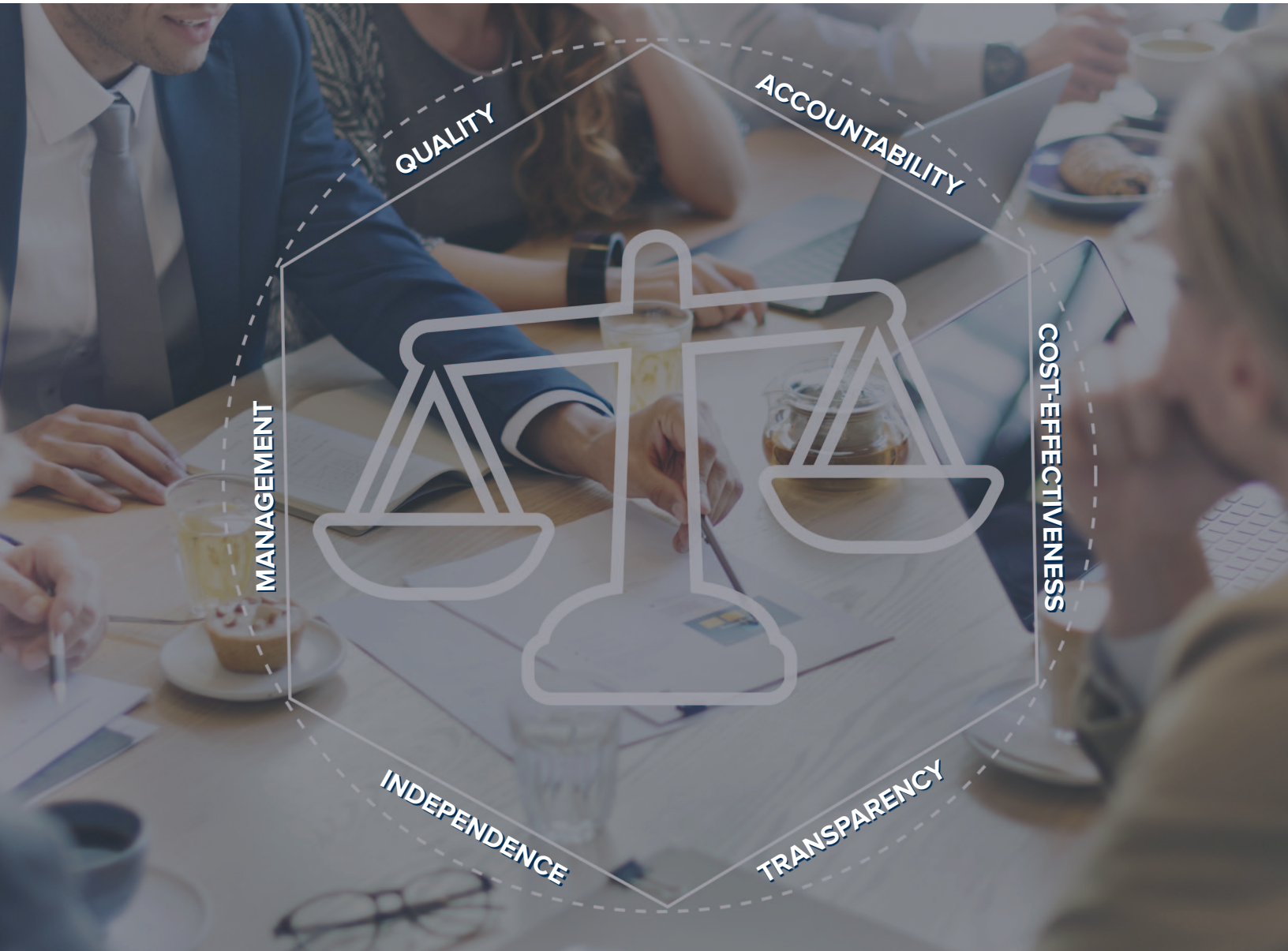


Managed Assigned Counsel Programs in Operation

A Supplement to the Primer on Managed Assigned Counsel Programs





TEXAS INDIGENT DEFENSE COMMISSION

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Mission Statement

The Texas Indigent Defense Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

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INTRODUCTION

Managed Assigned Counsel Programs in Operation supplements TIDC's *Primer on Managed Assigned Counsel Programs*, published in September 2017. This Supplement was designed for judges, criminal justice planners, and county officials who have read the *Primer* and are considering establishing a managed assigned counsel (MAC) program. It examines the operations of all MAC programs in Texas, as well as out-of-state programs in Massachusetts and San Mateo, California. The operational details provided in this *Supplement* give MAC planners some ideas of "what's possible" under the MAC model. It also provides useful information for developing a program plan, determining staffing levels, and establishing a budget based on a county's specific jurisdictional needs and capacity.

While each MAC program is unique in its operations and client services, they have many common features. All MACs serve as independent organizations that oversee private attorneys appointed to represent indigent criminal defendants, as well as ancillary services related to client representation. MACs include nonprofit organizations, governmental entities, and bar associations. The level of independence, case types, and ancillary services differs across programs.

All MACs have centralized staff who manage and administer the organization's operations. In addition to a director or chief, typically there will be other supervisors who advise attorneys on case-related matters, provide trainings, and monitor attorney performance. There also may be administrative staff who provide support services to attorneys, appoint attorneys to cases, and process payments for legal services. Other staff in the central office may include investigators, social workers, case workers, mitigation specialists, and legal specialists like immigration attorneys.

All MACs are involved in determining which attorneys can be appointed to represent indigent defendants. In Texas, the director or a review committee must approve the list of attorneys who can receive court appointments. MACs have standards in place to ensure that an attorney's legal experience matches the type of case to which the attorney is appointed. All MACs also have some type of disciplinary process for attorneys who provide inadequate representation. Supervisors will oftentimes intervene in an attempt to improve representation. Some programs have a separate disciplinary committee to remove attorneys from the appointment list or "demote" them to a lower-level list.

MACs ensure quality representation in a variety of ways. Managers appoint investigators, mitigation specialists, and experts to assist attorneys with their cases. MAC programs provide social worker or caseworker assistance, particularly for clients with mental illness. They can help develop a treatment plan or link clients with services, which can help ensure earlier release, improve case outcomes, and reduce recidivism. MACs organize trainings for their attorneys and investigators, and provide mentors for newer attorneys. And MAC programs enforce caseload limits to ensure that attorneys have adequate time to devote to all of their clients.

Finally, MAC programs process and approve requests for payment by attorneys, investigators, and experts. Some MAC programs make payments directly out of contract or appropriation funds, while others approve payments that are later paid by the county.

As always, anyone who is interested in establishing a MAC in their county should contact TIDC for additional assistance. We are here to help.

Contact:

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CHAPTER 1: MANAGED ASSIGNED COUNSEL PROGRAMS IN TEXAS

There were three managed assigned counsel (MAC) programs operating in Texas in 2017. The Lubbock Private Defender Office (LPDO) was the first MAC established in Texas. Travis County’s Capital Area Private Defender Service (CAPDS), like the LPDO, is a “full service” MAC that covers the full range of felony and misdemeanor cases. The third MAC in Texas is Collin County’s Mental Health Managed Counsel Program (MHMC), which specializes in representing defendants with a mental illness or intellectual disability.

Lubbock County—Lubbock Private Defender Office¹



LPDO staff (L-R): Calvin Vitela, Mental Health Forensic Caseworker; Jane Lindsey, Mental Health Forensic Caseworker; Cynthia Chavez, Mental Health Forensic Caseworker; Susan Pinson, Administrative Assistant; Philip Wischkaemper, Director of Professional Development; Lori Martinez, Office Manager; Jaime Villarta, Mental Health Program Manager; Tina Patrick, Mental Health Forensic Caseworker; and Jim Bethke, Chief Defender.

Lubbock County blazed a trail for Texas MACs, establishing an office before the concept was recognized in state law.

In 2007, the county struggled with mentally ill and other “special needs” defendants languishing in the county jail, resulting in ever-increasing costs and poor case outcomes. Multiple Lubbock County officials recalled a mentally ill female defendant who was in the jail pretrial for up to six or seven years due to difficulties in restoring her to competency and lack of effective coordination between the courts, jail, state hospital, defense counsel, and the district attorney’s office. Data on these special needs defendants was also lacking.

In an attempt to get mentally ill defendants restored to competency and out of jail sooner, Lubbock court officials and commissioners explored establishing a managed assigned counsel program specializing in representing special needs defendants. In late 2007, County Commissioner Bill McCay; Director of Court Administration David Slayton (now Administrative Director of the state Office of Court Administration); the district attorney; judges; local defense lawyers; and TIDC Executive Director Jim Bethke, took a trip to San Mateo, California to observe the Private Defender Program (PDP), a managed assigned counsel system operated by the San Mateo Bar Association. The goal was to determine if establishing such a program in Lubbock would help reduce the number of mentally ill defendants in jail and provide better representation and treatment for mentally ill defendants, while also helping to manage indigent defense costs.

Many stakeholders were convinced that the idea was worth trying. The judiciary, defense bar, and county commissioners came together in 2009 and the county applied for—and received—a TIDC grant to establish the Lubbock Special Needs Defender’s Office (LSNDO).

After the passage of H.B. 1754 in 2011, which, among other things, codified managed assigned counsel program operations into state law, Lubbock County decided to expand the mandate of its MAC to cover all misdemeanors

and felonies except capital cases. That same year, it received a TIDC multi-year discretionary grant to expand the scope of the LSND by establishing the Lubbock Private Defender Office (LPDO). In January 2012, the LPDO began taking appointments.

Organization of the LPDO²

Independence, Management, and Staffing

The LPDO is an independent nonprofit corporation that contracts with Lubbock County to appoint counsel to eligible indigent defendants, oversee appointed counsel, provide contracted services to assist counsel, and pay counsel for legal services. The predecessor organization, LSND, operated in the same fashion.

A Managed Assigned Counsel Oversight Committee provides “oversight and direction” to the LPDO.³ The committee’s purpose is “to ensure the objective evaluation” of the LPDO and “to provide necessary recommendations to the County” regarding the contract, and to “guarantee[] that financially eligible individuals accused of crimes in Lubbock County will receive the most appropriate, timely, and qualified representation.”⁴

The managed counsel program in Lubbock started with an executive director and three caseworkers when the office only oversaw representation of mentally ill and intellectually disabled defendants as the Lubbock Special Needs Defender’s Office. According to LPDO Executive Director Jim Bethke, as of January 2018, the LPDO had eight people on staff, with two openings to be filled:

- Chief Defender/Executive Director – Jim Bethke
- Professional Development Director – Phil Wischkaemper
- Office Manager – Lori Martinez
- Mental Health Program Manager – Jaime Villarta
- Mental Health Forensic Caseworker – Tina Patrick
- Mental Health Forensic Caseworker – Jane Lindsey
- Mental Health Forensic Caseworker – Calvin Vitela
- Mental Health Forensic Caseworker – Cynthia Chavez
- Assignment Coordinator – open
- Staff Accountant – open

LPDO Budget

For FY2016-2017, the contract between the county and LPDO called for \$3.8 million to be spent on LPDO central office operations, personnel, and all costs related to representing indigent misdemeanor and non-death penalty felony defendants, including investigators, experts, mental health caseworkers, and forensic services.⁵ The contract is scheduled to be paid over four payments, with a larger initial payment of \$1.52 million.⁶

LPDO Attorneys

The LPDO manages approximately 80 attorneys on its appointment list as of this report. Attorneys are primarily solo practitioners with experience levels ranging from recent licensees who handle low-level misdemeanor appointments to attorneys with decades of experience who handle every level of case except for capital cases where the death penalty is sought.

When the LPDO was first established, all attorneys previously on the appointment list had to reapply to be on a panel. The Chief Defender sought judicial input regarding who should be on the appointment list and who should be removed. Five or six attorneys were cut from the list; all appealed and were put on the misdemeanor list.

Each October 1, attorneys who want to receive court appointments through LPDO, including attorneys currently on the appointment list, must apply to be placed on a panel. The basic requirements for all attorneys include being in good standing with the State Bar; maintaining an office in Lubbock County; completing 12 hours of continuing legal education (CLE) in criminal law in the previous year; and being a member of the Lubbock Criminal Defense Lawyers Association. Beyond the basic requirements, attorneys must have increasingly higher levels of experience in order to be qualified to handle more serious cases. Following are the qualifications for the various offense levels:

Figure 1. LPDO Trial Attorney Panel Qualifications

On a case by case basis, when necessary and proper, the Professional Development Director shall have the authority with approval of the Executive Director, to elevate or lower an attorney's eligibility for assignment to a different grade of offense from that which the attorney is presently qualified, provided adequate procedural and/or substantive safeguards are put in place to ensure highly effective assistance of counsel for the accused.

Misdemeanors

Category 1

Includes every case EXCEPT DWI 2nd and Assault with Domestic Violence

As a condition to inclusion in the Attorney Panel, each prospective attorney must meet the following criteria:

1. The attorney must be licensed to practice law by the State Bar of Texas and be in good standing with that entity.
2. Maintain the attorney's primary office in Lubbock County.
3. Complete 12 hours of Continuing Legal Education in criminal defense annually.
4. Maintain membership in the Lubbock Criminal Defense Lawyers' Association.

Category 2

Includes all Category 1 cases plus DWI 2nd and Assault with Domestic Violence cases

In addition to 1-4 above:

1. Must be licensed at least one year.
2. Must sit second chair on four trials (any level).
3. Preference will be given to those who have attended a Trial College.

Felonies

State Jail Felonies

In addition to being qualified for all misdemeanors, the applicant must sit second chair on three Felony trials. However, if applicant's Misdemeanor Category 2 qualifying trials were felonies, those trials may count toward State Jail Felony level qualification.

Third Degree

In addition to State Jail Felony qualification criteria, the applicant must sit first chair on at least one Felony trial.

Second and First Degree

In addition to Third Degree felony qualification criteria, the applicant must sit first chair in two additional Felony trials of third degree or higher

3G Felonies: For any offense including an allegation contained in Texas Code of Criminal Procedure Art. 42.12 § 3g (recodified as Art. 42A.054)

In addition to being Second and First Degree qualified, the applicant must sit second chair in two 3g (42A.054) trials.

The Chief Defender reviews applications and qualifications to confirm that attorneys meet the minimum requirements and assigns attorneys to the various panels.

The Appeals Panel

The LPDO has established the Appeals Panel to handle attorneys' appeals of the Chief's decision to remove them from the appointment list. The panel comprises five experienced attorneys who either do not take appointments through LPDO or only take "special appointments" to assist on complex cases. If an attorney does not agree with the Chief's decision to remove him from the appointment list, he can appeal the decision to the Appeals Panel, which is empowered to reinstate the attorney. When attorneys are placed back on the appointment list they may be restricted to taking less serious cases, required to take additional training, or required to seek counseling to address mental health or substance abuse issues.

The Appointment Process⁷

If a defendant requests the appointment of counsel, he is screened for indigency by a judge or Lubbock court personnel. If the defendant is determined to qualify for appointed counsel, LPDO is informed by email that counsel should be appointed.

LPDO staff screen defendants to ensure they do not already have appointed counsel or have other charges that might be filed in the future. If the defendant has appointed counsel on another case, the same lawyer will be appointed on the new case, unless the charge exceeds the qualifications for the lawyer already appointed. If the charges are too high, the previous lawyer may be removed from the case, and a new lawyer appointed to handle all of the defendant's charges.

A new case is started by entering basic case information into the LPDO's case management system, defenderData™, and generating an assignment letter from a template document. The assignment letter is sent through defenderData™ to the appointed attorney, court administration, jail, and bonding company. In mental health cases, the caseworker also receives an email. Probation revocations will also go to the probation department. Notice documentation is then saved in the case file in defenderData™.

