

STRENGTHENING
THE SIXTH IN



Evaluating Investigator Use by Defense Counsel in Texas

A report for the Texas Indigent Defense Commission

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April 2023



Acknowledgments

The authors acknowledge and thank the investigators, lawyers, and judges who completed a survey or participated in an interview for this study. This report would not have been possible without their invaluable contributions. We also thank our colleagues at RTI International who assisted with scheduling, conducted interviews, and participated in the editing and review of this report, including Loretta Bohn, Emily Burtch, Debbie Dawes, Claire Korzen, Karima Modjadidi, and Alexia Walker.

This project is supported by Grant No. 2019-YA-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crimes and the SMART Office. Points of view or opinions in this program are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Executive Summary

The Texas Indigent Defense Commission (TIDC) discovered that 54% of Texas counties reported no expenditures for defense investigation in 2020. Most of the jurisdictions reporting no or low expenditures for investigators were small, rural counties. TIDC applied to the Bureau of Justice Assistance (BJA) for training and technical assistance (TTA) in February 2021 to examine the utilization practices of investigators in court-appointed cases. A team was assembled to provide the requested TTA. The team consisted of two main groups: those from the BJA-funded Justice for All grant project (JFA team) and those working and practicing in the state of Texas (Texas team). The JFA team included representatives from all four of the JFA grant principals: the Association of Prosecuting Attorneys, the National Center for State Courts (NCSC), the National Association of Criminal Defense Lawyers (NACDL), and RTI International. The research team, co-led by NACDL and RTI, sought to better understand these findings by surveying both investigators and defense attorneys and by interviewing judges in the geographic areas identified by the data.

Survey Design

The investigator survey was designed to gather information about a range of topics including the work investigators were performing, what skills were being utilized and underutilized, as well as any barriers they experienced in their participation in court-appointed cases. Additionally, the survey captured investigator demographics, education levels, and past employment experiences. It was distributed in early December 2021 and remained accessible for several weeks. The investigator survey received 171 responses, of which 143 respondents indicated they currently provide investigative support to defense attorneys.

The defender survey was designed to collect information about an attorney's background, skills, and how they use investigators in criminal cases. The survey administration directly followed the investigator survey administration and was available for approximately 2 weeks. The survey received 380 responses, of which 368 respondents indicated they currently practice criminal defense representation in state court(s) in Texas.

Interview Design

Judicial interviews were designed to focus on the court's role in the investigator request process, the process for reimbursing or allocating funding for investigators, and the frequency of defense attorney requests for investigators. Structured interviews were conducted with judges from 10 counties identified by TIDC as having reported no or low expenditures for defense investigators. The 10 counties were selected with a consideration of their mode of indigent defense delivery, regional representatives, and history of reported expenditures as a means to increase diversity of experience and responses. The interviews were conducted from early March to early April of 2022. Some judges chose to send email responses to the interview questions. In total, the research team either interviewed or received emailed responses from 15 judges in 5 of the 10 counties identified by TIDC's data.

Outcomes and Evaluation

The qualitative and quantitative research conducted in this study supports a conclusion that the underutilization of defense investigators in indigent defense cases is a widespread problem in Texas. Both investigators and defense attorneys agreed that the relationship between the two groups was a positive one, with roughly 90% of both groups either agreeing or strongly agreeing that investigators were valued members of a defense team. However, both groups also identified areas that needed improvement in order to better utilize the skills of investigators and to increase the usage of investigators in indigent criminal cases.

Notably, many investigators reported that courts often limit funding to 10 hours of work and, even when additional hours are requested, they are given in limited quantities. Further, payment from the court could be delayed for months (or sometimes years) which deterred participation in court-appointed cases. Investigators also noted that attorneys sometimes fail to give clear instructions on what the investigator is being asked to do or to provide clear deadlines for the work. Attorneys and investigators sometimes disagreed on the tasks investigators were most frequently being asked to conduct; for example, 90% of investigators reported that they frequently or almost always review body-worn camera and other video footage for a case, while only 35% of attorneys reported assigning these tasks with frequency.

Most judges reported that they thought investigators were being requested when they were needed, that investigator requests were being approved frequently, and they did not feel that changes to the request process was required. Judges were not as familiar with the process of issuing payments to investigators. However, two judges did mention that lack of investigators in their respective geographic areas was a concern.

Recommendations

Based upon the information gathered, the following recommendations are made:

- (1) Shift the review and approval of requests for defense investigators and the payment for investigator services from the judiciary to public defense service providers.
- (2) Increase investigator usage in misdemeanor and juvenile cases.
- (3) Promote early access to investigator services.
- (4) Pool resources and develop hubs for defense access to investigator experts.
- (5) Identify area of “investigator deserts” and promote greater access to investigators in these regions.
- (6) Improve investigator compensation practices.

- (7) Provide regular training for investigators, defense lawyers, members of the judiciary, and the community on the role and importance of defense investigators.
- (8) Improve data collection and transparency regarding investigator expenditures and usage.
- (9) Develop specialized grant opportunities to facilitate implementation of these recommendations.

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Section 1: Introduction



"We recognized long ago that mere access to the courthouse doors does not, by itself, assure a proper functioning of the adversary process, and that a criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense[.] [F]undamental fairness entitles indigent defendants to 'an adequate opportunity to present their claims fairly within the adversary system.' To implement this principle, we have focused on identifying the 'basic tools of an adequate defense or appeal,' and we have required that such tools be provided to those defendants who cannot afford to pay for them." *Ake v. Oklahoma*, 470 U.S. 68, 77 (1985) (quoting *Britt v. North Carolina*, 404 U. S. 226, 227 (1971)).

1. Introduction

Investigation is a critical and core component of defense representation. Notably, the practice standards of both the American Bar Association (ABA)¹ and the National Legal Aid and Defender Association (NLADA)² make this obligation clear. As the ABA notes, "Defense counsel has a duty to investigate in all cases, and to determine whether there is a sufficient factual basis for criminal charges."³ This duty exists even when the evidence appears overwhelming, the defendant admits guilt to his lawyer or suggests no investigation be done, or expresses a desire to plead guilty.⁴

According to Backus and Marcus (2006):

Adequate investigation is the most basic of criminal defense requirements and often the key to effective representation. An early study of public defender offices in the wake of the expansion of the right to counsel in *Argersinger* found that institutional resources were the most prevalent explanation for the variation in effectiveness scores among defender programs. Specifically, an in-depth analysis of nine urban public defender programs found that success in the courtroom was frequently tied to the availability of investigators. Investigators, with their specialized experience and training, are often more skilled than attorneys, and invariably more efficient, at performing critical case preparation tasks such as gathering and evaluating evidence and interviewing witnesses. Without the facts ferreted out by an investigation, a defender has nothing to work with beyond what she might learn from a brief interview with the client. With such limited information regarding the strength and

¹ See **Appendix 2** for American Bar Association (ABA) standards. (2017). *Criminal Justice Standards of the Defense Function: Standard 4-4.1 Duty to Investigate and Engage Investigators*.

https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/

² National Legal Aid and Defender Association (NLADA). (2006). *Performance Guidelines for Criminal Defense Representation (Black Letter)*, 4th ed. ("NLADA Defense Performance Guidelines") Guideline 4.1 Investigation, (a): "Counsel has a duty to conduct an independent investigation regardless of the accused's admissions or statements to the lawyer of facts constituting guilt. The investigation should be conducted as promptly as possible."

³ ABA. (2017). Standard 4-4.1(b).

⁴ ABA. (2017). Standard 4-4.1(b). See also ABA. (2002). *ABA ten principles of a public defense delivery system*.

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf

Principle 8 states, "There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system." Its Commentary states, "There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, **investigators**, and access to forensic services and experts) between prosecution and public defense." (Emphasis added.)

nature of the case, any attorney would be hard pressed to make the sensible strategic decisions necessary to adequately defend an accused or even have any leverage in plea bargaining.⁵

Despite the importance of investigation, defense attorneys do not always use investigators to assist them. Nationally, several reasons are frequently advanced as to why public defense lawyers might not be using investigators:

- **Lack of knowledge.** Attorneys may have limited understanding of or training on obtaining and using investigators.
- **Lack of time.** When lawyers do not have adequate time to spend with their clients; meaningfully review the discovery; keep abreast of new legal, forensic, digital, and other relevant issues; or otherwise become familiar with relevant case information, they may not develop enough information to identify the need for investigative assistance. In some situations, overworked attorneys may even lack the time needed to bring an investigator on board for a case (including time to locate and meet with a potential investigator, draft and argue the motion for funds, and then provide direction and oversight for the investigator's work).
- **Culture.** In some legal communities, there is no "culture" in which defense lawyers routinely utilize investigators. Many factors can contribute to this culture, from frequent denials by the court for investigative resources to a practice of lawyer-conducted investigation. Sometimes, prosecution practices, including early, time-limited plea offers, can prevent investigations from regularly occurring.
- **Court practices.** In some places, the process for seeking funds for an investigator itself serves as a barrier. For example, practices may require attorneys to disclose a high degree of information and/or case strategy to justify the funding request. Other concerns include judicial retaliation toward the attorneys making the request or toward the client if the investigation fails to produce favorable information.

1.1 Defense Use of Investigators in Texas

There is reason to suspect these same factors are at play in Texas. For example, a recent Sixth Amendment Center study of the public defense systems in Armstrong and Potter counties revealed:

[A]ccording to judges in Armstrong and Potter counties, court appointed lawyers "never" use investigators in misdemeanor cases and rarely do so in felony cases. One lawyer who has been on the court appointed counsel list for 10 years says he has used an investigator in only four cases. A different lawyer says she has "never" used an investigator in her 10 years on the Potter County list.⁶

⁵ Backus, M. S. & Marcus, P. (2006). The right to counsel in criminal cases, a national crisis. *Hastings Law Journal*, 57(6), 1031–1130. https://repository.uchastings.edu/hastings_law_journal/vol57/iss6/1

⁶ Sixth Amendment Center. (2019). *The right to counsel in Armstrong County and Potter County, Texas: Evaluation of adult trial level indigent defense representation*. https://sixthamendment.org/6AC/6AC_tx_armstrongpotterreport_2019.pdf at p. 138.

In examining this issue, the Sixth Amendment Center noted some of the reasons the attorneys provided included difficulty finding competent investigators in the area, fear of judicial reprisal for making requests for funds for investigative (and expert) services, that the process to seek funding was too time-consuming, and, in some instances, that they ran the risk that the judge would interfere with the defense by choosing the investigator (or expert) they would be allowed to use.⁷

According to the Texas Indigent Defense Commission (TIDC) 2020 Annual Report, 138 of the 254 counties in Texas (54%) reported no expenditures for defense investigation.⁸ Most jurisdictions reporting zero or minimal expenditures were small, rural communities. The map below (**Figure 1**) shows the counties in Texas with no indigent defense expenditures reported in fiscal year (FY) 2021 (see **Appendix 1** for a complete list of counties and reported expenditures). A workload study commissioned by the Texas legislature in 2013 also identified the underutilization of investigators as a significant concern, with the Delphi Panel⁹ calling for a “five-fold increase in attorney discovery and investigation and a twenty-fold increase in non-attorney investigator’s time. As much as forty times more external investigation was recommended for misdemeanors in particular.”¹⁰

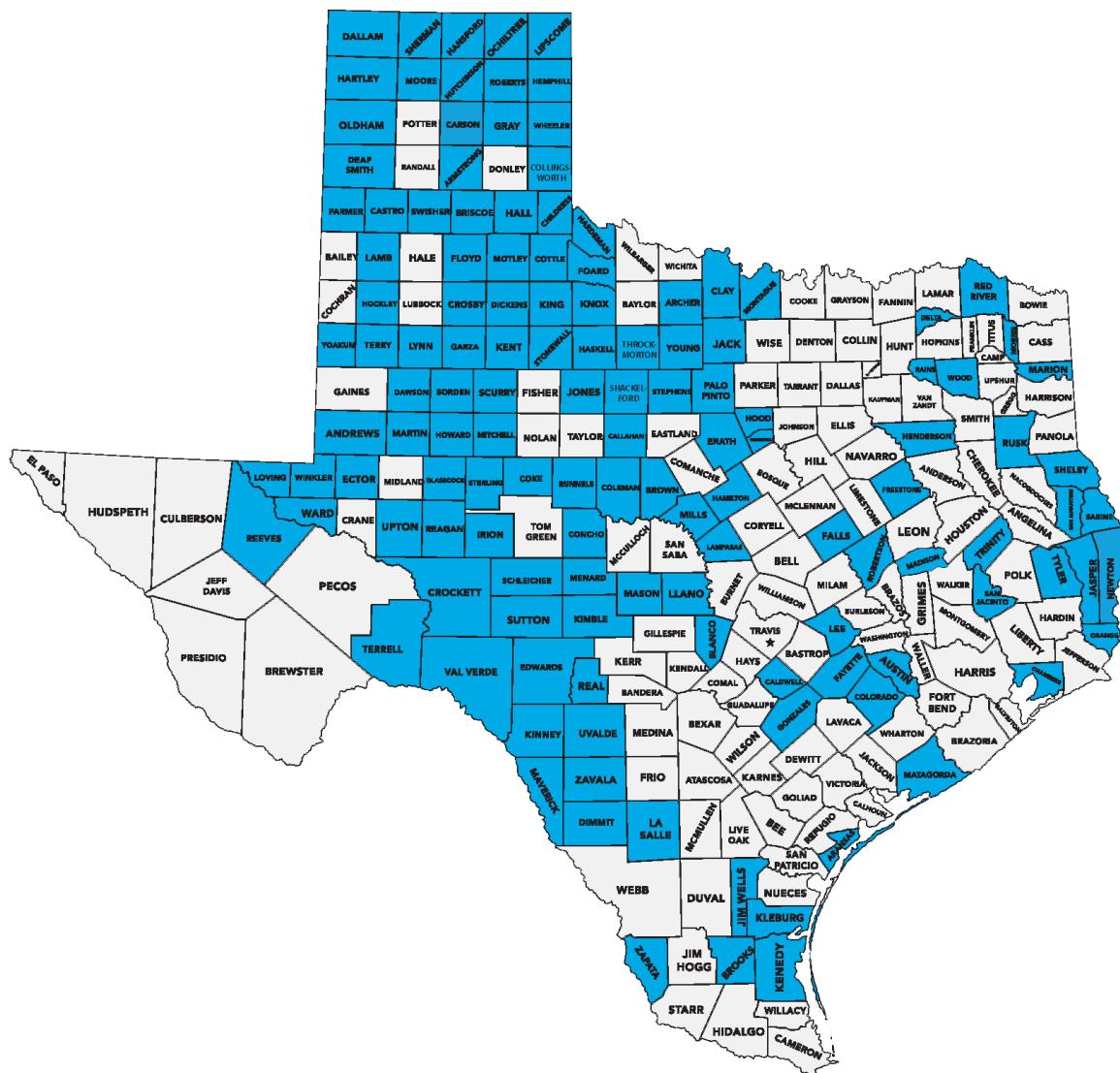
⁷ *Id.* at 138.

⁸ Texas Indigent Defense Commission (TIDC). (2020). *Annual report for fiscal year 2020 (September 2019–August 2020)*. http://www.tidc.texas.gov/media/8d92f48d6bbd826/tidc_annual_report_fy20.pdf.

See also Carmichael, D., Clemens, A., Caspers, H., Marchbanks III, M. P., & Wood, S. (2015). *Guidelines for indigent defense caseloads: A report* to the Texas Indigent Defense Commission. Public Policy Research Institute, Texas A&M University. <http://www.tidc.texas.gov/media/8d85e69fd4fb841/guidelines-for-indigent-defense-caseloads-01222015.pdf> (“investigators are rarely used among attorneys in the study.”) The report also indicated that many defense attorneys felt that investigators should be used more frequently and reported that investigators are especially useful in finding and interviewing witnesses.)

⁹ The Delphi methodology is used in several disciplines and is the preferred approach to integrating the opinions of experts into quantifiable measurements. In Texas’ Delphi Panel, experienced attorneys were selected from across the state to participate. See Carmichael et al. (2015) at xiii.

¹⁰ Carmichael et al. (2015) at xvi.

Figure 1. Counties in Texas with any indigent defense expenditures reported in FY2021

Note: Counties that reported any FY2021 expenditures for indigent defense are shaded blue; the remaining counties reported no such expenditures in FY2021.

Several reasons may contribute to why more than half of Texas counties reported no expenditures for defense investigators, including the following:¹¹

- No investigations are occurring.
- Attorneys are doing their own investigations.¹²
- No investigators are available in or near their county.

¹¹ It is also possible that no investigation is being conducted at all (i.e., the attorney is not doing any investigation in the case). This possibility is largely outside the scope of this report and thus is not included in this list of possibilities.

¹² Carmichael et al. (2015).

- There are investigators, but the investigators choose to not accept cases in a county because other counties pay more, or the process for payment is easier and faster in other counties.
- The process for requesting investigators is too difficult or takes too long, so attorneys choose to not request investigators.¹³
- Judges are denying defense requests for investigators or only approving investigators for certain case types or cases likely to go to trial.
- The county uses a Managed Assigned Counsel (MAC) system, where the cost of the investigator is included in the MAC budget.
- There is investigator use in the county, but the county is not tracking investigator expenses separately from other appointed attorney expenditures, or the county auditor is not reporting investigator expenditures separately from appointed attorney expenditures.

1.2 Request to Examine Defense Use of Investigators in Texas

According to an analysis of TIDC's appropriations data, 52% of counties reported having no indigent defense investigator expenditures in FY19.¹⁴ Concerned that investigators were being underutilized in Texas, the TIDC applied to the Bureau of Justice Assistance (BJA) for Training and Technical Assistance (TTA) in February 2021 to examine the use of investigators in court-appointed cases. A team was assembled to provide the requested TTA. The team consisted of two main groups: those from the Justice for All grant project (JFA team) and those working and practicing in the state of Texas (Texas team). The JFA team included representatives from all four of the JFA grant principals: the Association of Prosecuting Attorneys, the National Center for State Courts (NCSC), the National Association of Criminal Defense Lawyers (NACDL), and RTI International. The Texas team included members of TIDC and an advisory group of a broad range of legal system stakeholders.¹⁵

The kickoff meeting in May 2021 discussed the challenges and strengths of the Texas public defense system and providers. From this robust group, a smaller working group was formed and met monthly to provide input and feedback on the project's progress and proposals.¹⁶ At subsequent meetings, the team discussed the sources of information necessary to answer some of these questions and identify possible reasons for the low investigator expenditures, such as structural issues. Are defense attorneys failing to ask for investigators? Are judges routinely denying requests? Are there are lack of investigators available in some places? Are there data entry or reporting errors at play?¹⁷ To answer these and other questions, the JFA

¹³ https://sixthamendment.org/6AC/6AC_tx_armstrongpotterreport_2019.pdf

¹⁴ TIDC, Legislative Appropriations Request for FY 2022 and 2023 (Sept. 18, 2020), at 8, <http://tidc.texas.gov/media/8d87b88e901be08/tidc-lar-86th-legislative-session-fy22-23-submitted-september-18-2020.pdf>

¹⁵ See **Appendix 3** for a full list of Advisory Group and TIDC staff members.

¹⁶ See **Appendix 3** for a full listing of members of the working group.

