via a budget rider in the General Appropriations Act for the 2024-25 biennium. Specifically, the legislation directed TIDC to use some of its appropriated General Revenue for “conducting an assessment of public defender services and resources in rural areas....”<sup>11</sup> The Public Policy Research Institute (PPRI) at Texas A&M University contracted with TIDC to support the agency in addressing this request. The study aims to create a snapshot of the current public defense system in Texas focusing on rural counties, while also considering the resource and financial ramifications that result from any change in public defense strategies.

The report is organized into the following sections. We start with a discussion of the purpose and methods for the needs assessment. The next sections highlight the current issues in both criminal defense and indigent defense, focusing specifically on how these challenges are magnified in rural areas. Then we discuss the feasibility of public defender offices to address these issues by looking at current offices and those who work there, but also capturing the perspectives of those who do not have one. We follow this by delving into the financial and other factors that need to be in place for PDOs to be accepted by counties. Finally, we summarize the report and include a list of short-term and long-term recommendations to address the needs of rural counties.

## Purpose of This Study

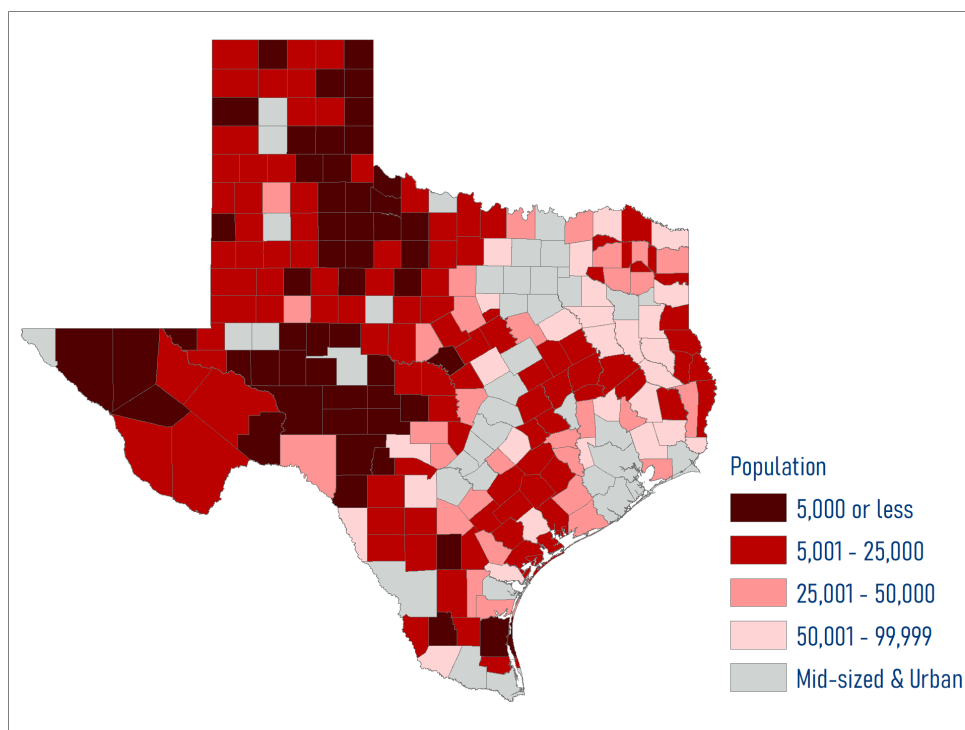
The purpose of this needs assessment is to:

1. Analyze the current state of criminal defense resources in Texas, both as a whole and specifically related to public defense in rural areas.
2. Identify challenges for rural defender services and the factors that influence a community to support a public defender (PDO) office.
3. Gather stakeholder (judges, county commissioners, public defenders, private attorneys, and other staff) perspectives on PDOs.
4. Evaluate county/TIDC financial support of public defender services, including the financial models and resources used to fund public defender services.
5. Document the resources needed for counties to implement PDOs.
6. Develop recommendations on how to best address the unique public defense needs of rural areas.



It should be noted that this analysis focuses on non-capital criminal defense. This report does not include juvenile criminal cases or status offenses, unless noted, in any of the reported case counts. Further, this report does not address family protection or child protection courts. Furthermore, for the purposes of this report, rural is defined as any county with less than 100,000 residents; this definition of rural aligns with other TIDC policy for grant-making purposes. Counties with a population of 100,000 – 250,000 are classified as mid-sized, and counties with a population of over 250,000 are classified as urban. We utilize 2020 census population counts to define counties as rural. As Figure 2 illustrates, 214 counties (84%) are considered rural, with great variation between the geographic size of the county and the population.

Figure 2: Rural Counties in Texas (Census 2020 Population)



## Methods

This study uses a mixed methods approach to comprehensively explore the needs of public defense in rural communities in Texas. We performed primary data collection via a survey and interviews with stakeholders. Survey and qualitative data are supported with quantitative macro-level data to identify trends over time. This supportive data comes from the Texas Commission on Jail Standards (TCJS), the Office of Court Administration (OCA), TIDC, and the State Bar of Texas.

To conduct the survey, we first reached out to all county stakeholders (judges, commissioners, staff such as court administrators, court coordinators, and grant administrators) and attorneys (those who took indigent defense cases including public defenders and private criminal defense attorneys) with an email request using contact information collected by PPRI through the TIDC data dashboard website (<https://tidc.tamu.edu/Public.Net/>). The online survey was open from October 24, 2023, to

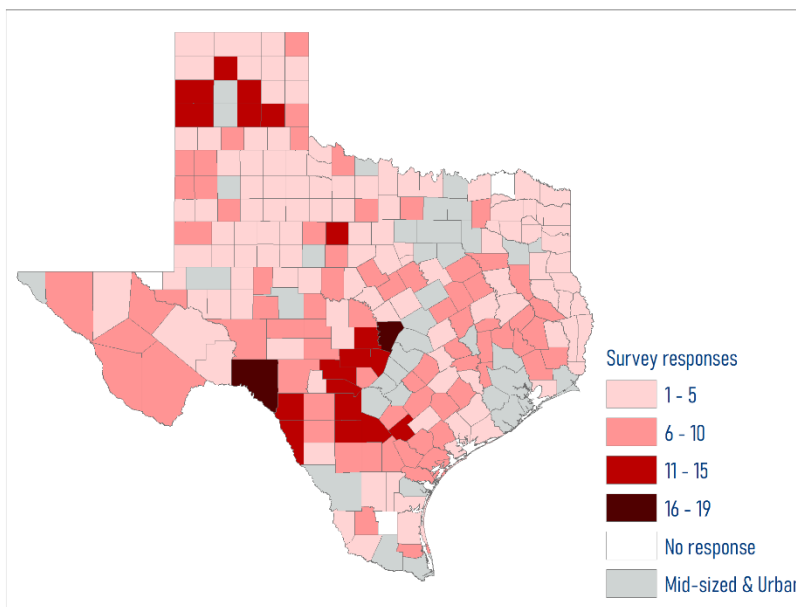
February 12, 2024. A survey link was also shared in the December 2023 edition of *County* magazine (<https://www.county.org/county-magazine>), a publication of the Texas Association of Counties. PPRI and TIDC staff also ensured that county and state stakeholders were informed about the survey at various meetings held throughout the fall of 2023.

At the end of the survey, respondents were given an opportunity to schedule a one-on-one semi-structured interview with PPRI staff. Initially, 128 individuals responded affirmatively to participating in an interview, but many did not respond to the follow-up email to schedule an interview. Ultimately the research team conducted 48 interviews with judges, commissioners, private attorneys, public defenders, auditors, and county staff. The interviews were all conducted virtually between November 2023 and February 2024. Interviewers asked respondents if they agreed to be recorded during the interview and for those that did, a transcript was developed. From the transcripts, we coded segments based on the content. Coded segments were organized into categories and themes around the pertinent questions. The analysis of the interviews focuses on responses from rural counties.

### *Demographics of Respondents*

To recognize the generalizability of the survey, it is important to understand the geographic distribution of the responses received. Of the 703 respondents who took the survey, 431 (61.3%) were from rural counties. Figure 3 illustrates the distribution of the 431 survey responses by county. Rural counties are depicted in a gradient ranging from the fewest to the most responses, while urban counties are represented in grey. Survey responses were collected from all but three rural counties in Texas. The three counties with no responses were Brooks, Lamar, and Loving.

Figure 3: Survey Responses by County



Respondents were asked to identify their specific roles in the criminal justice system, allowing for the classification of their positions into distinct categories. Figure 4 reveals a diverse array of roles held by survey respondents, encompassing positions such as County Judge, County Court at Law Judge, District Court Judge, Commissioner, Auditor/Treasurer, Public Defender, Private Criminal

Defense Attorney, Prosecutor, and Other. Among these, the largest group of respondents identified themselves as Private Criminal Defense Attorneys, comprising 17.9% of the total. Following closely are County Judges at 16.7%. Other notable roles include Auditor/Treasurer at 13.9%, District Court Judges at 12.5%, and Public Defenders at 10.9%.

Figure 5 illustrates the length of time served across these various roles. Notably, both County Judges and Commissioners reported short lengths of time served, with approximately 80.0% serving for 1-5 years. It is also noteworthy that while only 23.9% of public defenders have been in their role for more than 5 years, 84.2% of private criminal defense attorneys have served for more than 5 years.

Figure 4: Survey Responses by Role

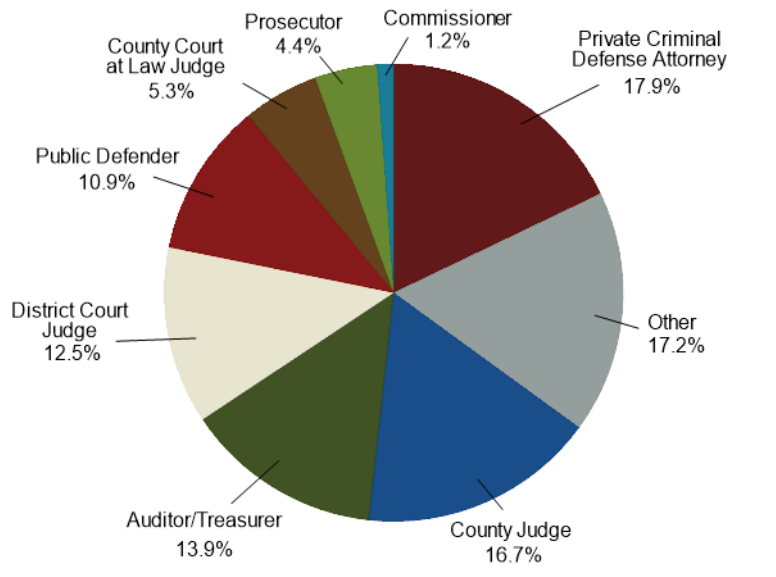
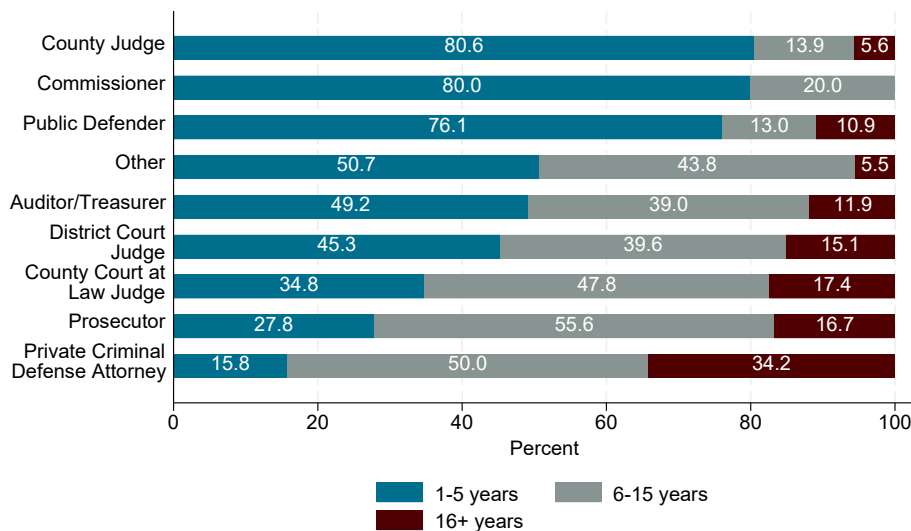


Figure 5: Survey Respondents' Length of Time Served in Current Role



As mentioned above, survey respondents had an option to opt in to participating in a subsequent interview to delve into each of these topics. Less demographic information is provided for these individuals to protect their identity. We conducted 48 interviews, with 21 interviewees coming from rural counties. This group included 12 judges, six private criminal defense attorneys, and three public defenders. Multiple interviewees worked several jobs, for example, as a judge and another profession such as farmer, or attorney in another county. Additionally, most of the interviewees worked in multiple counties.

## **Current State of Criminal Defense in Texas**

To provide context for interpretation of the survey results and the information gleaned from the interviews, it is important to examine the current trends of criminal defense in Texas. The trends of pretrial jail population over time give a glimpse into the number of individuals arrested and detained prior to a conviction and correlates to criminal cases over the same time.

### *Pretrial Jail Population in Texas*

A critical component of criminal defense is the population of county jails. Of interest is the number of incarcerated pretrial defendants, as this measure can indicate how overwhelmed the criminal justice system is in these areas, oftentimes with defendants who are indigent and cannot afford to get out on bond. Figure 6 shows the average number of pretrial misdemeanor offenders compared to the average number of convicted misdemeanor offenders in jail over time.

Figure 7 shows the same measure for felonies. These data points were collected on the first day of each month, and the averages are taken among jails in rural counties in Texas.<sup>12</sup> In Figure 6, the average number of misdemeanor pretrial and convicted offenders in jail is decreasing. Conversely, the average number of pretrial felons in jail has a clear upward trend even though the average number of convicted felons in jail is relatively constant over time. This provides evidence that the jails are becoming increasingly populated with people who remain incarcerated pending the outcome of their criminal case. Since felony cases tend to be more complex and require more time from the defense attorney, felony pretrial detainees will stay in jail longer if they cannot afford to pay their bond, as is often the case with indigent defendants. As the number of criminal cases, particularly felonies, increases, the need for more experienced defense attorneys to represent these defendants will rise.