Case Management and Processing⁸

LPDO uses defenderData™ for case management. For mental health wheel cases, a more robust form of defenderData™ is used, in which caseworkers add documents, like medical records and signed consent forms for attorneys to access. For non-mental health cases, defenderData™ is used only for billing, and no documents can be stored as part of those cases. Attorneys enter tasks into defenderData™ to document work on cases and claim hourly pay when case time exceeds a minimum level.

Attorney Pay Schedule and Billing Procedures

Attorneys document the time they spend on appointed cases in defenderData™. If a lawyer spends 4.2 hours or less on a misdemeanor or 5.8 hours or less on a felony, counsel is paid a base flat fee of \$200 for a misdemeanor and \$350 for a felony. Other tasks are paid at particular flat rates as well. Following is the fee schedule for LPDO attorneys:

Figure 2. LPDO Attorney Fee Schedule⁹

Felonies		Misdemeanors	
2nd Chair Felony	\$75/hr	2nd Chair Misd.	\$65/hr
Appeals	\$75/hr	Appeals	\$65/hr
ARP Hearing	\$225	ARP Hearing	\$195
Base Flat Fee	\$350	Base Flat Fee	\$200
Bond Reduction	\$150	Bond Reduction	\$130
Evidentiary Hearing	\$225	Evidentiary Hearing	\$195
Open Plea	\$300	Open Plea	\$260
Pre-Trial Hearing	\$150	Pre-Trial Hearing	\$130
1st Day Trial	\$900	1st Day Trial	\$600
Add'l Day Trial	\$780	Add'l Day Trial	\$520
		Mental Health Panel Case \$100/hr.	
Min 5.8 hrs. for Special		Min. 4.2 hrs. for Special	
“Special” Cases (Client with More than One Charge; Case Exceeds Minimum Time)			
\$75/hr		\$65/hr	

Where a defendant has only one case, the attorney will be paid under the flat fee schedule, unless she exceeds the minimum number of hours for a case. For example, if a defendant had a single felony charge where an attorney conducted a bond reduction hearing and an evidentiary hearing before the client plead guilty, the attorney would bill the base flat fee of \$350 for the plea, plus \$150 for the bond reduction hearing, and \$225 for the evidentiary hearing, for a total of \$725, assuming the attorney spent 5.8 hours or less on the case.

If a defendant has multiple charges, or if an attorney goes beyond the minimum number of hours for a single case, the case will be considered a “Special” case, and the attorney will bill hourly. Attorneys are paid based on an hourly rate of \$65 for a misdemeanor and \$75 for a felony.

For hourly billing, the LPDO has established maximum times allowed to be billed for particular tasks in order to standardize billing practices, pay attorneys equally, and impose cost controls:

Figure 3. LPDO Hourly Billing Schedule

Task	Time Allowed to Bill
Open File	0.10
Appearance of Counsel (APOC)	0.10
Close File and Prepare Voucher	0.20
Plea Negotiation Conference (PNC)	0.50
Prepare and File Pretrial Motions-Misdemeanor	0.50
Prepare and File Pretrial Motions- Felony	1.00
Drafting Motion to Suppress (Not Including Research)	1.00
Motion for Competency	0.30
39.14 (Discovery) Request (Includes Delivery)	0.10
Initial Letter to Client (or Informing Client of PNC, GP, etc.)	0.10
Video, Audio, Pictures (VAP) Request	0.20
Roundtrip to Jail	0.50
Read and Respond to Email (from DA)	0.20
Guilty Plea	2.00 Max.

In March 2017, LPDO implemented voucher payment deadlines. This policy was instituted because some attorneys waited many months—or, in some cases, years—before submitting a voucher for payment. The new policy states, “Vouchers must be submitted within 90 days or are subject to non-payment. However, upon a showing of good cause to either the Executive Director and with advice and consent of the LPDO Board of Directors as to why the voucher could not be timely submitted by the Attorney, the Executive Director may approve for payment a late voucher.”¹⁰

Ensuring Quality

A. Investigations

The LPDO’s philosophy and policy on the use of investigators is succinctly laid out in its *Written Plan of Operation*:

The Lubbock Private Defenders’ Office understands that in a wide variety of cases, the help of an investigator is crucial to the high quality representation to which our clients are entitled. Mitigation specialists have also been added to the list of available experts. The LPDO’s commitment to that principle is nowhere better evidenced than in its policy with respect to the assignment of investigators: investigators are available for all cases upon request. All requests for an investigator are granted with reasonable limits set on costs.¹¹

If an appointed attorney needs an investigator, mitigation specialist, or expert witness, they will provide the Chief Defender with basic facts that substantiate the need, and estimate the cost. The Chief then reviews the request, approves or denies it, and sets an expense limit. The expert or investigator will submit an itemized invoice to the attorney for approval once work has been completed, and then submit it to the Chief Defender for payment.¹²

If the Chief denies a request for investigator or expert funds, the attorney can appeal that decision to the court. If the judge determines that the expense should be approved, the Chief must approve the funds.

When a case involves extraordinary investigator or expert expenses, the Chief may authorize funds to be transferred to an attorney’s trust account and require an itemized accounting of the expenditure along with a refund to the LPDO of any unexpended funds.¹³

B. Holistic Defense¹⁴

The LPDO initially focused on representing defendants with a mental illness or intellectual disability (clients with “special needs”). After the organization began representing all non-capital defendants in Lubbock County, it retained its caseworkers so that it could continue to provide holistic defense services to those clients with special needs.

Today, LPDO has a Mental Health Program Manager and three caseworkers who assist LPDO’s mentally ill or intellectually disabled clients in securing various services to improve case outcome and clients’ lives. Typically a special needs client will come to the attention of LPDO after she is booked into jail and the mental health screener at the jail determines that the defendant has a qualifying diagnosis. The LPDO will assign a specially trained attorney on the mental health wheel and a caseworker to represent and assist that client. Sometimes a special needs defendant—usually one who has never been seen at the jail before—will not be identified at intake. In such a case, the defendant’s appointed attorney may notice that the client is showing signs of mental illness or intellectual disability. The attorney will then request an LPDO caseworker to interview the client to determine if additional services are needed.

After a caseworker is assigned to a client, she will visit the client in jail for a bio-psycho-social interview if the client has not made bond, or write a letter to those clients who have bonded out and ask them to come to the LPDO for an initial interview. LPDO caseworkers have a special security clearance at the jail and may enter and travel throughout the jail like any other jail staff, so they can visit LPDO special needs clients whenever necessary.¹⁵ The initial interview includes questions about demographic information; resources available to the client if they get out of jail; mental health, medical, and substance abuse history; informal assessment of severity of symptoms; and questions about what social or mental factors may have contributed to the arrest (e.g., homelessness, lack of money management, or intellectual disability). If it is determined that competency may be an issue, the social worker will alert the attorney that they should request a competency evaluation. At the initial interview, clients also sign consent forms so caseworkers can obtain records helpful for their defense.

When clients with mental illness remain in jail, they are transferred to a special pod (group of jail cells with community areas for recreation, meetings, eating, etc.) with security staff trained in working with mentally ill inmates. The inmates receive medication; take classes on topics, such as medications and money management; and, every other week, meet with a treatment team that includes the LPDO caseworker, where they talk about the client’s mental health issues (not about the case).¹⁶

The LPDO has built good relationships with Lubbock County’s Local Mental Health/Intellectual and Developmental Disability Authority, StarCare, and homeless services providers, to which LPDO caseworkers will refer clients for services and classes in the community. One of LPDO’s homeless service providers, Carpenter’s Church, provides people with a “free public phone, mailbox, transportation, help with acquisition of vital records,” showers, and lockers. It also offers classes in anger management, art, health, recovery, cooking, and Bible study.¹⁷ LPDO caseworkers will also help clients get Social Security benefits reinstated.

LPDO caseworkers help attorneys secure good outcomes for their clients and save the county money in a variety of ways. One way is by developing transition plans for clients, which includes finding community services, developing a housing and treatment plan, and having the client sign an agreement to take medications if released. Such transition plans will be taken by the defense attorney to the District Attorney’s office to try to get a personal bond to get the client out of jail and into treatment. This reduces days in jail and the provision of medications in jail and improves case outcomes in terms of better offers and reductions in recidivism.

Once the client is out of jail, the caseworker helps ensure that the client is linked to services, abiding by the terms of the personal bond, taking medications, and getting treatment. By building a rapport with the client, the caseworker makes the client feel comfortable in coming to meet with them if they are having difficulties, which keeps clients engaged in treatment, coming to court, and resolving their case. If additional services are needed, the caseworker can help secure those.

The Sheriff can advocate for the inmate only so much; now we can call Phil at the LPDO if a lawyer isn’t visiting their client or there’s a problem with a defendant. This collaborative model needs to grow to other parts of the state.

– Kim Howell,
Assistant Chief Deputy of Detention
Lubbock County Sheriff’s Office

Caseworkers can help attorneys manage difficult clients and provide insights that would not be possible if the attorney alone was handling the case. The rapport that the caseworker builds with the client can also translate into more trust between the client and attorney. Since the caseworker is part of the defense team and not working for the court, clients can feel more comfortable being fully honest with the caseworker, knowing that sensitive information will not be passed along to the judge and potentially used against the client.

After a special needs case is closed, LPDO caseworkers continue to provide up to 30 days of services to clients to help them succeed. Some clients return even later in certain circumstances—for instance, if they become homeless and have nowhere else to go for help. In such cases, LPDO caseworkers help their former clients get the services they need.

C. Attorney Supervision and Discipline¹⁸

Philip Wischkaemper, the LPDO's Director of Professional Development, serves as the primary supervisor of attorneys on the LPDO appointment list. Supervision includes ensuring that attorneys visit their clients in jail, responding to complaints about lawyers from clients and their family members, responding to complaints about attorneys from judges, monitoring attorney performance in trial, and disciplining attorneys who fail to provide adequate representation.

Rather than simply reacting to complaints about poor lawyering, Wischkaemper likes to prevent the complaints by walking the courthouse halls, monitoring courtrooms, and being available to answer LPDO attorneys' questions. He has even tried cases with his attorneys.

Sometimes Wischkaemper will receive more detailed questions from an attorney, and he will ask them to come down to the LPDO office to have a longer conversation about the issues in the case. It might then be determined that a "Rapid Response Team" meeting is in order to brainstorm the case. Such meetings often include seasoned attorneys who are content-area experts.

Relations between the LPDO and the judiciary are healthy, and there is open communication between the two. Judges share their concerns about attorney performance with Wischkaemper, who may contact the attorney to discuss the judge's concerns. Judges also tell him about outstanding performance by LPDO attorneys.

When Wischkaemper receives a complaint about a lawyer who is not visiting his client in jail, he discusses the complaint with the attorney first to determine the problem. If he finds the attorney's response inadequate, he will also visit the client. Sometimes he finds it necessary to send an open records request to the jail to get the jail visitation logs and determine if he can substantiate the complaint.

All complaints against LPDO attorneys are kept in the attorney's file. Failure to visit with clients in a timely manner, a significant number of complaints about a lawyer, or other examples of inadequate representation can result in the attorney's appointments being "put on hold," i.e., being removed from the appointment list for a period of time. If the complaints cease, the attorney is usually returned to the appointment list.

LPDO may also sanction attorneys by limiting their representation to lower level offenses or removing them from the appointment list. Attorneys may appeal these decisions.

D. Training¹⁹

The LPDO and the Lubbock Criminal Defense Lawyers Association (LCDLA) provide a significant number of continuing legal education (CLE) programs. LCDLA has organized the Prairie Dog Advanced Criminal Law CLE every January since 1980, worth 11 hours of CLE. LCDLA also includes at least 30 minutes of CLE at their monthly meetings. The LPDO organizes about 18 one-hour CLE's at the courthouse every year, including eight hours of CLE on mental health issues for the mental health panel attorneys.

As previously mentioned, individual training also occurs when Wischkaemper assembles a "Rapid Response Team" to brainstorm an attorney's case. Such brainstorming sessions typically occur when an attorney has a trial with a complex issue. A group of experienced attorneys will strategize about the case with the lead attorney for an hour to hour-and-a-half. Sometimes a second chair from that group will be appointed to assist at trial.

E. Mentoring²⁰

The LPDO has established a formal mentoring process, whereby five older, more experienced attorneys who have a successful private practice but still take appointments mentor 11 younger, newer attorneys, who have a few years of experience. Typically, the cases assigned to the mentorship program are more complex and can benefit from more than one attorney working on them. The mentor is given the appointment and soon thereafter meets with the mentee to discuss how the case should proceed. The mentee will make client visits, draft motions, handle discovery, and perform much of the other work on the case, all under the supervision of the

more experienced lawyer. Not only does the program benefit the newer attorneys in training them to handle more complex cases, but it also benefits LPDO and clients as a whole, because it makes it possible to keep good, experienced attorneys on the appointment list. Many of these attorneys have considered leaving the appointment list because of their busy private practices, but having a mentee available to handle some of the more time-consuming elements of the case allows them to keep taking appointments.

In addition to the formal mentoring program, episodic mentoring also takes place, as when Mr. Wischkaemper consults with less experienced attorneys on their cases, either alone or with the Rapid Response Team. The Rapid Response Team meetings may result in the appointment of a second chair—either a more experienced attorney to help guide the trial or a less experienced attorney to assist with the time-consuming aspects of a complex case.

Unfortunately, there is no formal mentorship program for the least experienced attorneys on the appointment list. Mr. Wischkaemper is hopeful that one can be started in the near future.

F. Caseload Limits²¹

LPDO attorneys are limited to 65 clients at a time. However, many attorneys will voluntarily remove themselves from the appointment list before reaching this limit if they believe the quality of their work is threatened by the number of cases they have. The LPDO has not set limits on the number of cases that an attorney can take in a year.

Summary

Lubbock County established the Lubbock Special Needs Defender's Office—the first MAC in Texas—in 2009. That office began representing all non-capital defendants in 2011 and was renamed the Lubbock Private Defender Service (LPDO). It is an independent nonprofit corporation that contracts with Lubbock County to operate all components of the indigent defense system, except indigency determinations, which are made by the courts.

The LPDO decides which attorneys are on the appointment list, appoints counsel to eligible indigent defendants, manages appointed counsel, and provides services or approves contracted services (mental health case-workers, investigators, and experts) to assist counsel. The LPDO also approves payment amounts and pays the attorneys and contracted service providers.

In FY2017, the LPDO had eight staff and an overall budget of \$3.8 million for administration, personnel, and all indigent defense expenditures, including attorney fees and other litigation expenses. The LPDO manages approximately 80 attorneys on its appointment lists.

Travis County—Capital Area Private Defender Service²²

The original proponent of a MAC program in Travis County was the Hon. Mike Lynch, Judge of the 167th District Court, who retired in 2012.²³ In Judge Lynch’s last year on the bench, he became dissatisfied with the county’s court appointment system. He had disagreements with some defense lawyers about how much he could pay them for court-appointed cases. He recalled the meeting of judges to decide if any attorneys should be removed from the court-appointment list, which ones should be promoted to handle more serious cases, and if any attorneys should be added to the list. The Court Administrator, Debra Hale, had to bring pictures of the attorneys so judges could recognize the 250 attorneys on the various appointment lists. There was little agreement on which attorneys should be removed, and not enough time to have a meaningful conversation about attorneys who were not adequately performing. He thought there must be a better way.