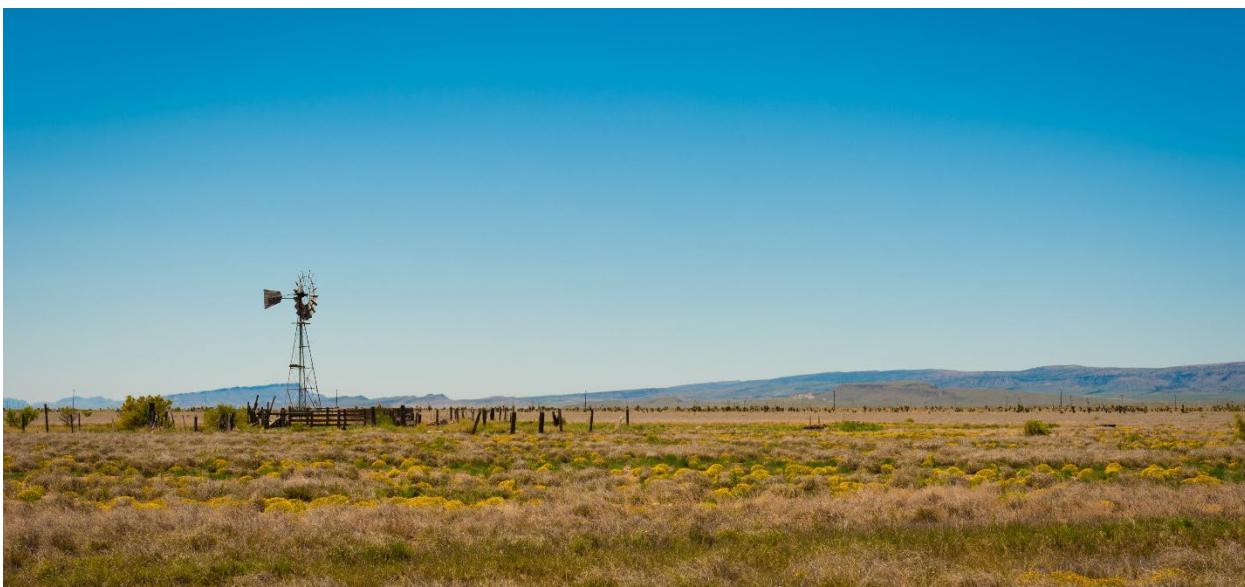
¹⁷ During the course of the project, one investigator member of the Working Group shared the stub from a payment for his work in one of the counties. Although the payment was for investigative work, the pay stub identified this payment as "jury funds." See *Strengthening the Sixth Amendment in Texas: Supporting the right to present a defense through defense investigations: Preliminary report & recommendations to the Texas Indigent Defense Commission*

team elected to survey investigators, defenders, and court staff. At a later meeting, the team determined that the judges, rather than court staff, would be the source of information for courts, and that for this group, an interview was likely to be more successful than a survey.

In addition, NACDL conducted informal informational interviews with Texas investigators, defense lawyers, and community organizations focused on criminal legal system concerns to gain a better understanding of existing practices, procedures, and issues to examine.

The JFA team began by surveying Texas investigators to understand their perspectives on how they were being utilized and what barriers, if any, existed to serving as defense investigators in court-appointed cases. The investigator survey questions are included in **Appendix 4**. The survey also collected additional information, such as years of experience, level of education, and prior training in law enforcement. The investigator survey was followed by a similar survey for public defense attorneys.¹⁸ The defender survey questions are included in **Appendix 5**. The JFA team then followed this up with targeted interviews with judges in 10 TIDC-selected counties with low or no defense investigator expenditures. The interview questions for judges are included in **Appendix 6**.

The surveys asked defenders and investigators to identify the primary jurisdiction they worked in and up to six secondary jurisdictions. The investigators reported working in 133 of the state's 254 counties, and attorneys reported working in 205 counties. Forty-one counties had no responses from either an attorney or an investigator, although some respondents in both surveys indicated that they provided "statewide" coverage. The responses by county are reported in **Appendix 7**.



(<https://www.nacdl.org/getattachment/c7f505a0-940b-4fb5-b75e-d394773624fb/tidc-short-report-web-final.pdf>) at p. 18.

¹⁸ As used in this report, the term "public defense attorney" refers to any lawyer appointed by the court who represents an individual. This includes lawyers working for public defender offices, working for managed assigned counsel programs, under contracts with localities to provide representation, and appointed by the court. More information on these groups can be found in the Texas Managed Assigned Counsel Primer at p. 3. <http://www.tidc.texas.gov/media/8d87ba4edab9eb1/managed-assigned-counsel-primer.pdf>

Section 2: Investigator Survey



2. Investigator Survey

2.1 Survey Instrument Development

To gain an overall understanding of investigator perspectives in Texas, the JFA team met several times with the Texas Working Group to learn more about the state's public defense system, the procedures for obtaining investigators, the overall court process, and some factors that affect the use of investigators.

Equipped with this information and drawing upon its experiences working with defenders and defender organizations across the country, NACDL drafted an initial survey focusing on identifying the type of work investigators are currently performing, the specialized skills and abilities they possess, any barriers or obstacles to their participation in court-appointed cases, and the impact they have on cases. Incorporating feedback from TIDC, the Texas Working Group members, and members of the JFA team, RTI designed and formatted the final survey instrument.

2.2 Recruitment Methods

The survey was administered via Survey Monkey. The link was shared with Texas investigators through several channels, including the Texas Association of Licensed Investigators (TALI), the investigator members of the Texas Criminal Defense Lawyers Association (TCDLA), and TIDC. All outreach included a request for those receiving the email to share with other defense investigators and not to complete the survey more than once. The survey was distributed in early December 2021 and remained open for several weeks.

In addition to the survey, NACDL conducted informal interviews with several investigators. These meetings were conducted both in person and virtually. They did not use a structured interview and served to further inform the work of the JFA team.

2.3 Results

The investigator survey received 171 responses. Question 1 asked whether the respondent provided investigative services for the defense in criminal cases (**Table X1**). Twenty-three respondents indicated that they did not provide services and did not continue with the survey. Five respondents provided an "other" response; three respondents were attorneys or otherwise responsible for hiring investigators, and two respondents indicated that they "sometimes" or are "looking to" serve as a defense investigator.

In addition to the substantive survey responses, some individuals reached out to convey their appreciation for the attention being paid to the issue and the willingness to include investigator perspectives in the process.

I would like to personally thank you guys for creating this survey for criminal defense investigators. I personally think that investigators as a whole are underutilized, but especially in criminal defense investigations. This survey helped me have a deeper understanding that I am not the only one that believes this.

Table X1. Respondents currently providing investigative services for the defense in criminal cases

Response	Number	Percent
Yes	143	83.6
No	23	13.5
Other	5	2.9

2.3.1 Number of Counties Covered by Investigators

RTI limited the remainder of the analyses to the 143 respondents who affirmatively responded that they provide criminal investigator support to defense counsel. The analyses provide univariate frequencies and sometimes include bivariate analyses (cross-tabs) to compare question responses by specific characteristics.

Of the 131 investigators who reported working in Texas counties, 41% worked in one county only, and nearly 40% worked in five or more counties, as displayed in **Table X2**.¹⁹

Table X2. Number of different counties in which a defense investigator reported performing services

Number of counties	Number of defense investigators	Percent
1 county	53	40.5
2 counties	5	3.8
3 counties	6	4.6
4 counties	16	12.2
5 counties	18	13.7
6 counties	9	6.9
7 counties	24	18.3

Note: Excludes 12 people who did not answer the question.

2.3.2 Investigator Type of Employment

Investigators could select “Yes” or “No” to each employment option. This means that one investigator could report working for multiple kinds of employers. Fifty-nine percent of investigators reported providing investigation services for appointed attorneys, 51% for public defenders, and 50% for privately retained attorneys (**Table X3**).

¹⁹ Appendix D shows the counties covered and not covered by investigator survey.

Table X3. Type of employment reported by investigators

Response	Yes (n)	Yes (%)	No (n)	No (%)
Public defender	63	50.8	61	49.2
Contract/managed assigned contract (MAC)	58	47.2	65	52.8
Appointed	72	58.5	51	41.5
Privately retained	62	50.4	61	49.6

Note: Each of the four above-listed employment categories (with yes/no response options) was asked as a separate question, and they were not mutually exclusive. The total number of respondents across all four questions was 143.

As displayed in **Table X4**, 72 respondents indicated that they performed investigation work for court-appointed cases; 63 respondents indicated that they worked directly with public defenders; 62 indicated that they were privately retained by counsel for their work; and 58 indicated that they performed their work as part of a multiagency contract. Of the 63 respondents who worked for public defenders, 71% reported working in only one county, and 6% reported working in seven counties. Of the 62 respondents who indicated that they were privately retained, 34% reported working in seven counties, and only 5% reported working in only one county.

Table X4. Number of counties defense investigators reported working in, by type of employment

Employment type*	Number of counties	1 (%)	2 to 3 (%)	4 to 6 (%)	7 or more (%)
Court-appointed	72	15.3	8.4	47.3	29.2
Public defender	63	71.4	4.8	17.4	6.3
Privately retained	62	4.8	11.3	50.0	33.9
MAC/contract	58	15.5	9.6	49.9	25.9

*Respondents could select working for more than one employer (e.g., could select public defender and privately retained).

Note: Excludes people who did not answer the question.

To try to learn more about where the investigators are located, on February 10, 2022, NACDL made a public records request to the Texas Department of Public Safety (DPS), the organization that oversees licensing for Texas investigators. The DPS provided a list of every person with a current Texas private investigator's license. According to the records, 33,734 people have active private investigator licenses in Texas. Under state regulations, anyone with an investigator's license wishing to perform as a defense investigator must work under the supervision of a licensed "investigator agency." There are 2,436 licensed investigator agencies, of which 2,280 of them have an address within the state. Of these agencies, one-third have their

physical address in the city limits of five cities: Austin (103), Dallas Fort Worth (80), Houston (301), and San Antonio (128).

Not all investigators in Texas are licensed, not all licensed investigators take criminal cases, and of those taking criminal defense cases, not all will take court appointments. Additionally, as a large number of investigators work for multiple jurisdictions, locations of investigator agencies proved to be of only limited additional value. Moreover, rules regarding the frequency of updating changes in employment make the information stale. More research, however, could be done to better understand where investigators are located and where there may be “investigator deserts.”

2.3.3 Investigator Background and Training

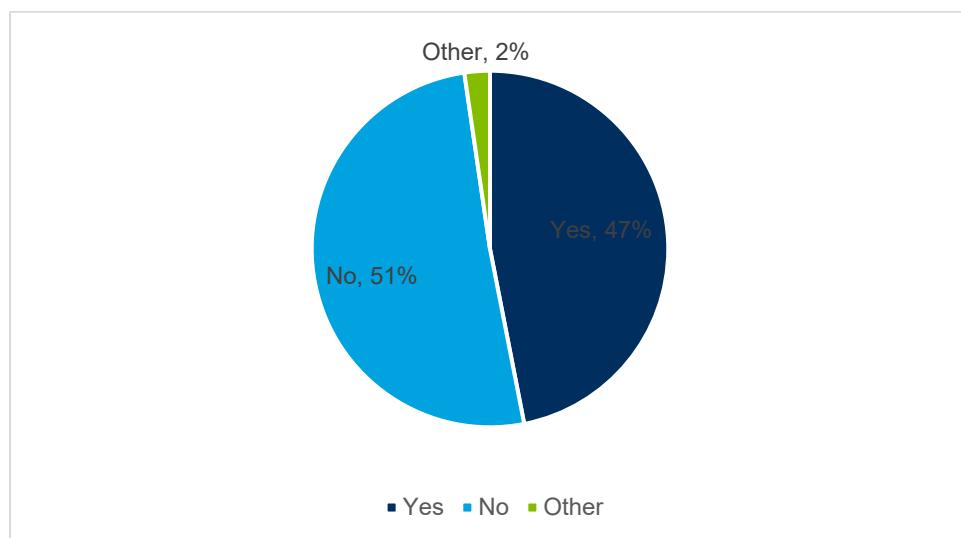
Table X5 shows the years of experience investigators reported. Thirty-seven percent of investigators reported that they had less than 5 years of experience, followed by 26% who reported that they had 6 to 10 years of experience. Notably, 16% of investigators indicated they had more than 20 years of experience.

Table X5. Investigators' reported years of experience

Years of Experience	Number	Percent
Less than 5	48	37.2
6 to 10	33	25.6
11 to 15	19	14.7
16 to 20	8	6.2
More than 20	21	16.3

Note: Excludes 14 people who did not answer the question.

In addition to years of experience as investigators, the survey asked respondents whether they had previous law enforcement experience. **Figure 2** shows that 51% of respondents said yes. An additional 2% reported other law enforcement experience, including federal agent, parole officer, and U.S. Marine Corps intelligence.

Figure 2. Previous law enforcement officer experience

Sixty-four respondents indicated previous law enforcement experience (Yes and Other). Excludes 13 people who did not answer the question.

Investigators also reported the length of their law enforcement career before becoming a defense investigator. **Table X6** shows that most investigators (57%) served as law enforcement agents for more than 20 years before becoming an investigator.

Table X6. Length of law enforcement career before serving as a defense investigator

Number of years	Number	Percent
Less than 5 years	7	11.1
6 to 10 years	5	7.9
11 to 15 years	8	12.7
16 to 20 years	7	11.1
More than 20 years	36	57.1

Note: Excludes one person who did not answer the question.

Investigators also identified where they served as law enforcement, and most reported that they served in Texas, primarily in the area where they currently work (46 respondents). Those with prior law enforcement experience were also asked what type of agency they worked in before becoming a defense investigator. Forty-seven respondents indicated that they had served with a local police department, 21 respondents indicated that they had served with a sheriff's office, and 13 respondents indicated that they had served with another federal agency.

When asked about special skills and training they received as law enforcement officers, the top five responses were crime scene investigation (54), homicide and other serious crimes involving

violence (48), drug crime investigation (47), sexually based offenses (40), and gang-involved investigations (36; **Table X7**).

Table X7. Skills and training received as a law enforcement officer in order of most-endorsed skill

Skill	Number	Percent
Crime scene investigation	54	83.1
Homicide and other serious crime involving violence	48	73.9
Drug crime investigations	47	72.3
Sexually based offenses	40	61.5
Gang-involved investigations	36	55.4
Undercover operations	35	53.9
Crisis intervention training	35	53.9
Reid Method/other specialized interrogation	32	49.2
Photography/videography	30	46.2
Financial crime investigations	25	38.5
Accident reconstruction	22	33.9
Latent print or other pattern evidence	17	26.2
Cell phone/digital data examination or analysis	7	10.8
K-9 dog handler	3	4.6
Other*	16	24.6

*Other includes active shooter, child forensic interviewing, child abuse, domestic violence, DWI, elder abuse, federal crimes conspiracy, federal drug task force, fire investigation, forensic and investigative hypnosis, fugitive investigations, immigration, juvenile investigations, officer-involved shootings, patrol officer, patrol supervisor, police management/leadership, property theft crimes, trespassing, serving hazardous warrants, SWAT, surveillance and arrest operations, and "other."

Note: Respondents could select multiple skills and training in their responses. Excludes people who did not answer the question.

Investigators were then asked to identify skills and training they had learned from sources *other than* their time as law enforcement officers. Although the skills are similar, the order of frequency is slightly different. The top five responses were crime scene investigation (44), sexually based offenses (43), homicide and other serious crimes involving violence (38), gang-involved investigations (26), and undercover operations (25) (**Table X8**).

Table X8. Skills and training received other than as a law enforcement officer in order of most-endorsed skill

Skill	Number	Percent
Crime scene investigation	44	46.8
Sexually based offenses	43	45.7
Homicide and other serious crime involving violence	38	40.4
Gang-involved investigations	26	27.7
Undercover operations	25	26.6
Crisis intervention training	24	25.5
Drug crime investigations	24	25.5
Photography/videography	24	25.5
Reid Method/other specialized interrogation	23	24.5
Cell phone/digital data examination or analysis	20	21.3
Financial crime investigations	19	20.2
Accident reconstruction	16	17.0
Latent print or other pattern evidence	11	11.7
K-9 dog handler	1	1.1
Other*	30	31.9

*Other includes active shooter response, bilingual (Spanish), BJA grants, business management, capital cases, mitigation, capital punishment and death penalty seminars throughout the United States, evidence collections, federal and states, child abuse investigation, child forensic interviewing, child pornography/computer, CPS child abuse/neglect investigations, DNA evidence, firearms instructor, forensic consultation, MA in therapy/counseling, instructor certification, insurance fraud (personal and commercial), juvenile offenses and delinquency, mental health, mitigation, oilfield theft, paralegal, policy writing, skip tracing, Social Security fraud, surveillance, TCOLE special investigator certification, and translation (Spanish).

Note: Respondents could select multiple skills and training in their responses. Excludes people who did not answer the question.

2.3.4 Investigator Education

Almost all investigators had some postsecondary education; 43% had a college degree, and several had additional advanced degrees, as displayed in **Table X9**.

Table X9. Highest level of education reported by investigator

Response	Number	Percent
High school diploma	7	5.6
Some college	28	22.4
Associates degree	16	12.8
College degree	54	43.2
Law degree	1	0.8
Other specialized or advanced degree*	19	15.2

Other included PhD, master's degree, and police certification.

Note: Excludes 18 people who did not answer the question.

2.3.5 Investigator Licenses and Professional Organizations

The investigators in the survey indicated whether they currently held a private investigator license (56%) or whether they had ever held a private investigator license (24%). Additionally, because licenses may not be required for all investigators, we examined licensure by type of employment. Ninety-eight percent of investigators who work for privately retained counsel reported having a current private investigator license, compared with only 16% of investigators employed by public defender offices.

Twenty-three percent of respondents said they currently have a private process license, and 80% of respondents said they are currently a notary public. When asked about memberships in professional organizations, 21 respondents said they were a member of the TALI, 19 respondents said they were a member of the TCDLA, and 68 respondents said they were a member of an organization not listed.²⁰

2.3.6 Demographics

Thirty-two percent of investigators were 46 to 55 years of age, and an additional 30% were 56 to 65 years of age. Most responding investigators were male (61%); 36% were female. Fifty-seven percent of investigators were White, 27% were Hispanic, and 7% were Black or African American.

2.3.7 Investigator-Reported Tasks and Skills

To help better understand the work investigators were doing and the work they could do, the survey asked a series of task- and skill-related questions. The task questions asked the respondents to specifically think about the work they have done in criminal cases over the past 6 months, identifying both the tasks they performed and how often they performed them. The

²⁰ Other organizations in which respondents indicated membership include American Academy of Forensic Sciences (2), California Association of Licensed Investigators (2), INTELLENET (3), National Association of Criminal Defense Lawyers (3), National Association of Public Defense (5), National Defense Investigators Association (6), National Legal Aid and Defender Association (2), Texas Association of Licensed Investigators (21), Texas Criminal Defense Lawyers Association (19), and Other (68).

tasks themselves were divided into groups such as “Case-Related Investigation and Field Work,” “Client-Related Activities,” and other catch-all groupings. The investigators were also asked to identify the areas of specialized skills they had, areas they wanted to develop further skills in, and areas where they felt they were being underutilized. The results of those questions are described below.

Case-related Investigations and Field Work

When asked about case-related tasks, the most commonly reported work was locating and interviewing witnesses (83%), locating and reviewing police records (73%), reviewing case-specific body-worn camera or other video footage (64%), conducting research on witnesses (57%), visiting events/crime scenes (52%), photographing potential evidence and event locations (41%) and locating and preserving video and other surveillance footage (37%; **Table X10**).

Table X10. Investigators reported completing the following case-related tasks

	Never (%)	Rarely (%)	Sometimes (%)	Frequently (%)	Almost Always (%)	Total (n)
Conduct research (including social media research) on witnesses	0.8	2.5	11.5	28.7	56.6	122
Examine and document cellphone content (nonforensic)	9.0	13.1	30.3	29.5	18.0	122
Examine and extract cellphone and other digital data (forensic)	34.2	27.5	21.7	12.5	4.2	120
Locate and interview witnesses	0.8	0.8	3.3	12.3	82.8	122
Locate and preserve video and other surveillance footage	3.3	8.1	22.8	29.3	36.6	123
Locate and preserve other physical or documentary evidence	4.1	10.6	26.0	24.4	35.0	123
Locate and review police officer records	0.8	3.3	5.7	17.1	73.2	123
Photograph potential evidence and event locations	2.4	7.3	25.2	24.4	40.7	123
Review case-specific body-worn camera or other video footage	2.5	2.5	9.8	21.3	63.9	122
Visit event/crime scene	4.1	2.4	13.8	27.6	52.0	123

Note: Excludes “other, fill in” responses and people who did not answer the question.