### *Felony and Misdemeanor Cases*

Figure 6 and Figure 7 above suggest that the number of pretrial incarcerations in county jail is mainly fueled by the average number of pretrial felony offenders. However, the increase in pretrial felony offenders may reflect other reasons over time—such different pretrial processes at magistration, heterogenous attorney practices, bail reforms, or prosecution processes (such as diversion programs). To shed more light on the need for attorneys, Figure 8 presents the composition of all indigent paid cases over time for both rural and mid-sized & urban counties. Felony paid cases represent between 59-63% of all indigent misdemeanor and felony paid cases in rural counties, and this percentage has been slowly but steadily increasing since 2014. The same observation is documented for indigent cases in mid-sized & urban counties where the share of indigent cases as felonies rose from about 44% in 2014 to almost 54% in 2022. Figure 8 along with the trends depicted in Figure 6 and Figure 7 highlight that the need for attorneys is only becoming more acute.

Figure 6: Average Number of Misdemeanor Offenders in County Jail

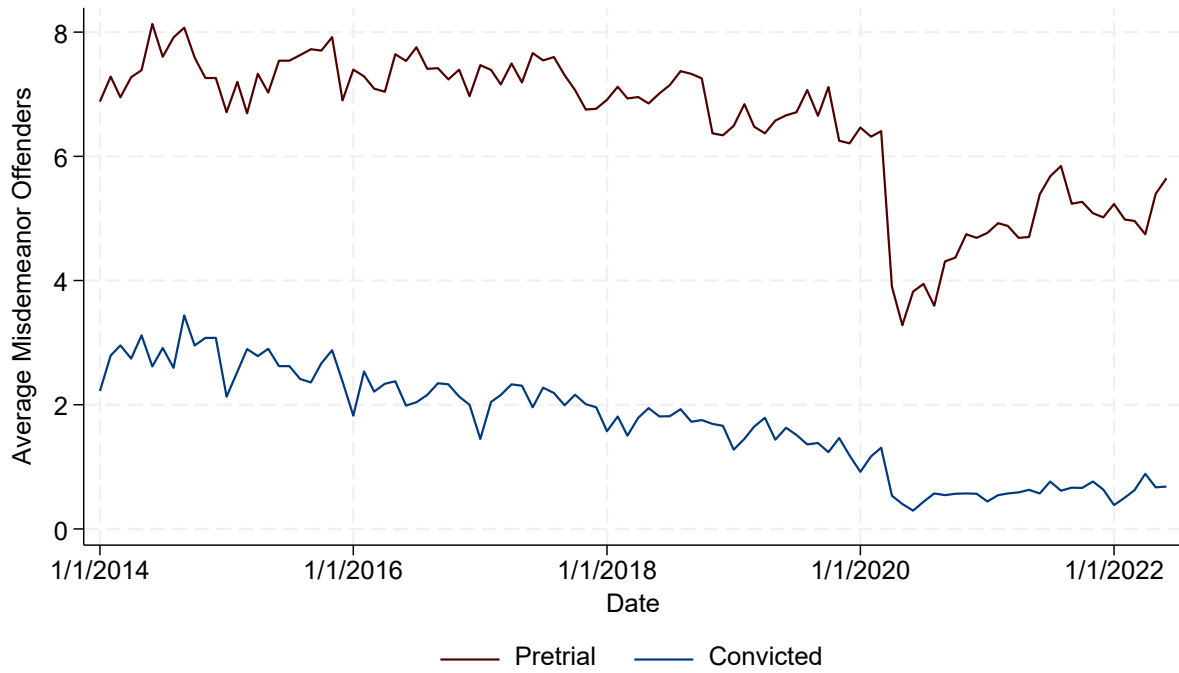


Figure 7: Average Number of Felony Offenders in County Jail

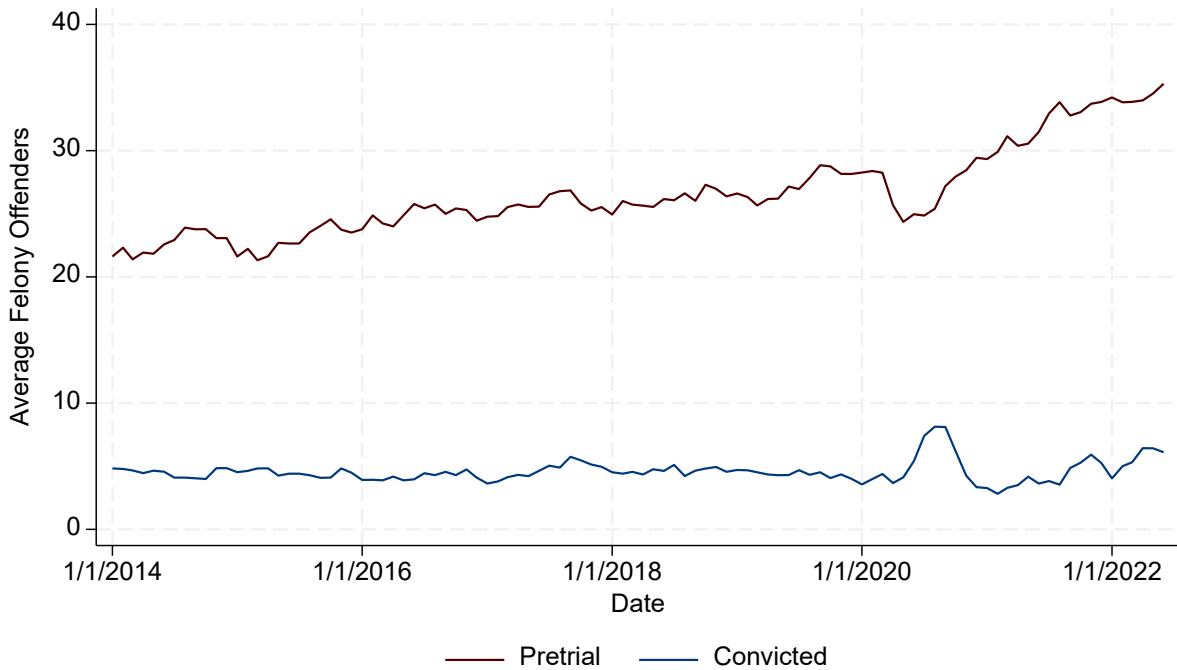
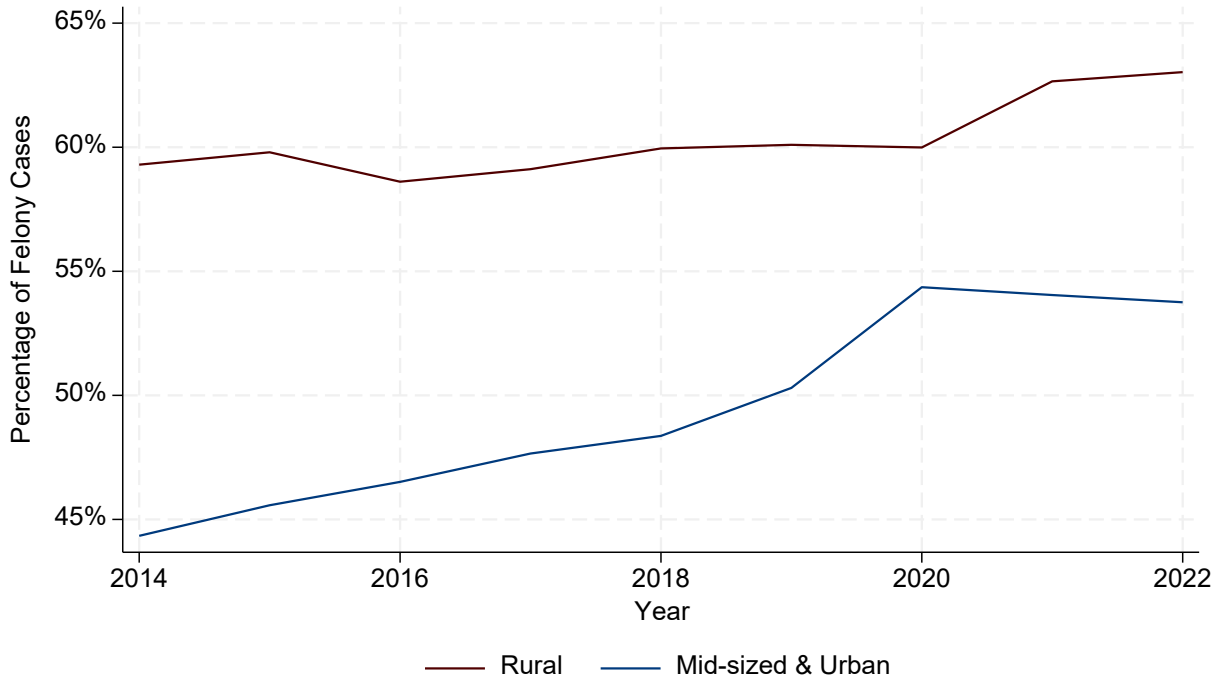


Figure 8. Percentage of Indigent Felony Cases Over Time



## Availability of Attorneys is the Biggest Challenge Facing Indigent Defense

To meet the needs of indigent defendants in the criminal justice system, there must be an equal, or greater, pool of attorneys available to represent them. Current trends in the number of available attorneys—particularly those taking indigent defense cases—unfortunately indicate, however, that the number of attorneys is shrinking. Additionally, survey respondents report the availability of attorneys to be a significant concern for their jurisdiction as it relates to indigent defense.

### *Population of Attorneys in Texas*

From 2014 to 2024, there has been a clear increase in the number of attorneys practicing in the state of Texas, as demonstrated in Figure 9.<sup>13</sup> Despite this, the number of attorneys taking indigent cases continues to fall. Figure 10 depicts the rate of attorneys taking at least one indigent case.<sup>14</sup> In rural areas, the average rate of attorneys taking an indigent case between 2014 and 2022 is declining by 3.8%, while at the same time, the average rate is declining by 2.2% in mid-sized and urban counties. For this study, rural attorneys are defined as attorneys who took at least one indigent case in a rural county, even if they also served urban counties. The data demonstrates, for both urban and rural areas, the number of attorneys taking indigent cases is steadily declining. This decline presents a

major challenge in the effort to improve indigent defense and ensuring everyone has access to an attorney.

Figure 9: All Attorneys Practicing in Texas

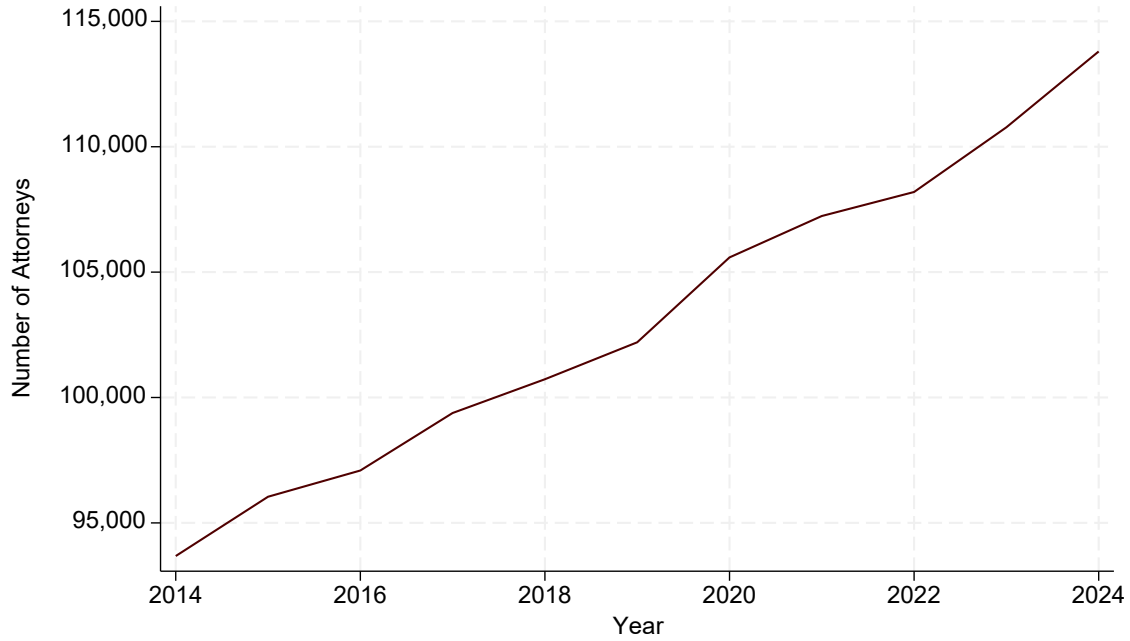
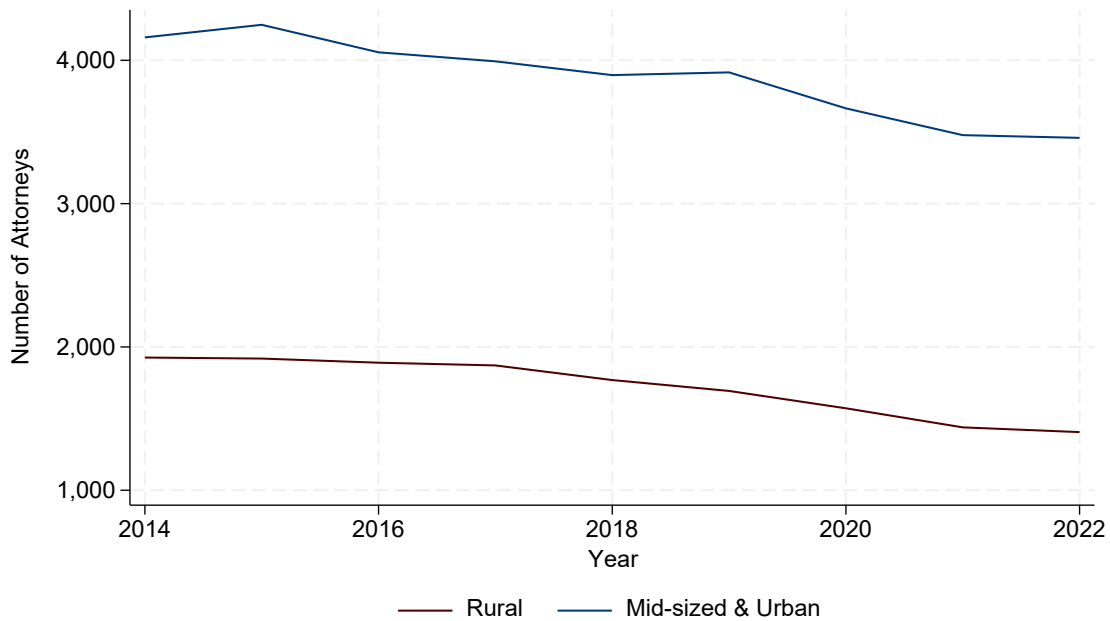