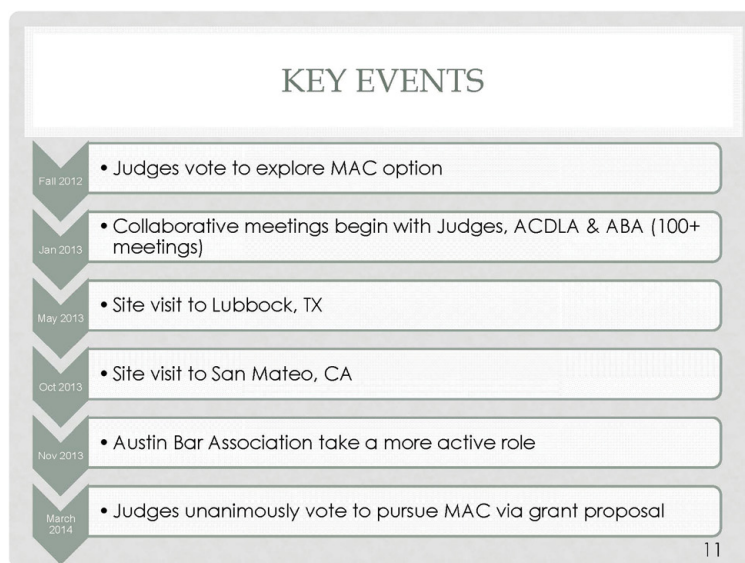
Lynch discussed his concerns with Ms. Hale, who sent him the annual report from the San Mateo Private Defender Office and the ABA *Ten Principles of a Public Defense Delivery System*. Those documents confirmed that Travis County’s court-appointed-attorney system needed to be changed for a number of reasons. The defense function was not independent, and defense counsel was not supervised and systematically reviewed for quality and efficiency, as required by Principles 1 and 10 of the *ABA Ten Principles*. The system created the “appearance of impropriety” through the possibility that (1) judges primarily appointed their friends; (2) appointed attorney earnings varied widely; or (3) judges were more interested appointing certain attorneys to “move the docket” rather than provide the highest quality defense. He thought some of these views were cynical, but nonetheless perceptions that would continue to exist so long as judges were intimately involved in the appointment process.

Additionally, the appointment system in Travis County had devolved. Approximately 40-50% of appointments were bench appointments, and the “wheel” was not followed. Instead, judges often appointed an attorney who was in the courtroom or one of their preferred attorneys who could handle a difficult client.

After Judge Lynch decided to retire, he sent a proposal to Judge Kocurek, the Presiding Judge, laying out his proposal for a MAC program in Travis County. While she and some other judges were supportive, others were initially hesitant. Over the next two year the judges voted to explore the MAC option, met with the Austin Criminal Defense Lawyers Association and the Austin Bar Association, and visited Lubbock and San Mateo, California to see their MAC programs in operation. Dozens of people met weekly for over a year to formulate a plan. In all, approximately one hundred meetings occurred, including 17 public events.²⁴ Ultimately, in March 2014, the judges voted unanimously to pursue a MAC through a grant proposal to TIDC.

TIDC approved the grant request to establish the office at a cost of \$893,378 for the first year, with TIDC covering \$717,516 of that amount.²⁵

Figure 4. Timeline of Events in Establishing a MAC in Travis County²⁶



Organization of CAPDS

Independence, Management, and Staffing

CAPDS is a joint-venture nonprofit formed by the Austin Criminal Defense Lawyers Association and the Austin Bar Association to operate Travis County's managed assigned counsel program. Management and staff run the organization with the input of the following entities:

- **Oversight Committee:** After Travis County was awarded the TIDC grant, it formed an Oversight Committee to recommend to the County Commissioners an entity to operate the MAC and to oversee the development of the MAC contract between the entity and the county. The seven members of the Oversight Committee included the Presiding District Court Judge, the Presiding County Court Judge, the Court Administrator, the Criminal Justice Planning Chair, a County Commissioner, the Director of the Mental Health Public Defender, and the Director of the Juvenile Public Defender Office.²⁷

The Oversight Committee continues to annually review the contract between the county and CAPDS, meet quarterly with the CAPDS Board of Directors on the state of the organization, review monthly reports on the status of funds spent, and review and comment on the annual report before publication.²⁸

- **Board of Directors:** CAPDS's Board includes seven voting members, two of whom are appointed by ACDLA (one elected by membership; one elected by ACDLA's Board), and two who are appointed by the Austin Bar Association (one must be active in criminal defense). The Board also includes one voting member who is a retired judge selected by the Oversight Committee, and two community members who are selected by the Board. There are also three ex-officio members from the court-appointment list who are non-voting but provide guidance and expertise on the functioning of the appointment list.²⁹

The Board is charged with approving the budget, fiduciary responsibilities, hiring and firing the director, approving recommendations of the Review Committee regarding the make-up of the appointment list and adverse actions taken against panel members, and meeting with the Oversight Committee.³⁰

- **Review Committee:** The Review Committee determines which attorneys are qualified for the appointment lists, which list level attorneys are qualified for, hearing appeals of the CAPDS Director's voucher payment decisions; hearing specific allegations of unsatisfactory performance by panel attorneys, and hearing matters referred by the Director for adverse action against a panel member.³¹

Management and Staffing. The managed counsel program in Travis County started with an executive director, two deputy directors, a staff investigator, and a project administrator. Early on, CAPDS began contracting with an immigration attorney to assist panel attorneys in fulfilling their *Padilla* obligations.³²

Since then, CAPDS has created a Holistic Defense Division comprising a Holistic Defense Supervisor (who took the place of the staff investigator), an immigration attorney, and two social workers who assist attorneys in identifying and placing their clients in various social services. Two part-time DNA Review Attorneys have been added as well to review DNA mixture cases as a result of the problems discovered with mixed DNA analysis by the Texas Forensic Science Commission (FSC), and specific problems discovered by the FSC at the Austin Police Department's DNA lab.³³ TIDC has provided Travis County and CAPDS with grant funding to support the DNA Review Attorneys, social workers, and immigration attorney in the Holistic Defense Division.

Figure 5. CAPDS Organizational Structure



Source: Bradley Hargis, *Capital Area Private Defender Service: A Managed Assigned Counsel Office*, PowerPoint presentation at CAPDS 2017 Mentoring Training, slide 15 (Apr. 17, 2017).

CAPDS includes the following 11 staff positions:

- Executive Director – Ira Davis
- Deputy Director – Bradley Hargis
- Deputy Director – Trudy Strassburger
- Project Administrator – Jeanette Frausto
- Mentoring Attorney – Richard Segura, Jr.
- Holistic Defense Supervisor – Katy Dyer
- Social Worker – Katie Cullather
- Social Worker – Megan Hunter
- Immigration Attorney – Adela Meraz
- DNA Review Attorney (part time) – Marjorie Bachman
- DNA Review Attorney (part time) – Mia de Saint Victor

The office recently added a Mentoring Attorney, Richard Segura, Jr. The CAPDS Mentoring Attorney will assist and support panel attorneys in their daily challenges in representing clients, observe panel attorneys in court, and evaluate their performance together with CAPDS directors. Segura will also investigate and respond to complaints from clients, the public, and judiciary about panel attorneys, and provide information to the Review Committee relevant to the conduct of panel attorneys.³⁴

CAPDS Budget

CAPDS began its operations with a budget of \$893,378 in FY2015, including \$707,494 for salaries and benefits. Operations went up slightly in FY2016 to \$895,126. Near the end of FY2016, Travis County applied for and received TIDC grant funding for a DNA Mixture Case Review Project that CAPDS would oversee with the assistance of a contract defender at a cost of \$148,404. In FY2017, CAPDS's overall budget rose to \$1,202,191 with the addition of the Holistic Defense Program.³⁵

CAPDS Attorneys

In 2017 there were approximately 225 attorneys on CAPDS's felony, misdemeanor, and mental health panels in 2017.³⁶ According to the organization's 2015 Annual Report, panel attorneys had a significant amount of experience—on average they had practiced for 21 years, had 18 years of criminal law experience, had handled 1,184 misdemeanors and 733 felonies, and tried 15 misdemeanor and 18 felony jury trials.

After CAPDS began operations in the fall of 2014, all attorneys had to reapply in order to receive court appointments. The following chart summarizes the outcome of the initial selection process for attorneys to be on one of the CAPDS panels:

Figure 6. Initial Selection Outcomes for Attorney Applicants Seeking Court Appointments through CAPDS³⁷

Total Applications to be on a CAPDS Panel – 225

- Attorneys assigned to same level of cases – 150 (66%)
- Attorneys assigned to higher level cases – 16 (7%)
- Attorneys assigned to lower level cases – 34 (15%)
- Attorneys previously on a list were not admitted to CAPDS – 11 (5%)
- Attorneys assigned to lower level or not admitted to CAPDS who did not have the minimal level of trial standards for their current list – 19 (44%)
- Attorneys not on an existing list but were added to CAPDS – 21
- Attorney applications that were denied – 21

Mental Health Panels

- Misdemeanor Mental Health: 13 retained; 5 removed; 8 added; 1 did not reapply
- Felony Mental Health: 15 retained; 12 removed; 8 added; 1 did not reapply

Each year, CAPDS panel attorneys have to reapply for the panels from which they seek appointments. There are minimum qualifications that all attorneys must meet to receive court appointments in Travis County, which are specified in the county's Fair Defense Plan. Such requirements include being licensed and in good standing with the State Bar, being a resident of Travis or an adjoining county, maintaining an office in Travis County, attending minimum required CLE as established by CAPDS, submitting the annual practice time report to TIDC as required by Tex. Code Crim. Proc. art. 26.04(j)(4), and other basic requirements.³⁸ Beyond the basic requirements, attorneys must have increasingly higher levels of experience in order to be qualified to handle more serious cases.³⁸

The Review Committee

CAPDS, through the Review Committee, determines the appropriate panel placement for each attorney.⁴⁰ The Review Committee also hears allegations of unsatisfactory performance by panel attorneys based on subject matter area, and matters referred by the CAPDS Director for adverse action against a panel member, like suspension or removal from a panel, or movement to a panel handling less serious matters. The Review Committee will also hear appeals of the CAPDS Director's determinations on voucher payments.⁴¹

The Review Committee is made up of criminal defense attorneys with a minimum of ten years of criminal law experience. Members are recruited and nominated by the CAPDS director, and serve on the Committee for one-year renewable terms. Review Committee members do not sit on a CAPDS panel. The full Review Committee is made up of 11 members, but three-member panels will review complaints about panel attorneys. The full Review Committee participates in the annual review of the appointment list.⁴²

The Appointment Process

If a defendant requests an attorney during magistration, an officer from Travis County Pretrial Services assists the defendant in filling out the Indigence Application and Request for Appointed Counsel.⁴³ The Pretrial Services Officer then transmits the Indigence Application and Request for Counsel to the Travis County Criminal Court Administrator's Office (TCCA) within 24 hours of magistration.⁴⁴ TCCA appoints counsel using a software program using the appointment lists provided by CAPDS.⁴⁵

Prior to the establishment of CAPDS, one of the big problems with the appointment system in Travis County was large numbers of "bench appointments," that is, appointments made by judges "off the wheel" (non-random manner) to attorneys who would simply come to court and tell staff they were available for appointments. Arguably such a system violates Code of Crim. Proc. art. 26.04's requirement that an appointment system use a "system of rotation" and that appointments be made in a "fair, neutral, and nondiscriminatory manner."⁴⁶ The bench appointment rate was about 45 percent before CAPDS was established. Since then, bench appointment rates have dropped to about 1 percent.⁴⁷

Travis County's judges wanted to have some means of quickly appointing counsel in those cases where a defendant comes to court without an attorney. The Attorney of the Day Program allows Felony A and B panel attorneys to be appointed on a rotational basis. Once that day passes, the attorney may sign up again for the next available date.⁴⁸

Case Management and Processing

CAPDS's case management system is called the Attorney Management Portal (AMP). Administrators' "back end" of the system is called the Indigent Defense Application (IDA), whereby attorneys can be added or removed from cases, searches can be performed across all appointed cases, submitted vouchers can be reviewed by the CAPDS Executive Director and submitted to the county for payment, and statistical reports can be run.

For panel attorneys, the AMP system is used to manage cases, report performed tasks, request investigators, receive case-related alerts, save case documents, report hours worked, and submit vouchers. The system is accessed by web browser or

Screenshot of attorney's view of AMP system. Client names removed.
Source: CAPDS, 2016 Annual Report (Draft), at 17 (undated).

mobile device. Although AMP does not have an app for mobile devices, it does have an interface that is designed for mobile devices.⁴⁹

Attorney Pay Schedule and Billing Procedures

Panel attorneys are paid according to the (mostly) flat fee schedule in the county's Fair Defense Plan. CAPDS can adjust payment "where the amount or quality or work performed is substantially above or below the norm." In misdemeanor cases, hourly rates of \$40 or \$60 an hour may be used in calculating fees in those unusual circumstances, depending on the complexity of the case and experience and ability of appointed counsel.⁵⁰ A flat fee schedule also exists for felony cases, but an hourly rate can be paid if CAPDS approves at the conclusion of pretrial hearings. An hourly rate of \$60 to \$100 will be paid in such circumstances depending on complexity of case and experience and ability of appointed counsel.⁵¹

Thanks to the efforts of CAPDS and the Austin Criminal Defense Lawyers Association, the fee schedule for jail release work, pleas, and dismissals was increased in 2016. The recommendation for a fee increase was made by a working group created by the Travis County Commissioner's Court, which included CAPDS, ACDLA, county staff, and criminal court judges.⁵² Jail release work for misdemeanors was raised to \$50 an hour, whether or not the attorney succeeds in getting the client released on a personal bond. Misdemeanor pleas and dismissals for the non-jail reduction docket were raised to \$275 per case from \$225, while jail docket cases were lowered from \$225 to \$175 per case.⁵³ For felony cases, jail release work was raised from a flat fee of \$75 to \$125. Dismissals and pleas were raised from \$550 to \$600.⁵⁴

The fee schedules in Travis County are as follows:

Figure 7. Travis County Misdemeanor Fee Guidelines

Jail Release Work	\$50.00 per hour
Attorney Released	\$50.00 per case
Jail Reduction Docket:	
Plea and Sentence (1 defendant/1 case) ¹	\$175.00 per case
Discover and Dismissal (1 defendant/1 case) ¹	\$175.00 per case
Probation Revocation (continued or revoked) ¹	\$175.00 per case
Non-Jail Reduction Docket:	
Plea and Sentence (1 defendant/1 case) ¹	\$275.00 per case
Discovery and Dismissal (1 defendant/1 case) ¹	\$275.00 per case
Probation Revocation (continued or revoked) ¹	\$275.00 per case
Misdemeanor 12.45's	\$75.00 per case
Pretrial (including preparation)	\$200 per case
Trial Before the Court – Full Day (including discovery and preparation)	\$500 per day
Trial Before the Court – Half Day (including discovery and preparation)	\$250 per half day
Jury trial – Full Day (including discovery and preparation)	\$700 per day
Jury trial – Half Day (including discovery and preparation)	\$350 per half day
Uncontested Competency	\$100 per case
Appeals	\$1,000 per Appeal

¹\$75 for each additional case

Figure 8. Travis County Felony Fee Guidelines**FIXED RATES**

These fees will be the standard compensation for the following services:

Jail Release Work	\$125
Attorney Released	\$100
Discovery and Dismissal ¹	\$600
Plea and Sentence ¹	\$600
Non-evidentiary Pre-Trial (necessary motions)	\$100
Probation Revocation (non-contested)	\$300
Writ Hearings	\$250
Appeals	
- Ander's Briefs, Motions to Revoke or Adjudicate	\$1,000
- 1 st , 2 nd , 3 rd Degree & State Jail Felonies	\$2,000
- Oral Arguments on Appeal	\$200
Uncontested Competency	\$100
Restoration Hearing	\$250

¹ \$100 for each additional case

DAILY RATES

Daily rates are premised on a minimum of six hours spent in court. Half day rates are premised on hearings less than 4 hours. If less time is spent the fee will be reduced. The Daily Rate fee includes compensation for preparation time.