Client-Related Activities

When asked about client-related tasks performed in the past 6 months, roughly two-thirds of investigators indicated they “almost always” or “frequently” conducted initial client meetings and follow-up meetings. Investigators also reported frequently meeting with a client’s family and supporters. The most frequently conducted client-related task was research (including social

media research) on the client, with 82% reporting they did this frequently or almost always (**Table X11**).

Table X11. Investigators reported completing the following client-related tasks

	Never (%)	Rarely (%)	Sometimes (%)	Frequently (%)	Almost Always (%)	Total (n)
Conduct initial client meeting (client in custody)	4.9	8.9	17.1	21.1	48.0	123
Conduct initial client meeting (client not in custody)	8.1	8.1	16.3	24.4	43.1	123
Conduct follow up meeting(s) with client (client in custody)	1.6	3.3	26.2	23.8	45.1	122
Conduct follow up meeting(s) with client (client not in custody)	4.9	4.1	26.8	27.6	36.6	123
Conduct research (including social media research) on clients	1.6	1.6	14.6	32.5	49.6	123
Confirm employment, housing, etc., to help secure a client's release	17.2	27.9	32.0	9.8	13.1	122
Meet with client's family and supporters	3.3	7.3	26.8	30.1	32.5	123
Participate in attorney meetings with client	2.4	6.5	18.7	35.0	37.4	123
Seek community resources for client (e.g., substance abuse treatment centers)	30.3	31.1	24.6	5.7	8.2	122

Note: Excludes "other, fill in" responses and people who did not answer the question.

Other Case-Related Activities

When asked to think about other case-related work they have performed as a defense investigator for criminal cases over the past 6 months, investigators reported that they almost always write reports (68%), serve subpoenas (48%), and identify and collect case or client records or documents (43%) (**Table X12**). Notably, 33% reported that they *never* conducted research on jurors, and 36% reported they rarely or never testify in court.

Table X12. Investigators reported completing the following other case-related tasks

	Never (%)	Rarely (%)	Sometimes (%)	Frequently (%)	Almost Always (%)	Total (n)
Conduct research (including social media research) on jurors	33.3	20.3	22.8	13.0	10.6	123
Create diagrams and trial exhibits	24.4	17.1	35.8	11.4	11.4	123

	Never (%)	Rarely (%)	Sometimes (%)	Frequently (%)	Almost Always (%)	Total (n)
Identify and collect case and/or client records and documents	2.5	3.3	17.2	33.6	43.4	122
Participate in case strategy and planning meetings	4.9	5.7	22.0	30.1	37.4	123
Serve subpoenas	4.9	2.4	17.9	26.8	48.0	123
Testify in court	12.3	23.8	41.8	9.0	13.1	122
Write reports	1.6	5.7	8.9	16.3	67.5	123

Note: Excludes “other, fill in” responses and people who did not answer the question.

Other Tasks and Activities

When asked to think about some of other work they performed as a defense investigator for criminal cases over the past 6 months, more than 90% of investigators reported they almost always (74%) or frequently (16%) reviewed discovery materials, and nearly as many (84%) reported almost always (30%) or frequently reviewing body-worn camera and other video footage (54%). Other commonly performed tasks included serving witness subpoenas (72%) and locating and obtaining court records (71%). Most investigators reported they never (63%) or rarely (24%) completed financial forms or eligibility for counsel screenings (**Table X13**).

Table X13. Investigators reported completing activities

	Never (%)	Rarely (%)	Sometimes (%)	Frequently (%)	Almost Always (%)	Total (n)
Complete financial forms or eligibility for counsel screenings	63.1	23.8	4.9	1.6	6.6	122
Draft subpoenas and other requests for records	23.0	9.0	16.4	21.3	30.3	122
Locate and obtain court records (generally)	4.1	2.5	22.1	28.7	42.6	122
Review body-worn camera and other video footage (generally)	3.3	2.5	10.7	29.5	54.1	122
Review discovery materials (generally)	2.5	0.8	6.6	16.4	73.8	122
Serve witness subpoenas	5.7	3.3	18.9	24.6	47.5	122
Transport witnesses and client to court	34.7	20.7	28.9	9.9	5.8	121

Note: Excludes “other, fill in” responses and people who did not answer the question.

Investigator Skills

When asked to think about the various tasks an investigator may be asked to do, investigators felt they had the most expertise or skill in locating and interviewing witnesses (109

respondents), building relationships with clients and their loved ones (76 respondents), and conducting research on witnesses (60 respondents). The fewest respondents (8) felt they had the most skill in examining and extracting cellphone and other digital data (forensic). The full results are displayed in **Table X14**.

Table X14. Tasks investigators feel they have the most expertise or skill in completing (select up to 3)

Tasks	Number	Percent
Locate and interview witnesses	109	89.3
Build relationships with clients and their loved ones	76	62.3
Conduct research (including social media research) on witnesses	60	49.1
Examine and assess evidence collected by police	54	44.3
Assess police officer actions	52	42.6
Locate and review police officer records	49	40.2
Review case-specific body-worn camera or other video footage	49	40.2
Examine and assess crime scene	45	36.9
Locate and preserve other physical or documentary evidence	45	36.9
Photograph potential evidence and event locations	45	36.9
Examine physical evidence collected by police	44	36.0
Develop mitigation and sentencing evidence	42	34.4
Testify in court	40	32.8
Locate and preserve video and other surveillance footage	39	32.0
Conduct research (including social media research) on jurors	27	22.1
Examine and document cellphone content (nonforensic)	23	18.9
Create diagrams and trial exhibits	18	14.8
Examine and extract cellphone and other digital data (forensic)	8	6.6

Note: Respondents could select up to three skills. Excludes people who did not answer the question.

The survey asked investigators to write about areas or skills in which they would like to develop more expertise. RTI reviewed the responses and categorized them by the most common themes. Twenty-nine respondents said that digital forensics knowledge would be useful, and 13 respondents mentioned that knowledge was needed in all areas of investigation (**Table X15**).

Table X15. Areas in which responding investigators would like more expertise

Areas	Number	Percent
Digital forensics	29	34.1
All areas of investigation	13	15.3

Areas	Number	Percent
Forensics	9	10.6
Crime scene analysis	8	9.4
Interviewing	8	9.4
Police procedure/police records/access to police databases	7	8.2
Social media	7	8.2
Court systems/court procedures/testifying	6	7.1
Other	25	29.4

Note: Respondents could enter a free text response to this question. Responses could fit into multiple categories.

Excludes people who did not respond to the question.

Investigator Perception of Underutilization of Skills

When asked about areas where they felt their skills were being underutilized, investigators' most common response was attending meetings with experts (36). Other frequently identified areas included research on jurors (22) and developing mitigation and sentencing evidence (21). A common theme for a number of responses also related to evidence examinations, including assessing evidence collected by the police, examining digital data, and assessing crime scenes (**Table X16**).



Table X16. In thinking about the various tasks an investigator may be asked to do, are there any in which you feel your skills are being underutilized (check all that apply)

	Number	Percent
Attend meetings with experts	36	40.1
Conduct research (including social media research) on jurors	22	25.0
Develop mitigation and sentencing evidence	21	23.9
Examine and assess evidence collected by police	20	22.7
Examine other digital data sources (computers, tablets, etc.)	20	22.7
Examine and assess crime scene	19	22.0
Create diagrams and trial exhibits	18	20.5
Testify in court	18	20.5
Examine and extract cellphone and other digital data (forensic)	16	18.2
Locate and review police officer records	16	18.2
Photograph potential evidence and event locations	16	18.2
Review case-specific body-worn camera or other video footage	16	18.2
Assess police officer actions	15	17.0
Build relationships with clients and their loved ones	15	17.0
Examine and document cellphone content (non-forensic)	14	16.0
Conduct research (including social media research) on witnesses	13	14.8
Locate and interview witnesses	12	13.7
Locate and preserve other physical or documentary evidence	12	13.7
Locate and preserve video and other surveillance footage	11	12.6

Note: Respondents could select multiple responses. Excludes people who did not answer the question.

2.3.8 Investigators' Opinions

Working with the Defense Team

Most investigators expressed very favorable opinions about working with the defense team. Ninety percent of investigators strongly agreed (54.5%) or agreed (35.5%) that they feel they are a valued member of the defense team, and nearly as many agreed or strongly agreed that they could share their opinions and assessment of case information with the defense lawyer (88.4%) and that their opinions and assessments of case information are valued (86.8%).

Table X17 shows investigators' attitudes about working with defense attorneys and the defense team.

Table X17. Investigator agreement with the following statements

	Strongly Disagree (%)	Disagree (%)	Neutral (%)	Agree (%)	Strongly Agree (%)	Total (n)
I am a valued member of the defense team	3.3	0.8	5.8	35.5	54.5	121
I am included in discussions on case strategy and planning	1.7	6.6	16.5	35.5	39.7	121
I am able to share my opinions and assessments of case information with the defense lawyer	1.7	1.7	8.3	35.5	52.9	121
My opinions and assessments of case information are valued	0.8	4.1	9.1	36.4	50.4	121
The defense lawyers I work with do a good job of utilizing my skill and expertise	1.7	5.0	7.4	38.0	47.9	121
The defense lawyers I work with give me clear directions on the work I am being asked to do	0.0	7.4	26.4	37.2	28.9	121
The defense lawyers I work with explain how my work fits within the overall case theory or strategy	2.5	6.6	20.7	40.5	29.8	121
The defense lawyers I work with communicate clear timelines and deadlines for my work	3.3	9.9	19.0	38.8	28.9	121
The defense lawyers I work with consider my other obligations in assigning me case work	5.8	11.6	28.1	29.8	24.8	121

Note: Excludes 22 people who did not answer the questions.

Working as a Defense Investigator in Texas

Nearly 80% of the surveyed investigators agreed or strongly agreed that defense attorneys in their area should use investigators more often in their court-appointed cases. More than 40% said that the courts in their area did not pay a fair rate for court-appointed investigator services, and more than 50% said there was not adequate training or mentorship for criminal defense investigators in Texas (**Table X18**).

Table X18. Level of agreement about working as a defense investigator in Texas

	Strongly Disagree (%)	Disagree (%)	Neutral (%)	Agree (%)	Strongly Agree (%)	Total (n)
There are an adequate number of criminal defense investigators in my area	10.7	24.8	29.8	27.3	7.4	121
The courts in my area pay a fair rate for court appointed criminal defense investigation services	22.3	20.7	37.2	17.4	2.5	121
Criminal defense attorneys in my area should use investigators more in court appointed cases	0.8	0.0	19.8	36.4	43.0	121
There is adequate training for criminal defense investigators in Texas	23.1	28.9	25.6	19.0	3.3	121
There is adequate mentorship for criminal defense investigators in Texas	26.4	28.1	29.8	15.7	0.0	121
There are adequate legal protections for investigators in Texas	15.7	24.0	49.6	10.7	0.0	121

Note: Excludes 22 people who did not answer the questions.

As one investigator elaborated:

Back in the 90's the rate was cut from \$55 per hour to \$40 per hour and the cap moved from \$750 to \$600. All rates were cut to include attorneys and mitigators. Early in 2000, these rates were adjusted for the attorneys and mitigators, but no one was there pitching for the investigators. Our rate stayed the same. Who can investigate a complicated aggravated assault case for \$600.00? That is the reason your court-appointed investigator universe is so small. The attorneys don't keep the investigators informed of the status of the case so those of us that do a volume had to design a case management system to follow the cases to ensure our steps were completed along with the court schedule. That costs money to maintain. We must absorb that cost within the \$600 cap.

In addition to the general challenges that low levels of compensation provide, rates in Texas vary widely from jurisdiction to jurisdiction, as each county is able to set its own rates and its own process and timeline for reimbursement. This creates a high degree of unevenness, with wide swings happening, sometimes even between neighboring counties. For example, while Travis County pays \$45/hour for investigator services, neighboring Williamson County pays \$80. A sampling of rates²¹:

²¹ Rates are compiled from both self-reported data from investigators and, where included, rates contained in the Attorney Fee Schedules filed and maintained by TIDC at <https://tidc.tamu.edu/public.net/Reports/FeeDocuments.aspx>.

County	Rate
Brown	\$60–\$65/hr.
Burnet	\$50/hr.
Dallas ²²	\$50/hr.
Harris ²³	\$40/hr.
Travis	\$45/hr.
Williamson	\$80/hr.
Federal	\$100/hr.

Additional research reveals variations in timing of payments, forcing investigators to bear much of the costs of their work while waiting for payment. A review of county indigent defense plans and interviews reveals that the process for payment varies across the state, with some of those processes creating additional barriers for investigators accepting appointed cases.

In some counties, investigators submit their bills directly to the court and receive their payment from the court. In other counties, investigators submit their invoices to the attorney who is responsible for filing the invoice with the court, but the court makes payment directly to the investigator. In a handful of counties, investigators must not only submit their invoices to the attorney handling the case but also receive their payment from the attorney (who received the payment from the court).

In interviews, investigators reported wide variations in how long they may wait to get paid. Some said payments are in their accounts within a few days or at most 2 weeks of submission, whereas others waited 6 months or more from the time their invoice was submitted.

Investigators identified two issues with respect to the timing of payments. First is the time between when an invoice is submitted and when payment is made. Second, however, is when the invoice may be submitted. In some jurisdictions, the investigator is permitted to pursue payment as soon as their work on the case is concluded, even if the case has not reached its final disposition. In others, the payment may not be requested until the case concludes. This means an investigator may complete their work on a case within weeks of a person's arrest, but not receive payment for their work until a year or more later when the case itself reaches its conclusion. Moreover, the investigator may be at the mercy of the attorney for when their invoice is filed with the court, leaving them limited avenues for relief when payments are not paid in a timely fashion.

²² [\[Dallas\] Criminal District Court: Schedule of fees for the compensation of appointed counsel](#), May 2020. Note that the mileage reimbursement rate for investigators in Dallas is \$0.345/mile. The relevant federal rate at the time this plan was approved was \$0.575/mile (<https://www.irs.gov/tax-professionals/standard-mileage-rates>)

²³ [Harris County district courts trying criminal cases: Fair Defense Act: Alternative plan for appointment of counsel to indigent defendants](#), Attorney's fees (p. 1).

Ex: Bell County

*"Attorneys shall submit original invoices for investigator and expert witness fees at the time they submit their attorney fee voucher for payment. Payments for expert and investigator fees shall be paid to the attorney at the time their attorney fee voucher is paid. Attorneys shall remit fees received on their voucher to the appropriate expert and investigators within 14 days of recipient of such fees."*²⁴

Ex: Bee County

*"Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation.... Whenever possible prior court approval should be obtained before expenses are incurred."*²⁵

Ex: Galveston County

*"The signed claim form for Investigator and Experts shall be submitted by the Provider on the form titled CLAIM FOR INVESTIGATION OR EXPERT WITNESS FEES (#GC-12) provided by the County. Investigators/Experts should submit a claim directly to the Indigent Defense Coordinator. Judges shall not approve and the County shall not reimburse such expenses to the attorney or other third party. The County shall make all payments only to the Provider of the services."*²⁶

2.3.9 Challenges as Investigators

Investigators were asked to respond to open-ended questions about the most challenging and most rewarding parts of their jobs. RTI reviewed the responses and categorized them by theme. Responses could fit into multiple categories. Many investigators said that defense attorneys not communicating or failing to incorporate investigators as part of the defense team was most frustrating (28 respondents). Others mentioned issues with payment rates or time to receive reimbursements (19 respondents), time constraints (16 respondents), and issues with client or witness location or behavior (14 respondents) (**Table X19**).

²⁴ [Bell County District and County Courts Indigent Defense Plan](#), November 1, 2021.

²⁵ [Bee, Live Oak and McMullen District Court Plan](#), October 26, 2021.

²⁶ [Galveston County District and County Court Indigent Defense Plan](#), October 18, 2021.

Table X19. Most challenging or most frustrating parts of investigators' jobs

Challenging or frustrating part of job	Number	Percent
Defense attorneys not communicating or failing to incorporate investigators as part of the defense team	28	25.5
Issues with payment rates or time to reimbursements	19	17.3
Time constraints	16	14.5
Issues with client/witness location or behavior	14	12.7
Referrals for investigation received too late	13	11.9
Issues with court policies, court notification, or court record access	11	10.0
Receiving discovery or other records from district attorney; other issues with district attorney	10	9.0
Caseloads or being asked to do work that is not investigative in nature	9	8.2
Poor access to technology and other resources necessary to complete investigations	8	7.3
Other	23	21.0

Note: Response could fit in multiple categories. Excludes people who did not answer the question.

Respondents could also provide short open-ended responses to this question. One investigator noted that the most challenging or frustrating parts of the job were:

1. Attorneys who want to dictate what my professional opinion should be.
2. Highly intelligent attorneys who do not understand or care to learn that the nuances of police culture and police department decision-making have a direct effect on their cases. They "believe" they know how cops think & make decisions... but they don't... and they aren't open to learning about it either... because they already know it all. Those attorneys are doing a disservice to their clients. They would win more cases if they knew what questions to ask and how to ask them.

Another respondent said, "Obtaining adequate and timely financial authorizations from the courts on appointed cases" was the most challenging or most frustrating part of being an investigator.

By contrast, investigators identified the most rewarding and most enjoyable parts of their job as obtaining better results for clients (61 respondents), assisting the defense and other investigators (36 respondents), working with clients and witnesses (29 respondents), completing an investigation (22 respondents), finding flaws or mistakes on the part of other agencies (11 respondents), and other parts (6 respondents) (**Table X20**).

Table X20. Most rewarding and most enjoyable parts of investigators' jobs

	Number	Percent
Obtaining better results for clients	61	54.5
Assisting the defense and other investigators	36	32.1
Working with clients and witnesses	29	25.9
Completing an investigation	22	19.6
Finding flaws or mistakes on the part of other agencies	11	98.2
Other	6	5.4

Note: Response could fit in multiple categories. Excludes people who did not answer the question.

One investigator noted that the most rewarding or most enjoyable aspect of the job was “[to] ensure that our clients [sic] rights were protected and our actions obtained a more favorable outcome for our client. It is very gratifying...proving if the law enforcement agencies did not follow the procedures against our client. It is also very satisfying in proving to prosecutor's [sic] that they should not depend on officer's sworn testimony alone to charge someone.”

Investigators also described how their work benefitted a recent case and identified ways that their investigations benefitted or affected outcomes of criminal cases. Sixty respondents shared instances of cases being dismissed, resulting in a not guilty finding, or resulting in the release of an innocent person. Other identified benefits included finding mistakes made by witnesses or evidence (28 responses), getting a better deal for the client (26 responses), completing the best investigation (24 responses), and finding mistakes made by the charging agency or district attorney (12 responses; **Table X21**).

Table X21. Investigator-identified ways that investigation benefitted a recent criminal case outcome

How investigation benefitted recent case outcome	Number	Percent
Case dismissed/not guilty finding/release of innocent person	60	56.1
Finding mistakes made by witnesses/evidence	28	26.2
Better deal for client/mitigation	26	24.3
Completing the best investigation	24	22.4
Finding mistakes made by charging agency/district attorney	12	11.2
Defense attorney effectively used the information	7	6.5
Rapport with client and witnesses helped the case	3	2.8
Provided new insight	1	0.9

Note: Responses could fit in multiple categories. Excludes people who did not answer the questions.

One investigator noted, “Recently my services have helped move cases through the system. Courts have been backed up. The most rewarding case recently worked was a case where a

high school student was falsely accused of sexual assault of another classmate at a party. Through witness interviews and video analysis showing contradictions to the allegations, the case never went to court."

Section 3: Defender Survey



3. Defender Survey

3.1 Survey Development

NACDL developed the initial survey questions and requested that TIDC help tailor the questions to the Texas defense community. The purpose of the defender survey was to learn about their background, their skills, and how they use investigators in criminal cases.