Figure 10: Attorneys Taking Indigent Criminal Defense Cases in Texas



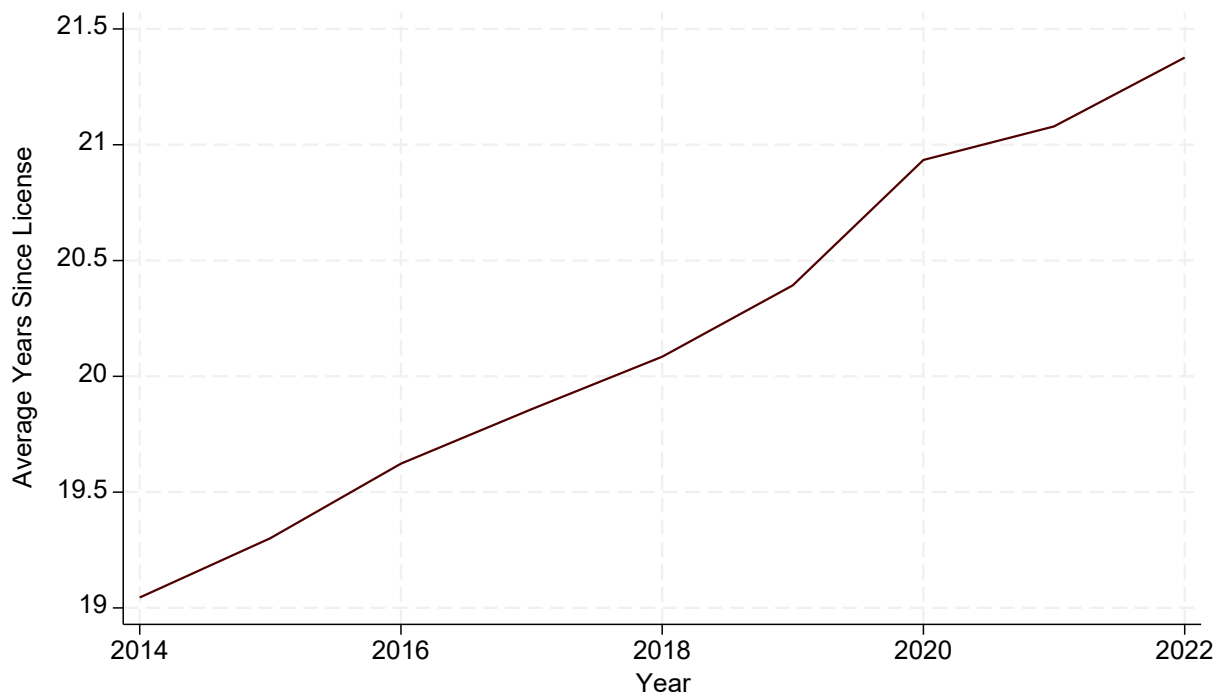
In addition to the decrease in the number of attorneys representing indigent defendants, there is also a pressing concern that the population of attorneys taking indigent criminal cases is getting closer to retirement, particularly in rural counties.

Figure 11 illustrates the change over time in the average number of years since receiving one's license, of all attorneys who took at least one indigent case in a rural county.<sup>15</sup> This steady increase validates the results of our interviews, where judges indicate that fewer new attorneys are entering the field of indigent defense in rural counties to replace the older attorneys. One participant explains:

*“They're all just older attorneys...People who are coming out of law school and looking for places to go, they're not coming to [rural area]...That's the issue...we've got some guys that are in their late 60s, some that are in their 50s, and you know one or two that might be in their 30s and 40s.”*

While not shown here, the same trend is also found for attorneys in mid-sized & urban counties.

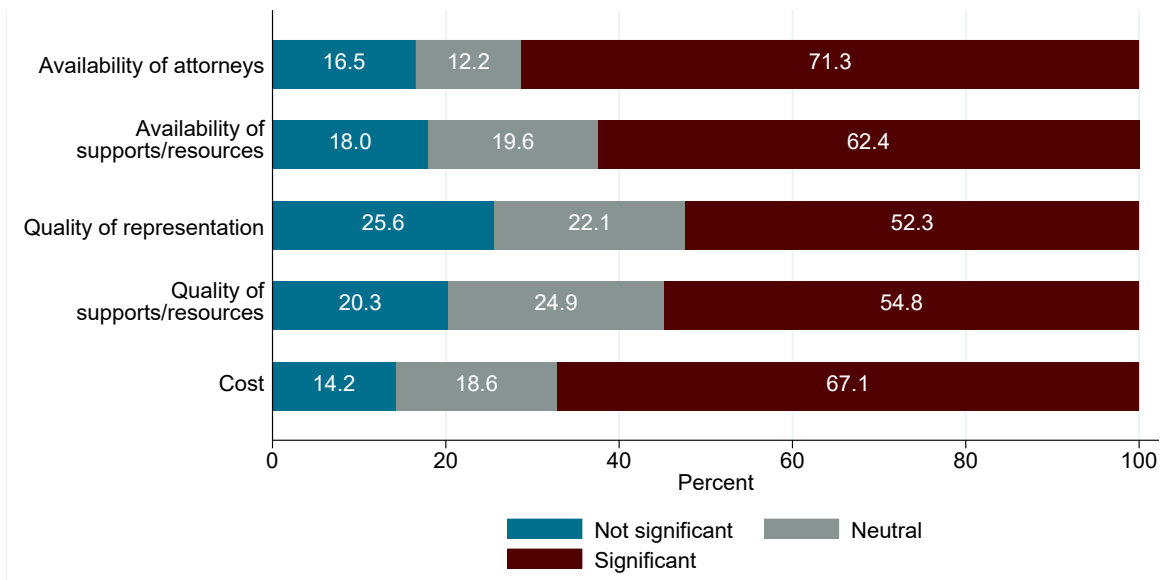
Figure 11: Attorneys' Average Number of Years Since Receiving Law License in Rural Counties



Survey respondents echoed these trends in their responses. Figure 12 illustrates the significance of specific issues concerning the respondent's jurisdiction in relation to indigent defense. The data reveals that the two most prevalent concerns are the availability of attorneys, with 71.3% of respondents considering it significant, and cost, with 67.1% identifying it as significant. Following closely are concerns regarding the availability of support and resources (62.4% significant), the quality of support and resources (54.8% significant), and the quality of representation (52.3% significant). Notably, all five issues are significant by most respondents in their respective jurisdictions.



Figure 12: Survey Respondents Perception of Issues Related to Indigent Defense in their Jurisdiction



## Attorney Motivation to Take Indigent Defense Cases

As the number of attorneys available to represent indigent defense cases continues to decline, it is important to understand what the motivators are for attorneys to represent indigent defendants. In our interviews with stakeholders, it became clear the motivators are deeply personal and often intangible. Despite the personal nature of these motivations, the responses clustered around two main themes: indigent defense as public service and the joy of the work.

### Public Service

Most attorneys we interviewed reported indigent defense as a calling. One attorney specifically discussed working in indigent defense because it was a way to preserve the United States Constitution and rights of the people. While others described indigent defense as a “*public service*,” a “*personal calling*,” a “*philosophical thing*,” or ensuring that both sides of justice were administered equally.

### Joy of the Work

Most of the attorneys we talked to enjoyed working in indigent defense. Only one lawyer stated that if he could retire now and not worry about money, he would indeed quit. Some attorneys stated they would never retire; they loved the work too much. Other attorneys stated they were retired but continued to take indigent defense cases because they enjoyed the work. One attorney expressed his commitment to ensuring that the right to an attorney was always preserved. While all attorneys we talked to had personal reasons for practicing indigent defense, it was clear that for most, it was more than a way to make money.

## **Additional Challenges in Rural Areas to Providing Indigent Defense**

In addition to the decreased number of attorneys willing to take indigent defense cases, rural communities face added challenges, such as higher caseloads per attorney and overburdening those attorneys willing to take indigent defense cases. To provide quality representation to clients, it is crucial for attorneys to maintain a reasonable caseload. Furthermore, rural areas now face concerns related to equitable funding with prosecutorial resources as Texas Senate Bill 22 is in effect. Each of these challenges are discussed in detail below.

### *Indigent Defense Caseload*

Of the attorneys we interviewed – both public defenders and private assigned counsel – most reported their caseloads were high, but manageable. These attorneys also expressed that during periods of extremely high caseloads, some courts will pause appointments for those that seem overburdened. The attorneys we interviewed shared that their courts are understanding of the situation and willing to work with attorneys when they need a pause on new appointments to serve their current clients. It is important to note that any pause in appointments is done on a case-by-case basis and is at the discretion of the court.

In addition to survey and interview reports, the data indicates indigent criminal case counts remain high in Texas. Figure 13 depicts the total number of indigent cases paid overtime, distinguished between mid-sized, urban, and rural counties<sup>16</sup>. Cases paid include cases handled by private attorneys paid on a per case basis or contract, as well as public defenders paid a salary to represent indigent defendants. It should be noted that these numbers don't reflect the annual number of appointments, which are likely even higher for many attorneys. An attorney might be appointed to numerous cases in a year, but only a portion of these cases may be resolved and paid within the same period. There is a relatively stable trend in case counts until 2020 when a decline occurred, likely attributable to the impact of the COVID-19 pandemic. Subsequently, case numbers rebounded to pre-pandemic levels.

Figure 14 displays the average number of indigent defense cases paid per attorney per fiscal year for both rural and mid-sized and urban counties.<sup>17</sup> Attorneys are included in the rural case count if they were paid for at least one case in any rural county within the given year. The data show a consistent rise in cases paid per attorney from 2016 to 2019, followed by a marked decline in 2020. In line with the trends observed in Figure 13, the average number of cases paid for attorneys solely practicing in mid-sized and urban counties returned to pre-pandemic levels by 2022. However, for attorneys practicing in rural counties, there is a notable increase in the average number of cases paid post-pandemic, from 74.16 in 2019 to 85.56 in 2022. In addition, by 2022, the average number of felony cases paid per attorney in rural counties has risen to very similar levels of mid-sized and urban counties. This emphasizes the disproportionate impact of fewer lawyers on attorney workload, particularly in rural regions. Importantly, these figures do not capture the additional workload of private assigned counsel, such as retained work, family representation (CPS) appointments, or other civil appointments.

Figure 13: Total Indigent Defense Cases Paid

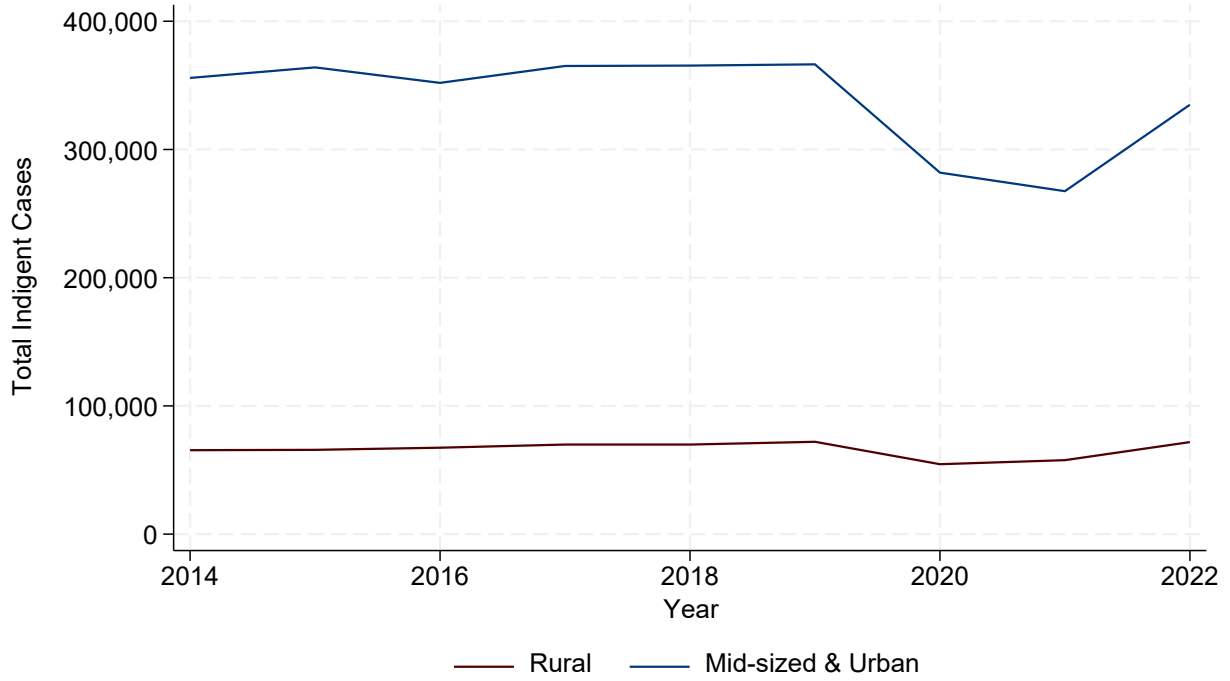
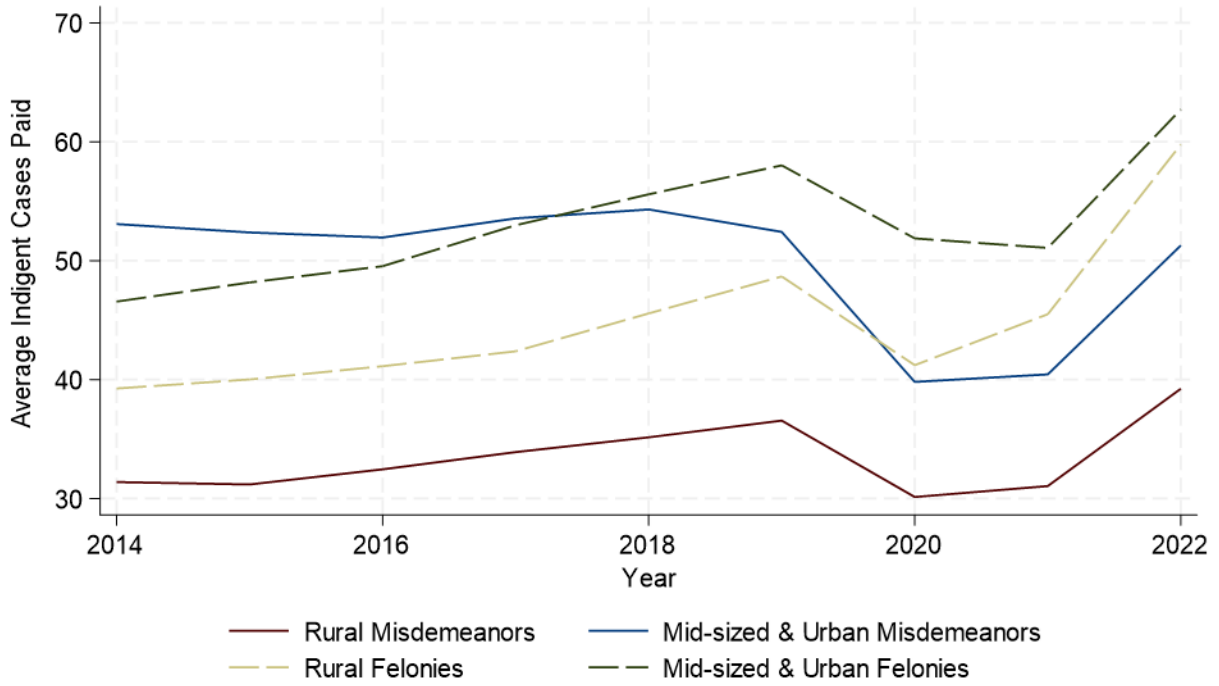