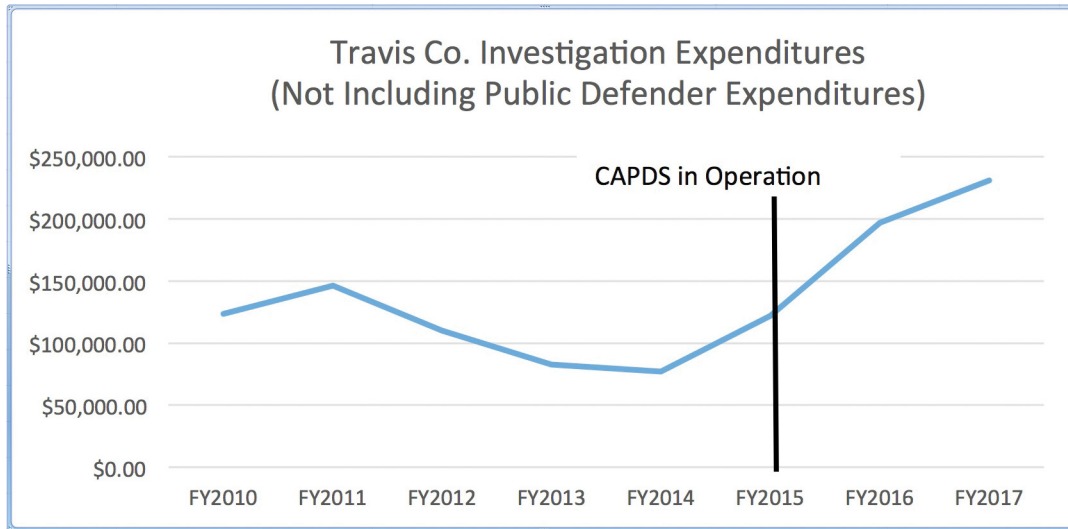
Evidentiary Pre-trial	\$500
Evidentiary Pre-trial (less than half-day)	\$250
Non-jury Trial	\$850
Non-jury Trial (less than half-day)	\$500
Jury Trial	\$1,100

Ensuring Quality**A. Investigations**

CAPDS panel attorneys can request the assistance of an investigator through AMP or CAPDS's website. CAPDS's Holistic Defense Supervisor reviews the request and assigns an investigator based on the request and availability of investigators. After investigators complete their assignments, they submit their vouchers through AMP, and upon approval by CAPDS, will receive payment directly from the county.

All investigators are required to attend a two-day training hosted by CAPDS.⁵⁵

In 2016, CAPDS approved 578 investigation requests. On average, investigators spent 11.4 hours on each case.⁵⁶ Based on investigative expenses reported to TIDC, investigations have gone up significantly since CAPDS became operational.

Figure 9. Travis County Investigative Expenditures (FY2010-FY2017)

Based on Travis County's Indigent Defense Expenditure Reports to TIDC.

B. Holistic Defense

CAPDS's Holistic Defense Division is run by the Holistic Defense Supervisor, Katy Dyer. Ms. Dyer oversees the appointment of investigators, an immigration attorney, and social workers to provide important ancillary services to CAPDS panel attorneys and their clients to improve criminal case outcomes and clients' social welfare.

Even before Ms. Dyer joined the organization, CAPDS had a part-time contract immigration attorney who was advising panel attorneys and their clients on immigration consequences of the criminal case. In 2016, the contract attorney consulted on over 314 cases, including 232 misdemeanors and 82 felonies.⁵⁷ With the assistance of a TIDC discretionary grant, CAPDS hired a full-time immigration attorney and added two social workers to its operations.

The social workers assist CAPDS panel attorneys by finding their clients services, such as housing, mental health services, and substance abuse services, which can help attorneys secure a personal bond and get their clients out of jail sooner, saving the county money and improving client outcomes.

C. Attorney Supervision and Discipline

CAPDS management currently has limited capacity to actively supervise attorneys through court observations or other means. Management documents and responds to complaints about panel attorneys from clients and their loved ones, as well as complaints received from judges about attorney performance. The CAPDS website hosts a complaint form where members of the public can file their grievances.⁵⁸ When management receives a complaint, they contact the attorney and client and attempt to solve the problem.

Sometimes complaints against an attorney warrant reporting to the Review Committee, which reviews complaints and recommends remedial action. A three-person panel of the Review Committee will examine the case and make a recommendation as to whether the attorney should be demoted to a lower level list, suspended from a list, removed, or attend training.

In the future, CAPDS hopes to document, track, and report complaints via its AMP program or other software.⁵⁹ CAPDS also hired a Mentoring Attorney to more effectively supervise and assist panel attorneys.

D. Training⁶⁰

CAPDS, typically in collaboration with ACDLA, provides numerous free or affordable CLE programs to CAPDS panel members and the criminal bar in general. On almost a weekly basis, a free one-hour CLE program is provided in the courthouse. In FY2016, CAPDS had a number of longer, specialized seminars and trainings as well:

- Three-day training for investigators and attorneys on investigation best practices;
- DWI voir dire and cross-examination seminar that included practice skills and feedback;
- Interactive negotiation seminar;
- Two-day forensic science conference with national experts;

- Seminar on capital murder cases, offered with ACDLA and the Austin Bar Association; and
- Resource fair that featured more than thirty local nonprofit and governmental organizations that provide services to defendant clients, including housing, employment, mental health, and substance abuse.

For FY2016, CAPDS recorded the following training statistics:

Hours of Training Provided by CAPDS: 61	Scholarships Provided: 43
Attorney Attendance: 218	National Trainers Brought to Austin: 6

E. Mentoring

Misdemeanor Panel. In 2015, CAPDS organized a six-month misdemeanor mentorship program to train attorneys interested in representing indigent defendants but who otherwise did not qualify for the misdemeanor appointment list. The mentorship program included 14 mentees and nine mentors who were paid \$2,000 to mentor one attorney, or \$3,000 for two. Mentees participated in a week-long training that introduced them to the Travis County criminal justice system’s operations, as well as sessions on substantive law and client-centered representation. Mentees also attended a week-long trial advocacy training.⁶¹

After the training, mentees were placed on the misdemeanor panel to begin receiving appointments. Mentors guided mentees in case strategy, substantive law, negotiations, and local court practices. The program provided second chair opportunities, resources, weekly CLE, and a dedicated listserv to mentees. After six months, the mentorship ended and mentees were retained on the misdemeanor panel, assuming they performed satisfactorily.⁶²

Felony Panel. In April 2016, CAPDS began a felony mentoring program with eleven attorneys assigned to five mentors. This program also lasted six months, included a week of substantive law training, a trial skills training, and the opportunity to second-chair trials.⁶³

In the Spring of 2017, CAPDS organized another group of mentees and mentors for the felony and misdemeanor panels. CAPDS added semi-monthly group case conferences to the program requirements.⁶⁴



CAPDS training for attorneys in its mentorship program. (April 2017)

Both mentorship programs were assisted by the District and County Judges through their amendment of the courts’ Fair Defense Plan to make it possible for CAPDS mentees to receive court appointments. Both of these mentorship programs were also supported by TIDC grant funding.

Mental Health. CAPDS has also added a contract attorney for up to five hours per week to consult with attorneys on their cases with a mental health component. The attorney, Krista Chacona, is a highly qualified attorney on the mental health panel. In addition to consulting with individual attorneys, she helps plan CLEs on mental health issues and organizes a weekly case conference for the mental health panel.⁶⁵

F. Caseload Limits

According to Travis County's Fair Defense Plan, an attorney with 90 pending felony cases or 100 misdemeanor cases shall be suspended from receiving additional appointments until their caseload reaches 85 felonies or 95 misdemeanors. CAPDS is also empowered by the Fair Defense Plan to adopt additional caseload standards that meet or exceed these standards.⁶⁶ Because attorneys may take appointments in multiple counties, CAPDS pulls monthly case counts from counties surrounding Travis County to make sure that attorneys do not exceed caseload limits due to out-of-county appointments.⁶⁷

CAPDS management and the Review Committee hope to impose additional caseload controls. They are re-searching the issue and will potentially impose weighted caseload standards in the future. However, they do not anticipate that the limits will impact a significant number of attorneys.⁶⁸

Summary

The Austin Criminal Defense Lawyers Association and the Austin Bar Association formed CAPDS in 2014. It is a nonprofit organization that contracts with the county to provide indigent defense services. CAPDS approves attorneys for appointment lists, approves attorney requests for investigators and experts, provides attorneys and their clients with immigration consultations and social worker assistance, provides trainings and mentorship opportunities, responds to client complaints, and approves payment requests by attorneys and investigators. The organization also oversees the review of DNA cases as a result of the mixed DNA calculation errors and problems discovered at the Austin Police Department's DNA lab.

In FY2017, CAPDS had 11 staff positions with an annual budget of approximately \$1.3 million for administration and personnel, and approved approximately \$6.9 million in attorney fees and other litigation expenditures in FY2016. As of 2017, CAPDS manages approximately 225 attorneys on their felony, misdemeanor, and mental health appointment lists.

Collin County—Mental Health Managed Counsel Program



Collin Co. Indigent Defense/Managed Counsel Dept. staff (L-R, seated): Alyse Ferguson, Chief Attorney; Tracye Sparks, Indigent Defense Coordinator. (L-R, standing): Rachel Collard, Indigent Defense Clerk; Toni Fawks, Case Manager; Kim Bennett, Administrative Assistant; Veronica Oliver, Indigent Defense Clerk.

In 2012, Collin County's Local Administrative District Judge, John Roach Jr., noticed the county had significant indigent defense costs associated with mentally ill defendants. He saw mental health caseloads growing, along with an expanding jail population due to mentally ill defendants. He realized something needed to be done to save taxpayer money, increase public safety, and improve the lives of mentally ill defendants.⁶⁹

Judge Roach researched how other Texas counties addressed similar problems and discovered that Montgomery County had established a managed assigned counsel program for mentally ill defendants (and which has since discontinued operations). That program was established with the assistance of a TIDC discretionary grant, which

Judge Roach knew would be needed in his county as well, as commissioners were not inclined to take on the costs of establishing such a program.⁷⁰

Shortly after, Pam DeVault was hired as the Collin County Court Administrator. One of her primary responsibilities was to secure grant funding, and Judge Roach immediately tasked her with drafting a grant proposal for TIDC to establish a mental health MAC in Collin County. Various stakeholders, including judges, sheriff's officers, the indigent defense coordinator, defense lawyers, and a representative from LifePath (Collin County's mental health provider), met to develop a program plan and grant proposal.⁷¹

Before a grant proposal could be submitted, however, the Commissioners Court had to approve it, which took some convincing because of the Commissioners' opposition to establishing another government department. The Commissioners recognized there was a problem with the growing number of defendants with mental illness languishing in jail for long periods of time, but questioned whether a MAC would solve the problem. Because MACs were relatively new in Texas, there was little to show that the program would save the county money. Ultimately, Judge Roach, the Sheriff's Office, and Commissioner Duncan Webb played an important role in convincing the Commissioners that a managed counsel program was worth exploring to reduce the number of mentally ill defendants in the jail and the amount of time they were incarcerated, and that the program could be reexamined after a year to ensure it was cost-effective.⁷²

A grant proposal was submitted to TIDC in 2012 and Collin County was awarded over \$250,774 for FY2013 to launch and operate the Mental Health Managed Counsel program (MHMC), with an estimated \$313,468 in costs for the first year.⁷³

Organization of the MHMC

Independence, Management, and Staffing

The MHMC was originally envisioned as an independent nonprofit organization that would contract with Collin County "to provide a managed defense attorney program per Article 26.047, Code of Criminal Procedure, including attorneys and social case management, for adult and juvenile misdemeanor and felony offenders diagnosed with Axis I or Axis II mental health disorders."⁷⁴

After receiving the TIDC grant and exploring the issue further, county officials decided that it made more sense for the county to operate the MAC program with a contract attorney overseeing operations rather than to have an independent nonprofit organization run the program. County Commissioners also initially did not want to establish the program as a county department with county employees because they were unsure it would be a success.⁷⁵ The program began operations in December 2012,⁷⁶ and in June 2013, County Judge Keith Self requested a grant adjustment to do away with the nonprofit operation of the program and instead operate it with a contract attorney, which was accepted by TIDC.⁷⁷

Alyse Ferguson, a local defense lawyer with a background in mental health and working with mentally ill defendants, helped formulate the operational plan for the MAC before the county received the grant. After the

grant was approved, Ferguson was hired in December 2012 as the contract attorney to manage the MHMC, and the county contracted with LifePath employees to provide mental health case management services.⁷⁸

In October 2016, the county made the MHMC a county department and combined it with the indigent defense operations (indigency determinations and attorney appointments) that were previously part of the Indigent Defense and Collections Division. Alyse Ferguson now manages all of the indigent defense operations for Collin County under the Indigent Defense/Managed Counsel Department, and Collections is now a separate department.⁷⁹ Only mental health cases are handled through a MAC model.

The Indigent Defense/Managed Counsel Department now includes six staff:

- Managing Attorney
- Case Manager
- Administrative Assistant
- Indigent Defense Appointment Clerks (3)

As an independent entity with a manager and staff dedicated to representing mentally ill defendants, MHMC has helped bridge disciplines and interests in Collin County. Alyse Ferguson has built a network between service providers, law enforcement, and defense counsel to ensure that services are coordinated and all entities are communicating with one other.⁸⁰ She also serves as the state hospital liaison, which ensures that mental health cases are quickly heard by the court upon the defendant's return from the hospital, resulting in quick turnaround times on hearings for orders and other matters. According to Ferguson, "The state hospital has been very pleased."⁸¹

MHMC Budget

The MHMC started with a budget of \$313,468 in FY2013. For the next three years, the office was budgeted at \$283,000 per year. In FY2017, the office budget was increased to \$460,008,⁸² due in large part to the office's mandate, and staff was expanded to handle broader indigent defense responsibilities.

MHMC Attorneys⁸³

When the MHMC was getting off the ground, judges initially gave Alyse Ferguson a short list of attorneys to represent mentally ill defendants. Within a few months, she took applications from others and formed the mental health wheel. Ferguson believes it is important to ensure that the MHMC program has the right attorneys on the wheel—attorneys who want to be in the program, who believe it isn't "just about the money."

Initially, Ferguson selected 20 attorneys, who were then approved by the District and County judges. These attorneys have shown an interest in representing mentally ill defendants and have expertise in handling cases involving a mental health personal bond (Art. 17.032, Code of Criminal Procedure), competency, and sanity determinations. The mental health wheel has since expanded to include 25 attorneys.

In addition to misdemeanor or felony appointment eligibility, attorneys in the MHMC program must take six hours of CLE in mental health each year; have six jury trials as lead counsel to receive misdemeanor appointments and eight jury trials for felony appointments; and must fill out a supplemental application for the MHMC program. The MHMC wheel is limited and is only expanded at the discretion of the managing attorney based on program needs.⁸⁴

The Appointment Process⁸⁵

The Indigent Defense/Managed Counsel Department is charged with making indigency determinations and appointing counsel. Every day, Alyse Ferguson reviews mental health screenings from the jail for the past 24 hours and appoints attorneys on the mental health wheel to represent defendants with a mental health diagnosis. Even if a defendant with mental illness does not request counsel, Ms. Ferguson will appoint counsel because, in her experience, the sicker a person is, the less likely he or she is to request an attorney, resulting in longer jail stays.

Case Management and Processing⁸⁶

The MHMC uses defenderData™ to manage cases in which an attorney on the mental health wheel has been appointed. defenderData™ is not used in other types of cases in Collin County. MHMC staff save documents like the probable cause affidavit, medical records, and bond documents into the electronic file for the defendant's case, which is accessible by MHMC staff, including the case manager and the client's attorney. Access to the case file by MHMC staff is useful for situations, such as when an attorney is visiting a client at the jail and needs MHMC staff to retrieve a document.

All of a defendant’s current and prior cases are linked in defenderData™. This allows convenient access to medical records from prior cases.

Attorney Pay Schedule and Billing Procedures

Collin County has an hourly fee structure for felonies and a mixed structure for misdemeanors.

After MHMC attorneys complete a case, they submit their voucher to Alyse Ferguson for review, and then the voucher is submitted to the judge for final approval and payment.⁸⁷ Payments are made by the county, not the MHMC.