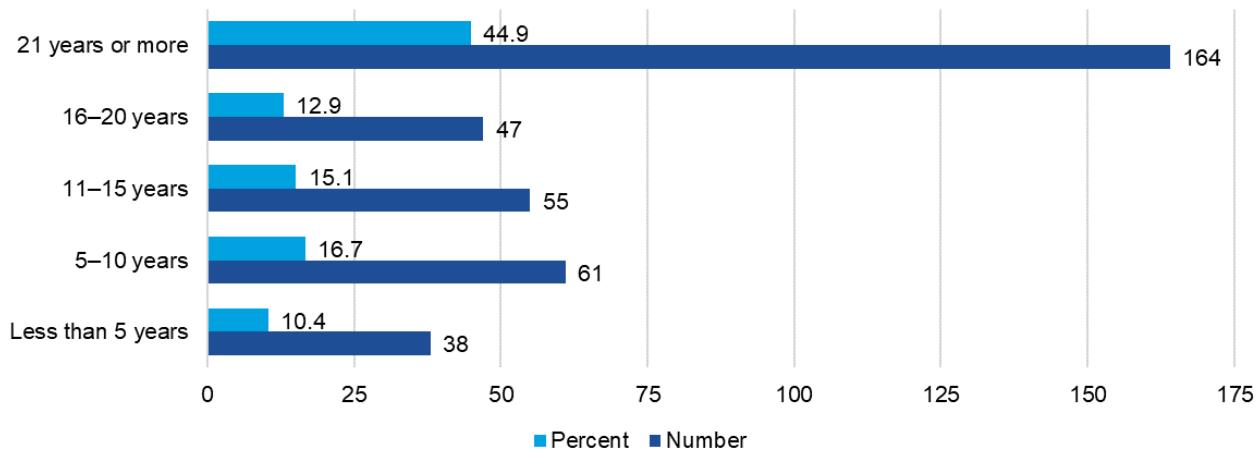
3.2 Recruitment Methods

The JFA team recruited participants by sending the survey to the TCDLA to be distributed through their membership network. TIDC and NACDL supplemented this effort by distributing the survey to their own networks, including public defender and MAC offices. The survey was available to be completed for approximately 2 weeks. Survey respondents were asked not to fill out the survey more than once to avoid duplication that might be caused by individuals who are on multiple distribution lists.

3.3 Results

Three hundred eighty people completed the defense attorney survey, of which 368 responded that their current practice included criminal (or juvenile) defense representation in state court in Texas.²⁷ The rest of this section focuses on those 368 respondents. Respondents were asked how long they had practiced criminal defense. Most respondents indicated that they practiced criminal defense for 21 years or more (45%) (Figure Y1).

Figure Y1. Years practicing criminal defense



Excludes 3 people who did not answer the question.

²⁷ Two “other” responses were recoded to be included in these 368 respondents. The responses indicated that they were mostly retired or recently retired but had answered the survey with respect to their experience while practicing criminal defense in state courts in Texas.

3.3.1 Counties Covered by Defenders and Employment Characteristics

Similar to the investigators, the two most common service areas were exclusively in a single county (34%) or in five or more counties (33%) (**Table Y2**).²⁸

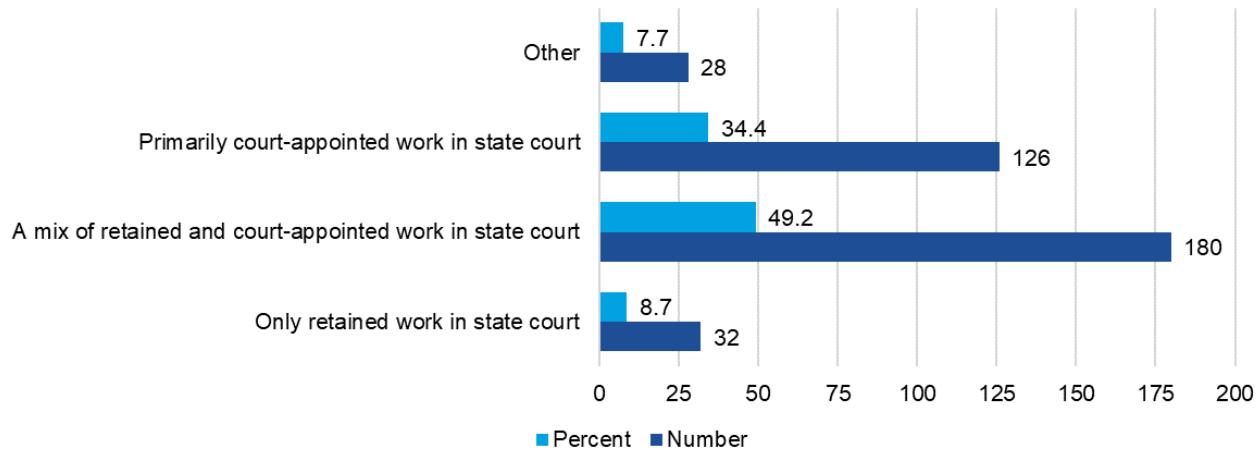
Table Y2. In how many counties do defense attorneys work

Number of counties	Number	Percent
1 county	118	34.4
2 counties	39	11.4
3 counties	37	10.8
4 counties	36	10.5
5 counties	30	8.7
6 counties (maximum number allowed)	83	24.2

Note: Excludes 25 people who did not answer the question.

The survey also asked attorneys to describe their state criminal defense practice. A plurality of attorneys responded that their practice is a mix of retained and court-appointed work in state criminal courts (49%) (**Table Y3**).

Figure Y3. Best description of attorney's state criminal defense practice



Note: Excludes 2 people who did not answer the question.

Attorneys were also asked to describe their court-appointed defense work. Attorneys could mark all that applied, and so percentages may sum to more than 100. The most commonly selected response was that attorneys described themselves as court-appointed counsel (93 of 178 total responses; **Table Y4**).

²⁸ Appendix D shows the counties covered or not covered by defense attorney survey.

Table Y4. Which best describes your current court-appointed/public defense practice?

Response	Number	Percent
Contract defender	14	8.1
Court-appointed counsel	93	54.1
Managed assigned counsel (MAC) program	14	8.1
Public defender or legal aid office	47	27.3
Other*	10	5.8

*Other includes no court-appointed cases, retained, pro bono, and use a sliding scale for clients who do not want appointments.

Note: Respondents could select more than one response. Excludes people who did not select any response.

The survey also asked attorneys to identify how many attorneys worked in their office or firm. Most respondents worked as sole practitioners or in very small offices (**Table Y5**). When asked about their support staff, the most common were paralegals (148), followed by office managers (113). Notably, nearly one-third of respondents indicated they had no support personnel (113). Of import to this research, 76 respondents indicated they had access to investigators in their office or firm (**Table Y6**).

Table Y5. Number of attorneys in office or firm

Response	Number	Percent
1 to 2 attorneys	264	76.7
3 to 5 attorneys	26	7.6
6 to 10 attorneys	10	2.9
11-15 attorneys	12	3.5
16 or more attorneys	32	9.3

Note: Excludes 24 people who did not answer the question.

Table Y6. Support personnel working for office or firm

Response	Number	Percent
Paralegal	148	43.1
Office manager	113	33.0
None	113	33.0
Investigator	76	22.2
IT support	41	12.0
Social worker	37	10.8
Mitigation or sentencing specialist	27	7.9
Other*	36	10.5

*Other includes accountant, administrative assistant/receptionist/secretary, civil attorneys, client intake specialist, contract office help, hired on as-needed basis, holistic defense, human resources, immigration attorneys, intern, justice advocates, legal assistant, peer navigators, and psychologists.

Note: Respondents could select multiple answers to the questions. Excludes people who did not select any responses to the question.

3.3.2 Attorneys' Description of Investigator Request Process

Attorneys were asked a series of questions regarding the process of requesting defense investigators. First, the survey asked the attorneys to identify all of the ways they may request an investigator's services. The most common response was that they make a motion to the court or judge (230) (Table Y7). Notably, 25 attorneys indicated that they have not requested a defense investigator in any of their state appointed cases.

Table Y7. Process used when requesting an investigator

Response	Number	Percent
Motion to the court/judge	230	70.1
Request directly to investigator	55	16.8
Request using public defender office's request process	28	8.5
N/A, I have not requested an investigator in a state-appointed case	25	7.6
N/A, I do not take state-appointed cases	19	5.8
Request to managed assigned counsel (MAC) administrator	15	4.6
Other*	17	5.2

*Other includes client direct retention investigator not involving attorney other than as recommendation, investigators on staff, only take federal appointed cases, and request through private public defender service.

Note: Respondents could select multiple responses to the question. Excludes people who did not answer the question.

Attorneys were then asked whether their motion to the court or judge was heard *ex parte*.²⁹ Seventy-nine percent reported their motions were heard *ex parte*.

Attorneys were asked to consider how frequently their request for a defense investigator was denied in the past 5 years. Eighty-two percent responded that their requests for investigators in serious felony cases were never denied (Table Y8). Three percent reported that their requests for investigators in misdemeanor cases were almost always denied.

Table Y8. How frequently has your request for a defense investigator been denied for your court-appointed cases over the past 5 years?

Response	Never (%)	Rarely (%)	Sometimes (%)	Often (%)	Almost Always (%)	Total (n)
Juvenile	77.1	14.3	2.9	5.7	0.0	70
Misdemeanor	71.9	11.6	10.3	3.4	2.7	146
Serious felony (e.g., homicide, sexual assault, robbery, other felony assault)	81.9	9.7	3.8	3.4	1.3	238
Other felony (e.g., property, drug, fraud, felony DWI)	74.2	14.7	7.4	2.8	0.9	217

Note: Table excludes responses marked "not applicable" and people who did not answer the question.

Last, attorneys were asked to consider how often their investigator requests have been reduced, either in scope or in the amount of funding, in the past 5 years. Although more than half responded that this never or rarely happened (Table Y9), one in five lawyers responded that their funding and/or scope of services requested were often or almost always reduced.

Table Y9. How frequently has your request for an investigator been reduced in scope or funding over the past 5 years?

Never (%)	Rarely (%)	Sometimes (%)	Often (%)	Almost Always (%)	Total (n)
36.0	20.5	23.4	9.2	10.9	239

²⁹ *Ex parte* is “communication between counsel and the court when opposing counsel is not present.” Black’s Law Dictionary 296 (8th ed., 2004). In this case, it means that the defense counsel requested the services of a defense investigator without notifying the prosecutor. Support for this practice in Texas can be found in the case of *Williams v. State*, 958 S.W.2nd 186 (Tex. Crim. App. 1997): “In essence, if an indigent defendant is not entitled to an *ex parte* hearing on his *Ake* motion, he is forced to choose between either forgoing the appointment of an expert or disclosing to the State in some detail his defensive theories or theories about weaknesses in the State’s case. This is contrary to *Ake*’s concern that an indigent defendant who is entitled to expert assistance have ‘meaningful access to justice,’ and undermines the work product doctrine. We decline to hold that in order for an indigent defendant to avail himself of one of the ‘basic tools of an adequate defense,’ he may be compelled to disclose defensive theories to the prosecution. We hold that an indigent defendant is entitled, upon proper request, to make his *Ake* motion *ex parte*.” (*Williams* at 193-94).

Note: Table excludes responses marked "not applicable" and 129 people who did not answer the question.

3.3.3 Defense Attorney Use of Investigators in Different Appointed and Retained Case Types

Juvenile Appointed and Retained Cases

Looking at juvenile cases, only one in three attorneys used an investigator in any of their appointed cases (34%). Notably, there was a slightly lower rate of investigator use for retained juvenile cases (24%; **Table Y10**). More important than whether an investigator had been used at all in the past 5 years was how often an investigator was used.

Looking at the estimated percentage of juvenile appointed cases where the defense attorney used the services of an investigator was also informative. Nearly half of attorneys (44%) responded that they used the service of defense investigators in 10% or less of cases (**Table Y11**). Similarly, 37% of defense attorneys reported that they used defense investigators in 10% or less of their juvenile retained cases (Table Y11).

Table Y10. Use of defense investigator in juvenile appointed and retained cases in the past 5 years

Response	Juvenile appointed (n)	Juvenile appointed (%)	Juvenile retained (n)	Juvenile retained (%)
Yes	52	33.5	38	23.5
No	101	65.2	124	76.5
Other*	2	1.3	162	100.0

*Other includes "I work with defense investigators all the time" and "only when certified to stand trial as an adult."

Note: Table excludes "do not take juvenile appointed cases" and people who did not answer the question.

Table Y11. Percentage of juvenile appointed and retained cases that used the services of a defense investigator in the past 5 years

Response	Juvenile appointed (n)	Juvenile appointed (%)	Juvenile retained (n)	Juvenile retained (%)
10% or less	24	43.6	15	36.6
11% to 25%	9	16.4	7	17.1
26% to 50%	8	14.5	5	12.2
51% to 75%	5	9.1	6	14.6
More than 75%	4	7.3	4	9.8
Other*	5	9.1	4	9.8

*Other for appointed includes 0%, "do not do court appointed juvenile/no juvenile work in the past 5 years," and "juveniles certified as an adult required the services of an investigator for all of those cases." Other for retained includes "have only had 1 juvenile retained case"; "I have taken juvenile retained cases, but have not had one in many years"; no juvenile retained cases; and not applicable

Note: Excludes "do not take juvenile cases" and people who did not respond to the question.

Misdemeanor Appointed and Retained Cases

Moving to misdemeanor appointed cases, half of defense attorneys reported that they used defense investigators in their appointed cases in the past 5 years (**Table Y12**). A smaller percentage of attorneys reported using defense investigators in their retained cases (37%).

Similar to the trend with juvenile cases, most attorneys reported that investigators were used in 10% or less of misdemeanor cases, whether retained or appointed (**Table Y13**). More than 80% of attorneys reported using investigators in 50% or less of their misdemeanor cases. Rates of use only varied slightly between appointed and retained cases.

Table Y12. Use of defense investigator in misdemeanor appointed and retained cases in the past 5 years

Response	Misdemeanor appointed (n)	Misdemeanor appointed (%)	Misdemeanor retained (n)	Misdemeanor retained (%)
Yes	132	50.2	98	36.8
No	131	49.8	168	63.2

Note: table excludes "do not take misdemeanor appointed cases," "do not take misdemeanor retained cases," and people who did not answer the question.

Table Y13. Percentage of misdemeanor appointed cases that used the services of a defense investigator in the past 5 years

Response	Misdemeanor appointed (n)	Misdemeanor appointed (%)	Misdemeanor retained (n)	Misdemeanor retained (%)
10% or less	66	50.4	50	50.5
11% to 25%	27	20.6	19	19.2
26% to 50%	19	14.5	20	20.2
51% to 75%	14	10.7	5	5.1
More than 75%	3	2.3	5	5.1
Other*	2	1.5	0	0

Other for appointed includes "not appointed on misdemeanors, only retained"; "in private practice (4 of 5 years) <10%", and "in PDO work (1 year), >75%."

Note: excludes "do not take misdemeanor appointed cases," "do not take misdemeanor retained cases," and people who did not answer the question.

Felony Appointed and Retained Cases

Not surprisingly, when it came to felony cases, defense attorneys reported much higher percentages of using defense investigators, with 90% of attorneys reporting use of investigators in appointed cases and nearly 75% reporting use in retained felony cases (**Table Y14**).

In serious felony cases, 28% of lawyers reported that they used investigators in 75% or more of their appointed cases. That number was slightly lower for retained cases. Notably, more than 1 in 5 lawyers reported rarely (10% or less of the time) using investigators for serious felony cases (**Table Y15**).

Table Y14. Use of defense investigator in any of your felony appointed or retained cases in the past 5 years

Response	Felony appointed (%)	Felony retained (%)
Yes	89.6	73.1
No	10.4	26.9
Total	100.0	100.0

Note: Excludes people who “do not take felony appointed cases,” “do not take felony retained cases,” or did not answer the question.

Table Y15. Percentage of serious appointed felony cases that used the services of a defense investigator in the past 5 years

	Serious felony appointed (%)	Serious felony retained (%)
10% or less	21.5	24.0
11% to 25%	17.7	14.8
26% to 50%	12.8	20.4
51% to 75%	17.0	20.4
More than 75%	28.3	20.4
Other*	2.6	0

*Other for appointed includes “I’ve only had one appointed case and I used an investigator”; “I don’t take appointed cases”; “I only do state jail and 3rd degree”; “nearly every 1st degree felony case”; “no felony appointed case”; “not qualified to be appointed to those cases yet”; and “only take federal appointed cases.”

Note: Excludes “do not take serious appointed felony cases,” “do not take serious felony retained cases,” and people who did not answer the question.

3.3.4 Attorneys’ Considerations When Requesting a Defense Investigator

Attorneys were asked to identify up to five factors they typically consider when thinking about whether to seek a defense investigator. The five most common responses were whether the case requires interviews of witnesses (246), whether the case has other evidentiary needs (189), the seriousness of the charge (188), whether the case will likely go to trial (177), and whether there is a need to develop mitigating evidence (176; **Table Y16**). Notably, defense lawyers ranked the need to develop mitigating evidence as one of their top five factors in deciding whether to engage an investigator, and investigators reported developing mitigation and sentencing information as one of the top areas in which they feel they are underutilized.

Table Y16. What are the most common factors you consider when thinking about whether to seek an investigator for a case? (select up to 5)

Response	Number
The case requires the interview of witnesses (e.g., eyewitnesses, child witnesses)	246
The case has other evidentiary needs (e.g., need to visit the crime scene, take photographs)	189
The seriousness of the charge	188
The likelihood the case will go to trial	177
The need for developing mitigation evidence	176
The need to avoid making yourself a witness in the case	167
The case has digital, forensic, or physical evidence (e.g., blood, DNA, fingerprints)	110
The case involves an affirmative defense (e.g., alibi, self-defense)	105
The case involved issues outside my area of knowledge/expertise	86
The strength of the client's claim of innocence	64
The strength of the state's evidence	42

Note: Excludes “other, please identify” responses. Respondents could select up to five responses. Excludes people who did not select any responses.

Attorneys were also asked to consider how frequently they requested the services of a defense investigator in different case types. **Table Y17** again reinforces the pattern that attorneys request defense investigators more often in more serious cases. Defense attorneys reported that they “almost always” ask for a defense investigator for homicide or murder (70%), capital offenses (65%), and sexually based offenses (38%). Combining “frequently” and “almost always,” attorneys also frequently request investigators for aggravated or felony assault (42%), robbery (32%), domestic violence (32%), and intimate partner violence (31%) cases.

Table Y17. In the past 5 years, how frequently have you requested a defense investigator for the following case types?

Response	Never (%)	Rarely (%)	Sometimes (%)	Frequently (%)	Almost Always (%)	Total (n)
Aggravated or felony assault	10.8	11.6	35.7	22.4	19.5	241
Appeals	80.0	9.2	6.2	1.5	3.1	130
Domestic violence	18.4	16.8	33.2	18.4	13.2	250
Burglary	30.0	25.3	28.8	10.3	5.6	233
Capital	22.4	4.7	1.9	6.5	64.5	107
Drug offenses	26.3	36.6	30.9	4.1	2.1	243
DUI	41.7	33.5	21.3	1.3	2.2	230
Fraud-related offenses	27.2	25.0	30.6	12.1	5.2	232
Probation violations	56.4	31.3	11.5	0.0	0.9	227
Homicide or murder	10.8	3.1	6.7	9.3	70.1	194
Intimate partner violence	22.4	16.6	30.3	15.4	15.4	241
Juvenile felony	44.9	17.3	14.3	13.3	10.2	98
Juvenile misdemeanors	66.0	15.5	16.5	1.0	1.0	97
Robbery	18.2	20.0	29.3	20.0	12.4	225
Sexually based offenses	9.5	10.3	21.1	20.7	38.4	232
Theft	33.5	33.5	27.2	3.3	2.5	239
Other felony offenses	17.9	25.8	42.4	10.5	3.5	229
Other misdemeanor offenses	37.3	35.9	21.5	2.4	2.9	209

Note: Table excludes responses marked "not applicable" and "other, please describe," and people who did not answer the questions.