Figure 14: Average Attorney Cases Paid for Criminal Indigent Cases

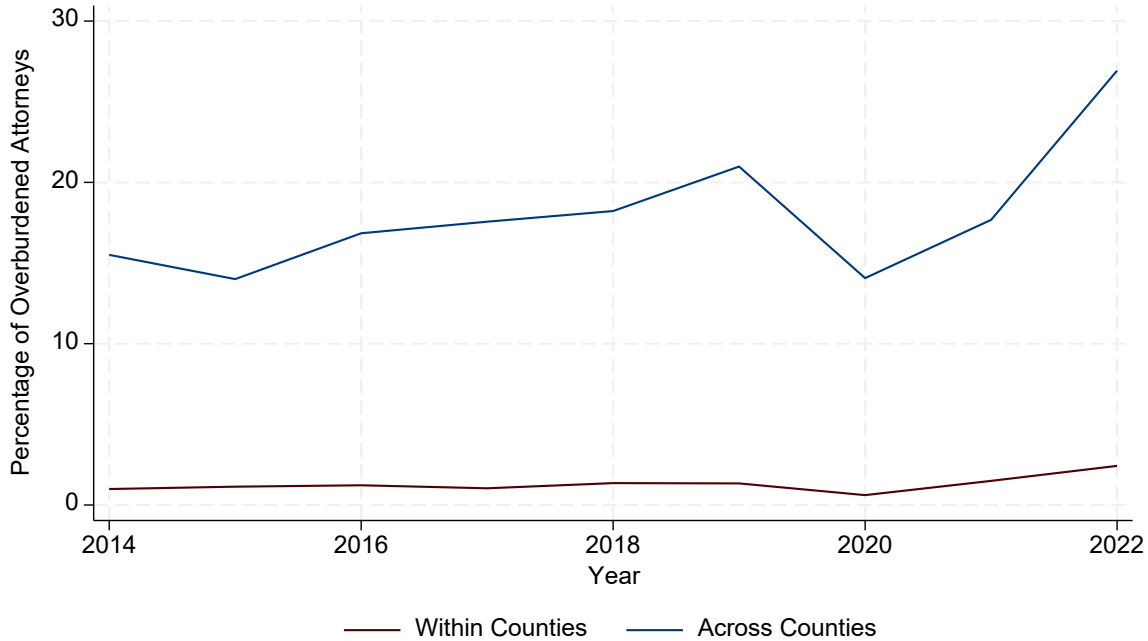


While average cases paid per attorney offer one measure of attorney workload, they can obscure variations in case complexity and resource demands. To address this, we employ a standardized metric known as full-time equivalencies (FTEs) for assessing workload across attorneys and case types.<sup>18</sup> Based on TIDC’s Caseload Guidelines, the recommended maximum caseload that is equivalent to full-time effort is 226 misdemeanors, 128 felonies, or 31.2 appellate cases closed per year (juvenile cases have been excluded from analysis). To determine the FTE status of an attorney assigned to indigent cases, the number of paid cases is divided by the maximum recommended number of cases associated with that case type. All case-specific FTEs are then summed together to establish the full body of effort across all case types. Further, there are two approaches to constructing FTEs for assessing whether an attorney is overburdened: a within-county FTE measure, which considers only the cases assigned within a specific county, and an across-county FTE measure, which considers an attorney’s total paid cases across all counties statewide. This second measure acknowledges that attorneys may handle cases from multiple counties without restrictions. An attorney with an FTE greater than 1.0 is considered overburdened.<sup>19</sup> Importantly, it should be noted that these case numbers do not include attorneys’ retained cases or non-criminal appointments, like in child protective services (CPS) cases.

Figure 15 plots the percentage of overburdened attorneys taking indigent cases in rural counties from FY 2014 to FY 2022.<sup>20</sup> The maroon line labeled “Within Counties” represents the percentage of overburdened attorneys accounting only for an attorney’s indigent caseload within a given county. The blue line labeled “Across Counties,” alternatively, illustrates the proportion of overburdened attorneys once attorneys’ full statewide indigent criminal caseloads are accounted for. While the proportion of overburdened attorneys within counties is relatively stable over time and never exceeds 2.5%, the proportion of overburdened attorneys across counties has been steadily increasing since FY 2015 (excluding FY 2020) and averages 18.0%. As of FY 2022, 26.9% of attorneys handling indigent defense cases in rural counties were considered overburdened. The decrease in the proportion of overburdened attorneys within and across counties in 2020 is most likely a result of the COVID-19 pandemic. These factors combined suggest that while efforts may have been made to manage caseloads within individual counties, there are broader systemic issues at play contributing to the increase in overburdened attorneys across counties statewide (i.e. fewer attorneys with the same or more overall indigent defense cases), a trend that appears to be escalating progressively over time. However, it is possible that case numbers may subside somewhat after pandemic-related backlogs are cleared out.

To further illustrate attorney workload, Figure 16 and Figure 17 depict the proportion of overburdened attorneys in rural counties taking indigent cases in 2014 and 2022, respectively.<sup>21</sup> The results are again presented in two ways: Panel A in both figures displays the proportion of overburdened attorneys in each county accounting only for attorney caseloads within a given county, while Panel B illustrates the proportion of overburdened attorneys once those attorneys’ full statewide caseloads are accounted for.

Figure 15: Proportion of Overburdened Attorneys in Rural Counties Across Time



In both Figure 16 and Figure 17, the findings reveal that in 2014 and 2022, counties employ a small number of attorneys with caseloads within that county exceeding 1.0 FTEs (Panel A), contrasting with the across-county results depicted in Panel B. This suggests that when all cases that attorneys represent across the state are accounted for, the prevalence of attorneys with overloaded caseloads increases significantly. Moreover, the comparison across the two years indicates a notable increase in the percentage of overburdened attorneys within counties, regardless of whether their caseloads are considered within the county alone or across the entire state. In 2014, 15 counties had at least some attorneys exceeding the 1.0 FTE threshold when only considering caseloads within the county, a number that nearly doubles to 38 counties by 2022. Similarly, when factoring in attorneys' statewide caseloads, the count of counties with overburdened attorneys rises from 165 in 2014 to 193 in 2022.

The analysis of Figure 16 and Figure 17 underscores the complexity of attorney workload management in rural counties. While initially, the number of attorneys with overloaded caseloads within individual counties may seem modest, accounting for statewide caseloads reveals a stark increase in overburdened attorneys. These findings signal a pressing need for systemic reforms to address the escalating burden faced by attorneys across counties, ensuring equitable distribution of caseloads and better access to justice for all individuals involved.

Figure 16: Proportion of Overburdened Attorneys in Fiscal Year 2014

- A. FTEs calculated using within-county caseload    B. FTEs calculated using across-county (statewide) caseload

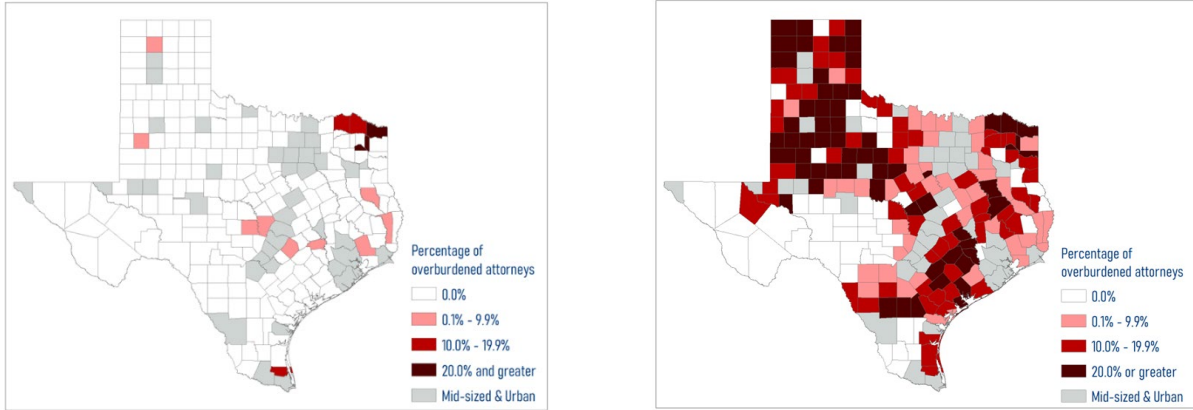
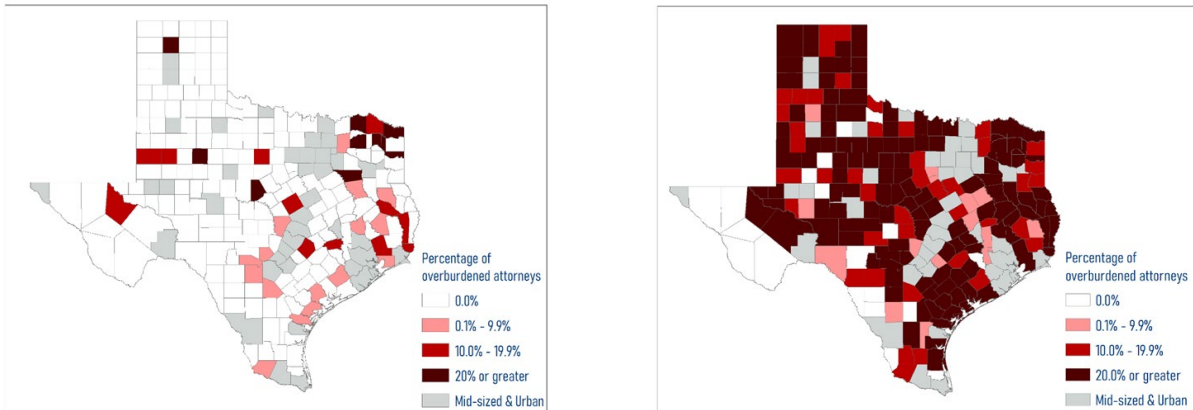


Figure 17: Proportion of Overburdened Attorneys in Fiscal Year 2022

- A. FTEs calculated using within-county caseload    B. FTEs calculated using across-county (statewide) caseload



### *Stakeholder Perspectives on Attorney Availability*

The overarching theme related to rural defense discussed by most interview participants is the decreasing number of attorneys available. Further, participants said it is difficult for some counties to find a competent criminal defense attorney—a difficulty that is compounded when a defendant needs representation during an appeal.

One respondent exemplified the problem, stating:

*“We’ve seen our numbers drastically reduced in these rural [area] and the counties surrounding us have the same exact problems, probably one-half to one-third of the number of attorneys that we had just 15 years ago, we have now.”*

According to our interviews, the decreased number of attorneys available for public defense or indigent defense in rural counties can be attributed to several challenges, most specifically related to attracting and retaining attorneys to practice in their communities.

## Lack of Specialization

Many of the private attorneys we spoke with expressed that the business realities of practicing law in a small-town mean working in several areas of law, including indigent defense, to support themselves and their businesses. According to one attorney, “you’re never going to specialize in a small town.” For many, the reality of practicing law in a small, rural community means the attorney will be unlikely to support their practices on paying clients alone, thus, requiring them to take on indigent defense cases in which their county will pay for their services. Further, attorneys we interviewed state they believe the pay for indigent defense is fair, “[i]t’s about par for Texas” and that they “haven’t been stretched so far.” However, these attorneys reported some caveats to this belief, which included increasing the volume of cases taken to compensate for the rates.

## Perceptions of Rural Living

When it comes to working and living in rural areas, public defense faces many challenges in attracting and retaining talent. These challenges include both the perceived stereotypes of rural areas and the limited resource realities of rural practice. Interviewees highlighted the lack of access to mental health resources that would be valuable to best serve their clients. Interviewees who live in rural areas used the following terms when describing their homes and workplaces as perceived by people from outside their area as: “*Hillbilly Frontierland*,” “*some wasteland*,” “*seedy*,” and “*nothing there*.”

When discussing why legal professionals chose to work and live in rural areas, one person stated, “*My family lives here, so it was a natural decision for me to want to move back here when I got out of law school. I don’t really know what you can do about that.*” This quote exemplifies the struggle in how to attract people to work in an area they have no previous ties to. As for one person who chose to work in a rural area who had no previous ties to the community, they stated, “*I hear a lot of attorneys being like, I’m not paid enough for this and it’s like you are right. You’re really not. I think that’s the problem with keeping attorneys. Then they see they can go to Travis or Harris or even West Texas and make so much more.*”

Turning to the quality of life in rural communities, several interviewees listed the lack of resources in their areas that could cause potential legal recruits to consider working in more urban areas: “*We have no hospital. We have no entertainment. We have no significant industry...*” “*We don’t have public transportation...*” As for social life, several interviewees observed that in their areas restaurants close at 8 pm, there is no Starbucks, Walmart, and the populations are aging. For people who enjoy a vibrant nightlife, or convenient shopping, rural areas may not offer much to attract them.