Figure 10. MHMC Attorney Fee Schedule

Felonies ⁸⁸		Misdemeanors ⁸⁹	
Death Penalty	\$125/hr to \$150/hr	Counsel shall be paid an hourly rate of a min. of \$75 and not more than \$100 for services performed under the Fair Defense Plan or	
		Plea on DWI	\$550 + \$100 for ea. additional case pled w/ same offense date
		Dismissal for non-DWI	\$450 + \$100 for ea. additional case pled w/ same offense date
		Jury trial, incl. motion for new trial	\$2,500
		Bench Trial	\$1,250
		Appeal, incl. motions for rehearing	\$2,500
		Dismissal or plea at time of trial	\$1,000
All other felony offenses	\$50/hr to \$100/hr	Supplemental payment in addition to any hourly or flat fee up to \$1,250 for misc. items incl. but not limited to: cases involving persons w/ mental illness or mental retardation; speedy trial motions, motions to suppress, expunctions, writs of habeas corpus, etc. with court approval.	

Ensuring Quality

A. Investigations and Experts⁹⁰

Alyse Ferguson has authority to approve up to \$1,500 in expert or investigator fees in MHMC felony cases without prior court approval. When counsel submits the bill for the investigator or expert, Ms. Ferguson will inform the court that she pre-approved the expense. Although pre-approval of investigator or expert expenses is not required by statute pursuant to art. 26.05(d), Code of Criminal Procedure, Ferguson’s pre-approval helps verify that the expenses are reasonably necessary.

B. Holistic Defense

According to Collin County stakeholders, one of the greatest benefits of establishing the MHMC office is the coordination of defense, mental health, and social services. This benefits not only the individual client, who oftentimes gets out of jail quicker and is linked to services that improve their lives and reduce recidivism, but also benefits the county by improving public safety, reducing jail costs, and reducing the costs of re-arrest and criminal justice processing.

MHMC Case Manager.⁹¹ The MHMC office has one case manager who assists attorneys and clients. She advises attorneys about appropriate options for the client's care and ordering medical records. She determines which services and placement options are available for clients, whether they are eligible, and makes referrals to services. The caseworker has proven effective at ensuring that recent arrestees get their medications in jail quickly. She also ensures that clients have a 30-day supply of medication when they are released from jail.

The MHMC case manager helps attorneys obtain mental health personal bonds under Art. 17.032, Code of Criminal Procedure, which rarely, if ever, happened prior to the establishment of the MHMC. The case manager meets with a client soon after arrest. She obtains a release from the client so that the defense team can speak to family members to get additional information about the client and possibly to find a place for the client to live. She ensures the client has medications when released. With housing, medication, and other stabilizing elements in place, the client is more likely to be released on a personal bond.

As a condition of the personal bond, clients have to check in with the case manager at least once a week. If an attorney cannot track down a client who is out on bond, the case manager will find him or her to make sure they come to court or contact their attorney. Courts will also inform the MHMC if one of their clients has not shown up to court, and the case manager will find him or her so that their bond is not revoked.

LifePath Services.⁹² MHMC's case manager and Alyse Ferguson also work closely with LifePath Systems, Collin County's mental health provider. Davis Goodwin, LifePath's Program Administrator of Jail Diversion, works most extensively with MHMC. Goodwin is informed every day by MHMC about any defendants who were booked into jail the day before and flagged as potentially having a mental illness or known to have previously received mental health treatment in the jail. Goodwin checks the client list to determine if defendants are LifePath clients, their diagnosis, the last time they were seen by LifePath staff, and their medication history. This information is then used to get MHMC clients on the proper medication in the jail as soon as possible.

LifePath also helps MHMC timely secure mental health bonds. MHMC and LifePath work together to develop a discharge plan for the client that will be presented to the judge. LifePath staff meet the client at the mental health bond hearing to answer any questions so the client can make an informed decision about whether to receive LifePath's services. LifePath staff drive the client from the jail to LifePath's offices to begin services, as well as provide clients with transportation to their residence, if they have one. LifePath also provides transportation for clients to transit stations so that they can access medical services, housing, and employment opportunities. MHMC has funds to assist clients with public transportation.

Defendants released on a mental health bond must typically undergo a mental health evaluation; follow the recommendations in the evaluation; meet with the MHMC case manager weekly; meet with the judge monthly; and sign a release of mental health and substance abuse information to MHMC, the court, and the client's lawyer. LifePath will discuss with MHMC's case manager whether a defendant is fulfilling all of the recommendations of the mental health evaluation and other conditions of the mental health bond. MHMC's case manager can then use that information to help the client fulfill all conditions of the mental health bond and avoid revocation.

If a MHMC attorney believes that his or her client may be incompetent to stand trial, Alyse Ferguson will arrange for a competency evaluation to be performed. If the evaluation indicates that out-patient competency restoration is possible, then an outpatient competency restoration (OCR) bond will be sought. LifePath is charged with OCR and related services such as taking clients to the doctor—a condition of an OCR bond is that defendants not drive—and working with the client's family to develop a safety plan. As part of the OCR process, LifePath provides counseling, gets the client on a stable medication regimen, and helps the client understand the role of the judge, prosecutor, defense lawyer, and the judicial system. In all, LifePath typically provides 2-6 hours of services per OCR client per week.

LifePath also serves as the defendant's advocate and support system with his or her lawyer and the court. LifePath staff get clients to court for their settings, wait with them until their case is called, and help clients articulate their treatment and life goals with attorneys and courts. After court, LifePath staff get the client safely home.

As part of LifePath's services for MHMC's clients, staff determine if a client is eligible for government assistance, such as food stamps, Medicaid, or disability benefits. LifePath then assists the client in filling out the paperwork for such services.

C. Attorney Supervision and Discipline

According to stakeholders, one of the greatest values of Collin County’s managed assigned counsel program is that there is a managing attorney like Alyse Ferguson to ensure accountability and remove attorneys who are neglecting their duties from the appointment list. The district judges have granted authority to Ferguson to remove attorneys from the mental health wheel, but the county judges have not. Some stakeholders speculate that judges are generally not in a position to effectively police attorney performance, particularly outside the courtroom, and therefore hesitate to remove attorneys from the appointment wheel. They view the MHMC under Ferguson’s management as better at monitoring attorney performance, addressing complaints about poor defense counsel performance, and improving the overall quality of legal representation of the mentally ill.⁹³

Sheriff’s Office representatives have noticed that effective attorney supervision has improved client visitation. In the past, attorneys sometimes took a week to visit their mentally ill clients. Under MHMC rules, attorneys must meet clients face-to-face within 24 hours of an appointment—and Alyse Ferguson can hold attorneys accountable if they are not visiting their clients in a timely manner.⁹⁴ The MHMC also provides attorneys with probable cause information immediately, which makes attorneys more effective at the initial client visit. By reducing the amount of time for client visitation, attorneys can get a sense of their clients’ needs early on, determine if a competency evaluation is needed, and get their clients out of jail sooner on a mental health or OCR bond.

D. Caseload Limits

MHMC attorney caseloads are monitored, and the following annual limits have been established by the MHMC to ensure that attorneys have adequate time to provide high-quality legal services to their clients:

- 452 misdemeanors
- 174 state jail felonies
- 144 third degree felonies
- 105 second degree felonies
- 77 first degree felonies

E. Training

Multiple stakeholders interviewed for this report praised MHMC’s annual Mental Health Symposium. The conference is planned and organized by a committee comprised of Ms. Ferguson and representatives from the Sheriff’s Office, LifePath, local police departments, and mental health providers. Hundreds of people from Collin County and surrounding areas attend this conference, which brings together interest groups working to improve mental health services and address mental illness in the community. During interviews with stakeholders, many shared the story of a mentally ill woman who was frequently in Collin County Jail. After being helped by the MHMC and getting the treatment she needed, she has stabilized her life and even presented a talk at the 2016 Symposium. Police officers who had arrested her multiple times over the years had an opportunity to visit with her and were awestruck at the transformation she had made. This humanized a person with whom they had previously had many negative experiences and gave them a new perspective on how effective mental health treatment can improve people’s lives.

Summary

In 2013, Collin County established the MHMC as a governmental entity MAC that contracted with a director and staff to coordinate defense, mental health, and social services for defendants identified as having a mental illness. In October 2016, the county merged MHMC with indigent defense operations, and MHMC’s director, Alyse Ferguson, now runs the Indigent Defense/Managed Counsel Department.

The department oversees a list of 25 attorneys who are appointed to represent mentally ill defendants charged with non-capital felonies and misdemeanors. These attorneys have special expertise in handling cases involving a mental health personal bond (Art. 17.032, Code of Criminal Procedure), competency, and sanity determinations. The MHMC case manager assists attorneys by determining what services and placement options are available for clients, whether they are eligible, and making referrals to services. This has been helpful in assisting attorneys obtain mental health personal bonds and getting clients out of jail more quickly.

For FY2017, the Indigent Defense/Managed Counsel Department had six staff and an operations budget of \$460,008 for central office operations and personnel.

CHAPTER 2: MANAGED ASSIGNED COUNSEL PROGRAMS IN OTHER STATES

While MAC programs are relatively new to Texas, they have existed at the state and county levels in other jurisdictions for decades, though not on a widespread basis. Following is a description of both models in other states: a county-based program in San Mateo, California, and a statewide program in Massachusetts.

San Mateo County, California—Private Defender Program

The managed assigned counsel program that has had the biggest impact on MAC program developers in Texas is the San Mateo Private Defender Program (PDP) in Northern California. Former TIDC Director Jim Bethke was inspired to bring the MAC model to Texas after he visited the PDP with Professor Norm Lefstein in 2008 as Lefstein was writing his book, *Securing Reasonable Caseloads: Ethics and Law in Public Defense*.⁹⁵

The PDP is one of the first documented MACs in the United States, opening its doors in February 1969. Prior to the establishment of the PDP, San Mateo County had an *ad hoc* system for appointing counsel for criminal defendants, not unlike many counties in Texas prior to the passage of the Fair Defense Act. Each judge controlled the appointment of lawyers in his or her courtroom. Some judges had a list of lawyers they would appoint—others appointed lawyers on the spot if an indigent defendant appeared in court, without regard for the lawyer’s criminal law experience. Some judges paid appointed counsel’s bill without question, while others slashed attorney billings with little reason.⁹⁷ The system (or lack thereof) resulted in uncertainty for the county, because it made it largely impossible to predict the cost of indigent defense in any particular year. Lawyers appointed by judges who slashed their bills were effectively donating their time. And it was not uncommon for attorneys to be appointed to cases that did not match their skill levels.⁹⁸

In 1967 and 1968, the San Mateo Board of Supervisors began evaluating how best to provide attorneys to constitutionally entitled defendants. County staff recommended that a public defender’s office be established, but the San Mateo Bar Association (SMBA) objected because inadequate resources had been budgeted for the office’s operations. The SMBA proposed to administer the county’s indigent defense program using the many small firms and solo practices that had expertise in criminal law.⁹⁹ The county accepted the SMBA’s proposal. It entered into a six-month contract with the Association for the provision of indigent defense services at a cost of \$500,000.¹⁰⁰

Administration and Structure of the PDP

The PDP continues to be operated by the San Mateo Bar Association, a nonprofit corporation with a 15-member board of directors. The Private Defender Program Committee is a standing committee of the board of directors that makes recommendations to the board about PDP operations. The committee also “meets regularly to discuss problems that arise in the criminal justice system and to propose solutions.”¹⁰¹

The PDP was led by Chief Defender John Digiacinto from July 2000 to July 2017.¹⁰² Prior to becoming the Chief, Digiacinto was the Assistant Chief since October 1989 and a PDP lawyer for 12 years prior to that.¹⁰³ Myra Weiher became the Chief after Digiacinto’s departure.¹⁰⁴ She served as the Assistant Chief Defender since 2006 and was appointed to represent her first PDP client in 1973.¹⁰⁵

The other PDP employees include a Managing Attorney of the Juvenile Division and assistant; Managing Attorney of the Adult Division; Chief Investigator and Executive Assistant the Chief Investigator; a Controller and Accounts Payable Specialist in the Accounting Department; and an Office Manager and three administrative staff.¹⁰⁶

The PDP organization is divided into the following divisions:

- **Adult Division:** The Managing Director assigns cases to PDP panel attorneys and reviews fee requests; observes PDP attorneys at calendar settings, hearings, and trials; and assists PDP clients and the public with their issues.¹⁰⁷ The Managing Director oversees trial attorneys appointed in misdemeanors and felonies, as well as appellate attorneys who handle misdemeanor appeals.¹⁰⁸ The Managing Director also assists trial attorneys in preparing certain writs, researching and preparing unusual motions, and reviewing the constitutionality of prior convictions alleged under the three strikes law.¹⁰⁹
- **Juvenile Services Division:** “The PDP represents minors charged with crimes, minors and their parents in dependency proceedings, and individuals subjected to involuntary commitments pursuant to the state’s mental health laws” through the Juvenile Services Division. The Managing Attorney reviews all juvenile cases that come to the PDP and assigns them to individual lawyers. Some PDP attorneys handle only delinquency cases, others only dependency cases, but a majority of attorneys handle both. When the

Managing Attorney is out of the office, one of the PDP attorneys experienced in both delinquency and dependency cases is assigned as the “officer of the day” to take on the Managing Attorney’s duties.¹¹⁰

As previously mentioned, the Juvenile Office also administers the PDP’s representation of clients who are allegedly unable to care for themselves due to a psychiatric condition (under California’s Lanterman-Petris-Short Act), or who cannot care for themselves due to a disability and a guardianship is being sought. A dedicated panel of attorneys travels to Bay Area mental health facilities to provide this representation.¹¹¹

- **Investigation Division:** The PDP prides itself on making investigators available to its attorneys in all cases on request: “All requests for an investigator are granted” (emphasis in original).¹¹² The division is overseen by Chief Investigator John Maness.¹¹³ The Chief oversees the assignments of 35 investigators, four of whom speak Spanish.¹¹⁴

The Appointment Process

When a defendant appears before the trial court for arraignment, they must submit a financial declaration form if they wish to be represented by a court-appointed attorney. If the court determines that the defendant qualifies for appointed counsel, then the PDP is appointed. A PDP attorney is present at every day’s arraignment calendar to represent persons who have qualified for court-appointed counsel. The PDP attorney “will generally enter a ‘not guilty’ plea on the client’s behalf, will seek to secure the client’s release on his or her own recognizance or affordable bail, and will set dates for future court appearances.” The client will be advised how to contact the PDP offices to get the name and contact information for their appointed lawyer. The calendar lawyer will report on which cases the PDP has been appointed to the PDP staff, who will then assign cases to lawyers, almost always within two days.¹¹⁵

Cases are assigned based on an attorney’s “ability, training, and experience, their availability to appear on the dates set for a particular case, and an assessment of the attorney’s current caseload.” The Office Manager and her staff assign routine adult cases. The most serious cases are assigned to particular attorneys by the Chief Defender or Assistant Chief Defender. For juvenile cases, the Juvenile Managing Attorney assesses the case before assigning it to a PDP attorney. All homicides—adult and juvenile—are assigned by the Chief or Assistant Chief Defender.¹¹⁶

PDP Attorneys

All 114 lawyers assigned to represent indigent defendants by the PDP are in private practice. Attorneys who seek to be on a panel must submit an application and interview with the Assistant Chief Defender. If the Assistant Chief recommends the candidate, then the Chief will interview the applicant and make a decision. A candidate’s dedication to representing the poor is considered as part of the evaluation. Less experienced attorney applicants are also assessed on the likelihood that they will “achieve a level of excellence” that will enable them to handle serious felony cases in the future. Attorneys are only added if they are needed, based on current caseloads and projections.¹¹⁷

PDP attorneys have a significant level of experience: over 63 percent have 16 or more years of experience. About 8 percent have 5 years or less experience.¹¹⁸ Approximately 20 percent are former prosecutors; 15 percent are former public defenders.¹¹⁹

The average PDP attorney devotes 77 percent of their time to representing clients assigned by the program.¹²⁰ Some attorneys prefer a much smaller appointed caseload, including some who focus only on fraud cases, because they are closely related to the white collar cases they handle in private practice. Others may decide to handle only one or two appointed cases at a time. As a general rule, no homicide-qualified attorney will be assigned more than one murder case at a time.¹²¹

Ten PDP lawyers handle specialty “calendars,” including nine who handle all of the in-custody arraignment calendars. Each of them has more than 25 years of experience, which is needed to quickly assess the “provability” of these cases, which involve defendants who are typically charged with a minor misdemeanor, not eligible for a personal recognizance bond, and cannot afford bail.¹²²

Budget

The San Mateo County contract for the PDP’s primary indigent defense services cost \$18.8 million for the 2016-17 fiscal year.¹²³ Overall, the PDP had over \$20.5 million in operating income for the fiscal year.¹²⁴ Case costs (e.g., attorneys’ fees, investigators’ fees, and experts) accounted for approximately \$17 million of the budget, while costs associated with PDP operations (e.g. staff salaries and benefits, office operations, and trainings) accounted for approximately \$3.2 million.¹²⁵ The Investigation Division spent almost \$2.2 million to deliver investigative services in FY2016-17.¹²⁶

San Mateo spent approximately \$25.57 on PDP operations for each of its 765,136 residents in 2015.¹²⁷ As a point of comparison, Travis County, Texas, which also has a MAC and an estimated population of 1,176,558, had per capita indigent defense expenditures of \$9.11 in the same year.¹²⁸ It should be noted, however, that the cost of living is considered to be 27 percent higher in San Mateo¹²⁹ and the PDP carried almost 1,300 civil cases (conservatorships; termination of parental rights; minor guardianships)¹³⁰ that would not be included in Travis County's indigent defense costs. Even accounting for these differences, San Mateo's indigent defense expenditures are significantly higher than Travis County's.