3.3.5 Tasks Assigned to Investigators by Defense Attorneys

Case-Related Tasks

Attorneys were asked about the case-related tasks that they assigned to investigators. The tasks attorneys almost always assigned to investigators included locating and interviewing witnesses (43%), visiting the event or crime scene (27%), and identifying and collecting relevant records and documents (26%; **Table Y18**). This is consistent with the tasks reported by the investigators (Table X10). However, one task that was not consistent with what investigators reported was reviewing case-specific body-worn camera or other video footage (which 64% of investigators said they almost always were assigned, while only 12% of attorneys reported almost always assigning this task to investigators.)

Table Y18. I assign my investigators to do the following case-related tasks

Response	Never (%)	Rarely (%)	Sometimes (%)	Frequently (%)	Almost Always (%)	Total (n)
Conduct research (including social media research) on witnesses	6.2	9.1	43.6	26.6	14.5	241
Examine and document cellphone content (nonforensic)	12.3	16.2	42.6	18.7	10.2	235
Examine and extract cellphone and other digital data (forensic)	25.1	20.8	26.4	16.5	11.3	231
Get affidavits of non-prosecution signed	17.0	17.9	26.4	22.1	16.6	235
Identify and collect relevant records and documents	6.2	7.4	29.2	31.3	25.9	243
Locate and interview witnesses	0.8	0.8	16.3	39.4	42.6	251
Locate and preserve video and other surveillance footage	7.1	8.7	28.6	34.4	21.2	241
Locate and preserve other physical or documentary evidence	6.1	11.9	28.3	34.0	19.7	244
Locate and review police officer records	11.1	20.1	25.8	28.7	14.3	244
Photograph potential evidence and event locations	3.2	8.1	35.1	33.1	20.6	248
Review case-specific body-worn camera or other video footage	15.2	24.2	25.8	22.5	12.3	244
Visit event/crime scene	2.8	8.9	30.9	30.1	27.2	246
Write reports	10.1	18.6	30.8	16.9	23.6	237

Note: Table excludes responses marked "not applicable" and "other, please specify," and people who did not answer the questions.

Client-Related Tasks

Overall, defense attorneys reported lower frequencies of investigator engagement with client-related tasks than with case-related tasks. Notably, only 29% of attorneys said they frequently or almost always had investigators participate in attorney meetings with clients, conduct research on clients (27%), or meet with clients' families and supporters (26%) (**Table Y19**). Most defense attorneys reported that they never asked investigators to conduct initial client meetings with out-of-custody (67%) or in-custody (64%) clients.

Although there is some overlap with client-related tasks reported by investigators (Investigators reported they almost always participate in attorney meetings with clients [37%], conduct research on clients [50%], and meet with client's family and supporters [33%]), nearly 70% of defenders reported frequently or almost always conducting initial client meetings with those in

custody, and 67% reported frequently or almost always conducting initial client meetings with those out of custody.

Table Y19. I assign my investigators to do the following client-related tasks

Response	Never (%)	Rarely (%)	Sometimes (%)	Frequently (%)	Almost Always (%)	Total (n)
Conduct initial client meeting (client in custody)	64.4	14.6	8.9	6.5	5.7	247
Conduct initial client meeting (client not in custody)	66.8	14.1	9.5	4.1	5.4	241
Conduct follow up meeting(s) with client (client in custody)	30.1	15.4	31.3	11.8	11.4	246
Conduct follow up meeting(s) with client (client not in custody)	32.9	19.4	29.5	8.4	9.7	237
Conduct research (including social media research) on clients	17.3	18.5	37.8	17.7	8.8	249
Confirm employment, housing, etc., to help secure a client's release	38.6	27.5	23.7	7.2	3.0	236
Meet with client's family and supporters	21.1	13.8	38.6	19.9	6.5	246
Participate in attorney meetings with client	13.2	16.8	41.2	19.6	9.2	250
Seek community resources for client (e.g., substance abuse treatment centers)	54.7	25.4	12.5	6.0	1.3	232

Note: Table excludes responses marked "not applicable" and "other, please specify," and people who did not answer the questions.

Trial-Related Tasks

Unsurprisingly, defense attorneys reported that few trial-related tasks were frequently or almost always assigned to investigators. Among the trial activities investigators were included in, the most common was case strategy and planning meetings (37%; **Table Y20**).

Table Y20. I assign my investigators to do the following trial-related tasks

Response	Never (%)	Rarely (%)	Sometimes (%)	Frequently (%)	Almost Always (%)	Total (n)
Conduct research (including social media research) on potential jurors	41.3	19.6	24.3	7.7	7.2	235
Create diagrams and trial exhibits	44.2	23.8	26.3	4.6	1.3	240
Participate in case strategy and planning meetings	17.1	11.8	34.3	22.4	14.3	245
Testify in court	7.1	39.6	42.9	8.8	1.7	240

Note: Table excludes responses marked "not applicable" and "other, please specify," and people who did not answer the questions.

3.3.6 Defense Attorneys' Opinions

Investigators as Part of Defense Team

Defense attorneys strongly agreed that investigators are a valued member of the defense team (62%; **Table Y21**). Defense attorneys also strongly agreed that they welcome and value investigator opinions and assessments of case information (58%), that they provide clear directions on the work investigators are asked to do (44%) and explain how the investigator's work will fit within the overall case theory or strategy (40%).

Investigators shared this view; more than 85% agreed or strongly agreed that they were valued members of the defense team, felt they could share their opinions and observations, and felt their opinions and assessments were valued.



Table Y21. What is your level of agreement with the following statements?

Response	Strongly Disagree (%)	Disagree (%)	Neutral (%)	Agree (%)	Strongly Agree (%)	Total (n)
Investigators are a valued member of my defense team	0.8	0.0	6.9	30.5	61.8	246
I give clear directions on the work investigators are asked to do	0.8	2.0	8.5	44.7	43.9	246
I explain how the investigator's work fits within the overall case theory or strategy	0.8	1.2	14.4	43.2	40.3	243
I communicate clear timelines and deadlines for the investigator's work	0.8	5.0	13.6	46.7	33.9	242
I consider the investigator's other obligations in assigning them case work	1.2	8.6	24.7	39.1	26.3	243
I include investigators in discussion on case planning and strategy	3.3	7.8	18.9	34.4	35.7	244
I rarely need an investigator because I do my own investigations	33.6	31.9	19.1	12.3	3.0	235
I welcome and value investigator opinions and assessments of case information	0.8	0.8	4.5	35.8	58.0	243

Note: Table excludes "not applicable or don't know" responses and people who did not answer the questions.

Benefits of Investigation

Like investigators, defense attorneys were asked to provide written examples of how investigators benefitted a recent case (**Table Y22**). RTI reviewed the responses and categorized them by themes. Responses could fit into multiple themes. The top five responses were that the investigator located and interviewed witnesses (65 respondents), the investigator discovered new or reviewed critical witnesses or evidence (42 respondents), their clients were found not guilty or the charges were dismissed (40 respondents), their clients received more-favorable outcomes other than dismissal (27 respondents), and the investigator was able to take crime scene photographs or review video surveillance footage (24 respondents).

Table Y22. How did investigation benefit a recent case?

Response	Number
Located and interviewed witnesses	65
Discovered or reviewed critical witnesses or evidence	42
Client found not guilty or charges dismissed	40
More-favorable outcome for client (other than dismissal)	27
Crime scene photographs, video surveillance footage	24
Another set of eyes on the evidence or in the courtroom	12
Helped substantiate an alibi	11
Helped develop case strategy with defense	9
Identified police or prosecutor mistakes	7
Obtained affidavit of nonprosecution	6
Ensured witnesses testified at trial	5
Evidence to support mitigation	4
Accident reconstruction/crime scene reenactment	4
Prevented client perjury or other client negative action	4
Knowledge of police practices	2
Used investigators interview of witness to impeach witness	1
I do my own investigations	1
Identified juror misconduct	1
Could not categorize response	6
N/A or No	21

Note: Excludes people who did not answer the question. Respondents answered the question in free text, and some responses are counted into more than one category.

One defense attorney said, "I've had entire cases turn on information discovered or proven false by my investigators. They have done crime scene reenactments for me in a capital murder case that was essential in obtaining a not guilty." Interestingly, 12 respondents noted that investigators were also helpful as another set of eyes in the courtroom. An attorney explained:

In every trial, our investigator assists with developing strategy, theme, theory, etc. He also is another set of eyes in the courtroom during jury selection and trial. The DA regularly has 3, 4, or even 9 prosecutors in the courtroom for jury selection. This puts defense counsel at a disadvantage in making thoughtful peremptory strikes and even challenges for cause. I often see court appointed defense counsel attempting to select a jury alone. Our investigator also routinely obtains written witness statements and affidavits of non-prosecution which we can provide to the DA for mitigation or even dismissals.

Overall, there were few indications of negative impacts from using investigators (of those that did respond, 24 indicated that investigators are always useful; **Table Y23**). Of the 24 responses indicating a negative impact, attorneys noted that the investigator's information did not add anything to the discovery materials provided by the prosecutors or otherwise did not help the case (14 responses), conducted services that were not requested by the attorney (6 respondents), or failed to provide a requested service (4 respondents).

Table Y23. How did investigation NOT benefit a recent case?

Response	Number
Investigators are always useful	24
Information gathered did not help the case/information was duplicative of discovery	14
Investigator could not locate witness	9
Investigator provided services that attorney did not request or need	6
Investigator did not provide a requested service	4
Investigation took too long to be useful to case	4
Investigator needed too much instruction	3
Investigator provided support to the state, not the defense	3
Investigator was not communicative to the attorney	2
Not worth the money/paralegal can do the same work	2
Client did not trust investigator	1
Attorney had to review the work anyway	1
Alerted state to defense strategy	1
Investigations are never useful	1
N/A or no	50
Could not categorize	21

Note: Excludes people who did not answer the question. Respondents answered the question in free text, and some responses are counted into more than one category.

In the earlier investigator response about the challenges and frustrations of their job, investigators noted that sometimes there were issues locating the witnesses or issues with their behavior (14 respondents). Attorneys echoed this; nine attorneys noted that their investigator could not locate a necessary witness. Investigators also noted that often, they received the referrals for the investigation too late in the process (13 respondents); which was also noted by four attorneys who said the investigation took too long to be useful to the case (Table Y23).

Working With Defense Investigators in Texas

Although 50% of defense attorneys agreed or strongly agreed that it was easy to find an investigator willing to work for the court-appointed rate in their area (**Table Y24**), only 37% agreed or strongly agreed that there were an adequate number of defense investigators in their

area, and only 25% agreed or strongly agreed that their jurisdiction paid a fair rate for appointed investigators. Thirty-five percent agreed or strongly agreed that they typically do their own investigation rather than using an investigator. Seventy-three percent agreed or strongly agreed that defense attorneys should use investigators more often, and few attorneys agreed that there was adequate training for defense attorneys about using investigators. These mirror investigator reports, in which 79% agreed or strongly agreed that defense lawyers should use investigators more, and more than half expressed concerns about the lack of professional training and mentorship for investigators.

Table Y24. Attorney opinions about working with investigators in their area in Texas

Response	Strongly Disagree (%)	Disagree (%)	Neutral (%)	Agree (%)	Strongly Agree (%)	Total (n)
It is easy to find an investigator willing to work for the court-appointed rate	11.5	24.2	14.8	35.2	14.3	244
There are an adequate number of criminal investigators in my area	18.9	29.3	15.3	26.9	9.6	249
There are enough criminal investigators in my office/agency for our caseload	22.5	22.0	14.3	29.1	12.1	182
Courts in my area pay a fair rate for court-appointed criminal defense investigator services	21.0	30.6	23.6	21.8	3.1	229
Criminal defense attorneys in my area should use investigators more often	3.1	3.9	20.5	33.2	39.4	259
There is adequate training for criminal defense lawyers in Texas on how to properly use investigators	22.9	44.3	19.4	10.7	2.8	253
I typically do my own investigations rather than use an investigator	19.6	24.0	21.5	25.8	9.1	275
I only seek an investigator if I believe the case is going to trial	31.8	42.9	12.6	9.6	3.1	261
I don't request an investigator because the process is too burdensome	53.7	29.0	7.5	8.2	1.6	255
I am more likely to get an investigator request approved by some judges than others	15.5	19.8	17.7	33.2	13.8	232
I have chosen not to seek an investigator because of fear of reprisal against me/my firm by the court/judge (such as reducing court assignments or receiving less-desirable case outcomes)	62.6	23.5	4.6	5.9	3.4	238

Response	Strongly Disagree (%)	Disagree (%)	Neutral (%)	Agree (%)	Strongly Agree (%)	Total (n)
I have chosen not to seek an investigator because of fear that the court/judge may penalize my client	65.1	24.8	4.2	2.5	3.4	238
I am required to proceed in my cases without an investigator despite needing one	47.1	32.4	8.8	6.3	5.5	238
I use investigators more often in my retained cases than my appointed cases	30.6	37.9	21.5	6.8	3.2	219

Note: Table excludes "not applicable or don't know" responses and people who did not answer the question

3.3.7 The Relationship Between Access to Investigators and Use of Investigators

Defense attorneys may differ in their use of investigators depending on whether or not they have them on staff. RTI ran analyses of access to staff investigators and the use of investigators in juvenile appointed, misdemeanor appointed, and felony appointed cases. **Table Y25** shows the results of the cross-tabulation.

Table Y25. Attorney use of investigators, by having investigator on staff and case type

Type of case	Had investigator on staff (22%)		Did not have investigator on staff (78%)	
	Used investigator (%)	Did not use investigator (%)	Used investigator (%)	Did not use investigator (%)
Juvenile appointed	75	25	26	74
Misdemeanor appointed	78	22	44	56
Felony appointed	100	0	87	13

Note: Seventy-six defense attorneys reported investigators on staff, and 270 defense attorneys reported not having investigators on staff. Excludes people who did not answer the questions.

Overall, attorneys who have investigators on staff use them more frequently, and use them in all case types. Of significance is the differences in use patterns in juvenile cases (26% of attorneys without investigators, compared with 75% of attorneys with investigators) and misdemeanor case (44% of attorneys without investigators, compared with 78% of attorneys with investigators).

Section 4: Judge Interviews



4. Judge Interviews

4.1 Background

Whereas the defense attorney survey gathered information about the attorneys' perceptions of the court process for seeking an investigator, another objective was to learn about the process from the court's perspective. For this viewpoint RTI conducted structured interviews with judges from 10 counties identified by TIDC as having reported zero or low-dollar investigator expenditures (**Table Z1**). The 10 counties were selected with a consideration of their mode of indigent defense delivery, regional representativeness, and history of reported defense investigator expenditures as a means to increase diversity of experience.³⁰

Table Z1. Ten Texas counties identified by TIDC for judicial interviews

County	Population (ACS 5-year estimates for 2020)	Indigent defense delivery method	FY2021 defense investigator expenditures	Region
Angelina	86,395	Assigned counsel	\$410.80 (felony only)	Northeast
Austin	30,167	Contract	\$0	East
Cameron	421,017	Assigned counsel	\$1,850.00 (felony only)	South (border)
Colorado	20,557	Public defender	\$0	East
Ector	165,171	Assigned counsel	\$0	West
Erath	42,545	Assigned counsel	\$0	Central
Gregg	124,239	Contract for misdemeanor; assigned for felonies	\$113,328.77 (felony only)	Northeast
Howard	34,860	Assigned counsel	\$0	West
Liberty	91,628	Assigned counsel	\$2,700.00 (capital and felony only)	East
Van Zandt	59,541	Assigned counsel	\$3,887.50 (felony only)	Northeast

4.2 Survey Instrument Development

RTI, NACDL, TIDC, and NCSC developed the interview to focus on the court's role in the request process. RTI, NACDL, and NCSC determined that the interview should take no longer than 30 minutes, including time to introduce the project and gain consent. With permission from the judges, interviews were recorded for accuracy. The interviews asked about the overall process of requesting an investigator, the process for reimbursing or allocating funding for

³⁰ TIDC also provided 10 additional back-up counties, but RTI did not contact any of them.

defense investigators, and the frequency of defense attorney requests for investigators. The interview guide is included in **Appendix 6**.

4.3 Recruitment

NCSC offered to make the first contact on behalf of RTI. NCSC has strong ties with the courts and judicial communities. On February 18, 2022, NCSC emailed all judges in the district courts and courts of common pleas in the 10 counties. The email told judges the purpose of the project and asked them to contact RTI to set up an interview at their convenience. The email also informed the judges that RTI might follow up with email requests.

Two weeks after the first email from NCSC, RTI emailed judges in the 10 counties. RTI scheduled interviews with judges at their requests; the first interview was on March 9 and the last on April 5, 2022. Some judges emailed to explain that their courts did not hear criminal cases, did not receive requests for investigators, or did not want to participate in the interview. The final responses are listed in **Table Z2**.

Table Z2. Judge interview or email responses, by court and county

County	# of District Courts	# of District Court Responses	# of County Courts at Law	# of County Court Responses
Angelina	2	0	2	0
Cameron	7	3	5	3
Ector	5	2	2	2
Erath	1	0	1	0
Howard	1	0	1	1
Liberty	2	1	2	0
Van Zandt	1	0	1	1
Austin	1	0	1	0
Gregg	3	3	2	0
Colorado	2	2	1	0
Total	25	11	18	7

4.4 Results

The JFA team either received emailed responses from or interviewed 15 judges in 5 of the 10 counties identified as having very low or no reported expenditures. (The counties were Cameron, Ector, Howard, Liberty, and Gregg.) The interviews asked judges about the process of requesting investigators, the process of tracking costs and payments for investigators, the judges' opinions about the process and use of investigators, and general court information. The qualitative data received from the judges were independently analyzed and coded by two separate analysts and the results were compared to identify key themes.

All judges explained that, in their courts, the judge assigned to the case is solely responsible for reviewing an investigator request and deciding whether to approve it. In one county with zero reported expenditures, two judges reported that they receive and approve requests for investigators daily. Both judges stated that they routinely approve these requests if they are submitted with the correct information (e.g., name of investigator or firm, type of case, and what the investigator will perform for the amount requested); however, these judges did not clarify the zero reported expenditures issues. The judges stated only that the court does not track expenditures and that they are not sure who actually does so in their county.

In another county with zero expenditures, a judge reported via email,

The only thing I do is approve their requests when made. Which in my experience has been very seldom. I can only really remember one time in the past 5 years that I've gotten a request for an investigator from them.

When discussing why so few requests were made, one judge mentioned that attorneys were likely aware of resource constraints and tried to avoid requesting funds.

This concern was echoed by other judges when they were asked about the costs of investigators. Specifically, one judge explained that a judge's role is to "balance the need to be a good steward of the county's funds with the need to provide a robust defense." A second judge stated that judges must be mindful of taxpayer funds and not waste those funds:³¹

I just don't hand out court-appointed lawyers, nor do I appoint investigators or expert witnesses like a bag of lollipops because once again, I'm conscious of who has to pay for these. But if the need is there, absolutely. And certainly an indigent person is entitled to representation, and we don't quibble about that. But I do look hard at appointing investigators. I just don't want a lawyer to say, 'Well, I'm just going to sit in my office, and I'm going to have the taxpayers pay for an investigator to go out and talk to witnesses,' when it's their damn job to do so. That aggravates me.

Only one judge mentioned reducing investigator invoices, explaining that they reduce invoices only when the investigator "double-charges," such as charging for both mileage and travel time to interview a witness.

Another judge mentioned that new attorneys might not know that they have the option to request investigators and they might have privacy concerns as well. Elaborating, the judge said, "Defense lawyers need to be educated on how helpful an investigator could be and [need to] understand how to acquire one. Defense lawyers may think they are divulging info on their case by requesting one because the state is going to know if they are privy to their report, but that isn't the case."