Another interviewee observed that to make money in rural areas, lawyers need to accept court appointments: “*Honestly, the county where I live, you’re not going to make a living only on paying clients. It’s a very poor county. They don’t have the money to hire you.*” Additionally, another interview with a legal professional revealed the struggle to access experts for cases. They often must look to urban areas to find resources.

Based on these challenges, it may seem impossible to attract and retain legal professionals in rural areas, however, one interviewee noted that they enjoyed the rural life for several reasons, *“I wouldn’t move to the city right now because my commute is 5 minutes door to door. And you know, my house wouldn’t buy a shed in Dallas, but it is a pretty nice house. The cost of living makes it.”* This interviewee reveals that while it may be difficult to recruit and retain people to rural areas, it is possible but depends on the priorities and values of the individual.

Another interviewee suggested the *“Northern Exposure solution”* in which the county (or state) pays for law school in exchange for the legal professional serving for a set number of years serving in a rural area. In this way, the rural area gets legal help, and a legal professional receives help with student loans and gains legal experience and will lure long-term residents to the areas. This suggestion may help rural areas overcome some of the above listed challenges.

## Relationships in Rural Areas are Key

Interviewees stressed the value of relationships among the local legal community, particularly in rural areas. This valued relationship extends between judges, lawyers, and their community. For attorneys in rural communities, it is understood that if a judge requests an attorney take a case, the attorney will accept it and be appointed. They state:

*“So, if your practice is a pie and 25% of your practice is court appointments, you feel obliged to take [indigent cases] because the local judge or judges say, “hey, I need your help”, which is common. I am doing it for my community, I am doing it because the judge asked me to, and I get paid a little bit, so it balances out.”*

Because these communities are tightknit, it can be difficult for newcomers to be welcomed. Additionally, the idea of bringing in new attorneys who may not be established in the local community can be seen as infringing on the relationships that have been developed by other more established attorneys.

## Local Ways of Doing Justice

Regarding non-local legal professionals coming to work in rural PDOs, local norms can be one of the biggest challenges to overcome. To that end, one respondent noted:

*” The biggest thing they don’t want is someone that gets hired in that’s not local, and they show up and they file every [expletive] piece of paper in every case, regardless. So that is not common sensical to many of them. It violates local custom, and it is a waste of resources.”*

The same interviewee elaborated that their local customs come from practicing law in a community in which the rural county judge does not have a legal background or advanced training and is more focused on the local budget. These county judges want to make sure that local money works hard for the residents and stays in the local area.

*“The rest of them [judges] are teachers and ranchers and whatever you can dream up. Your county judges are going to have a lens that is a little different because they—do it as a budgetary issue, even though they’re sitting on the court, it all comes down to budget.”*

Others point to “southern politics” or more “seasoned” or “male dominated” legal professionals working in rural areas as a part of the reason for a resistance to setting up PDOs in rural areas. Attracting lawyers to work in rural areas means that new people with varying beliefs of how law is practiced will come into the area. One legal expert stated, *“but that’s just so foreign to them to step out of something that they haven’t done before. So, it’s—I keep telling myself it’s baby steps here...”*



## Senate Bill 22

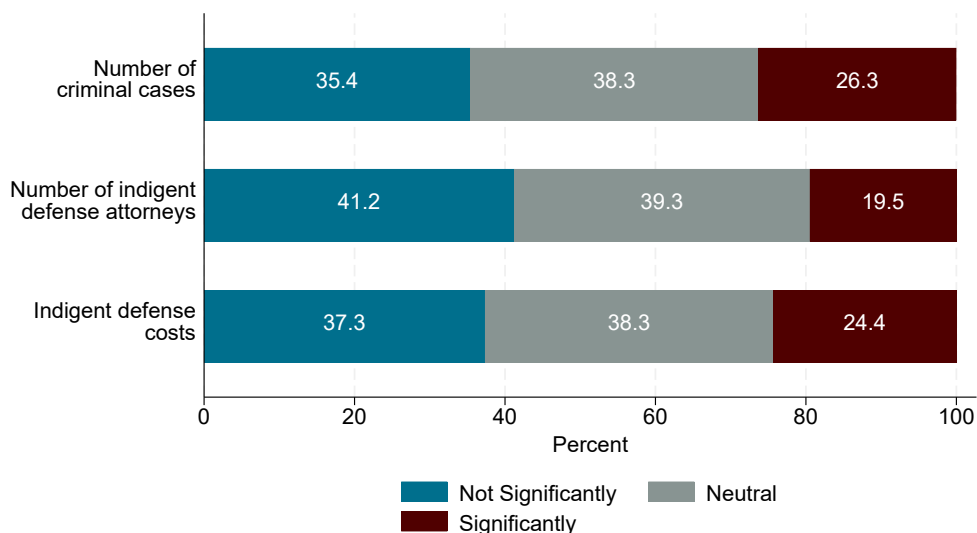
In the 88<sup>th</sup> regular session of the Texas Legislature, the governing body passed Senate Bill 22 (SB 22). This law enacts a grant program to provide financial assistance to rural sheriff's offices, constable's offices, and prosecutor's offices.<sup>22</sup> Under this new legislation, rural counties may apply to the state Comptroller's office for grant funding to increase the minimum annual salary of employees of these offices. It should be noted that SB 22 defines a county as rural if the population of the county is less than 300,000 residents (meaning 236 counties representing 92.9% of Texas can qualify for funding), which differs from the definition of rural in this report where to be considered rural the population of the county is less than 100,000 (where 214 counties representing 84% of all counties are considered rural). Rural counties under SB 22 may apply for funds under this program to hire additional personnel; and purchase vehicles, firearms, or safety equipment if certain salary thresholds have been met. It is important to note there are no provisions for grant funding for indigent defense or PDOs under SB 22.

In counties receiving SB 22 funds, it may be even more difficult to recruit attorneys to indigent defense as indigent defense cannot compete with the resources provided to the prosecution side. As one judge illustrates:

*"I feel like [the District Attorney's office is] pretty well staffed. I think they're going to come and ask for more people since we got SB 22...they're going to ask for a third Assistant District Attorney [and] it's hard to argue [against it] if they get the money through the SB 22 [funds] to do it. It's probably OK, but at the same time, like how do I keep up with that with Indigent Defense? I don't. I can't."*

Survey respondents from rural areas indicated uncertainty in the impact SB 22 would have on indigent defense in their communities. Approximately 26.3% of respondents indicated they felt SB 22 would significantly impact the number of criminal cases. Further, approximately 19.5% of respondents expected SB 22 to significantly impact the number of defense attorneys available in their county. Finally, 24.4% of respondents expected SB 22 to significantly impact the costs of indigent defense in their county (Figure 18). Importantly, in all three questions most respondents expected SB 22 to have no significant impact or were neutral in their responses. We believe this underscores how little was known about the potential impacts of SB 22 at the time of the survey.

Figure 18. Expected Impact of SB 22 on Indigent Defense in Rural Counties



Since the survey and interviews were conducted, SB 22 funds have been allocated by the Texas Comptroller's Office. As predicted, a spending disparity has emerged between prosecutors' offices and PDOs. In fact, 77.1% of all rural counties (as defined by this report) received funding from SB 22 targeting district and county attorney offices. During this time, no additional funding sources have been provided to PDOs or indigent defense.

## Public Defender Offices as a Solution to Challenges in Indigent Defense

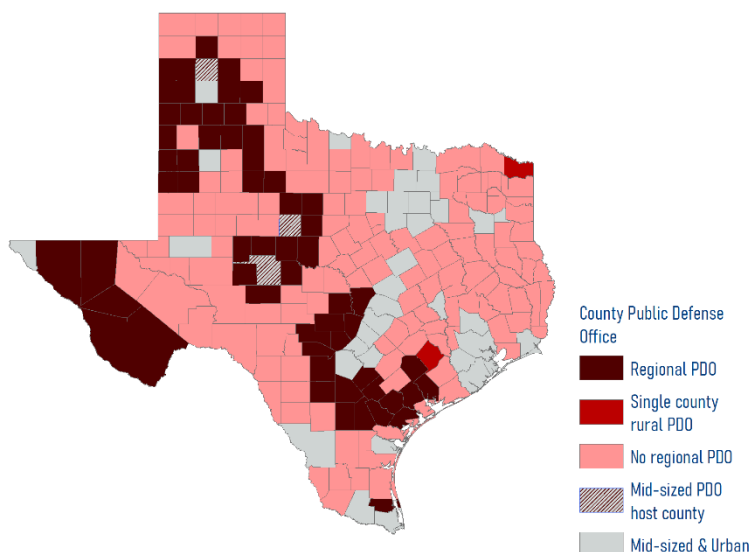
PDOs provide a unique opportunity to address the indigent defense challenges rural communities face. As jurisdictions consider establishing a PDO, it is important to understand the stakeholder perspectives on PDOs and how this may bolster support.

### *Public Defender Offices*

Public defender offices provide jurisdictions with a centralized solution to representing indigent defendants. Counties may choose to establish an office which supports a single county or form a coalition with other counties to establish a regional PDO. These regional PDOs are often the best solution for rural counties as they can share the financial burden of supporting a PDO while reaping the benefits a PDO can offer their county. However, the current regional PDO model relies heavily on the counties to come together to form an agreement of where the regional PDO will be located and how the resources will be shared. This can lead to some counties being surrounded by counties served by regional PDO offices with no way to enter into an agreement to participate or to counties that want a regional PDO but do not have any willing county partners to join them.

TIDC provides counties with an opportunity to apply for funding through their improvement grants. These grants are designed to give rural counties an opportunity to establish a regional PDO. In addition to funds to establish a rural regional PDO, TIDC provides an opportunity for counties to apply for sustainability funding equivalent to two-thirds of the cost of operating the regional PDO. Currently, there are 12 regional PDOs in Texas serving 57 rural counties and 3 mid-sized counties. Two additional rural counties have their own PD office (Figure 19). There are 155 rural counties that are not being served by a single county or regional PDO.

Figure 19. Regional Public Defense Offices in Texas

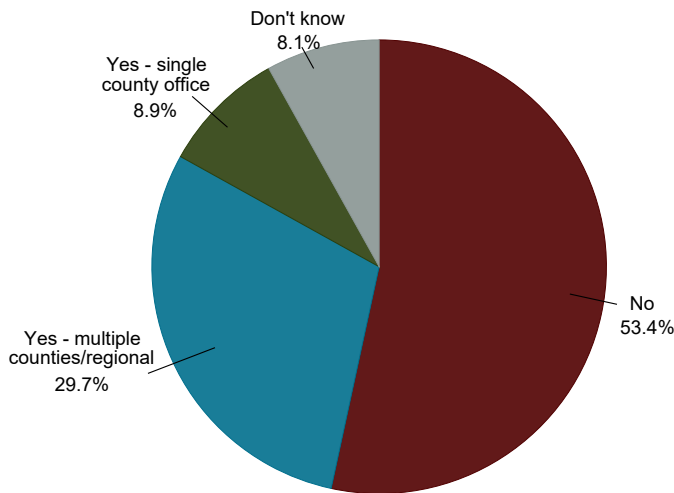


In addition to the regional PDOs, which represent criminal defendants, TIDC also supports regional PDOs that specialize in capital offenses. However, those offices are not the focus of this report.

### *Stakeholder Perspectives on Public Defender Offices*

Just over a third of rural survey respondents have a PDO for non-capital cases in their county (Figure 20). Among these, 8.9% have a single county office, while 29.7% are served by offices covering multiple counties or regions. Conversely, slightly more than half of respondents (53.4%) lack a PDO in their county, while the remaining 8.1% are uncertain about the presence of a PDO.

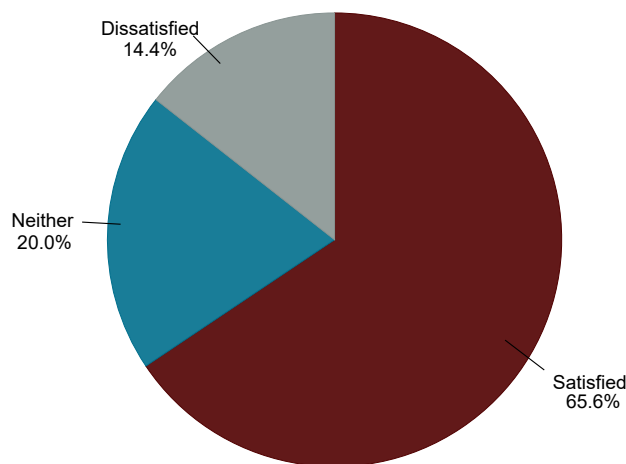
Figure 20: Does Your County Have a Public Defender’s Office Handling Non-Capital Cases?



Overall, survey respondents are satisfied with the PDO in their county, whether serving a single county or multiple counties.

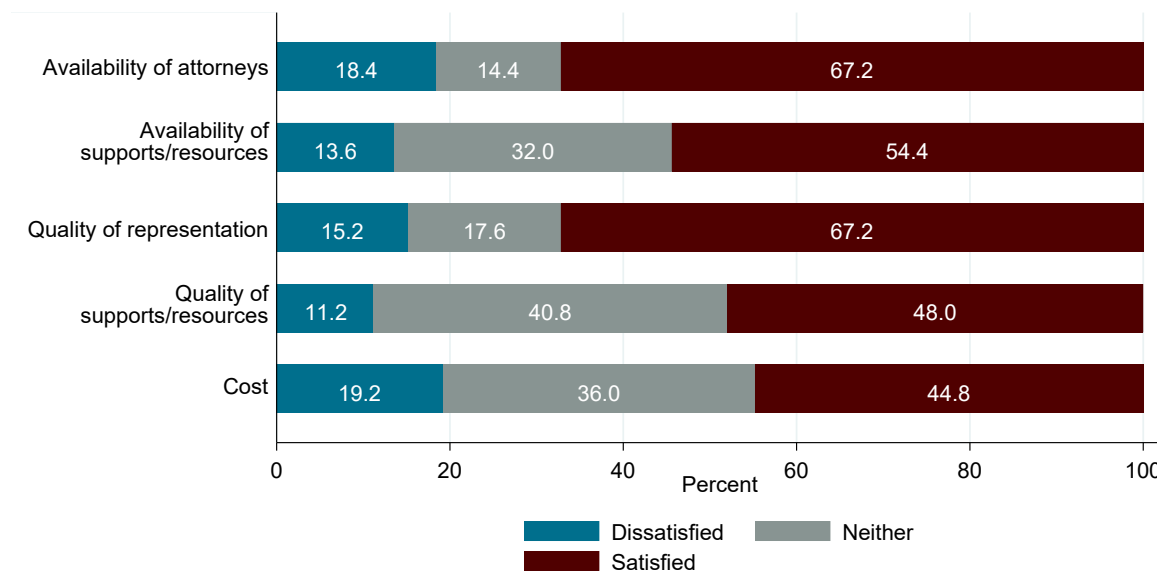
Figure 21 shows that 65.6% are satisfied, 14.4% express dissatisfaction, and 20% neither lean towards satisfaction nor dissatisfaction with the PDO in their county.