Ensuring Quality

The PDP has a number of organizational structures in place to help ensure that high quality services are provided to its clients. As part of its agreement with the county, the PDP also has a number of "performance benchmarks" that it has to report in its annual report to the county. The PDP's quality controls include:

A. Caseload Monitoring

The agreement between San Mateo County and the San Mateo Bar Association recognizes the negative impact that excessive workloads can have on the quality of representation. As such, the PDP must "include the caseloads of each Private Defender Program attorney by types of cases, as well as the average caseloads for the Private Defender Program as a whole in the annual report" of the PDP to the county.¹³¹

The PDP has conducted a weighted caseload study on which it used to base caseload limits. However, the PDP's *Annual Report Fiscal Year 2016-2017* notes: "In the past, the Annual Report included targeted maximums for caseloads. This Annual Report does not include those figures because the studies on which the targets were based are outdated."¹³²

PDP attorneys tracked their time for all cases assigned during a three-month period. PDP attorneys also estimated the amount of their practice time spent defending PDP cases.

Based on that research, the PDP established the following caseload targets for the various types of cases handled by PDP attorneys, but as previously noted, these maximum caseloads are no longer in effect:

Figure 11. Case Weighted Targets for Attorney with 100 Percent PDP Practice¹³³

Misdemeanor	Domestic Violence Misd.	Felony 1	Felony 2	Juvenile Delinquency	Juvenile Dependency
450	334	265	174	335	188

These targets assumed a lawyer devoted 100 percent of his or her time to handling each type of case. If an attorney was to handle a mixture of different case types, as many do, then a caseload limit calculation could be made based on the number of cases assigned for each of the different categories.

The PDP reports on each attorney's caseload and the percentage of the attorney's practice dedicated to PDP cases. Following is an example of how two attorneys' cases were reported:

Figure 12. Example of PDP Attorney Caseload Reporting¹³⁴

Randomized Attny #	% on PDP Cases	Type A	Type B	Type C	Type D	Type E	Type X
45	75%	51	370	0	0	0	8
105	80%	0	0	0	33	69	3

The different case types are described in the agreement between the county and the PDP regarding the scope of PDP's work:

- Type A cases are misdemeanor and felony Superior Court cases;
- Type B are misdemeanor and felony Municipal Court matters;
- Type C are cases initiated under the state's mental health civil commitment statutes;
- Type D cases are juvenile dependency cases where parents or children need representation; and,
- Type E cases are juvenile delinquency cases.¹³⁵

"Type X" reflects services for which PDP attorneys are paid, but are not individual cases.¹³⁶ Type X assignments include, among others, specialty courts representation; post-conviction record clearance assistance; witness representation; lineup observation; and "officer of the day" assignments, where an experienced attorney

handles client complaints about PDP attorneys.¹³⁷

“% on PDP Cases” is the percentage of time devoted to PDP cases as reported by the attorney. The average attorney devoted 77% of their time to handling PDP cases.¹³⁸

B. Attorney Performance Monitoring and Evaluations

The agreement between the county and San Mateo Bar Association requires the PDP to evaluate its lawyers annually, and to provide some evidence that the evaluations were performed. The PDP must report attorney performance standards, too.¹³⁹

Attorney performance is monitored and evaluated using the following methods:

Evaluation Standards. PDP attorneys are assessed based on professional ability, attitude, and personal relations. The factors on which PDP management places the greatest weight include:

1. Effective use of investigation.
2. Willingness to try cases.
3. Professional growth.
4. Effective use of legal research and pretrial motions.
5. Consideration of immigration issues and use of resources in that regard.
6. Attendance at MCLE events.
7. Use of education budget.¹⁴⁰

Administrators’ In-Court Observations. The administrators and managing attorneys “observe PDP lawyers in . . . trials, hearings on motions, Superior Court reviews, and pretrial conferences without advance notice.” PDP management observed most attorneys handling misdemeanors and felonies, and all attorneys handling juvenile cases, in FY2016-2017.¹⁴¹

Annual Surveys. PDP lawyers must fill out an annual survey about the work they performed in the previous year.¹⁴² Here is a sample of information PDP lawyers had to provide:

1. List the PDP cases you have tried to jury verdict. Provide the client’s name, case number, judge, and the result.¹⁴³
2. List two PDP cases which “went to an evidentiary hearing on issues raised in written points and authorities.” Provide the client’s name, case number, judge, and the result.¹⁴⁴
3. List the PDP cases in which you used an investigator and the name of the investigator used (only applies to certain types of cases).¹⁴⁵ (Note: Information about investigator utilization was not requested in most types of cases because the PDP maintains records on requests for investigators by case and attorney. Administrators review requests for investigation on a random basis.)¹⁴⁶
4. “[L]ist the PDP cases in which you raised competency. . . .”¹⁴⁷
5. Provide a list of courses you took to fulfill MCLE requirements.¹⁴⁸
6. “[S]tate the legal research tools you used in preparation of motions, briefs and responses” (i.e. online provider, or books in your office or law library).¹⁴⁹
7. State the approximate percentage of cases involving “some type of immigration issue.” State what “sources/ resources you used to assist you in providing accurate legal advice . . . concerning the immigration consequences of a particular case.” State whether you consulted with the Immigrant Legal Resource Center, and if not, state why you did not.¹⁵⁰

PDP administrators also gathered information from PDP lawyers about how many cases were dismissed the day of trial when the attorney announced ready for trial.¹⁵¹

Motion Practice. PDP panel lawyers are compensated for filing written motions and arguing them. In order to be paid, attorneys must file the written motion with their bill for the case. This also allows for PDP management to randomly select motions to review for quality. As part of the previously mentioned annual survey, panel attorneys are required to submit a motion they filed with the court during the fiscal year. These writing samples are reviewed by PDP management during the annual review process.¹⁵²

C. Training

For FY2016-2017, the PDP spent \$75,249 on attorney training, and \$4,788 for investigator training.¹⁵³ An education fund of \$750 is available for each PDP attorney to attend approved education and training programs, or for membership in professional organizations. The PDP also pays for membership in the California Public Defenders Association.¹⁵⁴

The PDP has a continuing education subcommittee that plans all of the organization's CLE programs.¹⁵⁵ The PDP sponsored three mandatory seminars in FY2016 and FY2017, which were video recorded for attorneys who could attend.¹⁵⁶ The PDP hosts other training programs throughout the year. In FY2016-2017, the PDP presented a total of 52 hours of in-house training for its attorneys.¹⁵⁷

D. Mentoring

Mentors are paired with new panel attorneys or attorneys who have not had adequate trial experience within the last three years. Attorneys transitioning from one panel to another will also be assigned a mentor from the panel they are joining.¹⁵⁸

Mentors must meet with their mentee at least twice a month to review the new attorneys' cases, attend a minimum of two of the new lawyer's pretrial conferences within the first two months of the mentor program, and attend a full jury trial or the attorney's first preliminary hearing for lawyers moving to the felony panel.¹⁵⁹

Mentors also regularly discuss the mentee's progress with the Chief Defender, Assistant Chief Defender, or Managing Attorney. There are no "graduation dates"—the mentee will continue in the program until they have "developed sufficient skill in all aspects of client representation. . . ."¹⁶⁰

The PDP compensates mentors according to its fee schedule. Mentors receive a \$1,080 case fee for casual meetings and telephone conversations that do not take up a significant amount of time. For more structured meetings and court appearances that consume significant amounts of time, panel attorneys can bill \$105 an hour.¹⁶¹

E. Client Complaint Process

The agreement between San Mateo County and the bar association requires the PDP to report "the number and nature of client complaints" and how they were resolved.¹⁶² The PDP places an attorney with extensive felony experience on duty as the "Officer of the Day" (OD) to receive complaints about PDP panel attorneys and address them according to a written procedure developed for handling complaints.¹⁶³

In addition to handling client complaints, the OD also handles calls from clients with legal questions and the general public. The PDP received 1,456 inquiries from the general public in FY2015-2016, and 1,751 in FY2016-2017.¹⁶⁴ Many of these calls are from clients seeking assistance with an expungement, which the PDP provides to any former client that qualifies for relief.¹⁶⁵

In FY2015-2016, the PDP received 74 complaints, with 52 falling into complaints characterized as "relationship issues" (no returned calls; no visit; bad fit) and 22 characterized as "performance issues" (court strategy; don't want to plea; ineffective assistance).¹⁶⁶ In FY2016-2017, the PDP received 108 complaints, with 70 characterized as relationship issues and 38 characterized as performance issues.¹⁶⁷ The Assistant Chief Defender and the Managing Attorney reviewed all complaints prepared by the OD and discussed with the attorney involved.¹⁶⁸

At the request of the county Board of Supervisors, the PDP began sending out client surveys beginning in November 2013. The PDP selects clients randomly to receive the survey. The survey asks the following seven questions:

- 1) Did your attorney return phone calls?
- 2) Did you have a chance to meet with the attorney before the first court appearance?
- 3) Did you have enough time with your attorney to discuss your case?
- 4) Did your attorney explain sufficiently what was going on with your case?
- 5) Did your attorney appear to be prepared in court?
- 6) Was your attorney on time for meetings with you?
- 7) Were you satisfied with the overall representation of your attorney?¹⁶⁹

In FY2015-2016, the PDP sent out 359 surveys. They received 29 replies to the mailed surveys; 23 (79 percent) were positive. The next year, the PDP mailed out 351 surveys. There were 33 responses, 27 of which (82 percent) were positive.¹⁷⁰

As of FY2016-2017, the PDP has a new complaint procedure to better document and track complaints. The

PDP will be using defenderData™ to document all complaints received by phone, letter, or in-person visit. The system can track complaints, complainant history, and whether numerous complaints have been made against an attorney.¹⁷¹

The PDP has also instituted a more robust and transparent system to address complaints about attorneys and appoint new attorneys for clients, if warranted.¹⁷²

Institutional Representation

The PDP recognizes the important role that its organization plays in formulating criminal justice policy in San Mateo County, and so does the judiciary. The organization notes:

The Association and its Private Defender Program are always “invited to the table” to discuss the formation and implementation of criminal justice policy. Unlike many other jurisdictions, our Court never hands down such policy decisions before our input has been sought and received. The importance of that relationship to the persons we are appointed to represent cannot be overstated.¹⁷³

This collaborative relationship between the PDP and the judiciary—as well as the District Attorney’s Office and the Probation Office—has resulted in programs that benefit PDP clients, including a mental health court, called Pathways, and a veterans’ treatment court.¹⁷⁴

In March 2017, the PDP was invited to join the county’s Criminal Justice Working Group. The group is comprised of criminal justice stakeholders, including the Board of Supervisors, County Manager’s Office, Superior Court, Health Department, Sheriff’s Office, District Attorney’s Office, and the County Counsel’s Office.¹⁷⁵

Recent Evaluations and Proposed Reforms to PDP Operations

In July 2015, the San Mateo County Civil Grand Jury issued a report on the operations of the PDP. The report noted that the “Grand Jury decided to study this issue because the County’s approach to indigent defense is unusual,” not because the Grand Jury received any complaints or because the program had been criticized.¹⁷⁶

While the Grand Jury did not find any specific problems, it suggested that better county oversight might be warranted and that the county should “conduct regular evaluations to determine whether the operation of the indigent defense program is consistent with state and national guidelines.”¹⁷⁷

In response, the county contracted for an evaluation of the PDP that was performed by a retired appellate justice and Superior Court Judge, Hon. Zerne P. Haning, and Thomas F. Case, former San Mateo County Counsel.¹⁷⁸ The Haning/Casey report “found that the PDP was in compliance with the ABA and State Bar of California’s standards and principles for the operation of indigent defense programs.”¹⁷⁹ But the report also found that the “SMBCA Board of Directors is failing in its responsibilities to manage and oversee the operation of the PDP,” which was a concern expressed by “a very broad cross section of the legal community.”¹⁸⁰ The Haning/Casey report made a number of recommendations, including that the PDP “be completely severed, both physically and financially, from the SMCBA in order to avoid any possible financial and material conflicts of interest,” and “that the selection of the Chief Defender be made by the County.” It recommended that “the administration and management of the PDP . . . be conducted by County personnel, with the attorneys to whom cases were assigned . . . continu[ing] to operate as independent contractors.”¹⁸¹

After the Haning/Casey report was released, the San Mateo Controller’s Office conducted a financial review of the PDP and made a number of recommendations as well.¹⁸² The County Manager’s Office then made several recommendations to the Board of Supervisors based on the Haning/Casey report and Controller’s Office recommendations, including the creation of a “Private Defender Oversight Committee that would meet quarterly to set priorities, monitor PDP operational and financial goals, and select the Chief Defender.”¹⁸³

The PDP opposed the recommendations in the Haning/Casey report, in particular the recommendation that the PDP be severed from the San Mateo County Bar Association and that the Chief and the PDP administrators become county employees:

[A]ppointment of the Chief Defender by the County strips the Chief Defender of his ability to independently negotiate with the County Manager for funding. The Chief Defender, as an appointment and employee of the County, is placed in a situation where he or she must accept the funding assigned by the County or reject the funding level and jeopardize his or her appointment. This is an actual conflict between the financial interest of the County and indigent criminal defendants’ interest in obtaining sufficient funding for defense.¹⁸⁴

Ultimately, the San Mateo Board of Supervisors approved various recommendations from the Controller’s Office pertaining to accountability. However, the Board rejected the County Manager’s recommendation that

an oversight board be formed to pick the Chief Public Defender, at the urging of the San Mateo County Bar Association, Stanford Law professors Ronald Tyler and Suzanne Luban, and the local chapter of the NAACP. Supervisor Don Horsley believed that the PDP should remain independent, noting, “We [the Board of Supervisors] don’t pick judges or the district attorney and we shouldn’t pick the chief defender.”¹⁸⁵

Summary

The PDP is one of the first documented MACs in the United States, opening its doors in February 1969. The San Mateo Bar Association has operated the program since its inception. The PDP had 12 salaried employees and operating income of over \$20.5 million for the 2016-2017 fiscal year.

The PDP’s 114 lawyers assigned to represent indigent defendants are in private practice. PDP attorneys represent clients in misdemeanor, juvenile delinquency, and felony cases (including capital offenses). The office also represents persons in certain civil matters where counsel must be appointed, including conservatorships, terminations of parental rights, and minor guardianships.