When considering whether to approve a request, two judges mentioned that typically they receive requests for cases that require many interviews because of the number of witnesses

³¹ See also ABA. (2002). Principle 1: "The public defense function, including the selection, funding, and payment of defense counsel, is independent." The Commentary to Principle 1 makes clear "[t]he public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel."

involved and said that they consider the complexity of the case the deciding factor. One judge explained,

It depends on the case. If it's just a matter of needing help because the volume of items/evidence to sift through, that is all they need to explain. If that's not the case, then they would need to explain to me what is the evidentiary issue that you have that warrants an investigator be used.

All judges reiterated, however, that was very rare to deny a request.

Ultimately, most judges reported that they thought investigators were being requested when they were needed; these judges did not feel that changes to the request process are necessary. One judge, however, did mention that improvements could be made:

The process could be sped up for approval. Maybe some of the discretion should be taken away from judges on whether an investigator should be hired. In certain circumstances there should be expectations that an investigator should take part in a case. They shouldn't need to ask me for one; it should be automatic if they feel it's necessary.

Two judges mentioned that lack of investigators in their area was a problem, and one judge suggested that giving attorneys a directory of approved investigators in the region, even outside the given county, would be useful to both increase investigator use and to incentivize investigators to practice in under-resourced areas.



Section 5: Summary and Conclusions



5. Summary and Conclusions

Investigators bring a unique and critical skill set to a defense team. They can identify weaknesses and errors in the government's case, provide crucial evidence to support the defense theory, and help balance the resources the state has marshalled against the accused. They may locate evidence that establishes a person's innocence, uncover government misconduct or inattentiveness, or move a case closer to resolution.

Despite numerous examples from investigators and defense counsel alike of how an investigator meaningfully affected a case, the qualitative and quantitative research conducted in Texas supports a conclusion that the underutilization of defense investigators in indigent defense cases is a widespread problem. Although there is no singular cause or singular solution, a number of system strengths can serve as a foundation for lasting improvements. The recommendations in this report are intended to be a starting point. Ongoing assessment, evaluation, and refinement will be critical to making sure that changes are implemented and prove effective.

5.1 System Strengths

For the past two decades Texas has demonstrated a commitment to pursuing high-quality public defense representation³² while being a hub for innovation.³³ Ongoing efforts to pursue public defense delivery models that will suit the needs of the wide array of counties in the state, TIDC's support for the creation of regional defender offices, and MAC programs provide models that localities can use to facilitate early, ready access to shared resources such as investigators. Moreover, the state's public-facing database, as well as its overall data collection and analysis infrastructure, uniquely situates it to collect and assess data and to make informed adjustments to policies and procedures.

Both investigators and defense counsel spoke positively about the relationship between the two groups. Roughly 90% of both groups agreed or strongly agreed that investigators were valued members of the defense team, with nearly as high percentages of both groups describing creating spaces where investigators felt free to share their opinions and assessment of case information. Investigators overall responded positively to their level of inclusion.

In our system a defense lawyer characteristically opposes the designated representative of the State. The system assumes that adversarial testing will ultimately advance the public interest in truth and fairness. But it posits that a defense lawyer best serves the public, not by acting on behalf of the State or in concert with it, but rather by advancing the 'undivided interests of his client.' *Polk County v. Dodson*, 454 US 312, 318-19 (1981).

The power and duties of TIDC are another source of strength for Texas. While it cannot regulate the actions of judges or investigators, through its statutory authority to develop policies and

³² Starting with the passage of the Texas Fair Defense Act in 2001, which provided state funding, and continuing until today, with the TIDC using performance and workload standards to promote quality representation. [Public Defense Primer](#), TIDC (2020).

³³ ["Indigent Defense Innovation,"](#) TIDC (2018).

standards for attorneys providing indigent defense under its funding,³⁴ TIDC can enact performance standards that create a more consistent and prominent practice of employing defense investigators in cases.³⁵

5.2 Critical Observations

An area of concern is the processes relating to the payment of investigators. Numerous investigators reported that courts routinely limit funding for services to just 10 hours of work. Once accounting for time to review discovery, meet with counsel and travel, precious little may be left for actual investigative work. Several investigators expressed that courts would allow lawyers to return to request additional hours and funds, but those hours, too, are doled out in very limited quantities. These factors combine to create a complex concern, with investigations having to start and stop as investigators reach their approved limit and must either continue their work without compensation or stop their work until funds are approved. The added layers created repeated levels of frustration and bureaucracy, which in turn can drive away individuals from continuing to accept court appointments. Delays in payments can span months or even years, adding insult to injury, as most investigators are paid substantially below attorneys of the same court.

An area of some weakness, according to investigators, is that attorneys fail to consistently communicate how the investigator's work fits within the broader case theory, provide clear directions on the work the investigator is being asked to do, or give clear communication on timelines and deadlines. Not surprisingly, attorneys had a more positive view of the clarity, timeliness, and completeness of their communications.

When addressing the ways in which investigators are being used, both defense lawyers and investigators noted that investigators regularly locate and interview witnesses, locate and preserve evidence, and visit crime scenes. However, when it comes to client-related tasks, investigators and defense attorneys varied noticeably on how involved investigators are. Of significance for this report is the potential that attorneys are using investigators to conduct initial meetings with clients. Although it is easy to conceive of instances in which a defense investigator is the first person to meet with a client, those situations should be the exception rather than the norm. Only 29% of attorneys reported that they frequently or almost always have investigators meet with clients; roughly two-thirds reported that they never ask investigators to conduct initial client meetings with people out of custody (67%) or in custody (64%). However, the reverse was reported by investigators, who reported that they almost always or frequently conduct initial client meetings with clients in custody (69%) or out of custody (68%).

Another area of substantial divergence in tasks was that nearly 90% of investigators reported that they frequently or almost always review body-worn camera and other video footage for a

³⁴ [79.034, Texas Government Code](#)

³⁵ Currently TIDC does require contract defender programs to specify how necessary investigation services will be made available. [Chapter 174, Texas Admin. Code](#), Rule 174.24.

case, whereas only 35% of attorneys reported frequently or almost always assigning such tasks to their investigators.

Without further follow-up, it is difficult to know what may be at the root of this disparity, but it is notable that some of the places of deviation are in areas where attorneys have ethical obligations to fulfill (meeting with clients and reviewing discovery) but may also face significant challenges due to workloads.

5.3 Study Limitations and Future Research Needs

Notably, there are large parts of the state from which little or no data was obtained. Additionally, the study was limited by the low level of engagement by judges and court administrators. Understanding the issues from the court's perspective is critical, as judges play a significant role for most defenders in access to the funding for investigator work. The study also lacks input from prosecutors in the state. Of course, prosecutors should not have any role in the operations of the defense function, but they are likely to have an important perspective on the ways in which defense investigators are effective and the ways they are not. Prosecutors can also offer input as to the impact of defense investigation on charging decisions, plea negotiations, and trial practices.

5.4 Recommendations

- 1. Shift the review and approval of requests for defense investigators and the payment for investigator services from the judiciary to public defense service providers.**

Independence of the defense function is a cornerstone of a robust public defense system. Public defense lawyers should be subjected only to the level of court oversight and supervision that retained counsel and prosecutors experience.³⁶ Judicial involvement in decisions of whether to approve defense employment of an investigator, as well as the extent of those services, represents an intrusion unique to public defense. Neither retained counsel nor prosecutors face such control. Even though surveyed defenders did not overwhelmingly report judicial retribution as a reason they do not pursue funding for investigators, the low rate of usage raises core concerns about the impact of judicial oversight. Notably, in connection with their role in assessing and approving defense requests for investigator funds, several judges interviewed during the study made references to their responsibilities to be "good stewards" of the county's money, the need to balance the needs of the defense with the needs of the county, or their opinions about what work should be done by the lawyer rather than the investigator.

Current statutes relating to funding for defense services like investigators, such as Code of Criminal Procedure art. 26.052(f)(2), allow for *ex parte* applications for funding but come with a

³⁶ ABA Ten Principles of a Public Defense Delivery System, Principle 1 (Feb. 2002). See also American Legislative Exchange Council Resolution in Support of Public Defense (Sept. 2019): "That to ensure the defense may fulfil its role in the adversarial system, the defense should be insulated from undue influence, involvement, and control by actors whose interests are directly or indirectly adverse to the attorney-client relationship. Supervision of the public defense system by the judiciary should be no greater than that which is exercised over the private bar."

requirement that the defense must state “specific facts that suggest the investigation will result in admissible evidence.”³⁷ This condition is reflected in a number of county indigent defense plans that require defense attorneys to provide specific, detailed descriptions of how the investigation will “lead to admissible evidence.” Such provisions can have a chilling effect on lawyers seeking defense funding, as the lawyer must weigh whether to reveal confidential or sensitive information to the person who will ultimately be deciding the case. These and similar barriers can be reduced if the role of the court in reviewing and approving requests for investigators is shifted to public defense service providers.

Of similar import is reducing or eliminating the court’s role in assessing investigator invoices. Courts lack sufficient insight and information as to what circumstances may have been at play during the course of the investigation; to avoid improper engagement in the case, or the revealing of confidential or privileged information, the court cannot be privy to these details. To the extent that a court remains involved in invoice approval, and absent indications of fraud, invoices that are submitted within a pre-approved budget should be approved without delay and without deductions.

A potential model to follow may be a regional or localized version of the Wayne County, Michigan, Indigent Defense Services program, which has a defense expert and investigators administrator on staff to consult with defense lawyers to identify case needs, facilitate connections with appropriate investigators, and process invoices and payments.

2. Increase investigator usage in misdemeanor and juvenile cases.

A report in 2015 called for a multifold increase in investigator usage, especially in misdemeanor and juvenile cases. Nevertheless, survey results, interviews, and data on spending all indicate significant underutilization of investigators.

The study data revealed substantially lower use of investigators in juvenile and misdemeanor cases than in felony cases. Notably, while half of the attorneys reported having used an investigator in a misdemeanor case at least once in the past 5 years, over 70% of respondents indicated that they used investigators in a quarter or less of their cases (with 50.4% reporting they used investigators in 10% or less of their appointed cases). Even lower rates of usage were reported for juvenile cases.

These seemingly minor crimes have major impacts on individuals and communities. Long-term effects on housing, employment, access to education, and many other areas cannot be understated. Like their felony counterparts, these cases are subject to errors. Incomplete investigations, police misconduct, additional evidence and witness information, and forensic errors can plague misdemeanor cases as much as cases with more serious charges. As a result, individuals, communities, and the legal system will benefit from thorough, zealous defense investigation.

³⁷ Although art. 26.052(f)(2) applies to capital cases, Texas Code of Criminal Procedure art. 26.05(d) directs the application of art. 26.052(f)(2) for how investigator expenses are to be reimbursed for appointed counsel.

In contrast, public defender offices and MAC programs showed an increased use of investigators overall, and a marked uptick in use in juvenile and misdemeanor cases. These programs feature non-judicially controlled access to investigators, reducing the barriers to use of services. Reducing the time required to engage an investigator also facilitates early action in the case. Removing the judiciary also lowers other the barriers to use, such as the need to provide specific information about the evidence that the investigator might locate.

Of note, some jurisdictions reported that investigators are provided only if a case is going to trial. Corroboration for this comes from the survey data. When asked about the most common factors they consider when thinking about whether to seek an investigator, one of the top five responses from attorneys was the likelihood that the case will go to trial.

3. Promote early access to investigator services.

Investigators are most valuable when they can enter a case early. Many of the activities investigators engage in, such as locating and interviewing witnesses, examining crime scenes, and identifying and collecting evidence, must be done as soon as possible. Delays of days or weeks between an incident and the start of an investigation can lead to the loss of critical information. Surveillance videos may be recorded over, social media posts removed, physical injuries healed; conditions at scenes change, leads grow stale, and witnesses move or forget crucial details.

Public defender offices with investigators on staff³⁸ and MAC offices with an existing roster of investigators benefit by having immediate access to investigators without the need to file a motion with the court, await approval, and locate an available and willing investigator. The creation of more regional public defender offices³⁹ and MAC programs can help smaller areas gain these same benefits.

4. Pool resources and develop hubs for defense access to investigator experts.

Even if an area is not ready to implement a MAC or open a public defender office, it can be very valuable to collaborate with other nearby offices to create regional hubs with shared resources, including information on investigators willing to accept court appointed cases in the area as well as their areas of expertise, skill, and experience. Any steps that make it easier for defenders to identify and secure investigators, especially those whose skill set may fit the needs of a particular case, are highly beneficial and may minimize an artificial boundary to rapid utilization of a defense investigator: finding one.

Creating a resource pool of investigators and their areas of expertise and specialized skills can also minimize another barrier to access of investigator services: locating and identifying investigators who have the right skill and experience to handle a particular case type or case need, making it easier for attorneys to seek and use investigators. One of the judges

³⁸ In 2019, of the 21 public defender offices in Texas, 16 had at least one staff investigator, and more than half of the offices had two or more. [Public Defense Primer](#), Table 2.

³⁹ See, for example, the 2021 opening of the North Hill Country Public Defender Office serving Bandera, Gillespie, Kendall, Kerr, and Medina Counties.

interviewed for the study said that providing attorneys with information on available investigators would be a useful tool to increase investigator usage.

With the growing reliance on technology as a part of people's day-to-day lives, more law enforcement agencies are developing their own staff experts to locate, retrieve, and assess digital data. Evidence is extracted not only from cell phones, tablets, and computers, but also from fitness monitors, cars, and kitchen appliances. As a result, it is becoming increasingly apparent that defenders need their own investigators to have similar, specialized skills. Investigators themselves echoed this need, identifying digital forensics as the area they most wanted to develop more expertise in as well as an area where they felt their existing skills were being underutilized.

Although not every case will require the use of these particular skills, they can prove to be extremely valuable, and the growing prevalence of digital data in even some of the more routine cases heightens the need for defense investigative expertise in this area. To help provide defenders access to these discrete investigative skills, Texas could create a centralized office or a series of regional hubs. Using a model similar to TIDC's myPadilla virtual platform, which connects defense lawyers handling appointed cases involving noncitizens with skilled immigration counsel, defense lawyers could get ready access to trained investigators to at least assist with initial case assessments.

Other areas that could similarly benefit from expertise are accident reconstruction, arson, firearms, forensic interviewing of children, and interrogation techniques.

5. Identify areas of “investigator deserts” and promote greater access to investigators in these regions.

Not having investigators in a particular county has a number of critical negative effects, such as delays in locating and securing an investigator; added costs for travel; and potentially reduced efficacy because the outside investigator may have less understanding of local dynamics, lower social capital, and fewer local relationships and connections to draw upon. Simple but common occurrences for investigators, like difficulty connecting with an elusive witness or a last-minute meeting cancellation, can especially drain resources and time for out-of-area investigators.

The currently available data make it difficult to fully examine where there may be “investigator deserts”—places that are unserved or severely underserved by defense investigators willing to take court appointed cases. However, given that there were 65 counties in Texas for which no local lawyer accepted a criminal appointment in 2021,⁴⁰ it is reasonable to expect that if these communities are unable to support a local defense presence, they will equally struggle to support a local defense investigator presence.

Additionally, more detailed research will need to be done to better pinpoint these areas and to delve into how to best remedy the situation. It is important in this regard to examine matters at a local level, as not all jurisdictions will benefit from the same approach to the problem. While some areas may simply need more investigators to work in their geographic areas and can

⁴⁰ [POLICY BRIEF Greening Criminal Legal Deserts in Rural Texas](#), Deason Center at SMU (2021).

address those needs by increasing funding, other areas may face defense and court cultures that do not embrace the use of investigators. Taking steps to increase the number of investigators will be of little effectiveness in regions where defenders are not seeking out their services or courts are not approving their usage.

6. Improve investigator compensation practices.

Most defenders and investigators reported that their counties are not fairly compensating investigators performing court-appointed representation. In addition to rates that are low—and that appear to have stagnated for years, despite the rising cost of living—the process for paying investigators adds to their growing frustration and drives them away from taking appointed cases. Creating uniform fee structures and payment practices that fairly compensate investigators on the basis of their experience and expertise would go a long way to improving and sustaining defense investigator participation.

Legislative efforts at the state level, as well as changes to local court rules, can promote better practices, including the following:

- Creating uniform hourly rates for investigators that take into account licensure status, areas of expertise, years of experience, and case complexity. Such rates should be regularly reviewed and increased, in a fashion similar to that of the compensation rates of other government employees, to keep pace with inflation.
- Permitting interim billing in complex cases and paying investigators at the conclusion of their work rather than requiring them to wait until the conclusion of the case.
- Removing any local requirements for investigators to reveal confidential client information, such as the names of witnesses, in their invoices.
- Directing that payments for court-appointed work be made directly to the investigators, rather than to the attorney engaging them.
- Absent indications of fraud, requiring that vouchers for work within the pre-approved hours be fully paid.
- Requiring that investigator payments be made within 2 weeks of voucher submission. Investigators should not wait months or even years to receive payment for work they have completed.

Though legislative changes at the state level would ensure that these practices are uniform across the state, individual counties could also use court rules to employ some of these improvements, ensuring that investigators are promptly and fairly compensated.

7. Provide regular training for investigators, defense lawyers, members of the judiciary, and the community on the role and importance of defense investigators.

To help change the overall culture and attitude toward the use of defense investigators, it is critical that all three key system actors have a shared understanding of the values and goals of such investigators. More comprehensive, shared trainings that highlight the critical role of case investigation, as well as the legal underpinnings for the right to investigative support, can help shift the culture of a community, moving it toward increased use of investigators.

Stakeholder-specific training, especially for defenders, should include

- legal, constitutional, and ethical foundations for defense investigation and
- effective communication and collaboration between defense counsel and investigators, including the array of skills, tools, and services investigators can provide, as well as training relating to substantive areas of practice, and with special attention paid to the role of investigation in misdemeanor and juvenile cases.

Training for judges should include

- the role and import of defense investigation and
- the legal, constitutional, and ethical underpinnings for the provision of defense investigation services, with special attention paid to the role of investigation in misdemeanor and juvenile cases.

Additionally, increasing investigators' practical, case-related skills may increase their confidence, competence, and effectiveness. Providing avenues for regular access to trainings that allow investigators to keep pace with emerging technologies and hone their existing skills can have the collateral effect of recruiting additional investigators and raising the number of investigators willing to provide defense services and to accept court appointments.

Additional training and education should take place in affected communities, serving to raise their awareness of defense access to investigative services. Knowing the defense has investigative services at its disposal can help spark ideas for leads and information, better prepare defendants and defense witnesses for meeting with a defense investigator, and increase overall confidence in the legal system by showing the defense is equipped with resources to help meet and fight the state's accusations.

8. Improve data collection and transparency

Accurate data can help identify issues and ensure that reform efforts are tailored to the specific needs of the jurisdiction. A threshold step should be taken to address the potential of misreported data so that future examinations of investigator expenditures reflect the most complete and current data, as well as historical data for comparison.

Other data recommendations include making indigent defense plan information more accessible and sortable. Although every county's indigent defense plan is available online, the current format makes it extremely challenging to examine the information for statewide trends and practices. If a searchable, filterable database is created, communities and counties can identify outlier jurisdictions as well as practices from other jurisdictions that they may aspire to incorporate.

Finally, it is important to continue to collect data on investigator usage by public defender offices and MAC programs to fully understand the nature and breadth of investigator usage in the state. Collecting information on investigator requests, frequency of investigator usage by case type and task, and the impact that investigative services have on case outcomes will all help identify the effect of investigation on case outcomes.

As Texas has a strong reputation for making data accessible, gaining support for collecting and reporting data on investigator funding and usage should be relatively easy.

9. Develop specialized grant opportunities to facilitate implementation of these recommendations.

TIDC's grant program has been a powerful and effective resource to spur on innovation, providing critical financial support for jurisdictions interested in exploring new practices.