Figure 21: Overall, How Satisfied are You With Your Public Defender’s Office?



When asked about how well the PDO addresses each issue, survey respondents in counties with a PDO reveal the highest levels of satisfaction regarding the availability of attorneys (67.2%) and the quality of representation (67.2%), as depicted in Figure 22. Following closely behind, satisfaction rates for the availability and quality of support and resources are at 54.4% and 48.0%, respectively. Notably, the lowest level of satisfaction pertains to cost, with only 44.8% of respondents indicating satisfaction with how the PDO addresses this issue.

Figure 22: How Well Does Your Public Defender’s Office Address These Issues?



With respect to caseload, our survey revealed, 27.6% of respondents in counties with a PDO feel their PDO has an excessive caseload while 37.4% do not (with 35.0% expressing uncertainty).

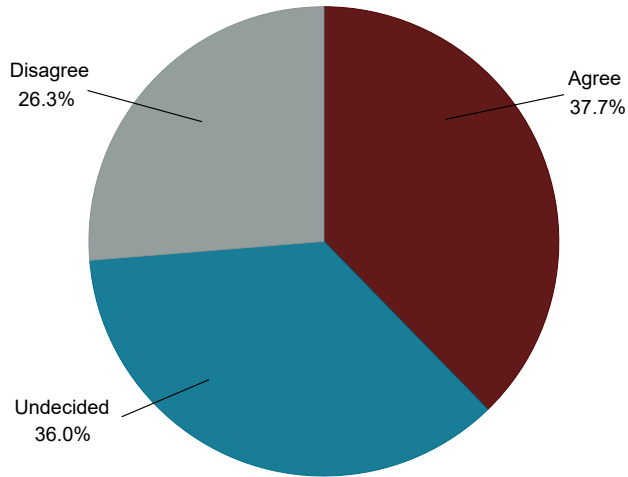
## Anticipated Outcomes of Establishing a Public Defender Office

Many survey respondents reported they did not have a PDO in their jurisdiction. However, this does not preclude them from beliefs of the benefits of establishing a PDO in their jurisdiction. Interview participants provided additional clarity on the perceived benefits of establishing a PDO. Overall, many felt a PDO could alleviate some of the resource shortages their jurisdictions are currently facing.

### *Perceived Benefits of Establishing a Public Defender’s Office*

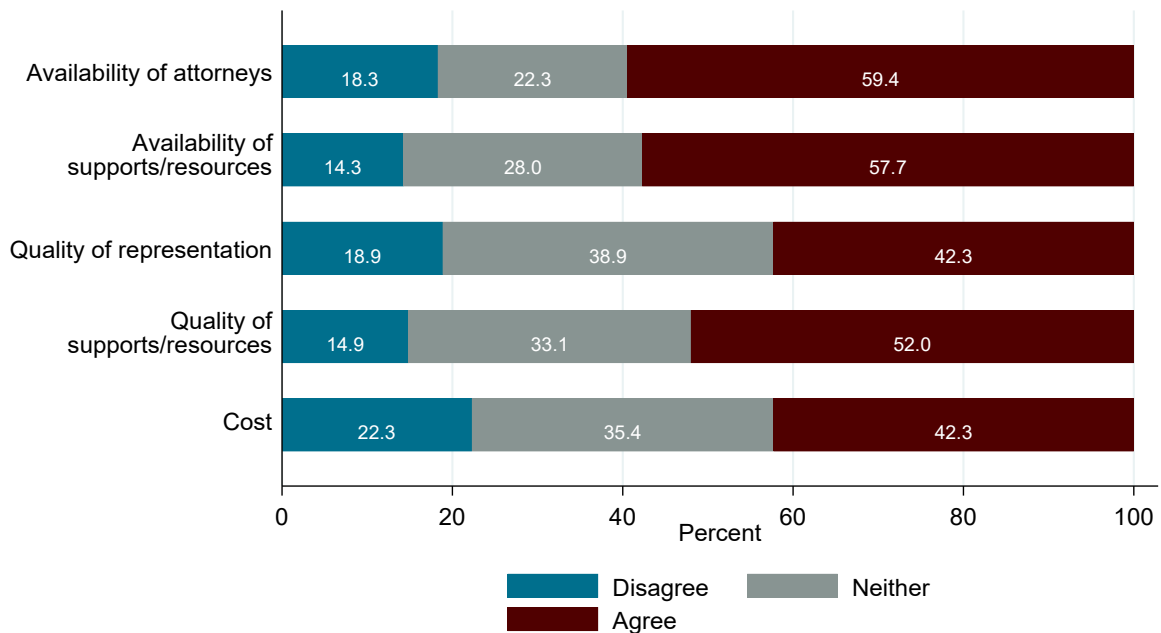
Survey respondents in counties without a PDO report conflicting views on the potential benefits of having a public defender’s office. As depicted in Figure 23, 37.7% agree that the county would benefit from a PDO, while 26.3% disagree, leaving the remaining 36.0% undecided. Those who were undecided on whether their county would benefit from a PDO identified themselves as county judges (22.2%), district court judges (20.6%), auditors/treasurers (19.1%), prosecutors (9.5%), county court at law judges (6.4%), private criminal defense attorneys (4.8%), public defenders (3.1%), commissioners (1.6%), and other (12.7%).

Figure 23: Our County Would Benefit From Having a Public Defender’s Office.



While Figure 22 evaluates the satisfaction levels among respondents in counties with PDO, Figure 24 explores the anticipated benefits of a PDO from the perspective of respondents without such offices. Referring to Figure 24, most respondents, accounting for 59.4%, agree that a PDO would improve the availability of attorneys, followed by the availability and quality of support and resources, with 57.7% and 52.0% agreeing, respectively. Meanwhile, fewer respondents believe it would enhance the quality of representation (42.3%), and cost (42.3%).

Figure 24: How Well Would a Public Defender’s Office Improve These Issues?



Additionally, interview participants in an area without a PDO share their perceived benefits to establishing a PDO. Benefits to the county include:

- Sharing resources with other participating counties;
- Solving attorney availability issues;
- Improving the quality of attorneys in the area;
- Saving the county money;
- Providing defendants with representation; and
- Improve court efficiency.

It should be emphasized that many judges in rural areas were interested in a PDO because they felt that was the only possible solution to increasing the number of attorneys available in their county, while also having the benefit of taking the burden of assigning the attorney from the judge. As one judge noted: *“I would love to have a public defender’s office to come over here where I can assign somebody and I make sure it makes my court run faster, smoother, and there’s less waste. And it’s not going to solve everything, but it would make things a lot easier.”*

Additionally, the judges felt the PDO would provide representation to defendants at the same level as the district attorney’s office, as best illustrated by the following quote from one judge:

*“But when you have private attorneys who do a decent amount of criminal but that’s still not their main focus of their practice; they have other things they’re doing all the time too...You really want somebody who’s, there’s times when I’ve felt uncomfortable with, there’s no question I felt uncomfortable with the representation that the defendant’s been given just because the resources aren’t equitable and the expertise and abilities are not equal. Equal on both sides.”*

## **Financial Support and Other Resources Needed to Establish a Public Defender’s Office**

For rural communities, external financial support is crucial to their ability to establish and maintain a PDO in their jurisdiction. A common thread expressed by both survey respondents and interviewees was related to their jurisdiction’s ability to financially support a PDO in the long run. Many participants were concerned about the economic situation of their jurisdiction and thus cognizant of the resources needed to fully support the indigent defendants.

### ***Adequacy of Funding Resources***

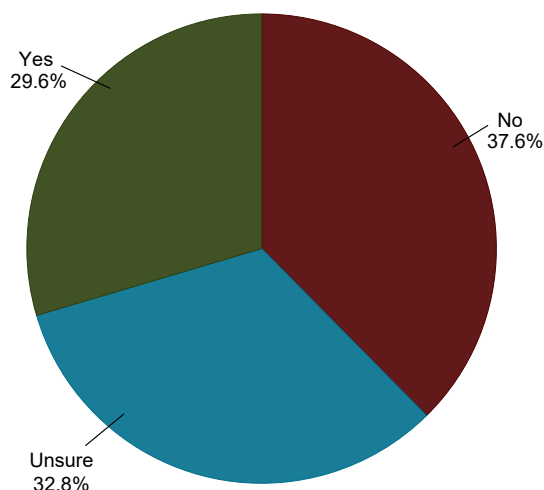
Interview participants describe the availability of resources in rural areas as a key challenge. Specifically, participants highlighted the capacity issues of the county, such as not having pretrial services, not using software for case management, difficulty maintaining a staffed office, and not enough courts or judges. Participants also mention inequitable funding as an issue, specifically the increase in resources available to the district attorney’s office through Senate Bill 22<sup>23</sup>.

During the interviews, the two most common requests were for more funding (or more sustainable funding) and more attorneys to support indigent defendants. These requests were the same regardless of the model of representation assignment used. While most interviewees requested more attorneys, four interviewees specifically requested experienced attorneys for their PDOs. Other staffing needs included an investigator, administrative staff, case support services staff, and one person requested more legal assistance.

Additionally, one interviewee noted that while they would like to see public defenders all over Texas, the lack of funding for rural areas makes this a difficult reality. The attorney notes: *“It would probably be better if there were public defender offices all over the state and that office was as well staffed as the DA’s office. But I don’t know that that’s ever going to happen because the smaller counties there’s no money there.”*

Among survey respondents in counties with PDOs, 29.6% believe their PDO is sufficiently funded, while 37.6% do not (with 32.8% expressing uncertainty) (Figure 25). Perspectives shift when evaluating whether PDO staff receive fair compensation, with 38.2% agreeing and 27.6% disagreeing (and 34.2% unsure). Moreover, approximately 68.4% of County Judges and Commissioners with PDOs surveyed express concerns about their county's ability to sustain adequate funding for the office.

Figure 25. Survey Respondents Belief PDOs are Sufficiently Funded



Concerning funding, approximately 90% of county judges and commissioners surveyed do not receive federal or private foundation grants to support their PDO. Similarly, three-quarters of respondents from counties lacking a PDO also do not receive such grants. Funding relies heavily on local and state funds.

### *Applications for TIDC Improvement Grants*

Indeed, for rural counties, functional PDOs rely on funding from TIDC improvement grants. Between 2014 and 2022, the number of applications for TIDC improvement grants has doubled while the amount of money given has increased tenfold. Figure 26 displays the increase in the number of requests for improvement grant funds<sup>24</sup>. Additionally, Table 1 displays the amount of improvement grant funds dispersed each year since 2014<sup>25</sup>. What is evident is the amount of funds requested (and dispersed) to support indigent defense in rural counties is increasing year over year. Some of this increase can be attributed to the COVID-19 pandemic case backlog, however, there is a lasting need for ongoing financial support for rural counties.

Figure 26. Number of Improvement Grant Requests

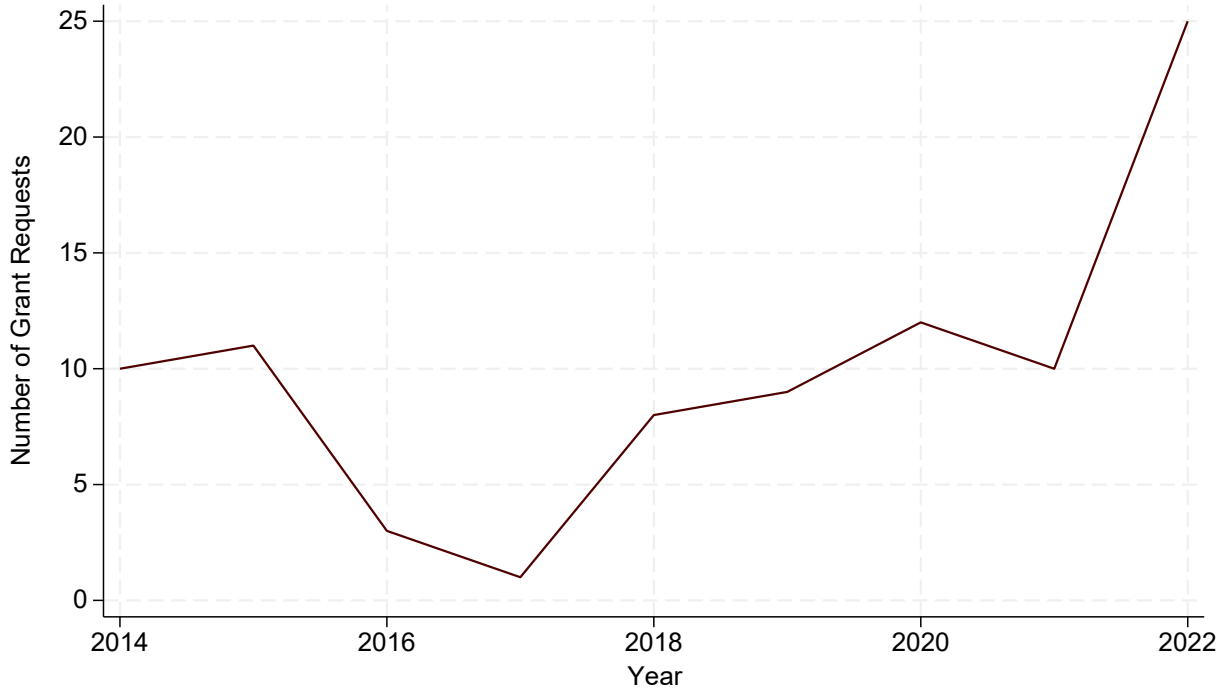


Table 1. Improvement Grant Funds Dispersed to Rural Counties

Fiscal Year	Amount Dispersed	Percentage Change
2014	\$613,632.50	N/A
2015	\$634,354.00	3.4%
2016	\$628,234.00	-1.0%
2017	\$1,075,948.00	71.2%
2018	\$1,338,378.00	24.4%
2019	\$1,558,774.00	16.5%
2020	\$2,497,253.00	60.2%
2021	\$5,319,449.00	113.3%
2022	\$6,533,271.00	22.7%

A review of improvement grant applications sheds light on counties’ financial and other circumstances that motivates them to seek out additional funding. The bulk of the funding requests are to support additional personnel, including their salaries, benefits, training, and other incidentals. The grant requests cover initiatives such as:

- Starting a regional PDO or expanding a regional PDO to cover to more counties;
- Funding for social workers, case managers, and attorneys specializing in representing defendants with mental illness;



- Adding software to automate PDO processes; and
- Hiring additional staff (attorneys, chief PD, or staff) to handle case backlog.