The PDP determines what attorneys are eligible to receive appointed cases, assigns appointed attorneys to cases based on their level of experience, assigns investigators and forensic experts to assist attorneys, enforces caseload limits, supervises and evaluates PDP lawyers, provides training and mentoring, and responds to client complaints. The office also serves as an institutional voice for the defense in formulating criminal justice policy in the county.

Massachusetts—Committee for Public Council Services

The Committee for Public Counsel Services (CPCS) is responsible for providing legal representation for indigent defendants throughout the state of Massachusetts. The CPCS provides representation in criminal, juvenile delinquency, child welfare, mental health, and sex offender registry cases, as well as appeals and post-conviction matters.¹⁸⁶ CPCS has a staff of 750, including approximately 425 staff lawyers.¹⁸⁷ The agency also oversees approximately 2,800 assigned private lawyers. In 2017, the agency had a total of 181,659 new staff and private bar assignments in all practice areas, and approximately 269,000 assignments in total when assignments carried over from the previous year are included.¹⁸⁸

CPCS Organization and Operations¹⁸⁹

CPCS is governed by 15 members (“the Committee”) who serve four-year terms. Two members are appointed by the Governor, two by the President of the Senate, and two by the Speaker of the House of Representatives. Nine members are appointed by the justices of the Supreme Judicial Court, with various membership requirements specified in the statute (i.e., one with public defender experience, one with private bar advocate experience, one with criminal appellate experience, etc.). By law, the Supreme Judicial Court must give “appropriate consideration” to nominees for the nine positions from various bar associations.

By statute, all members of the Committee must have “a strong commitment to quality representation in indigent defense matters or have significant experience with issues related to indigent defense.” Judges, elected officials, district attorneys, law enforcement, and currently employed public defenders are ineligible to be members of the Committee.

CPCS provides legal representation for adults in criminal cases and related matters through two divisions: the Public Defender Division and the Private Counsel Division.¹⁹⁰ Additionally, there are units that provide support services to both of those divisions, including the Criminal Defense Training Unit, Civil Consequences, the Forensic Services Unit, and the Immigration Impact Unit.¹⁹¹ CPCS also has a Youth Advocacy Division, Children and Family Law Division, Mental Health Litigation Division, and various offices related to central operations (e.g., General Counsel’s Office, Human Resources, and Administration and Finance).

Management

The Committee appoints a chief counsel to administer the program. The Committee also appoints three deputy chiefs: one to supervise the Public Defender Division, another to supervise the Private Counsel Division, and one to supervise the Children and Family Law Division.¹⁹²

Public Defender Division

The Public Defender Division is made up of approximately 300 staff attorneys,¹⁹³ as well as social service advocates, investigators, and support staff employed by CPCS. The Division has a central administration office and offices throughout the state serving different courts.¹⁹⁴ It also has specialized units for different types of cases: Trial Unit, Appeals Unit, Drug Crisis Litigation Unit, Alternative Commitment Unit, and the Special Litigation Unit.¹⁹⁵ The Deputy Chief Counsel who supervises the Public Defender Division is Randy Gioia, who has held that position since 2012.¹⁹⁶

Private Counsel Division

The Private Counsel Division is charged with assigning private attorneys to represent indigent clients in criminal trial-level cases, post-conviction cases, and commitment and registration cases for persons convicted of sex offenses.¹⁹⁷ Over 80 percent of CPCS representation is provided by the approximately 3,000 private attorneys who are trained and certified by CPCS to accept appointments.¹⁹⁸ The Private Counsel Division has been supervised by Deputy Chief Counsel Nancy T. Bennett since 2006.¹⁹⁹

The Private Counsel Division is organized into the following units for criminal cases:

- **Criminal Trials/Bar Advocate Programs:** The Criminal Trial Unit certifies and assigns qualified counsel to represent indigent criminal defendants.²⁰⁰ Central administration and senior staff counsel of the Unit are located in Boston.²⁰¹ Local administration and supervision of private counsel is accomplished through cooperation between CPCS and the Bar Advocate Programs, which are nonprofit corporations that have staff “to coordinate duty day assignments of private lawyers who have been certified by CPCS to provide representation.”²⁰²
- **Criminal Post Conviction and Appeals:** This unit “certifies and assigns qualified private counsel to represent indigent criminal defendants in post-conviction proceedings. Assignments include direct appeals and collateral attacks such as new trial motions, motions for relief from unlawful restraint, sentence

appeals, motions to revise and revoke sentence, and other post-conviction matters.”²⁰³ Staff for the unit, including the Director of the CPCS Innocence Program, are located in Boston.²⁰⁴

- **Alternative Commitment and Registration Support Unit (ACRSU):** This unit certifies and trains private counsel to represent indigent defendants in Sex Offender Registry Board proceedings and “sexually dangerous persons” cases.²⁰⁵

The Appointment Process

The Committee is charged with establishing, supervising, and maintaining “a system for the appointment or assignment of counsel at any stage of a proceeding”—both civil and criminal—in which state law or rules of the Massachusetts Supreme Judicial Court “require that a person in such proceeding be represented by counsel” and “that such person is unable to obtain counsel by reason of his indigency.”²⁰⁶

The Committee is also statutorily charged with establishing uniform standards and procedures for all Massachusetts courts in determining that a person is indigent and cannot obtain counsel or has the ability to pay a reduced fee for the appointment of counsel.²⁰⁷

Persons claiming indigency and requesting the appointment of counsel must

execute a waiver authorizing the court’s chief probation officer, or the officer’s designee, to obtain the person’s wage, tax and asset information from the department of revenue, department of transitional assistance, and the registry of motor vehicles that the court may find useful in verifying the person’s claims of indigency.²⁰⁸

A justice or associate justice assigns a case to CPCS after receiving the report containing the probation officer’s opinion regarding the defendant’s ability to pay for counsel.²⁰⁹ Under state law, the “committee may establish a rotating appointment mechanism that will encourage open access among attorneys participating within the private counsel division.”²¹⁰

Private Counsel Pay Schedule and Billing Procedures

Compensation rates for private appointed counsel is set by state law:

- Homicide cases: \$100 per hour
- Superior Court non-homicide cases: \$60 per hour
- District Court and children in need of services cases: \$53 per hour
- Children and family law cases: \$55 per hour
- Sex offender registry and mental health cases: \$50 per hour²¹¹

The legislature has set an annual cap of 1,650 billable hours.²¹² Private counsel who have billed 1,350 hours during the fiscal year are prohibited from accepting any new appointments, except private counsel assigned to a homicide cases.²¹³

Policies and procedures related to billing and compensation are detailed in the Assigned Counsel Manual.²¹⁴ State law mandates that private attorney invoices be processed within 30 days of receipt by the chief counsel. Private counsel must submit bills for payment within 60 days of the conclusion of a case, or if the case is pending at the end of the fiscal year, within 30 days after the end of the fiscal year. Invoices submitted between 60 and 90 days of final disposition (or between 30 and 60 days after the end of the fiscal year for pending cases) are required by law to be reduced by 10 percent. Bills submitted more than 90 days after completion of the case (or more than 60 days after the fiscal year for pending cases) will not be processed unless the chief counsel determines payment should be made because “the delay was due to extraordinary circumstances beyond the control of the attorney.”²¹⁵

Ensuring Quality in the Private Counsel Division

CPCS has put a variety of policies and practices in place over the years to ensure the quality of representation provided by staff attorneys and private counsel.²¹⁶ Importantly, as Professor Norman Lefstein notes, “To a considerable degree, the success of CPCS, including its ability to control the caseloads of its lawyers, is attributable to its enabling legislation.”²¹⁷

A. Division Standards²¹⁸

The legislature has directed the Committee to establish standards for the Public Defender Division and Private Counsel Division on a variety of topics. A few examples include:

- Vertical or continuous representation, whenever possible;
- Required participation by attorneys in “an approved course of training in the fundamentals of criminal trial practice”;
- Caseload limits;
- Investigative services;
- Provision of social services or social service referrals; and,
- Adequate supervision provided by experienced attorneys available to less experienced attorneys.

The Committee must “monitor and evaluate compliance with the standards and the performance of counsel in its divisions in order to insure competent representation of defendants. . . .”

B. Qualification Standards

All attorneys who want to accept court appointments through CPCS must first be certified in the area(s) in which they seek to practice. The application and certification process differs by case type. Attorneys seeking to represent defendants in less serious cases—misdemeanors and felonies in District Court—must “(1) be accepted into the panel of attorneys of a county bar advocate program; and (2) complete a required training program.”²¹⁹ The initial training program is a five-day seminar called “Zealous Advocacy.” It is offered several times a year at various locations throughout the state.²²⁰

C. Caseload Limits²²¹

The Committee’s caseload limits are designed to “assure both the equitable distribution of cases to qualified private counsel and the quality of representation.” The Committee has adopted a “weighted system of caseload limits” for private counsel, which essentially means that more complex cases are weighted more heavily and the annual caseload limits for those cases will be lower than other cases that are less serious or less time-consuming. The Committee has set “an absolute limit of 250 cases per year.”

Following is an example of three types of cases, their weight, and the annual limit that an attorney could handle if he or she only took that one particular case:

- District Court jurisdiction criminal cases..... (weight=1) (limit=250)
- Superior Court jurisdiction criminal cases.....(weight=2) (limit=125)
- Delinquency cases.....(weight=1.5) (limit=165)

If one attorney were to take 125 District Court Case (125x1=125), 60 Superior Court cases (60x2=120), and 3 Delinquency cases (3x1.5=4.5), then he or she would effectively reach the caseload limit because the case count would be 249.5 (125+120+4.5).

D. Attorney Performance Monitoring and Evaluations²²²

The “Bar Advocate Programs, in cooperation with CPCS, select several part-time ‘supervisory attorneys’ with whom CPCS contracts to provide oversight for the representation furnished by private counsel division lawyers.” Supervisory attorneys will assess complaints filed against assigned counsel, train lawyers, and conduct performance evaluations. Supervisory lawyers file over 500 performance evaluations with CPCS annually.

E. Training

CPCS has a robust training program for private counsel, as evidenced by its training calendar: <https://www.publiccounsel.net/train/calendar/>. “The Criminal Defense Training Unit is responsible for the design, development, oversight and delivery of training programs and materials as well as other resources for CPCS Public Defender Division staff and bar advocates who accept appointments through the Private Counsel Division.” The CDTU also collaborates with the other divisions of CPCS to develop training programs offered throughout the state.²²³

Attorneys certified to represent defendants in District Court and Superior Court must take eight hours of continuing legal education every year to be recertified to receive assignments through CPCS.²²⁴

F. Mentoring²²⁵

CPCS uses “resource attorneys,” who are certified to handle Superior Court cases, to be paid, part-time mentors for private counsel in District Court criminal cases. “Resource lawyers are assigned to all trial-level private criminal defense counsel who have not achieved certification for Superior Court or youthful offender assignments.” CPCS employs mentors who are not supervisors “because of a belief that lawyers are more apt to seek advice from persons who are not designated as ‘supervisory lawyers.’”

G. Client and Judicial Complaint Process²²⁶

State law requires the Committee to “establish a procedure for the review and disposition of client complaints.” The Committee is also required to “establish procedures whereby comments on the standard of performance of counsel in its divisions may be submitted by the justice hearing a particular matter.” Supervisory attorneys also assess complaints filed against private counsel.

Institutional Representation

CPCS serves as an institutional voice in Massachusetts on indigent defense and criminal justice matters. CPCS’s general counsel represents the agency before the executive, legislative, and judicial branches on budgetary and legislative matters. CPCS’s effectiveness at the legislature was acknowledged in 2017 by the National Association of Criminal Defense Lawyers (NACDL), which presented CPCS’s Chief Counsel Anthony Benedetti with its *Champion of State Criminal Justice Reform Award*:

Examples of successful legislative efforts in which Benedetti and CPCS have played a major role include compensation for the wrongfully convicted, reform to the Criminal Records Statute, reclassification of certain low level misdemeanors to civil offenses, reduction of certain minimum mandatory sentences, reform of the school zone statute by decreasing the zone from 1,000 feet to 300 feet, and advocacy to keep the death penalty out of Massachusetts.²²⁷

Summary

CPCS is responsible for providing legal representation for indigent defendants throughout the state of Massachusetts. The office provides representation in criminal, juvenile delinquency, child welfare, mental health, and sex offender registry cases. The office also handles related appeals and post-conviction matters. CPCS represents approximately 285,000 clients annually with a staff of 750, including 425 staff lawyers and 2,800 assigned private lawyers.

The division that is charged with assigning private attorneys to represent clients in criminal cases is the Private Counsel Division. Private attorneys represent indigent misdemeanor and felony defendants at the trial level, in post-conviction proceedings, and for sex offender commitment and registration cases. Over 80 percent of CPCS representation is provided by private attorneys who are trained and certified by CPCS to accept appointments.

CPCS has put a variety of policies and practices in place over the years to ensure the quality of representation provided by staff attorneys and private counsel. CPCS has established qualification standards for private attorneys seeking court appointments, caseload limits, an attorney performance and monitoring program, a robust training program, mentoring, and a client and judicial complaint process.

CONCLUSION

TIDC's *Primer on Managed Assigned Counsel Programs*, combined with this *Supplement*, should give any county in Texas the background information and tools it needs to successfully establish a managed assigned counsel program if a MAC is appropriate to address the county's indigent defense needs. Anyone interested in establishing a managed assigned counsel program can reference the *Primer* and learn about:

- Texas's MAC statute and program models (Ch. 3);
- Benefits of a MAC, including greatly enhanced accountability, improved quality of representation, cost effectiveness, independence, and being an institutional resource for indigent defense issues (Ch. 4);
- The steps that should be taken to establish and operate a MAC program (Ch. 5), and
- A summary of the key components of Texas MAC programs (Appendix).

This *Supplement* provides a detailed description of the operations of Texas's three MAC programs, as well as MACs in San Mateo, California, and Massachusetts, so that county officials and interested parties can get a firm grasp on how MACs operate. From this *Supplement*, one can get a sense of:

- Organizational structures and program offerings by MACs;
- Proper staffing types and levels;
- Budget needs for establishing a MAC;
- Attorney fee schedules and billing procedures that other jurisdictions are using and how your jurisdiction compares;
- Attorney qualification and selection processes in other jurisdictions and how your jurisdiction's processes can be improved;
- Attorney disciplinary programs that should be implemented with the MAC; and
- The services that MACs offer to improve the quality of indigent defense services, including providing investigators, social workers, attorney supervision, training, mentoring, client complaint processing, and enforcing caseload standards.

If you think that a MAC could improve indigent defense services in your county, please contact the Texas Indigent Defense Commission for more information about grant opportunities and technical assistance.