5.5 Future Research

Ongoing research should examine the impacts of any statutory or policy changes on the increased availability and use of defense investigators. Of significant import is to undertake research on the costs and benefits of increased utilization of investigators. While increasing defense use of investigators can foreseeably add costs, these costs may be mitigated by the systemic benefits that result from increased defense investigations.

Research in this area should consider both quantitative and qualitative outcomes, including impact on dismissal, non-prosecution, and acquittal rates; reductions in severity and number of charges at conviction; and impacts on sentencing, including rates and length of jail and prison sentences. Data collection should also examine the impact of defense investigation on case flow, including the number, frequency, and impact of pretrial motions; the number of cases proceeding to trial; the time between arrest and disposition; and the overall duration of cases. Other areas for study include the impact of investigation on defender workloads, attorney-client relationships, and community perceptions of the legal system.

It is posited that empowering more defense teams with the resources to better meet the prosecution's case, better identify problematic police practices and forensic errors, and improve the quality of evidence the defense may present will positively affect community trust and confidence in the fairness, accuracy, and effectiveness of the criminal legal system.

5.6 Conclusion

The use of investigators by the defense is a necessary component of competent, ethical representation. It is also a critical tool for improving the effectiveness of not only public defense, but the legal system as a whole.

Without an independent defense investigation, the adversarial system would fail in its most foundational premise—the ability of both sides to marshal and present their evidence to the judge or jury deciding the case.⁴¹

“Because that [adversarial] testing process generally will not function properly unless defense counsel has done some investigation into the prosecution's case and into various defense strategies ... ‘counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.’” *Kimmelman v. Morrison*, *supra* at 384 (quoting *Strickland*, 466 U.S. at 691).

⁴¹ “[A] fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984).

Appendices



APPENDIX 1. County Defense Investigator Expenditures Reported to TIDC in FY2021

County	Reported investigator expenditures by TIDC in FY2021	Type of investigator expenditures (case types)	Reported investigator salary by TIDC in FY2021	Type of salaried investigators (case types)
Total	\$5,637,651.03			\$5,737,094.24
Anderson	\$3,372.53	Capital, Felony	NA	NA
Andrews	No data	No data	No data	No data
Angelina	\$410.80	Felony	NA	NA
Aransas	No data	No data	No data	No data
Archer	No data	No data	No data	No data
Armstrong	No data	No data	No data	No data
Atascosa*	NA	NA	\$110,577.07	Juvenile, Felony, Misdemeanor
Austin	No data	No data	No data	No data
Bailey	\$22,444.80	Felony, Misdemeanor	NA	NA
Bandera*	\$250.00	Felony	\$21,433.58	Felony
Bastrop	\$14,082.50	Felony	NA	NA
Baylor	\$800.00	Felony	NA	NA
Bee*	NA	NA	\$119,396.41	Felony, Misdemeanor
Bell	\$7,411.00	Juvenile, Felony, Misdemeanor	NA	NA
Bexar	\$171,041.03	Juvenile, Capital, Felony, Misdemeanor	NA	NA
Blanco	No data	No data	No data	No data
Borden	No data	No data	No data	No data
Bosque	\$6,128.82	Felony	NA	NA
Bowie	\$12,119.62	Capital	\$75,589.00	Juvenile, Capital, Felony, Misdemeanor
Brazoria	\$21,762.48	Capital, Felony	NA	NA
Brazos	\$57,804.67	Juvenile, Felony, Misdemeanor, Felony Appeal	NA	NA
Brewster*	NA	NA	\$28,374.44	Felony
Briscoe	No data	No data	No data	No data
Brooks	No data	No data	No data	No data
Brown	No data	No data	No data	No data

County	Reported investigator expenditures by TIDC in FY2021	Type of investigator expenditures (case types)	Reported investigator salary by TIDC in FY2021	Type of salaried investigators (case types)
Burleson	\$5,350.00	Felony	NA	NA
Burnet	\$1,962.50	Felony	NA	NA
Caldwell	No data	No data	No data	No data
Calhoun	\$3,527.21	Felony, Misdemeanor	NA	NA
Callahan	No data	No data	No data	No data
Cameron	\$1,850.00	Felony	NA	NA
Camp	\$660.00	Felony	NA	NA
Carson	NA	NA	NA	NA
Cass	\$12,924.11	Felony, Misdemeanor	NA	NA
Castro	No data	No data	No data	No data
Chambers	No data	No data	No data	No data
Cherokee	\$7,361.85	Felony	NA	NA
Childress	No data	No data	No data	No data
Clay	No data	No data	No data	No data
Cochran	\$2,200.25	Felony	NA	NA
Coke	No data	No data	No data	No data
Coleman	No data	No data	No data	No data
Collin	\$63,628.59	Juvenile, Capital, Felony, Misdemeanor	NA	NA
Collingsworth	No data	No data	No data	No data
Colorado	No data	No data	No data	No data
Comal	\$6,029.31	Felony	NA	NA
Comanche	\$3,026.72	Capital	NA	NA
Concho	No data	No data	No data	No data
Cooke	\$982.50	Felony	NA	NA
Coryell	\$29,835.60	Felony	NA	NA
Cottle	No data	No data	No data	No data
Crane	\$654.40	Felony	NA	NA
Crockett	No data	No data	No data	No data
Crosby	No data	No data	No data	No data
Culberson*	\$0.00	NA	\$3,103.45	Felony
Dallam	No data	No data	No data	No data

County	Reported investigator expenditures by TIDC in FY2021	Type of investigator expenditures (case types)	Reported investigator salary by TIDC in FY2021	Type of salaried investigators (case types)
Dallas	\$413,602.58	Capital, Felony, Misdemeanor	\$1,900,871.75	Juvenile, Capital, Felony, Misdemeanor, Felony Appeal, Misdemeanor Appeal, Magistration
Dawson	No data	No data	No data	No data
Deaf Smith	No data	No data	No data	No data
Delta	No data	No data	No data	No data
Denton	\$30,311.93	Felony, Misdemeanor	NA	NA
DeWitt	\$3,395.35	Felony	NA	NA
Dickens	No data	No data	No data	No data
Dimmit	No data	No data	No data	No data
Donley	\$1,000.00	Felony	NA	NA
Duval*	NA	NA	\$31,532.37	Juvenile, Felony, Misdemeanor
Eastland	\$495.50	Felony	NA	NA
Ector	No data	No data	No data	No data
Edwards	No data	No data	No data	No data
Ellas	\$71,505.46	Capital, Felony, Misdemeanor	NA	NA
El Paso	\$155,797.00	Juvenile, Capital, Felony, Misdemeanor	\$560,190.00	Juvenile, Capital, Felony, Misdemeanor, Juvenile Appeal, Felony Appeal, Misdemeanor Appeal
Erath	No data	No data	No data	No data
Falls	No data	No data	No data	No data
Fannin	\$6,676.65	Felony	NA	NA
Fayette	No data	No data	No data	No data
Fisher	\$900.00	Felony	NA	NA
Floyd	No data	No data	No data	No data
Foard	No data	No data	No data	No data
Fort Bend	\$51,168.54	Juvenile, Capital, Felony, Misdemeanor	\$202,646.75	Felony, Misdemeanor
Franklin	\$462.50	Felony	NA	NA
Freestone	No data	No data	No data	No data
Frio*	NA	NA	\$17,636.00	Juvenile, Felony, Misdemeanor
Gaines	\$5,620.95	Felony	NA	NA
Galveston	\$22,325.92	Felony, Misdemeanor	NA	NA

County	Reported investigator expenditures by TIDC in FY2021	Type of investigator expenditures (case types)	Reported investigator salary by TIDC in FY2021	Type of salaried investigators (case types)
Garza	No data	No data	No data	No data
Gillespie*	\$2,352.50	Felony	\$20,593.04	Felony
Glasscock	No data	No data	No data	No data
Goliad	\$0.00	NA	\$17,636.00	Felony, Misdemeanor
Gonzales	No data	No data	No data	No data
Gray	No data	No data	No data	No data
Grayson	\$5,921.20	Felony	NA	NA
Gregg	\$113,328.77	Felony	NA	NA
Grimes	\$4,120.40	Felony	NA	NA
Guadalupe	\$20,161.27	Capital, Felony	NA	NA
Hale	\$748.37	Felony	NA	NA
Hall	No data	No data	No data	No data
Hamilton	No data	No data	No data	No data
Hansford	No data	No data	No data	No data
Hardeman	No data	No data	No data	No data
Hardin	\$1,208.99	Felony	NA	NA
Harris	\$2,147,289.94	Juvenile, Capital, Felony, Misdemeanor	\$1,513,252.48	Juvenile, Felony, Misdemeanor, Misdemeanor Appeal
Harrison	\$2,896.61	Felony, Misdemeanor	NA	NA
Hartley	No data	No data	No data	No data
Haskell	No data	No data	No data	No data
Hays	\$49,437.55	Juvenile, Capital, Felony, Misdemeanor		
Hemphill	No data	No data	No data	No data
Henderson	No data	No data	No data	No data
Hidalgo	\$2,642.50	Felony	\$19,751.79	Juvenile, Felony, Misdemeanor
Hill	\$2,190.00	Felony	NA	NA
Hockley	No data	No data	No data	No data
Hood	No data	No data	No data	No data
Hopkins	\$17,396.00	Capital, Felony	NA	NA
Houston	\$450	Capital		
Howard	No data	No data	No data	No data
Hudspeth*	NA	NA	\$51,872.02	Felony

County	Reported investigator expenditures by TIDC in FY2021	Type of investigator expenditures (case types)	Reported investigator salary by TIDC in FY2021	Type of salaried investigators (case types)
Hunt	\$87,712.75	Juvenile, Capital, Felony, Misdemeanor	NA	NA
Hutchinson	No data	No data	No data	No data
Irion	No data	No data	No data	No data
Jack	No data	No data	No data	No data
Jackson	\$1,687.75	No data	No data	No data
Jasper	No data	No data	No data	No data
Jeff Davis*	NA	NA	\$2,666.10	Felony
Jefferson	\$12,680.60	Felony	NA	NA
Jim Hogg*	NA	NA	\$12,970.30	Felony, Misdemeanor
Jim Wells	No data	No data	No data	No data
Johnson	\$187,960.50	Felony	NA	NA
Jones	No data	No data	No data	No data
Karnes*	NA	NA	\$41,990.87	Felony, Misdemeanor
Kaufman	\$0.00	NA	\$81,662.74	Felony, Misdemeanor
Kendall*	\$900.00	Felony	\$11,557.32	Felony
Kenedy	No data	No data	No data	No data
Kent	No data	No data	No data	No data
Kerr*	\$4,199.55	Felony	\$38,454.36	Felony
Kimble	No data	No data	No data	No data
King	No data	No data	No data	No data
Kinney	No data	No data	No data	No data
Kleberg	No data	No data	No data	No data
Knox	No data	No data	No data	No data
Lamar	\$1,200	Felony, Felony Appeal	NA	NA
Lamb	No data	No data	No data	No data
Lampasas	No data	No data	No data	No data
La Salle	No data	No data	No data	No data
Lavaca	\$0.00	NA	\$28,864.00	Juvenile, Felony, Misdemeanor, Felony Appeal
Lee	No data	No data	No data	No data
Leon	\$2,486.22	Felony	NA	NA
Liberty	\$2,700.00	Capital, Felony	NA	NA
Limestone	\$4,433.75	Felony	NA	NA

County	Reported investigator expenditures by TIDC in FY2021	Type of investigator expenditures (case types)	Reported investigator salary by TIDC in FY2021	Type of salaried investigators (case types)
Lipscomb	No data	No data	No data	No data
Live Oak*	NA	NA	\$40,896.80	Felony, Misdemeanor
Llano	No data	No data	No data	No data
Loving	No data	No data	No data	No data
Lubbock	\$39,556.11	Felony, Misdemeanor	NA	NA
Lynn	No data	No data	No data	No data
McCulloch	\$1,852.88	Felony	NA	NA
McLennan	\$155,136.60	Capital, Felony, Misdemeanor	NA	NA
McMullen*	NA	NA	\$6,560.74	Felony, Misdemeanor
Madison	No data	No data	No data	No data
Marion	No data	No data	No data	No data
Martin	No data	No data	No data	No data
Mason	No data	No data	No data	No data
Matagorda	No data	No data	No data	No data
Maverick	No data	No data	No data	No data
Medina*	NA	NA	\$20,172.78	Felony
Menard	No data	No data	No data	No data
Midland	\$14,405.00	Felony	NA	NA
Milam	\$9,519.62	Felony, Misdemeanor	NA	NA
Mills	No data	No data	No data	No data
Mitchell	No data	No data	No data	No data
Montague	No data	No data	No data	No data
Montgomery	\$204,815.41	Felony, Misdemeanor	NA	NA
Moore	No data	No data	No data	No data
Morris	No data	No data	No data	No data
Motley	No data	No data	No data	No data
Nacogdoches	\$7,569.37	Juvenile, Felony, Misdemeanor	NA	NA
Navarro	\$9,301.93	Felony	NA	NA
Newton	No data	No data	No data	No data
Nolan	\$7,363.00	Felony	NA	NA
Nueces	\$13,429.50	Capital, Felony	NA	NA
Ochiltree	No data	No data	No data	No data
Oldham	No data	No data	No data	No data

County	Reported investigator expenditures by TIDC in FY2021	Type of investigator expenditures (case types)	Reported investigator salary by TIDC in FY2021	Type of salaried investigators (case types)
Orange	No data	No data	No data	No data
Palo Pinto	No data	No data	No data	No data
Panola	\$19,308.50	Capital, Felony	NA	NA
Parker	\$8,150.70	Felony	NA	NA
Parmer	No data	No data	No data	No data
Pecos	\$6,354.00	Felony	NA	NA
Polk	\$10,984.60	Felony	NA	NA
Potter	No data	No data	No data	No data
Presidio*	NA	NA	\$4,433.51	Felony
Rains	No data	No data	No data	No data
Randall	\$3,670.00	Felony	NA	NA
Reagan	No data	No data	No data	No data
Real	No data	No data	No data	No data
Red River	No data	No data	No data	No data
Reeves	No data	No data	No data	No data
Refugio*	NA	NA	\$68,497.78	Felony, Misdemeanor
Roberts	No data	No data	No data	No data
Robertson	No data	No data	No data	No data
Rockwall	\$10,478.56	Juvenile, Felony, Misdemeanor	NA	NA
Runnels	No data	No data	No data	No data
Rusk	No data	No data	No data	No data
Sabine	No data	No data	No data	No data
San Augustine	No data	No data	No data	No data
San Jacinto	No data	No data	No data	No data
San Patricio	\$1,982.50	Capital	NA	NA
San Saba	\$1,980.60	Felony	NA	NA
Schleicher	No data	No data	No data	No data
Scurry	No data	No data	No data	No data
Shackelford	No data	No data	No data	No data
Shelby	No data	No data	No data	No data
Sherman	No data	No data	No data	No data
Smith	\$371,008.57	Capital, Felony	NA	NA

County	Reported investigator expenditures by TIDC in FY2021	Type of investigator expenditures (case types)	Reported investigator salary by TIDC in FY2021	Type of salaried investigators (case types)
Somervell	No data	No data	No data	No data
Starr*	\$0.00	NA	\$96,325.34	Juvenile, Felony, Misdemeanor
Stephens	No data	No data	No data	No data
Sterling	No data	No data	No data	No data
Stonewall	No data	No data	No data	No data
Sutton	No data	No data	No data	No data
Swisher	No data	No data	No data	No data
Tarrant	\$338,327.10	Juvenile, Capital, Felony, Misdemeanor	NA	NA
Taylor	\$18,683.50	Felony	NA	NA
Terrell	No data	No data	No data	No data
Terry	No data	No data	No data	No data
Throckmorton	No data	No data	No data	No data
Titus	\$3,301.56	Juvenile, Felony	NA	NA
Tom Green	\$166,588.28	Capital, Felony, Misdemeanor, Felony Appeal	NA	NA
Travis	\$121,429.92	Capital, Felony, Misdemeanor	\$234,685.91	Juvenile, Felony, Misdemeanor
Trinity	No data	No data	No data	No data
Tyler	No data	No data	No data	No data
Upshur	\$19,421.06	Juvenile, Capital, Felony	NA	NA
Upton	No data	No data	No data	No data
Uvalde	No data	No data	No data	No data
Val Verde	No data	No data	No data	No data
Van Zandt	\$3,887.50	Felony	NA	NA
Victoria	\$15,298.07	Capital, Felony, Misdemeanor	NA	NA
Walker	\$210.00	Misdemeanor	NA	NA
Waller	\$21,835.29	Juvenile, Felony	NA	NA
Ward	No data	No data	No data	No data
Washington	\$13,775.10	Felony	NA	NA
Webb	\$5,000.00	Capital	\$286,258.49	Juvenile, Felony, Misdemeanor

County	Reported investigator expenditures by TIDC in FY2021	Type of investigator expenditures (case types)	Reported investigator salary by TIDC in FY2021	Type of salaried investigators (case types)
Wharton	\$12,867.50	Felony	NA	NA
Wheeler	No data	No data	No data	No data
Wichita	\$41,478.10	Felony, Misdemeanor	NA	NA
Willbarger	\$2,480.00	Felony	NA	NA
Willacy*	NA	NA	\$10,060.27	Felony, Misdemeanor
Williamson	\$42,303.06	Capital, Felony, Felony Appeal	NA	NA
Wilson*	NA	NA	\$67,202.01	Felony, Misdemeanor
Winkler	No data	No data	No data	No data
Wise	\$1,990.00	Juvenile, Felony	NA	NA
Wood	No data	No data	No data	No data
Yoakum	No data	No data	No data	No data
Young	No data	No data	No data	No data
Zapata	No data	No data	No data	No data
Zavala	No data	No data	No data	No data

*Indicates a regional defender program. Amount reported is for the county listed.

Note: NA means there is not data available for that column, but there was provided data in another column. No data means no data was reported.

APPENDIX 2. National Standards: Duty to Investigate and Engage Investigators

American Bar Association (ABA). (2017). *Criminal Justice Standards of the Defense Function: Standard 4-4.1 Duty to Investigate and Engage Investigators*

- (a) Defense counsel has a duty to investigate in all cases, and to determine whether there is a sufficient factual basis for criminal charges.
- (b) The duty to investigate is not terminated by factors such as the apparent force of the prosecution's evidence, a client's alleged admissions to others of facts suggesting guilt, a client's expressed desire to plead guilty or that there should be no investigation, or statements to defense counsel supporting guilt.
- (c) Defense counsel's investigative efforts should commence promptly and should explore appropriate avenues that reasonably might lead to information relevant to the merits of the matter, consequences of the criminal proceedings, and potential dispositions and penalties. Although investigation will vary depending on the circumstances, it should always be shaped by what is in the client's best interests, after consultation with the client. Defense counsel's investigation of the merits of the criminal charges should include efforts to secure relevant information in the possession of the prosecution, law enforcement authorities, and others, as well as independent investigation. Counsel's investigation should also include evaluation of the prosecution's evidence (including possible re-testing or re-evaluation of physical, forensic, and expert evidence) and consideration of inconsistencies, potential avenues of impeachment of prosecution witnesses, and other possible suspects and alternative theories that the evidence may raise.
- (d) Defense counsel should determine whether the client's interests would be served by engaging fact investigators, forensic, accounting, or other experts, or other professional witnesses such as sentencing specialists or social workers, and if so, consider, in consultation with the client, whether to engage them. Counsel should regularly re-evaluate the need for such services throughout the representation.
- (e) If the client lacks sufficient resources to pay for necessary investigation, counsel should seek resources from the court, the government, or donors. Application to the court should be made ex parte if appropriate to protect the client's confidentiality. Publicly funded defense offices should advocate for resources sufficient to fund such investigative expert services on a regular basis. If adequate investigative funding is not provided, counsel may advise the court that the lack of resources for investigation may render legal representation ineffective.