Applications include a rationale for why the county needs the support; with responses echoing what we heard in the surveys and interviews. Explanations include:

- A dwindling tax base and bleak economic future hindering the county’s ability to pay for a PDO;
- Increasing caseloads and long wait times for an attorney to meet with defendant;
- Inability to recruit attorneys to take cases because of pay or location;
- Need to compensate attorneys to travel to take cases; and
- A high proportion of cases involving mental health issues and how attorneys are often managing mental health instead of professionals with more training in mental illnesses.

Almost half (45.1%) of rural survey respondents that do not have a PDO indicate that they were unaware they could apply to TIDC to receive a grant that would fund two-thirds of the cost of their rural regional public defender office. The majority of those who responded they did not know they could apply for sustainability funding from TIDC indicated they were private attorneys (20.3%), district court judges (19%), auditor/treasurers (12.7%), and county judges (10.1%).

### *Financially Sustaining and Expanding Regional Public Defender Offices*

Currently the predominant funding model for rural counties to develop a PDO is to form a coalition with geographically close counties and create a regional PDO. The primary advantage of a regional PDO structure is the ability to share resources that may be limited in the area, like attorney and other personnel availability. Many counties have requested funds to start rural regional PDOs via improvement grants in recent years. Based on the funds that have been dispersed to these rural counties, we can estimate what it would cost to expand regional PDOs in rural counties across the state of Texas.

For this estimation, we utilize 2022 improvement grant amounts and number of cases represented by the PDO from counties that are a part of the following regional PDOs—Atascosa Area Advocates (Atascosa, Frio, Karnes, Wilson), Beeville Regional PDO, Texas Rio Grande Public Defender (Beeville, Goliad, Live Oak, McMullen), North Hill Country PDO (Burnet, Blanco, Llano), Far West Texas Regional PDO (Culberson, Brewster, Hudspeth, Jeff Davis, Presidio), Hill Country Regional PDO (Kerr, Bandera, Gillespie, Kendall, Medina), and Crossroads Regional PDO (Lavaca, Jackson, Refugio, Victoria). The list of PDOs excludes those that received extraordinary disbursement and compliance grants only, did not have funding dispersed in 2022, or are part of offices that serve non-rural counties. The improvement grant funds utilized in 2022 by each of the listed PDO were divided by the total number of felony and misdemeanor indigent cases handled by that office to determine the per-case amount at the office level. A per-case average measure was then created from all per-office case averages. This approach allows to highlight the differences in cost and processes between different PDOs, counties, and regions. This per-case average measure was then multiplied by the total number of indigent defense cases from all rural counties without a PDO to estimate the total amount needed to fund regional public defender offices across all rural counties. Assuming the newly established regional PDOs represents 85% of all indigent defense cases at the participating counties (the typical case coverage by a PDO), this estimate is \$70,720,000 per year (Table 2).

Table 2: Amount Needed Each Year to Fund Additional Regional PDOs (Beyond 2022 grant support)

Number of Counties Covered by new Regional PDOs (Assuming PDO handles 85% of cases)	Additional Yearly Funding Needed from the State
All counties without a PDO currently	<b>\$70,720,000</b>
1/3 of counties without a PDO currently	<b>\$23,573,333</b>

For this analysis, we made a few assumptions that makes the above estimate a conservative one and a starting point. First, for the case counts, we only counted misdemeanor and felony cases paid. This does not consider juvenile cases, cases handled by a specialized caseload, such as mental health, or appellate cases. In addition, this estimation is based on an overall average cost per case that weighs misdemeanor and felony cases equally. Second, the estimate is a snapshot of what is needed next year so it does not account for population growth nor inflation cost. Third, the estimate is based on regional PDO cost per case and hence does not account for single PD offices' costs. It is reasonable to expect that some counties will establish a single PDO and not a regional PDO. Finally, the estimate is based on the 2022 disbursement of improvement grants regardless of the counties' percentage contribution or how long the regional PDO has been active. The cost of building new PDOs may vary from this number based on these assumptions.

The establishment of new regional PDOs for one-third of counties currently without a PDO (60 counties) would need to cover 15,460 felony and misdemeanor indigent defense paid cases. Using the latest share of felony indigent defense paid cases of 63%, this means the new regional PDOs will have to serve 9,740 felony cases and 5,720 misdemeanor cases. Applying the state caseload guidelines, this requires 101 attorneys to staff the new regional offices (76 handling felony cases and 25 handling misdemeanor cases) assuming that attorneys do not represent both types of cases.

### *Additional Resources Needed*

Many PDOs need more support than just additional attorneys or funding. In the survey, two respondents reported concerns with general office quality, requesting more or improved office space. Other respondents requested other personnel to support their office. Investigators, social workers, translators, and even court reporters were suggested to better serve clients and move cases through the system faster. One person requested mentors for their office, and another requested peer support for their office, with the thought being if there is more professional support for staff, turnover may be reduced.

Still, others focused on the needs of their clients. One survey respondent requested housing resources for clients, as many clients need shelter, while two respondents requested more mental health support. Three respondents highlighted a resource that had not come up in interviews by mentioning a need for work vehicles. Because of the nature of working in rural areas, transportation for clients, as well as providing access to legal help for clients could be better addressed with more work vehicles. While the requested resources are not unique to only rural areas, the difficulty of providing the services may be a unique challenge as opposed to providing similar services in urban areas.

# Factors that Influence Support for a Public Defender's Office

Survey respondents and interviewees in areas without a PDO provided reasons they believed their jurisdiction had not established a PDO. Understanding the significance of these factors can be a barometer of how receptive residents and legal professionals will be to supporting the efforts of establishing a PDO.

## Reasons Counties Do Not Have a Public Defender's Office

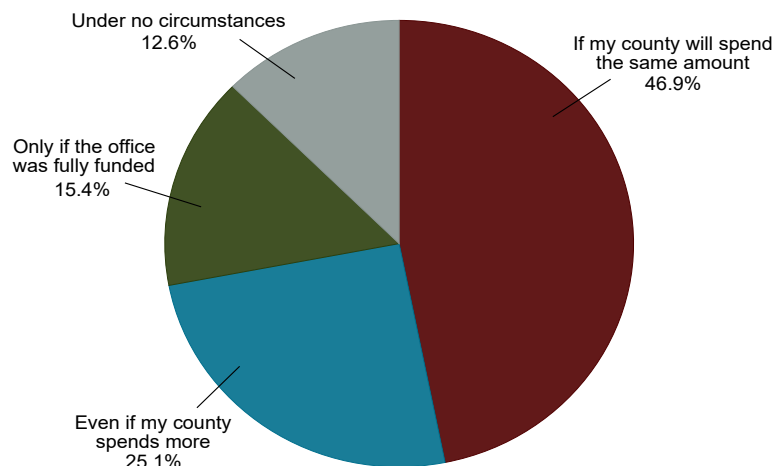
Interview participants gave a wide variety of reasons for not having a PDO in their area. The reasons given by judges and attorneys include:

- Concern about decreasing number of local rural attorneys practicing criminal defense;
- Bureaucratic red tape involved in working with other counties when setting up regional offices;
- The perception that recent law school graduates would slow the process by filing more paperwork and taking more cases to trial than more experienced lawyers;
- Defendants remaining on the docket for a long time due to cases not moving quickly; and
- Keeping the county money within the county by paying local attorneys rather than joining a regional PDO.

Additionally, interview participants cite financial support of the PDO as a reason their county does not have one. County stakeholders believe financing a PDO will cost more than what is currently paid towards court appointed attorneys. Other participants believe the financial arrangement with PDOs obligates the county to the state.

Survey respondents in counties without a PDO were also asked under what circumstances they would be willing to support the establishment of a PDO. Among respondents, 25.1% express a willingness to establish a PDO even if it meant increased county spending. The predominant response, accounting for 46.9%, favors establishing the office under the condition that the county maintains current spending, while 15.4% prefer full state funding (Figure 27). Only 12.6% of respondents express an unwillingness to establish a PDO under any circumstance.

Figure 27: Under What Circumstances Would You be Willing to Establish a Public Defender's Office?



## *Private Attorney Support and Opposition for Establishing a Public Defender's Office*

Private attorneys participating in our interviews have mixed opinions regarding working for a public defender's office. There are multiple reasons an attorney might refuse to join a PDO as illustrated by:

*"I would not join one because it would require me to preclude the rest of my practice. I assume that once you join you are all in, it is like working for the DA, so you are 100% and that's what you do. So, I have a small-town practice. It would require me to close it down. I doubt there's a scenario where it's part time work, right?"*

Other reasons given by attorneys that do not want to join a PDO include:

- Enjoy running their own legal business/be their own boss;
- Not wanting to work for the government;
- Freedom to create own schedule;
- Inability to make own judgement on individual cases;
- Not being able to work on CPS cases; and
- Not being able to take non-criminal defense cases.

Some private attorneys indicate they would join a PDO if given the opportunity. The reasons private attorneys gave for interest in joining a PDO are the areas need for a PDO and the perceived job security of the position within the PDO. As one attorney contends, *"You know if you're doing public defender work at least you get a salary. You know that check is coming in every two weeks. You get some benefits."*

In addition to the community benefits and job security, interview participants described career benefits for attorneys who work within a PDO. Working within a PDO provides an opportunity to work with a staff that may include other attorneys, investigators, legal assistants, and social workers. Participants also describe opportunities for increased mentorship and training. As one public defender's comments illustrates the positive support that can be developed in a PDO versus private practice: *"There's just lots of people to learn from, and a wealth of information [in a public defender's office]. And people that didn't get to start their careers out the same way that feel really passionate with like—there are benefits to starting out in a PD's office."*

However, a high value is placed on the relationships developed between all members of the local legal community in rural communities. These legal communities are often small, and all the members begin to get to know one another on a personal level. Thus, the establishment of a PDO, and the idea of bringing in new attorneys, can be seen as infringing on that relationship. One stakeholder notes:

*"Everyone has to be a generalist in a small county, you can't make a living just doing one thing, even as a lawyer. So, you're going to have a lot of hostility towards the public defenders in whatever county it is. Yeah, because you're taking a few cases away from the guy who also dabbles in divorce and does a few wills here and there. And you know, does a traffic accident lawsuit."*

Additionally, for some defense attorneys in rural areas, the establishment of a PDO is viewed as taking away business. According to one participant, *"I think our district attorneys were also hesitant and our judges previously, they did not want to take away work from our local lawyers who were earning their living – just staying in this area - and basically sole practitioners, right?"*

For officials beginning to consider PDOs, outreach is key to bring awareness to the benefits of public defender offices. According to one interviewee, *“They look at it [PDO] as a life raft...”* and there is little alternative because the political figures in the area are requiring it, or they feel the quality of local attorneys is low. However, understanding how to utilize a PDO can take time and buy-in. One public defender commented, *“I don’t think people quite understand using us as a resource. They don’t get that they are already paying us, you might as well use us.”* They felt judges only assigned a case to the PDO after the judge exhausted the appointed attorneys list.

In addition to awareness, others report a PDO must make financial sense to the local leaders and residents of the area,

*“...so, they had a meeting stopped and showed her [the judge] the numbers how much it would take. And then they did a free study with TIDC. And so, once they did that, then [she], who was the judge at the time, said, oh, we’re gonna set up an office.”*

Echoing this sentiment, survey respondents reported the establishment of a PDO must make financial sense. Respondents also reported they would need education on how to apply for funding as well as continuing education on how to utilize the PDO as elected officials and political climate change over time.

## Conclusions

Over the course of this study, our team made several important discoveries which explain the current state of indigent defense in rural communities in Texas and shaped the following recommendations.

First, the percentage of felony cases are increasing, underscoring the need for more attorneys to represent these defendants. The number of attorneys choosing to represent indigent defendants, in contrast, is decreasing. This decrease is especially true in rural areas.

Second, the two most prevalent concerns stakeholders shared with us related to indigent defense are the availability of attorneys to represent indigent defendants and the cost to support indigent defense in their communities. Additionally, the motivators for attorneys to represent indigent defendants are often personal, intangible things that are difficult to create broad sweeping policies around.

The Texas Indigent Defense Commission funds two-thirds of the cost of rural regional public defender offices to address attorney shortages and improve public defense services in rural Texas. Despite potential challenges, many stakeholders without a public defender’s office were supportive of establishing a PDO in their community. Stakeholders felt they had exhausted all other options and a PDO could be the solution to their issues. Stakeholders felt a PDO could improve the availability of attorneys, and the availability and quality of support and resources, but consensus would need to be built in the community through outreach. Additionally, communities will need to be informed of the ways they can establish sustainable funding for a new PDO. Finally, whatever solutions are utilized, local influences and preferences need to be considered. Counties will need the ability to choose the solution that best fits their situation. Ideally, there will be complete buy-in to sustain solutions.

## Recommendations

In this section, we present actionable recommendations aimed at enhancing public defense in rural communities in Texas. Drawing from the field work, these recommendations are tailored to address the needs of indigent defense. We believe each of these recommendations will support indigent

defendants in Texas and are not presented in priority order. To ensure TIDC can implement these policy recommendations and fully execute their mission, additional funding must be allocated to TIDC for the purpose of hiring additional staff as well as direct support to counties and stakeholders who represent indigent defendants in Texas.

**Policy Recommendation 1:** Develop a comprehensive program to increase the number of attorneys representing indigent defendants.