Contact:

Texas Indigent Defense Commission
209 W. 14th Street, Room 202 (Price Daniel Building)
512.936.6994
tidc.texas.gov

ENDNOTES

1. History of MACs in Lubbock provided during interview of Patti Jones and Bill McCay, County Commissioners, and Philip Wischkaemper, Professional Development Director and Interim Executive Director, LPDO, in Lubbock, Tex. (Apr. 20, 2017).
2. Unless otherwise noted, “Administration and Structure” section based on interviews with LPDO staff (Apr. 20, 2017).
3. *2016-2017 Agreement Between Lubbock County and the Lubbock Private Defender* 15 (Dec. 2016) (on file with TIDC).
4. *Id.*
5. *Id.* at 6-9.
6. *Id.* at 8.
7. Interview with Lori Martinez, Office Manager, LPDO, in Lubbock, Tex. (Apr. 20, 2017).
8. *Id.*
9. Lubbock District and County Court Attorney Fee Schedule (file dated Jan. 22, 2014), *available at* <http://tidc.tamu.edu/IDPlanDocuments/Lubbock/Lubbock%20District%20and%20County%20Court%20Attorney%20Fee%20Schedule.pdf>.
10. LPDO, *Lubbock Private Defender's Office Attorney Voucher Submission and Payment Policy* (effective March 2017) (on file with TIDC).
11. LPDO, *Written Plan of Operation, Fiscal Year 2014-2015*, 18 (undated) (on file with TIDC).
12. *Id.* at 19.
13. *Id.*
14. Unless otherwise noted, this section based on interview with Jaime Villarta, Mental Health Program Manager, LPDO, in Lubbock, Tex. (Apr. 21, 2017).
15. Interview with Kim Howell, Assistant Chief Deputy of Detention, Lubbock County Sheriff's Office, in Lubbock, Tex. (Apr. 20, 2017).
16. *Id.*
17. Carpenter's Church, *Community Center*, <http://www.carpenterslubbock.org/community-center.html> (last visited Aug. 15, 2017).
18. Unless otherwise noted, this section based on telephone interview with Philip Wischkaemper, Director of Professional Development, LPDO (May 8, 2017).
19. *Id.*
20. *Id.*
21. *Id.*
22. Unless otherwise noted, this section based on interview with Hon. Mike Lynch, Judge (ret.), Travis County 167th District Court, in Austin, Tex. (Apr. 13, 2017).
23. CAPDS, *Capital Area Private Defender Service Board of Directors*, <http://www.capds.org/board-of-directors.html> (last visited May 31, 2017).
24. CAPDS, *Annual Report 2015*, 9, *available at* <http://www.capds.org/annual-report.html>.
25. TIDC, Statement of Grant Award, Revised FY2015 Discretionary Grant (signed by Travis Co. Judge Samuel Biscoe on July 29, 2014) (on file with TIDC).
26. Bradley Hargis, *Capital Area Private Defender Service: A Managed Assigned Counsel Office*, PowerPoint presentation at CAPDS 2017 Mentoring Training, slide 11 (Apr. 17, 2017) (on file with TIDC).
27. 2015 Travis County Discretionary Grant Application Narrative (Multi-Year Grant), section e. Activities, 2 (on file with TIDC).
28. Hargis, *supra* note 26, at slide 19.
29. *Capital Area Private Defender Service Board of Directors*, <http://www.capds.org/board-of-directors.html> (last visited June 2, 2017). See also Hargis, *supra* note 26, at slide 18.
30. Hargis, *supra* note 26, at slide 17.
31. *Id.* at slide 21.
32. *Padilla v. Commonwealth of Kentucky*, 559 U.S. 356 (2010).
33. Various materials related to the mixed DNA problem and the Texas Forensic Science Commission's response are *available at*: <http://www.fsc.texas.gov/texas-dna-mixture-interpretation-case-review> (last visited Aug. 15, 2017). The FSC's audit report of the Austin Police Department DNA Section is *available at*: <http://www.fsc.texas.gov/blog/2016-07-12/commission-releases-austin-police-department-dna-section-audit-report> (last visited Aug. 15, 2017).
34. E-mail from Bradley Hargis, Deputy Director, Capitol Area Private Defender Service, to author (Sept. 1, 2017, 12:05 AM CDT) (on file with TIDC).
35. Budgetary figures are based on the total of: (1) the “Total Proposed Costs” contained in TIDC’s “Statement of Grant Award” to Travis County for the FY2015, FY2016, and FY2017 Discretionary Grant Awards for the Managed Assigned Counsel program; (2) the “Statement of Grant Award” for the FY2016 Technical Support Grant for the DNA Mixture Case Review program; and (3) the “Statement of Grant Award” for the FY2017 Discretionary Grant for the Travis County Holistic Defense Program. Available from TIDC upon request.
36. Interview with Bradley Hargis, Deputy Director, Capital Area Private Defender Service, in Austin, Tex. (Aug. 22, 2017).
37. Bradley Hargis, *Capital Area Private Defender Service: A Managed Assigned Counsel Office*, PowerPoint presentation to the Harris Co. County Courts at Law Judges, slide 30 (date unknown) (on file with TIDC).
38. *Travis County Criminal Courts Fair Defense Act Program: Guidelines, Standards and Procedures* 5-6 (approved Oct. 23, 2015), <http://www.capds.org/fair-defense-plan.html> [hereinafter Travis Co. Fair Defense Plan].
39. *Id.* at 7-11.
40. *Id.* at 12.
41. Hargis, *supra* note 37, at slide 21.
42. *Id.* at slide 20.
43. Travis Co. Fair Defense Plan, *supra* note 38, at 2 (sec. I.B.3).
44. *Id.* at 5 (sec. II.E.3).
45. *Id.* at 23 (sec. IV.A.1).

46. See Tex. Code Crim. Proc. Ann. art. 26.04(a) and 26.04(b)(6) (West 2008 & Supp. 2015).
47. Hargis, *supra* note 37, at slide 31.
48. CAPDS, *Annual Report 2016* (forthcoming early 2018) (manuscript at 19).
49. *Id.* at 16. The author also has personal knowledge of the AMP system and its functionality.
50. See *Travis County Fee Guidelines for Appointed Counsel in Misdemeanor Criminal Cases*, <http://tidc.tamu.edu/IDPlanDocuments/Travis/Travis%20District%20and%20County%20Court%20County%20Fee%20Schedule.pdf> (effective Nov. 1, 2016) [hereinafter *Misdemeanor Fee Guidelines*].
51. See *Travis County Fee Guidelines for Appointed Counsel in Felony Criminal Cases*, <http://tidc.tamu.edu/IDPlanDocuments/Travis/Travis%20District%20and%20County%20Court%20District%20Fee%20Schedule%20.pdf> (effective Nov. 1, 2016) [hereinafter *Felony Fee Guidelines*].
52. CAPDS, *supra* note 48, at 25.
53. *Misdemeanor Fee Guidelines*, *supra* note 75.
54. *Felony Fee Guidelines*, *supra* note 76.
55. CAPDS, *supra* note 48, at 24.
56. *Id.*
57. *Id.* at 26.
58. CAPDS, *Client Complaint Form*, <http://www.capds.org/client-complaints.html> (last visited June 6, 2017).
59. Interview with Ira Davis, Executive Director, CAPDS, and Bradley Hargis, Deputy Director, CAPDS, in Austin, Tex. (Apr. 13, 2017) [hereinafter CAPDS Management Interview].
60. This section based on CAPDS, *Annual Report 2016* (forthcoming early 2018) (manuscript at 20-21).
61. Marea L. Beeman, Tiffany Culley & Andrea Marsh, *Indigent Defense Attorney Mentoring in Texas: A Guide to Establishing a Mentorship Program* 11-12 (Dec. 2015), <http://www.tidc.texas.gov/resources/publications/reports/special-reports/indigent-defense-attorney-mentoring-in-texas.aspx>.
62. *Id.* at 12.
63. CAPDS, *supra* note 48, at 23.
64. Posting of Trudy Strassburger, Trudy_AT_capds.org, to capds-attorneys@googlegroups.com (Jan. 23, 2017) (on file with TIDC).
65. CAPDS, *supra* note 48, at 24.
66. Travis Co. Fair Defense Plan, *supra* note 38, at 20 (sec. III.I.7).
67. CAPDS Management Interview, *supra* note 59.
68. *Id.*
69. Interview with Hon. John Roach Jr., Judge, Collin County 296th District Court, in McKinney, Tex. (Apr. 26, 2017).
70. *Id.*
71. Interview with Pam DeVault, Collin County Court Administrator, in McKinney, Tex. (Apr. 26, 2017).
72. *Id.*; Interview with Duncan Webb, Commissioner, Collin County Commissioners Court, in Plano, Tex. (Apr. 28, 2017); Judge Roach interview, *supra* note 69.
73. TIDC, Corrected Statement of Grant Award, FY2013 Multi-year Discretionary Grant (signed by County Judge Keith Self on Aug. 14, 2012) (on file at TIDC Grant and Plan Management Website).
74. 2013 Collin County Discretionary Grant Application Narrative (Multi-Year Grant), “Sec. e.2. Contract with nonprofit entity to operate MHMC program” (on file at TIDC Grant and Plan Management Website).
75. Devault interview, *supra* note 71; letter from Keith Self, Collin County Judge to Jim Bethke, Executive Director, TIDC (June 6, 2013) (on file at TIDC Grant and Plan Management Website).
76. E-mail from Alyse Ferguson, Managing Attorney, Collin Co. MHMC, to author (May 24, 2017, 2:28 PM CST) (on file with TIDC).
77. Collin County Judge Keith Self, Letter to Texas Indigent Defense Commission, RE: FY2013 Grant Adjustment Notice – Grant Number 212-13-D05 (letter undated) (on file at TIDC Grant and Plan Management Website).
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79. *Id.*
80. Interview with Alyse Ferguson, Managing Attorney, MHMC; John Cooper, Danny McDaniel, Kristen O’Brien, Matt Goheen, and Vanita Parker, panel attorneys, MHMC; and Davis Goodwin, Jail Diversion Coordinator, Lifepath Systems, in McKinney, Tex. (Apr. 28, 2017) [hereinafter MHMC attorneys interview].
81. E-mail from Alyse Ferguson, Managing Attorney, Collin Co. MHMC, to Scott Ehlers (Aug. 8, 2017, 2:11 PM CDT) (on file with TIDC).
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83. Unless otherwise noted, this section based on MHMC attorneys interview, *supra* note 80.
84. Collin County Application for Approval as Court Appointed Attorney for Defendants with Mental Illnesses, <http://tidc.tamu.edu/IDPlanDocuments/Collin/Collin%20County%20Court%20Attorney%20Application%20for%20MHMC%20Program%20Appointment.docx>.
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88. Collin District Court Plan, Local Rules to Implement the Texas Fair Defense Act, 2017 Plan Standards and Procedures Related to Appointment of Counsel for Indigent Defendants in Felony Cases in Collin Co., Fee Schedule for Indigent Defense Court Appointed Attorneys (May 18, 2017), <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=463>.
89. Collin County Court Plan, The Collin Co. Indigent Defense Plan, Sec. 7.03 (as amended effective Apr. 24, 2017), available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=322>.
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94. Interview with Terry McCraw, Assistant Chief Deputy, Jail Administrator, and Randy Clark, Deputy Chief, Collin Co. Sheriff's Office, in McKinney, Tex. (Apr. 26, 2017).
95. Norman Lefstein, American Bar Assoc., Standing Comm. on Legal and Indigent Defendants, *Securing Reasonable Caseloads: Ethics and Law in Public Defense 202* (2011).
96. San Mateo Co. Bar Assoc. Private Defender Program, *Annual Report Fiscal Year 2014-2015 to the Board of Supervisors, San Mateo County 4* (2015), available at
97. <http://www.smcgov.org/sites/smcgov.org/files/PDP%20Annual%20Report.pdf> [hereinafter *PDP Annual Report 2014-2015*].
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.* at 5.
102. Anna Schuessler, Chief defender stepping down: After 40 years, John Digiacinto leaves his mark on county's criminal justice system, THE DAILY JOURNAL, Feb. 13, 2017.
103. *Id.*
104. San Mateo Co. Bar Assoc. Private Defender Program, *Annual Report Fiscal Year 2016-2017 to the Board of Supervisors, San Mateo County 7* (2017), available at https://www.smcba.org/wp-content/uploads/2017/12/Annual-Report-FY-2016-2017_FINAL_Digital.pdf [hereinafter *PDP Annual Report 2016-2017*].
105. *PDP Annual Report 2014-2015, supra* note 96, at 5.
106. *PDP Annual Report 2016-2017, supra* note 104, at 7-8.
107. *PDP Annual Report 2014-2015, supra* note 96, at 6.
108. The PDP does not appoint appellate counsel to represent defendants convicted of felonies. See *PDP Annual Report 2014-2015, supra* note 96, at 18 n.23.
109. *Id.* at 18.
110. *Id.* at 19.
111. *Id.* at 20.
112. *PDP Annual Report 2016-2017, supra* note 104, at 22.
113. *Id.*
114. *Id.* at 23.
115. *PDP Annual Report 2014-2015, supra* note 96, at 7.
116. *Id.*
117. *PDP Annual Report 2016-2017, supra* note 104, at 11-12.
118. *Id.* at 12.
119. *PDP Annual Report 2014-2015, supra* note 96, 14.
120. *PDP Annual Report 2016-2017, supra* note 104, at 15.
121. *Id.*
122. *PDP Annual Report 2014-2015, supra* note 96, 17-18.
123. *PDP Annual Report 2016-2017, supra* note 104, Appendix D.
124. *Id.*
125. *Id.*
126. *PDP Annual Report 2016-2017, supra* note 104, at 22.
127. Calculation based on \$19,568,009 overall budget for FY2015-16 and a county population estimate of 765,135 on July 1, 2015. Population estimate source: United States Census Bureau, *QuickFacts: San Mateo, California*, <https://www.census.gov/quickfacts/table/BZA010214/06081> (last visited March 7, 2017).
128. Calculation based on total indigent defense costs of \$10,719,171 and a county population estimate of 1,176,558 on July 1, 2015. Indigent defense cost source: Texas Indigent Defense Commission, *Travis County Dashboard*, <http://tidc.tamu.edu/public.net/Pages/CountyDashboard.aspx?cn=Travis>. Population estimate source: United States Census Bureau, *QuickFacts: Travis County, Texas*, <https://www.census.gov/quickfacts/table/PST045215/48453> (last visited March 7, 2017).
129. Based on single adult with household income of \$100,000 <https://smartasset.com/mortgage/cost-of-living-calculator#mQneKbUNRH>.
130. See *PDP Annual Report 2014-2015, supra* note 96, at Appendix B, p. 2 and Appendix C, Private Defender Program Case Counts for the Year Ended June 30, 2015.
131. *PDP Annual Report 2016-2017, supra* note 104, at 10.
132. *Id.*
133. *PDP Annual Report 2014-2015, supra* note 96, at 49; Appendix G, "PDP Caseloads: Case Weighted Targets for Percent of PDP Practice."
134. *PDP Annual Report 2016-2017, supra* note 104, at Appendix G, "PDP Caseloads by Attorney and PDP Averages, Fiscal Year Ended June 30, 2017."
135. *Id.* at Appendix B, "Agreement Between the County of San Mateo and the San Mateo Bar Association," 2-3.
136. *Id.* at 10.
137. *Id.* at Appendix E, "Fee Schedule," Addendum 1.
138. *Id.*
139. *Id.* at 33.

140. *Id.* at 34.
141. *Id.* at 35.
142. *Id.* at 35.
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146. *Id.* at 38.
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151. *Id.* at 38.
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153. *Id.* at 27.
154. *Id.* at 33.
155. *Id.* at 30.
156. *Id.* at 27-28.
157. *Id.* at 32.
158. *Id.*
159. *PDP Annual Report 2014-2015*, *supra* note 96, at 35.
160. *Id.*
161. *PDP Annual Report 2016-2017*, *supra* note 104, at Appendix E, “Fee Schedule,” 8.
162. *Id.* at 39.
163. *Id.*
164. *Id.*
165. *Id.*
166. *Id.*
167. *Id.* at 40.
168. *Id.*
169. *Id.* at 41.
170. *Id.* at 41-42.
171. *Id.* at 42.
172. *Id.* at 42-43.
173. *PDP Annual Report 2014-2015*, *supra* note 96, at 25.
174. *Id.*
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180. *Id.* at Attachment A, Zerme P. Haning & Thomas F. Casey, *San Mateo County Private Defender Program Evaluation 5* (Dec. 8, 2015).
181. *Id.* at 6. See also the list of recommended changes to the program if the contractual relationship essentially remained the same, at 7-8.
182. *Id.* at Attachment C, San Mateo Controller’s Office, *Private Defender Program Financial Review Report; For the period July 1, 2013-Feb. 29, 2016* (Sept. 1, 2016).
183. *Id.* at 4.
184. *Id.* at Attachment B, Letter from the PDP to the San Mateo Board of Supervisors (Apr. 11, 2016), at 2 (emphasis in original).
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