APPENDIX 3. Advisory Group and TIDC Staff Members

Texas Team

- Mark Atkinson, CEO, Texas Center for the Judiciary
- Charles Chatman, Exoneree
- Kelli Childress, Chief Public Defender, El Paso PDO
- Rachel Ethridge, Attorney & Mitigation Specialist, Regional PDO for Capital Cases
- Nate Fennell, Attorney and Equal Justice Works Fellow, Texas Fair Defense Project
- Genesis Draper, Judge, Harris County Criminal Court at Law No. 12
- Michelle Moore, Chief PD, Burnet County PDO
- Rick Wardroup, Curriculum Director/Staff Attorney, TCDLA
- Eldon Whitworth, Fact Investigator, Lubbock Private Defenders Office
- David Williams, Investigator, Harris County PDO
- Phil Wischkaemper, Chief Defender, Lubbock Private Defenders Office
- Ben Wolff, Director, Office of Capital and Forensic Writs

Texas Indigent Defense Commission Staff:

- Geoff Burkhart, Executive Director
- Kathleen Casey Gamez, Senior Policy Analyst
- Scott Ehlers, Director, Public Defense Improvement
- Joel Lieurance, Senior Policy Analyst

JFA Team

- Venita Embry, RTI
- Bonnie Hoffman, NACDL
- Beth Hustedt, RTI
- Monica Milton, NACDL
- Nikki Parisi, APA
- Suzanne Strong, RTI
- Chris Wu, NCSC

Working Group members:

- Kathleen Casey-Gamez
- Kelli Childress
- Scott Ehlers
- Rachel Ethridge
- Joel Lieurance
- Eldon Whitworth
- Ben Wolff

APPENDIX 4. TIDC Investigators Survey

1. Do you currently provide investigative services for the defense in criminal cases?
2. In what county do you primarily provide criminal defense investigation services?
3. In which other counties, if any, do you provide criminal defense investigation services?
4. How many years have you served as a defense investigator?
5. Before serving as an investigator for the defense in criminal cases, did you ever serve as a law enforcement officer?
6. How long did you work as a law enforcement officer?
7. Which types of agencies did you work for?
8. Where was your law enforcement experience?
9. In thinking specifically about your time as a law enforcement officers, what specialized training/skills did you learn while in that role?
10. Aside from any training you may or may not have received as a law enforcement officer, do you have other specialized training or skills in any of the following areas?
11. What is your highest level of education?
12. Are you currently licensed as a private investigator?
13. Have you previously been licensed as a private investigator?
14. Are you currently licensed as a private process server?
15. Have you previously been licensed as a private process server?
16. Are you currently a notary public?
17. Have you previously been a notary public?
18. Do you hold any other professional licenses or certifications?
19. Are you currently employed by a public defender's office?
20. Are you currently accepting cases through a contract or employer with a lawyer or law firm providing public defense services (including managed assigned counsel programs)?
21. Do you currently accept court-appointed cases on an individual basis?
22. Do you currently provide investigative services on private, retained cases?
23. Please share the names of any professional organizations you belong to.
24. Thinking about the work you have done as a defense investigator for criminal cases over the past 6 months, how frequently have you engaged in the following activities? Conduct research, examine and document cellphone content; examine and extract cellphone and other digital data; locate and interview witnesses; locate and preserve video and other

surveillance footage; locate and preserve other physical or documentary evidence; locate and review police officer records; photograph potential evidence and event locations; review case-specific body worn camera or other video footage; visit event/crime scene; other

25. Client activities: conduct initial client meeting in custody; conduct initial client meeting not in custody; conduct follow up meetings with client in custody; conduct follow up meetings with clients not in custody; conduct research; confirm employment, housing; meet with client's family and supporters; participant in attorney meetings with client; seek community resources for client; other
26. Other case related activities: Conduct research on potential jurors; create diagrams and trial exhibits; identify and collect case and/or client records and documents; participate in case strategy and planning meetings; serve subpoenas; testify in court; write reports; other case related activities
27. Other tasks and activities that may not be specific to a particular case: complete financial forms or eligibility for counsel screenings; draft subpoenas and other requests for records; locate and obtain court records; review body worn camera and other video footage; review discovery materials; serve witness subpoenas; transport witnesses and client to court; other administrative tasks and activities
28. In thinking about the various tasks an investigator may be asked to do, which tasks do you feel you have the most expertise or skill in completing (select up to 3)?
29. In thinking about the various tasks an investigator may be asked to do, are there any in which you feel your skills are being under-utilized (check all that apply)?
30. In thinking about your role as a defense investigator, please describe any areas you would like to develop more expertise or skill in?
31. In thinking about your work as a defense investigator, rate your level of agreement with the following statements [feeling valued, respected, and listened to]
32. What are the most challenging and frustrating parts of your job?
33. What are the most rewarding or enjoyable parts of your job?
34. Can you provide an example of how your investigative services benefitted or affected the outcomes of a recent criminal case?
35. In thinking about your profession and work in Texas, please rate your level of agreement with the following statements: there are an adequate number of criminal defense investigators in my area; the courts in my area pay a fair rate for court-appointed criminal defense investigation services; criminal defense attorneys in my area should use investigators more in court-appointed cases; there is adequate training for criminal defense investigators in Texas; there is adequate mentorship for criminal defense investigators in Texas; there are adequate legal protections for investigators in Texas
36. What is your age?

37. To which gender do you most identify?
38. I describe my race and ethnicity as
39. I am comfortable communicating in the following languages

APPENDIX 5. TIDC Defender Survey

1. Does your current practice include criminal defense representation in state court in Texas?
2. How many years have you practiced criminal defense?
3. Which of the following best describes your current state criminal defense practice?
4. In thinking about your court appointed/public defense representation in state court, which best describes your practice?
5. How many attorneys are in your office or firm?
6. In addition to the lawyers, which of the following support persons work for your office or firm?
7. In thinking about your current state court criminal defense practice, in what county do you primarily provide representation?
8. In which other counties, if any, do you provide state court criminal defense representation (list up to 5)?
9. The region in which you primarily practice can best be described as: rural, suburban, metropolitan
10. In the past 5 years, have you used the services of a defense investigator in any of your juvenile appointed cases?
11. In the past 5 years, in what percentage of your juvenile appointed cases have you used the services of a defense investigator?
12. In the past 5 years, have you used the services of a defense investigator in any of your juvenile retained cases?
13. In the past 5 years in what percentage of your juvenile retained cases have you used the services of a defense investigator?
14. In the past 5 years have you used the services of a defense investigator in any of your misdemeanor appointed cases?
15. In the past 5 years in what percentage of your misdemeanor appointed cases have you used the services of a defense investigator?
16. In the past 5 years have you used the services of a defense investigator in any of your misdemeanor retained cases?
17. In the past 5 years in what percentage of your misdemeanor retained cases have you used the services of a defense investigator?
18. In the past 5 years have you used the services of a defense investigator in any of your felony appointed cases?

19. In the past 5 years in what percentage of your serious appointed felony cases have you used the services of a defense investigator?
20. In the past 5 years in what percentage of your other felony appointed cases have you used the services of a defense investigator?
21. In the past 5 years have you used the services of a defense investigator in any of your felony retained cases?
22. In the past 5 years in what percentage of your serious felony retained cases have you used the services of a defense retained cases have you used the services of a defense investigator?
23. In the past 5 years in what percentage of your other felony retained cases have you used the services of a defense investigator?
24. When obtaining an investigator in a state appointed case what process do you use (how request)?
25. Was your motion to the court/judge for an investigator heard ex parte?
26. In thinking about your state court appointed cases over the past 5 years, how often has your request for investigator services in the following case types been denied?
27. In thinking about your state court appointed cases over the past 5 years, how often has your funding or scope request for an investigator been reduced by the court/judge from your initial request?
28. When thinking about whether to seek an investigator for a case, what are the most common factors you consider (choose up to 5)?
29. How frequently in the past 5 years have you requested a defense investigator for the following case types?
30. Do you agree with the following statement? [enough investigator, courts pay fair, good training for lawyers on how to use investigators, do own investigations, reasons for not requesting investigator, sentiments on using investigator]
31. I assign my investigators to do the following case-related tasks
32. I assign my investigators to do the following client-related activities
33. I assign my investigators to do the following trial-related activities
34. In thinking about your work with defense investigators, rate your level of agreement with the following statements [how work with investigators]
35. Can you provide an example of how investigative services benefitted or affected the outcome of a recent criminal case?
- 36. Can you provide an example of how investigative services were not useful in a criminal case?**

APPENDIX 6. Judge/Court Qualitative Interviews

Section 1:

1. Are judges assigned to criminal cases?
 - a. At what time in the criminal case (PROBE: At the initial hearing, at the point the defendant accepts a plea or proceeds to trial)?
2. Which judge makes the decisions about defense requests for investigators?
 - a. (PROBE): Is it the judge assigned to the case, or does it rotate among judges? (IF ROTATES, PROBE: depending on the day of the week, type of case, random assignment)?
3. How often do defense attorneys in your court make requests for using or funding a defense investigator? (OFFER THE FOLLOWING, IF NEEDED): Frequently, not often, never // estimates per month or year
 - a. [IF JUDGE ANSWERS “NEVER, CAN’T REMEMBER, ETC”]: Why do you think appointed attorneys are not requesting investigators?
 - b. (PROBE): Are there certain types of cases or charges that more frequently have requests for investigator requests?
 - c. (PROBE): Are there certain types of evidence that are associated with investigator requests, such as body cameras, DNA, or other forensic evidence?
 - d. (PROBE): Are there ever any case types where you would expect a defense request for an investigator, and one is not made?
4. When was the last time an investigator was requested in [COURT NAME] or in your court?
 - a. Without revealing any private information about the case, what details, if any, can you recall about the case? (Type of charge or whether it went to trial)?
5. How do defense counsel ask for investigators? (PROBE: is it verbally in court, over the phone, by written motion)?
 - a. Can (and does) the prosecutor participate in this process?
 - i. [IF YES] How are prosecutors involved?
 1. (PROBE IF NOT COVERED IN RESPONSE): Do prosecutors get a copy of any motion filed, including motions for investigators?
 2. Do prosecutors attend hearings if the court holds a hearing on the motion (or is the motion heard ex parte)?
 - ii. Can the prosecutor raise any objections to the defense's request?
6. What information does the defense have to provide when they make their request?
 - a. (PROBE IF NOT COVERED IN RESPONSE) Does the defense have to explain:

- i. Why an investigator is needed?
- ii. An estimate of the number of hours needed?
- iii. What they want the investigator to do? If so, how detailed do they need to be?
- iv. Who they want to hire?
- b. Does the amount of detail required in defense requests for investigators vary based on the complexity of the case? (PROBE EXAMPLE, IF REQUESTED: do you need only a brief explanation in serious cases where an investigator is likely to be used and a detailed one in less serious cases to explain why it's needed?)
- 7. When is a request typically made? (PROBE: early in the case; once the case is set for trial?)
- 8. What information do you consider when determining whether to grant or deny a request for investigator?
 - a. If a request is denied, what are some of the reasons they may be denied?
 - i. Can an attorney renew their request at a later time after it is denied?
 - b. If the request for defense investigator is granted, what happens next?
- 9. Are the requests for investigators tracked in any way (CMS, etc.)?
 - a. If so, how?
 - b. Is that data/information available to the public?
- 10. Is there anything else about the process of requesting an investigator that I didn't cover?

Section 2. Cost-related information

- 1. What is the process for paying an investigator?
 - a. (PROBE IF NOT COVERED IN RESPONSE) Does the attorneys submit the voucher? The investigator? Some other process?
 - b. Who reviews the voucher before its approved?
 - c. When is it submitted (PROBE: monthly; when the investigator is finished their work; when the case ends)?
- 2. Are there instances in which all or part of voucher would be denied?
 - a. If so, what are some of the reasons?
 - b. How frequently is there a denial or partial denial of a voucher?
- 3. Are the monies spent on investigation tracked? Where and how?
 - a. Do you track investigator expenditures for auditors? Do you report monies spent on investigations separately from monies spent for appointed attorneys? Why or why not?

Section 3: Investigator Requests

1. In your opinion, is the process for requesting investigators in indigent defense cases effective?
 - a. Are there any changes you would make to the process?
 - b. Are there ways it can be improved?
 - c. Are there strengths to the current process?
2. In your opinion, do you think that defense lawyers request (or use) the services of investigators enough? Why/Why not?
 - a. Do you see a difference in investigator use between court appointed cases and privately-retained cases? If so, describe how they are different?
3. Do you think there are any barriers that may be affecting whether defense lawyers are seeking investigators?
 - a. What are those barriers?
 - b. Do you have any suggestions on how to reduce/minimize them?
4. Are there enough investigators in [COUNTY NAME]?
 - a. IF NO -- Do you know where the closest investigator is located?

Section 4. General court information

County Court:

1. How often do you hear criminal cases?
2. What types of criminal cases do you typically see on your dockets? (types of offenses – traffic, drug, property).
3. Can you walk me through the process of how the court appoints an attorney for a defendant?

District Court:

1. How many judges hear criminal cases?
2. How often do you hear criminal cases?
3. What types of felony cases do you typically see on your dockets? (types of offense – drug, property, traffic, etc.)
4. Can you walk me through the process of how the court appoints the attorney?

APPENDIX 7. County Responses to Investigator and Defender Surveys

County	At least one investigator response	At least one defender response	No response
Total	129	199	42
Anderson	No	1	
Andrews	No	1	
Angelina	1	1	
Aransas	No	1	
Archer	No	1	
Armstrong	No	No	1
Atascosa	1	1	
Austin	No	1	
Bailey	No	1	
Bandera	1	1	
Bastrop	1	1	
Baylor	No	1	
Bee	1	1	
Bell	1	1	
Bexar	1	1	
Blanco	1	No	
Borden	No	1	
Bosque	1	1	
Bowie	1	1	
Brazoria	1	1	
Brazos	1	1	
Brewster	No	1	
Briscoe	No	No	1
Brooks	No	1	
Brown	1	1	
Burleson	1	1	
Burnet	1	1	
Caldwell	1	1	
Calhoun	1	1	
Callahan	1	1	
Cameron	1	1	

County	At least one investigator response	At least one defender response	No response
Camp	No	1	
Carson	No	1	
Cass	No	1	
Castro	No	No	1
Chambers	1	1	
Cherokee	1	1	
Childress	No	No	1
Clay	No	1	
Cochran	No	1	
Coke	No	No	1
Coleman	1	1	
Collin	1	1	
Collingsworth	No	No	1
Colorado	No	1	
Comal	1	1	
Comanche	No	1	
Concho	1	No	1
Cooke	1	1	
Coryell	1	1	
Cottle	No	No	1
Crane	No	1	
Crockett	No	1	
Crosby	No	1	
Culberson	No	1	
Dallam	No	1	
Dallas	1	1	
Dawson	No	1	
Deaf Smith	No	1	
Delta	No	No	1
Denton	1	1	
DeWitt	1	1	
Dickens	No	1	
Dimmit	No	No	
Donley	No	1	
Duval	No	No	1

County	At least one investigator response	At least one defender response	No response
Eastland	1	1	
Ector	1	1	
Edwards	No	1	
Ellas	No	1	
El Paso	1	1	
Erath	No	1	
Falls	1	1	
Fannin	1	1	
Fayette	No	1	
Fisher	No	1	
Floyd	No	1	
Foard	No	1	
Fort Bend	1	1	
Franklin	1	1	
Freestone	1	1	
Frio	1	1	
Gaines	No	1	
Galveston	1	1	
Garza	1	1	
Gillespie	1	1	
Glasscock	No		
Goliad	1	1	
Gonzales	No	1	
Gray	No	No	1
Grayson	1	1	
Gregg	1	1	
Grimes	1	1	
Guadalupe	1	1	
Hale	No	1	
Hall	No	No	1
Hamilton	No	No	1
Hansford	No	No	1
Hardeman	No	1	
Hardin	No	1	
Harris	1	1	

County	At least one investigator response	At least one defender response	No response
Harrison	1	No	
Hartley	No	1	
Haskell	No	No	1
Hays	1	1	
Hemphill	No	No	1
Henderson	1	1	
Hidalgo	1	1	
Hill	1	1	
Hockley	1	1	
Hood	No	1	
Hopkins	1	1	
Houston	No	1	
Howard	No	1	
Hudspeth	No	1	
Hunt	1	1	
Hutchinson	No	1	
Irion	No	No	1
Jack	No	1	
Jackson	1	1	
Jasper	1	1	
Jeff Davis	No	1	
Jefferson	1	1	
Jim Hogg	No	No	1
Jim Wells	No	1	
Johnson	No	1	
Jones	1	1	
Karnes	1	1	
Kaufman	1	1	
Kendall	1	1	
Kenedy	No	1	
Kent	No	No	1
Kerr	1	No	
Kimble	No	1	
King	No	No	1
Kinney	No	1	

County	At least one investigator response	At least one defender response	No response
Kleberg	No	1	
Knox	No	No	1
Lamar	1	1	
Lamb	1	1	
Lampasas	1	1	
La Salle	No	1	
Lavaca	No	1	
Lee	1	No	
Leon	No	1	
Liberty	1	1	
Limestone	No	1	
Lipscomb	No	No	1
Live Oak	1	1	
Llano	1	1	
Loving	No	No	1
Lubbock	1	1	
Lynn	1	1	
McCulloch	1	1	
McLennan	1	1	
McMullen	1	No	
Madison	1	1	
Marion	1	1	
Martin	No	1	
Mason	1	1	
Matagorda	No	1	
Maverick	No	No	1
Medina	1	1	
Menard	1	1	
Midland	1	1	
Milam	1	No	
Mills	No	1	
Mitchell	1	1	
Montague	1	1	
Montgomery	1	1	
Moore	No	1	

County	At least one investigator response	At least one defender response	No response
Morris	No	1	
Motley	No	No	1
Nacogdoches	1	1	
Navarro	No	1	
Newton	1	1	
Nolan	1	No	
Nueces	1	1	
Ochiltree	No	No	1
Oldham	No	1	
Orange	1	1	
Palo Pinto	No	1	
Panola	1	1	
Parker	1	1	
Parmer	No	No	1
Pecos	1	1	
Polk	1	1	
Potter	No	1	
Presidio	No	1	
Rains	1	1	
Randall	No	1	
Reagan	No	No	1
Real	No	No	1
Red River	1	1	
Reeves	1	1	
Refugio	1	1	
Roberts	No	No	1
Robertson	1	1	
Rockwall	1	1	
Runnels	1	No	
Rusk	1	1	
Sabine	1	No	
San Augustine	No	No	1
San Jacinto	1	1	
San Patricio	No	1	
San Saba	No	No	1

County	At least one investigator response	At least one defender response	No response
Schleicher	No	1	
Scurry	No	No	1
Shackelford	1	No	
s	1	No	
Sherman	No	1	
Smith	1	1	
Somervell	1	1	
Starr	1	1	
Stephens	No	1	
Sterling	No	1	
Stonewall	No	No	1
Sutton	No	1	
Swisher	No	1	
Tarrant	1	1	
Taylor	1	1	
Terrell	No	No	1
Terry	1	1	
Throckmorton	No	No	1
Titus	1	1	
Tom Green	1	1	
Travis	1	1	
Trinity	No	No	1
Tyler	No	1	
Upshur	1	1	
Upton	No	No	1
Uvalde	No	No	1
Val Verde	No	1	
Van Zandt	No	1	
Victoria	No	1	
Walker	1	1	
Waller	1	1	
Ward	1	1	
Washington	1	1	
Webb	1	1	
Wharton	1	1	

County	At least one investigator response	At least one defender response	No response
Wheeler	No	No	1
Wichita	1	1	
Willbarger	No	1	
Willacy	1	1	
Williamson	1	1	
Wilson	1	1	
Winkler	No	1	
Wise	1	1	
Wood	1	1	
Yoakum	No	No	1
Young	No	1	
Zapata	No	1	
Zavala	No	No	1