*The program should be the outcome of collaboration between counties, TIDC, PDOs, and law schools across the state. The program could include but is not limited to loan repayment, internship and fellowship opportunities for law school students, webinars, and resource sharing. The program should also create a recruitment campaign at both Texas and non-Texas law schools as well as a recruitment campaign for experienced attorneys to join public defense. As a part of the program development, an evaluation component should be employed to determine which components most strongly influence attorneys to join public defense, and specifically rural defense.*

**Policy Recommendation 2:** TIDC needs additional funding and staffing; at a minimum TIDC needs \$23.5 million per year to establish and operate new regional PD offices covering one third of rural counties without a PD office today; this does not include funding for TIDC staff

*Establishing additional rural regional PDOs or MACs would alleviate the burden on the judicial system for attorney appointments by increasing the number of attorneys available for indigent appointments, specifically in rural areas. The current system of relying on counties to build coalitions among themselves or develop local solutions for attorney shortages appears to be inefficient and results in counties remaining underserved. Other states have considered or implemented policy changes such as a statewide PDO or MAC; statewide, standards-based reforms combined with 100% reimbursement to counties for complying with higher standards; and other reforms aimed at ensuring equal availability and quality of representation between more urban and rural communities. Further investigation into if or how they could be applied in Texas is also warranted.*

**Policy Recommendation 3:** Perform a comprehensive analysis of court appointed attorneys' fees and motivations to take on indigent defense cases.

*Counties' first response to attorney shortage is to increase court appointment fees resulting in varying degrees of success. TIDC should evaluate the data provided by counties in their Indigent Defense Expenditure Reports to determine the current appointment fees. The analysis should consider factors like a county's capacity to boost its tax revenue and should also identify how historical successes in raising appointment fees have helped alleviate attorney shortages. Key stakeholder interviews with county officials and local attorneys can validate the Indigent Defense Expenditure Reporting (IDER) findings.*

**Policy Recommendation 4:** TIDC should embark on an intentional outreach campaign with rural regional PDOs and those interested in establishing PDOs to build trust and foster engagement. This campaign should focus on bridging gaps in information and advertising resources available through TIDC to support the county's indigent defense needs.

*TIDC needs to engage more purposely with rural counties to develop a working relationship. This relationship will allow cooperation and trust in addressing the needs of indigent defense. To do this, we propose TIDC expand its current outreach efforts with the help of new staff. TIDC should increase its visits to counties interested in establishing a rural regional PDO.*

*These expanded visits, which are not associated with any punitive action, should be focused on relationship building, which is key to establishing buy-in from rural communities.*

**Policy Recommendation 5:** As much as possible, ensure that all current PDOs have sustainable funding.

*While TIDC currently provides two-thirds sustainability funding for rural regional public defender offices, some counties struggle to afford the cost of the office even at this level of support. PDOs are established in rural areas to add attorney capacity. If funding constraints force a PDO to close, legal representation capacity is lost and will be difficult to build back up with private assigned counsel alone. TIDC should examine how it can increase its sustainability funding support for counties who cannot afford a regional PDO under its current two-thirds funding model.*

**Policy Recommendation 6:** Establish regional TIDC offices to better serve the state's needs.

*A more consistent presence of TIDC across the state allows the agency to be on top of the current challenges, build and maintain strong relationships with stakeholders, and allows counties to engage with the state agency. Creating regional TIDC offices can achieve these goals while still maintaining a local identity. Other agencies in Texas have regional offices that are either extensions of said agency or support a state agency mission. Examples include Texas Department of State Health Services,<sup>26</sup> Texas Education Agency,<sup>27</sup> and Texas Workforce Commission.<sup>28</sup> In each of these regional models, local practitioners most commonly interact with and develop a relationship with their regional office contacts (as opposed to the head state agency). TIDC would have to find a regional model that befits their structure and purposes specifically, but regional offices would likely generate better connections between counties and TIDC, especially in rural areas, where relationships are vital to the criminal justice system. To implement regional offices, additional staff would need to be hired. These staff can be tasked with visiting local counties (for compliance, grant monitoring, etc.), providing technical assistance and support, organizing outreach between counties and local bar and TIDC, ensuring TIDC information is reaching the right parties, among other duties.*

**Policy Recommendation 7:** Develop annual indigent defense check-in survey for all counties. This survey should identify what issues the county faced in addressing indigent defense issues in the past year including county-level funding concerns, attorney availability, caseload, etc.

*Each county has varying levels of need to be addressed. To better capture those needs and to draw attention to those counties that require the most support, an expansion of the data collected is needed. TIDC can use this data to target communication, outreach, or other support to the specific county.*

**Policy Recommendation 8:** Invest in robust data and research capabilities to maintain up to date knowledge of public defense needs for rural communities. Such investment could occur at the county level, PDO level, or state level.

*By leveraging data analytics and research, counties can identify trends, assess resource allocation efficiency, and develop strategies to address evolving challenges within public defense. Most improvement grants have an evaluation component; however, this language is usually ambiguous. TIDC should assist counties in developing an evaluation plan for their local data and support follow-up analysis and dissemination on the data collection.*

# Appendix A: Survey Questions

5/13/24, 10:03 AM

Qualtrics Survey Software



## Intro.



During the 88th legislative session, the state of Texas provided funds to the Texas Indigent Defense Commission (TIDC) accordingly: Amounts appropriated above in Strategy D.1.1, Texas Indigent Defense Commission, from General Revenue include \$5,000,000 in the 2024-25 biennium that may only be used for the purpose of conducting an assessment of public defender services and resources in rural areas and providing new public defender services and resources in those areas.

The Public Policy Research Institute (PPRI) at Texas A&M University is conducting a study about rural public defense in Texas. The Texas Indigent Defense Commission (TIDC) has contracted with the PPRI to conduct this survey. The study aims to create a snapshot of the current public defense system in Texas focusing on rural counties, while also considering the resource and financial ramifications that result from any change in public defense strategies.

- The survey will take approximately 15-20 minutes of your time.
- Your participation in this survey is voluntary and your answers will remain confidential. Your responses will not be linked to your information.
- There is no compensation for participating.
- There is no cost to participate.
- There are no known risks to participating.

If you have questions or concerns about this survey or your rights, please email [gnaufal@tamu.edu](mailto:gnaufal@tamu.edu).

Please click the NEXT button to begin the survey. Thank you!

## Block 2

Please select the county/counties in which you serve:

- Anderson  Carson  Donley  Hamilton  Kaufman  Mc Lennan  Real  Throckmorton  
 Andrews  Cass  Duval  Hansford  Kendall  Mc Mullen  Red River  Titus

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5/13/24, 10:03 AM

Qualtrics Survey Software

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| <input type="checkbox"/> Angelina  | <input type="checkbox"/> Castro        | <input type="checkbox"/> Eastland  | <input type="checkbox"/> Hardeman   | <input type="checkbox"/> Kenedy     | <input type="checkbox"/> Medina      | <input type="checkbox"/> Reeves        | <input type="checkbox"/> Tom Green  |
| <input type="checkbox"/> Aransas   | <input type="checkbox"/> Chambers      | <input type="checkbox"/> Ector     | <input type="checkbox"/> Hardin     | <input type="checkbox"/> Kent       | <input type="checkbox"/> Menard      | <input type="checkbox"/> Refugio       | <input type="checkbox"/> Travis     |
| <input type="checkbox"/> Archer    | <input type="checkbox"/> Cherokee      | <input type="checkbox"/> Edwards   | <input type="checkbox"/> Harris     | <input type="checkbox"/> Kerr       | <input type="checkbox"/> Midland     | <input type="checkbox"/> Roberts       | <input type="checkbox"/> Trinity    |
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| <input type="checkbox"/> Atascosa  | <input type="checkbox"/> Clay          | <input type="checkbox"/> Ellis     | <input type="checkbox"/> Hartley    | <input type="checkbox"/> King       | <input type="checkbox"/> Mills       | <input type="checkbox"/> Rockwall      | <input type="checkbox"/> Upshur     |
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| <input type="checkbox"/> Brown     | <input type="checkbox"/> Dallas        | <input type="checkbox"/> Gonzales  | <input type="checkbox"/> Jasper     | <input type="checkbox"/> Lynn       | <input type="checkbox"/> Parmer      | <input type="checkbox"/> Stonewall     | <input type="checkbox"/> Winkler    |
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| <input type="checkbox"/> Camp      | <input type="checkbox"/> Dimmit        | <input type="checkbox"/> Hall      | <input type="checkbox"/> Karnes     | <input type="checkbox"/> Mc Culloch | <input type="checkbox"/> Reagan      |  |                                     |

What is your current role in the county?

- County Judge
- County Court at Law Judge
- District Court Judge
- Commissioner

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- Auditor/Treasurer
- Public Defender
- Private criminal defense attorney
- Prosecutor
- County Staff specify role:

Do you preside in criminal and/or juvenile cases?

- Yes
- No

How long have you served in your current role in your county?

**Block 2**

For each item below, rate how significant the issue is to your jurisdiction as it relates to indigent defense.

	Not significant	Slightly significant	Neutral	Significant
Availability of Attorneys	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Availability of other supports/resources for indigent defense (e.g. investigators and experts)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Quality of representation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Quality of other supports/resources for indigent defense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Cost of indigent defense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Other:				
<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	



Does your county have a Public Defender Office handling **non-capital** cases?

- Yes - single county office
- Yes - multiple counties/regional office
- No
- Don't know

**Yes to 5**

For the following questions, please consider the Public Defender Office **in your county** that does **not** handle capital cases.

Overall, how satisfied are you with the Public Defender Office?

- Very dissatisfied
- Dissatisfied
- Neither
- Satisfied
- Very satisfied

For each of the following, rate how well the Public Defender Office addresses these issues:

	Very dissatisfied	Slightly dissatisfied	Neither
Availability of attorneys	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Availability of other supports/resources for indigent defense (e.g., investigators and experts)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of representation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of other supports/resources for indigent defense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cost of indigent defense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Court efficiency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Very  
dissatisfied

Slightly  
dissatisfied

Neither

§{q://QID8/ChoiceTextEntryValue/6}

Is there anything you would like to share with us that explains your response to the above ratings?

Do you feel the Public Defender Office is sufficiently funded?

- Yes
- No
- Unsure

What additional funding is needed?

Do you feel Public Defender Office staff are fairly compensated?

- Yes
- No
- Unsure

What additional funding is needed to provide fair compensation?

What other resources, if any, does the Public Defender Office need to improve their services?

Do you feel your Public Defender Office has an excessive caseload?

- Yes - please explain
- No
- Unsure

**For county judge and commission only yes to q5**

Does your county receive any of the following funds for the Public Defender Office?

- Federal grants
- Private foundation grants
- None of the above

Are you concerned about your county's ability to continue to meet the funding needs of the Public Defender Office?

- Yes - Please explain
- No

**No to Q.5**

How strongly do you agree with the following statement: Our county would benefit from having a Public Defender Office.

- Strongly disagree
- Disagree
- Undecided
- Agree
- Strongly agree

For each of the following, rate how well a Public Defender Office could improve these issues:

	Strongly disagree	Disagree	Neither	Agree	Strongly agree
Availability of attorneys	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Availability of other supports/resources for indigent defense (e.g., investigators and experts)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of representation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quality of other supports/resources for indigent defense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cost of indigent defense	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Court efficiency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If your county could address challenges such as attorney shortages and improve quality representation by establishing a Public Defender Office, under what circumstances would you be willing to do so? (select all that apply)

- If my county will save money
- If my county will spend same amount
- If my county spends somewhat more
- If my county spends substantially more
- If the office was fully funded by the state
- Under no circumstances would I be willing to establish a public defender office

Please elaborate on any of your above responses.

What are your reasons for why your county does not have a Public Defender Office?

Are you aware that counties can apply to TIDC for sustainability grants that pay for two-thirds of the cost of rural regional public defender offices?

- Yes  
 No

**For County Judge/Commissioners only no on q5**

Does your county receive any of the following funds for indigent defense?

- Federal grants  
 Private foundation grants  
 None of the above

Are you concerned about your county's ability to continue to meet the funding needs of the indigent defense system?

- Yes - Please explain  
 No

**For all to answer**

Senate Bill (SB) 22 was passed in the Texas 88th Regular Legislative Session. SB 22 establishes a grant program that will provide financial assistance to sheriff's departments, constable's offices and district and county attorney's offices in eligible counties to ensure professional law enforcement and legal representation of the people's interests throughout the state.

How do you anticipate SB22 impacting rural indigent defense in your county?

	Not significantly	Slightly significantly	Neutral
Number of criminal cases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of indigent defense attorneys	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Indigent defense costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other: <input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



Does your county participate in the capital Regional Public Defender Office?

- Yes
- No

What could be improved for the capital Regional Public Defender Office?

Why does your county not participate in the capital Regional Public Defender Office?

- Not aware
- Cost
- Other:



# Appendix B: Interview Questions

## *General Interview Questions*

1. What county/counties? How long have you been in the county? What is your current role in the county?
2. Does your county have a Public Defender Office that handles non-capital cases?
  - a. Yes – single county office.
  - b. Yes – multiple counties/regional office.
  - c. No
  - d. I don't know.
3. Tell me about indigent defense in your county? How has indigent defense in your county changed over time?
4. What are the main challenges/successes that indigent defense services face in your county?
  - a. Tell us about funding.
  - b. The availability of attorneys
  - c. The quality of representation
  - d. The number of indigent defense cases
5. If your county is served by a Public Defender Office, what can you tell us about the:
  - a. Impact of that office?
  - b. Quality of representation by the office?
  - c. Are additional resources needed? If yes, what?
6. If your county does **not** have a Public Defender Office, has your county ever considered a Public Defender Office?
  - a. If yes, why?
  - b. If not, why not?
  - c. What would persuade you to establish a PD office? Explain.

## *Interview Questions for Attorneys*

1. Tell us a little bit about yourself.
2. Do you take indigent defense cases? Why or why not?
  - a. [alternatively], what motivates you to take indigent defense cases?
3. If takes indigent defense cases:
  - a. How much of your caseload is indigent defense cases? Are you satisfied with the number? Would you take more or less?
  - b. Is it misdemeanors and felonies? What's the distribution of felonies vs. misdemeanors?
  - c. How are you paid (e.g., by case, by the hour, by cause number)? Do you consider the pay fair?
  - d. What would make you stop taking indigent cases?
4. If your county started one, would you consider joining PDO? Why or why not?
5. What do you think could incentivize other attorneys to join criminal defense, and specifically indigent defense?

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